

STATE OF NEVADA
Minutes for the
Nevada Occupational Safety and Health Review Board
Reno, Nevada

January 13, 2021
Via teleconferencing and audio conferencing (WebEx)

Steve Ingersoll (Labor)
Rodd Weber (Management)
James Halsey (Labor)
Frank Milligan (Public at Large)

On January 13, 2021, a meeting of the Nevada Occupational Safety and Health Review Board was convened. The meeting was duly noticed in compliance with the Nevada Open Meeting Law as modified by Governor Sisolak's Emergency Directive 006, permitting meetings to be conducted by Teleconferencing and Audio conferencing (WebEx) and providing for a refined publication process for posting and the publication of Agendas or Notices of the Meeting. This meeting took place by Teleconferencing. In accordance with the Nevada Open Meeting Law, each Board member participating in the meeting either had before him all written materials to be considered during the deliberations or was obliged to refrain from voting if not in possession of the materials.

The meeting was called to order by Board Chairman Steve Ingersoll at approximately 9:00 a.m., on January 13, 2021.

1. Roll Call.

Board member participating and present by video conferencing were Chairman Steve Ingersoll, Secretary Rodd Weber and Board Members James Halsey and Frank Milligan. Lance Semenko was absent for the start of the meeting, anticipating a late arrival. As all four of the five members of the Board participated in the meeting, including a representative of labor and a representative of management, a quorum was present to conduct the Board's business.

Board counsel Charles R. Zeh, Esq., also participated *via* video conferencing as did Sally Ortiz, Esq., counsel to Nevada State OSHA. Jimmy Andrews, Chris Carling and Decker Loretz also attended by virtual conferencing during the course of the meeting. Allison Kheel, Esq., of Fisher Phillips, made her presence known as she was one of the attorneys for Sofidel America Corp, LV 19-1990, Item 4 (b) (iii) on the Agenda. Additionally, during the course of the meeting, the Board was contacted by Amy Compton, Esq., of the law firm of Littler Mendelson, P.C. She appeared for the limited purposes of finding out what the Board's disposition was regarding the decision, Item 4 (b) (ii), the Hirschi Masonry matter, LV 19-1979.

The hearing on this date was reported by Court Reporter Kelly Jackson.

The Notice of Meeting was duly provided under Chapter 618 of the Nevada Revised Statutes and in accordance with NRS Chapter 241 of the Nevada Open Meeting Law, as modified through the

Governor Sisolak's Emergency Directives. A copy of the Notice is attached to these Minutes and made a part hereof as though fully set forth herein.

Notice of the meeting was posted or published, electronically or otherwise, consistent with the requirements of the Nevada Open Meeting Law as further modified by the Governor's Emergency Directives 006.

2. Public Comment.

Board Chairman Ingersoll asked for any public comment. There was none offered. Upon that information, Board Counsel advised that his office had received no written public comment in connection with the meeting on this date.

3. Contested Hearings:

The Board deferred until 10:30 a.m., consideration of the one contested matter left on the Agenda, Valley Joist, LLC, RNO 20-2025, upon the request by the State of Nevada to delay consideration of the matter because the State of Nevada witnesses in this matter were unexpectedly scheduled for COVID vaccinations the morning of January 13, 2021. The State advised that their witnesses would be ready at 10:30 a.m., on January 13, 2021 and as an accommodation to the State and the pandemic episode that everyone is experiencing, the Board moved this item down to the end of the Agenda when the State witnesses would be available.

Board Chairman called Item 4 of the Agenda.

4. Administrative Meeting:

(a) Approval of the previous Review Board minutes of September 9, 2020 and November 12/13, 2020.

September 9, 2020 minutes: Board legal counsel pointed out that the word "States" should have been the word "State" without an "s" on the last line of page 3. Other than that correction, Board counsel saw no other corrections, additions or omissions to the minutes of September 9, 2020. It was accordingly moved by James Halsey, seconded by Frank Milligan, to approve the minutes as read. **Motion adopted.**

Vote: 4-0.

November 12/13, 2020: Next, the Board Chairman asked the Board to take up the minutes for the meeting on November 12 and 13, 2020. Board members Chairman Ingersoll, Secretary Weber and members Milligan and Halsey were present for the hearing, memorializing by the minutes of November 12, 2020. There being no corrections, additions or omissions to the minutes, it was moved by Rodd Weber, seconded by Frank Milligan, to approve the minutes as read. **Motion adopted.**

Vote: 4-0.

