

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

**October 11, 2023**

**Rodd Weber (Management)**  
**William Spielberg (Labor)**  
**Jorge Macias (Management)**  
**Scott Fullerton (Labor)**

On October 11, 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.

Chairman Rodd Weber called the meeting to order of the OSH Review Board at approximately 8:50, a.m.

**1. Roll Call.**

Board members Chairman Rodd Weber, William Spielberg, Secretary, Scott Fullerton and Jorge Macias, appeared in person for the meeting conducted at the State offices in Las Vegas, Nevada. Frank Milligan was absent due to work related reasons. As four of the five members of the Board were present for the meeting, including two members representing labor and two members representing management, a quorum was present for the Board to conduct its business on this date.

Salli Ortiz, Esq., Legal Counsel to State OSHA, appeared in person in Las Vegas, Nevada. Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Legal Counsel to the Board of Review, appeared by video conferencing.

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 <https://dir.nv.gov/Meetings/Meetings>

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

Each Notice was timely posted.

## **2. Public Comment.**

There was no public comment offered when called by the Chairman. Board counsel advised that there was no public comment in written form received by Legal Counsel's office prior to the commencement of the meeting.

## **3. Contested Case Hearings.**

### **LV 21-2123, Core Contracting Group**

Board Chairman Weber called this item first out of order as it appeared that no one would be present other than State legal counsel for Reno Forklift, Inc., the case set ahead of the Core Contracting matter on the contested docket. Sally Ortiz, Esq., appeared on behalf of Complainant, Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry, State of Nevada. John Winston, President of Core Contracting Group, (Core) appeared on behalf of the Respondent. Mr. Winston is not a lawyer. He was present to represent Core. The State of Nevada offered 4 Exhibits, Numbered C-1 through C-207. Mr. Winston did not object to their admissibility. Mr. Winston offered into evidence a Park Service letter dated January 20, 2021. Ms. