

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

January 12, 2022
Via teleconferencing and audio conferencing (WebEx)

Rodd Weber (Labor)
Frank Milligan (Public at Large)
William Spielberg (Labor)
Jorge Macias (Management)
Scott Fullerton (Labor)

On January 12, 2022, a meeting of the Nevada Occupational Safety and Health Review Board was convened.

The Board elected to exercise its option under AB 253 in light of the COVID-19 pandemic to conduct the meeting of the Board exclusively by use of a remote technology system. There was no physical site available for the conduct of this meeting. The public was advised that the Complainant, Respondents, Witnesses, Attorneys, Board members, and legal counsel and any other participants in the meeting would be participating by electronic means.

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.

Chairman Rodd Weber, called the meeting to order at approximately 9:00 a.m., on January 12, 2022, and called Item 1, Roll Call.

1. Roll Call.

Those present at the meeting were Board Chairman Rodd Weber, Vice Chairman William Spielberg, and Members Frank Milligan, Jorge Macias and Scott Fullerton. As all the members participated, including representatives of labor and management, a duly constituted quorum was present to conduct the business of the Board.

Present on behalf of the Board was Board Legal Counsel Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Also in attendance was Salli Ortiz, Esq., Chief Administrative Officer of NV OSHA Division of Industrial Relations.

The meeting of the Board was conducted by video conferencing. The public had the option of participating also by telephone. The hearing on this date was reported by Court Reporter Kathy Jackson, who appeared virtually.

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 or amended through Governor Sisolak's Emergency Directives and AB 253. 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 amended by AB 253.

2. Public Comment.

Chairman Rodd Weber called this item to be heard. No public comment was offered at this stage in the proceedings. Board Legal Counsel advised that his office had received no written public comment as of the commencement of the meeting.

3. Contested Case Hearings.

Board Chairman Weber asked Board Legal Counsel to set the record with respect to the contested hearings before the Board on this date. Board Counsel advised that with the exception of Breakthru Beverage Nevada, LLC, LV 21-2115, the remaining matters on the Board's stacked docket for contested hearings set to commence on January 12, 2022, were vacated. The only remaining matter to be heard on a contested basis was LV 21-2115, two motions with respect to the conduct of discovery in the this matter. Thus, cases RNO 22-2150, RNO 22-2183, RNO 21-2150 and RNO 20-2047 were vacated.

The Chairman, therefore, called LV 21-2115 to be heard and asked Board Counsel to set forth the status of this matter. Board Counsel advised that there were two discovery motions before the Board. One discovery motion involved an application by respondent to take the deposition of Gabriela Katschka. The other motion for discovery was also filed by respondent, where the respondent was seeking to propound a request for production of documents and records and to propound a set of interrogatories to the Complainant, State of Nevada. Each side was given 15 minutes to present their position on each motion. The motions were orally argued. Salli Ortiz, Esq., argued on behalf of the State. Michael Kernstock, Esq., of Peters, Revnew, Kappenman & Anderson, P.A., Minneapolis, Minnesota appeared on behalf of respondent. Respondent sought to withdraw the motion to take the deposition of Ms. Katschka, because of the representation by the State of Nevada that it would not call her to testify during the course of the hearing on this matter. For this motion, the Board determined that it would permit withdrawal of the motion to take the deposition of Ms. Katschka, without prejudice and to renew the motion in the event that the State elected to call her to testify. The withdrawal was also conditioned upon the requirement that if the State elected to call Ms. Katschka to testify it would give respondent notice sufficiently far in advance for the respondent to pursue taking the deposition of Ms. Katschka at that time. It was so moved by Scott Fullerton, seconded by Frank Milligan, the motion was adopted.

Vote: 5 in favor of the motion and 0 against the motion. The motion will be reduced to a written order.

As to the second motion, it was a general motion to take discovery in the form of written interrogatories and the request for production of documents and records. No interrogatories had been propounded, only some generalized discussion of the content of interrogatories, the respondent sought to propound if permitted. Similarly, there was some general discussion of the request for production of documents and records but nothing specific to which the Board could evaluate and address. Respondent argued that discovery by interrogatories and request to produce were permitted as a matter of right under the procedures governing Board hearings, particularly relying upon NAC 618.791 and NAC 618.797. Respondent argued further, that if leave was required to proceed with discovery by interrogatory or requests to produce, good cause appeared to support the application for discovery.

The State through Ms. Ortiz argued that good cause was required to conduct discovery matters before the Board, and that respondent had not produced good cause to conduct such discovery.

