

STATE OF NEVADA
Minutes for the
Nevada Occupational Safety and Health Review Board
Las Vegas, NV

July 12, 2023

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

On July 12, 2023, 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 to take place at the Division of Industrial Relations, 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102. The Board convened at the Division of Industrial Relations offices located at 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102. 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.

1. Roll Call.

Chairman Weber called roll call: Rodd Weber, Chairman, William Spielberg, Vice-Chairman, Frank Milligan, Jorge Macias and Scott Fullerton, were personally present and in attendance. As all the of the Board were present for the meeting, including two members representing labor and one member representing management, a quorum was present for the Board to conduct its business on this date.

Also present were Salli Ortiz, Esq., Legal Counsel to the Administrator, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Legal counsel to the Board of Review.

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. 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.

Notice was posted at the following locations:

The Law Offices of Charles R. Zeh, Esq.
50 West Liberty Street, Suite 950
Reno, Nevada 89501

Division of Industrial Relations
3360 West Sahara Avenue, Suite 175
Las Vegas, Nevada, 89102

This Notice was also posted at the following website addresses:

State of Nevada, Department of Business and Industry, Industrial Relations (DIR)
website at <http://dir.nv.gov/Meetings/Meetings>

Nevada Public Notices at <http://notice.nv.gov>

Each Notice was timely posted.

2. Public Comment.

Chairman Weber called this item to be heard. There was no public comment at the outset of the meeting and no public comment in writing was received by Board Counsel's office.

3. Contested Case Hearings.

Chairman Weber called this matter to be heard.

- a. LV 23-XXXX, Walmart Inc. dba Walmart Supercenter #1560. Oral Argument, on the Complainant's Motion to Dismiss.

Salli Ortiz, Esq., appeared on behalf of the State on its motion to dismiss. Tom Strong, Esq., Venable LLP, appeared on behalf of the respondent party defending against the State's motion to dismiss. The parties were given 15 minutes a side to argue their positions. The State was given 10 minutes to argue in reply to Walmart's opposition to the motion to dismiss, after which the Board members questioned counsel for the respective parties regarding the position taken in connection with this motion to dismiss. The State argued that Walmart should summarily be sanctioned consistent with the complaint filed in this matter because Walmart failed to give notice pursuant to NRS 618.475(1) that it was contesting the State's complaint against Walmart in this matter. The State argued that the time deadline for giving notice to the State under NRS 618.475(1) is jurisdictional, that Walmart failed to meet the deadline for giving notice under NRS 618.475(1) and, therefore, Walmart could not challenge the sanctions set forth in its complaint against Walmart. Walmart, in turn, argues that (1) NRS 618.475(1) is not jurisdictional and, therefore, the deadline or time frame of NRS 618.475(1) is subject to equitable tolling and excusable neglect, under NRCP 41, that Walmart had shown excusable neglect and that, therefore, the State's motion to dismiss Walmart's Notification of Intent to contest the State's complaint should be denied.

The Board members deliberated and concluded as a matter of the fact that Walmart had failed to prove excusable neglect or reasons to find equitable tolling. Therefore the State's Motion to Dismiss should be granted, leaving Walmart subject to the sanctions of the State's complaint against Walmart. It was moved by Frank Milligan, seconded by Scott Fullerton, to grant the State's Motion to Dismiss. **Motion adopted.**

Vote: 5-0.

- b. LV 18-1952, Westcor Construction. Hearing on the proposed Findings of Fact, Conclusions of Law, and Final Order.

Chairman Weber then called this item to be heard on the proposed Findings of Fact, Conclusion of Law and Final Order that had been prepared and submitted by the State in this matter, as the prevailing party in this case. The State was represented by Salli Ortiz, Esq., and Westcor was represented by Raymond Perez, Esq., of the law firm of Jackson Lewis. As the prevailing party, the State, through Ms. Ortiz, had prepared a set of Findings of Fact, Conclusion of Law and Final Order for Board review and approval consistent with the Board's Decision in this matter. Mr. Perez had challenged portions of the State's Findings of Fact. The matter was set to be heard for the parties to argue their proposed versions of the Findings of Fact, etc.

Mr. Perez complained that he was unprepared because he did not realize that he would be called upon to argue why his set of proposed Findings of Fact, etc., should be adopted by the Board. Ms. Ortiz expressed similar circumstances. Accordingly, the Board continued this matter in order to give Mr. Perez the opportunity to provide his explanation in support of his proposed Findings of Fact, etc., within 10 days from July 12, 2023. Ms. Ortiz will be given 10 days thereafter to provide a pleading in support of her version of the proposed Findings of Fact, etc.