November 13, 2020: The Board then took up the minutes memorializing the meeting of November 13, 2020. Chairman Ingersoll was absent for that meeting. Rodd Weber, Secretary, acted as Chairman for the meeting on that date, attended by members Frank Milligan and James Halsey. It was moved by Rodd Weber, seconded by Frank Milligan to approve the minutes for the meeting of November 13, 2020 as read. **Motion adopted.**

Vote: 3-1-1 (Ingersoll abstaining for the reasons stated).

Chairman Ingersoll then called Item 4 (b) to be heard.

(b) Review contested case settlements, motions, draft decisions, or procedural issues pending on status report, for approval and issuance of final orders:

i. RNO 20-2021, Quad/Graphics Printing Corp. aka QG Printing LLC.

Before the Board was a settlement and proposed dismissal of this matter. It was moved by Rod Weber, seconded James Halsey, to approve the settlement as proposed and for dismissal of this matter. **Motion adopted.**

Vote: 4-0.

Then, Board Chairman called the next item to be heard.

ii. LV 19-1979, Hirschi Masonry, LLC.

Before the Board was a draft of a decision. The question before the Board was whether the draft decision provided by Board Counsel was consistent with what the Board thought its action was that took place when disposing of this matter. The Board agreed that the decision as drafted was consistent with the action taken by the Board and accordingly, it was moved by Rodd Weber, seconded by Frank Milligan, to approve the decision as drafted by the Board Counsel. **Motion adopted.**

Vote: 4-0.

iii. LV 19-1990, Sofidel America Corp. dba Sofidel America.

Before the Board was a decision drafted by Board Counsel, for the Board to determine whether the decision, as drafted, was consistent with the action of the Board when deciding this matter. The Board determined that the decision, as drafted by Board Counsel, was consistent with the action taken by the Board when deciding this matter, and accordingly it was moved by Rodd Weber, seconded by Frank Milligan, to approve the decision as drafted by Board Counsel. As Chairman Ingersoll was absent from the meeting when Sofidel was heard and decided, he advised he would abstain from voting on the motion. **Motion adopted.**

Vote: 3-0-1 (Ingersoll abstaining for the reason stated).

- iv. Depending on the outcome of the contested matters heard on this Agenda, the Board may assess the hearing process and may consider amending or otherwise disposing of its general emergency procedural order for handling documents offered for admission into evidence by the contesting parties, the acceptance of testimony from the witnesses and the handling of other evidentiary matters.**

Board Chairman then called Item 4(b)(iv) for discussion and assessment by the Board of the hearing process under the virtual hearing procedures currently being employed. Board members concurred that the virtual hearing process was cumbersome, time consuming and complicated. The Board members, however, for the moment could see no way out from proceeding by virtual hearing in order to maintain some kind of handle on the growing number of cases to be disposed of by the Board. For the moment, the Board's consensus was, therefor, to continue conducting hearings through this virtual hearing process and in accordance with the procedural measures taken by the Board as reflected by the Board's General Order as the most expeditious means of handling the caseload until further notice or until the Board can return to in person hearings.

The Chairman then called Item (2) (sic) for hearing. General administration and/or procedural issues.

Item 2(i). General matters of import to Board members.

The one issue brought up at this portion of the meeting was the possible resignation of Lance Semenko from the Board due to the press of his business and the demands of Board membership. Chairman Ingersoll is going to contact Lance Semenko to confirm his position on resignation, secure a letter of resignation from him if member Semenko intends to resign and contact AGC in order to help recruit a member representing business to replace Mr. Semenko on the Board.

Item 2(ii). Old and New Business.

There was none discussed.

Item 2(iii). Conduct of contested cases hearings.

Board counsel advised that this Item was also discussed under Item 4 iv, and did not require further deliberation.

(3) Schedule of hearings and pending cases.

Board Chairman called this matter for discussion. The four members of the Board present for the meeting on this date, advised that they would be available for hearing on February 10 and 11, 2021. Board Counsel advised that the hearing on that date will not be conducted at 4600 Kietzke Lane, Reno as the Board will continue to hold virtual meetings at least through February 10 and 11, 2021. Notification will go out to the parties with cases that will be heard on February 10 and 11, 2021, advising that the hearings will be conducted by virtual conferencing.

The Board then discussed the hearing dates for March 10 and 11, 2021. The hearings on those dates are set for 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada. In all likelihood the hearings in March will also be virtual and, therefore, the parties on the Agenda for March 10 and 11, 2021 will be informed by the Board through Board Counsel that the hearings will be conducted by virtual conferencing.