Board Counsel pointed out that both parties had ignored the controlling regulation, NAC 618.680(2), which states that the Nevada Rules of Civil Procedure govern these proceedings before the Board unless specifically accepted by the regulations and that neither party had identified an exception to NAC 618.680(2) or the Nevada Rules of Civil Procedure which permit discovery by interrogatories, the production of documents and requests for admissions as of right.

After considerable debate concerning the motion, it was moved by Frank Milligan, seconded by Scott Fullerton, to deny the motion of respondent to conduct discovery but without prejudice to respondent's further pursuit of discovery by actually propounding interrogatories and requests for production of documents and records to which the State could then posit its objection it had, if any, at that time. The Motion was adopted.

Vote: 5 in favor and 0 against. The ruling on the motion will be reduced to a written order.

Upon disposition of the Breakthru Beverage matter, the business of contested hearings under Item 3 of the agenda was concluded.

The Chairman then moved to consider the Administrative matters on the Agenda.

Item 4(a). Approval of November 9 and 10, 2021 minutes.

It was moved by William Spielberg, seconded Scott Fullerton, to approve the minutes for November 9/10, 2021, as read. Motion adopted.

Vote: 4-0-1 with Chairman Weber abstaining as he was not present for the meeting of November 9 and 10, 2021.

Item 4(b)i. Consideration of the withdrawal of LV 21-2082, Mountain Rehabilitation Services, Poindexter & Associates, Ltd.

It was moved by Frank Milligan, seconded by Jorge Macias, to approve the withdrawal of this claim. Motion adopted.

Vote: 5-0.

Item 4(b)ii. Consideration of the withdrawal of RNO 20-2035, Production Pattern and Foundry, Co., Inc.

Dan Javinsky appeared on behalf of Production Pattern and Foundry, Co., Inc. and explained the basis by which this matter was allowed to be withdrawn. It was moved by William Spielberg, seconded by Scott Fullerton, to approve the withdrawal of this claim. Motion adopted.

Vote: 5-0.

Item 4(b)iii. LV 18-1943, Brady Linen Service, LLC.

Before the Board on this item was a draft decision, memorializing the disposition of this case by the Board. When the case was heard, Chairman Weber and member Milligan were present. The remaining Board members were not appointed to the Board at the time when the case was heard. The remaining Board members, William Spielberg, Jorge Macias and Scott Fullerton reviewed the transcripts of the hearing, the exhibits and the pleadings and were, therefore, eligible according to NRS 233B.124 (read record) to participate in the disposition of this matter.

The only issue before the Board was whether the draft decision was consistent with the action taken by the Board. It was moved by Frank Milligan, seconded by Jorge Macia, to approve the written decision as consistent with the action taken by the Board during the course of the hearing on this matter and to adopt the draft as the final decision of the Board. Motion adopted.

Vote: 5-0.

Item 4(c). General Administration and/or procedural issues.

Board Chairman called this item to be heard.

Item 4(c)i. General matters of import to Board members.

There was none.

Item 4(c)ii. Old and New Business.

There was none.

Item 4(c)iii. Post Pandemic, whether hearings may continue to be conducted remotely and if so, under what circumstances.

The Board took up this matter. Board Counsel asked the Board to approve continuing to conduct hearings on a virtual basis and to make that determination for at least three months in advance, given the continued progression of the pandemic confronting the State and the Nation. Board Counsel advised that it would also simplify matters with this determination to let the Board, Counsel and parties know further in advance the kind of hearing to be conducted. The Board agreed. It was moved by Scott Fullerton, seconded by Frank Milligan, to direct that the hearings be conducted on a virtual basis for the next three months, through the end of April, 2022. The Board could evaluate this determination during the course of the March 2022 meeting of the Board.

Item 4(c)iv. Rescheduling the February 9-10, 2022 Board meeting due to a conflict with Division Counsel's calendar.

Salli Ortiz, Esq., asked that the February 2022 meetings be rescheduled from February 9 and 10, 2022, because of a conflict she has in her schedule, involving a conference of State OSHA attorneys. The Board was sympathetic to the situation and it was accordingly moved by Scott Fullerton, seconded by Frank Milligan to move the date of the February 9 and 10, 2022 Board meeting to February 22 and 23, 2022. Motion adopted.

Vote: 5-0.

Item 4(d) Schedule of hearings of pending cases, calendar and status report.

There were no changes to the remaining schedule of Board meetings as reflected under this item.

Item 5. Public Comment.

There was no public comment. Board Counsel advised that there was no written public comment received by his office during the course of the meeting.

Item 6. Adjournment.

It was moved by Frank Milligan, seconded by William Spielberg, to adjourn the meeting. Motion adopted.

Vote: 5-0


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