The matter will then appear on the August 9, 2023 Docket of the Board for the parties to argue their respective position regarding the proposed Findings of Fact, etc. At the hearing, Mr. Perez will be given 15 minutes to argue his position, Ms. Ortiz will be given 15 minutes to argue her position. Mr. Perez will be given 10 minutes to argue in reply to Ms. Ortiz after which the Board will take the matter up on deliberation. It was so moved by William Spielberg, seconded by Frank Milligan. **Motion adopted.**

Vote: 5-0.

The Chairman next called Item 4.

4. Administrative Meeting.
 - a. Approval of the previous Review Board meeting minute of December 14/15, 2022.

It was moved by William Spielberg, seconded by Frank Milligan, to approve the minutes as read. **Motion adopted.**

Vote: 5-0.

- b. Review contested case settlements, motions, draft decisions, or procedural issues pending on status report, for approval and issuance of final orders:
 - i. The Board will consider for approval, rejection or modification of the draft Decisions of the Board for the following:
 - 1. LV 21-2060, Pole Fitness Studio, LLC.

This issue before the Board was whether the draft decision should be approved by the Board if consistent with the action taken by the Board after conclusion of the contested hearing in this matter. It was moved by Frank Milligan, seconded by William Spielberg, to approve the draft Decision of the Board as consistent with the action taken by the Board upon conclusion of the hearing in this matter. **Motion adopted.**

Vote: 3-0-2 (Macias and Fullerton abstained as they were not present when the case was heard).

- 2. LV 21-2102, Tarkanian Basketball Academy, Inc.

This matter was also before the Board to consider whether the draft Decision of the Board was consistent with the action that the Board believes it took when deciding this matter. It was moved by Jorge Macia, seconded by William Spielberg, to approve the draft Decision as consistent with the action the Board believes it took in this matter after the contested hearing. **Motion adopted.**

Vote: 5-0

- c. Consent Agenda

The Chairman called this matter to be heard, the Consent Agenda where all consent items may be approved together with a single motion, be taken out of order, and/or be heard and discussed individually. There were five items on the Consent Agenda consisting of:

- i. LV 21-2077, GM Construction, LLC;
- ii. LV 21-2080, Tri-Tech dba Mesquite Lumber/Ace Hardware;
- iii. LV 21-2084, Bendix Enterprises LLC dba Time-Out Sports Bar and Grill;
- iv. LV 22-2133, Macrotec Consulting, LLC; and
- v. LV 22-2172, CB Manufacturing Company, Inc. dba Pepsi Beverages Company, aka The Pepsi Bottling Group.

At issue for each of these cases was the State's withdrawal of prosecution of these matters. It was moved by Frank Milligan, seconded by Jorge Macia, to approve the Consent Agenda. **Motion adopted.** All five cases are withdrawn and dismissed with prejudice.

Vote: 5-0.

(d) General administration and/or procedural issues.

The Chairman then called this item to be heard.

i. General matters of import to Board members.

Board Member Jorge Macias stated that he would like placed on the Agenda for August a discussion of the appointment of alternate members to the Board and also Board replacements.

ii. Old and New Business.

There was no old or new business discussed as the one item sought to be discussed under this heading was subsumed under Item 4.d.iii.

iii. Discussion of case load and disposition of matters before the Board in light of the 6 month pause in Board proceedings; possible direction to Board Counsel; possible procedural suggestions from Board Counsel; review of steps already taken to address caseload.

The discussion here revolved around ways to possibly expedite proceedings before the Board, in order for the Board to fairly and adequately address the case load that has built up in light of the fact that the Board had imposed upon it a six month pause through June 15, 2023, to conduct its business, including the hearing of contested matters. The ideas expressed under this heading are intended as a means of getting a handle on the Board's backlog of cases due to the "imposed pause," included:

1. During the course of the hearing, limiting the number of times the parties may examine and cross examine witnesses (the back and forth solution);
2. Extending the length of the Board meetings to 10 hours starting at 8:00 a.m. and ending at 6:00 p.m.;
3. Adding a third day each month to hear cases;
4. Continuing the use of hybrid/virtual hearings;
5. Scheduling 10-12 contested cases for each two day session of the Board;
6. Advising parties that their case will be heard in a set or limited number of hours;
7. Discussing the length of Board Counsel's contract to represent the Board as the Board did not want to go through the extended and unfortunate/delay process for retaining it's legal counsel it experienced in connection with the current contract for the Board's legal counsel.

These items will be re-visited and discussed along with any other additional items the Board members might come up with before the next meeting of the Board in order to streamline the process, regain control of the Board's calendar, and provide for swift and fair justice in the deliberation of matters before the Board.

5. Public Comment.

There was no public comment except that Board Counsel expressed his gratitude on behalf of himself and the law firm for the Board's support continuing the relationship as legal counsel to the Board.

6. Adjournment.

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

Vote: 5-0.

Dated this 10th day of August, 2023.

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