Chairman Ingersoll advised the Board that he did not believe he could make the meetings on March 10 and 11, 2021, according to his schedule at the moment, but members Weber, Halsey and Milligan indicated that they would be able to be in attendance for the hearings on those two dates.

Discussion of the meeting dates after March 10 and 11, 2021 was deemed problematic.

As of approximately 10:00 a.m., the Board, therefore, concluded all of its administrative work under this Agenda. The Board adjourned until 10:30 a.m., and would hopefully pick up at that time on the hearing for Valley Joist, LLC, RNO 20-2025, the lone remaining case of the nine items listed on the Agenda yet to be heard or settled.

Board Chairman Ingersoll reconvened the Board at approximately 10:30 a.m., to continue the hearings on this date and to proceed with the Valley Joist matter. Unfortunately due to equipment problems, with the sound, the representatives from Valley Joist could not be heard. It took the next half hour until 11:00 a.m., to straighten out the equipment problems at which time Chairman Ingersoll called the meeting to order and the hearing on Valley Joist, LLC, RNO 20-2025 was commenced to be heard.

State OSHA in this matter was represented by Salli Ortiz, Esq. Valley Joist, LLC, was represented by Travis Mistler, Katie Hinckley and Marsisa Randall. Also present on behalf of Valley Joist was Mario Ibarra. Valley Joist advised that Katie Hinckley a Safety Consultant and a non-lawyer, would represent Valley Joist in this matter.

The hearing was commenced, the State presented its first witness, Brenda Gill. Ms. Gill testified and at the conclusion of her testimony after direct examination, Katie Hinckley, for Valley Joist, advised that Valley Joist had not received the State's evidence package which was already admitted into evidence without objection and consisted of 158 pages. It was pointed out in light of the objection that the certificate of service indicated that the State of Nevada had served upon Valley Joist a copy of this evidence package on May 8, 2020. Additionally, as indicated, at the outset of the hearing, Board Counsel advised that the State exhibits pages 1 through 158 were admitted into evidence without objection to their admissibility and that there was no objection to their admissibility when admitted into evidence then. Valley Joist made no statement objecting to the packet on the grounds that Valley Joist had not been provided a copy of the packet in advance of the hearing.

This issue of the State's evidentiary packet consumed the next 30 minutes of the hearing after which Valley Joist was specifically asked if it had any objection to proceeding with the hearing on this date even though, allegedly, it had not received a copy of the State's evidence package prior to the hearing on this matter. Valley Joist, by and through Katie Hinckley, had no objection

to proceeding to hear the matter on the merits even though it had taken the position that it had not received a copy of the State's evidence package of 158 pages.

Member Semenکو then joined the hearing. Board counsel advised that if the Board proceeded to decide the case at the conclusion of the hearing, this date, he would not be able to participate because he would not have heard all of the testimony in the case and would be deciding the case based upon incomplete information, an unacceptable situation. He, therefore, excused himself and departed the meeting.

The matter then resumed upon the merits. At the conclusion of the lunch break, Board Chairman Ingersoll reconvened the meeting at 2:30 p.m., and the Board heard the matter to conclusion. Upon conclusion of the hearing, the Board immediately proceeded to deliberate on the merits of the case. The Board determined that the State of Nevada, the complainant, had proved a *prima facie* case that 29 CFR § 1910.133(a)(5) had been violated. The Board concluded further, that Valley Joist did not provide safety glasses for welding work which provided minimum protective shade as specified by 29 CFR § 1910.133(a)(5). The Board concluded also that Valley Joist failed to prove any affirmative defense such as proof that the use of safety glasses in accordance with the standards laid out by 29 CFR § 1910.133(a)(5) would create a less secure safety and health environment.

It was, accordingly, moved by Frank Milligan, seconded by James Halsey, to affirm Citation 1, Item 1, an "other-than-serious" violation of 29 CFR § 1910.133(a)(5). No fine was levied under Citation 1, Item 1. Citation 1, Item 1, was the only charge brought in the complaint against Valley Joist. **Motion adopted.**

Vote: 4-0.

Chairman Ingersoll then pointed out that all the administrative matters had been resolved earlier in the day and that, therefore, the only matter left on the Agenda was Public Comment. Chairman Ingersoll called for Public Comment. There was no additional Public Comment.

It was then accordingly moved by Rodd Weber, seconded by James Halsey to adjourn the meeting. **Motion adopted.**

Vote: 4-0.

/s/Charles R. Zeh, Esq.
Charles R. Zeh, Esq., Board Legal Counsel

S:\Clients\OSHA\Minutes\2021\January 13 2021 R3.wpd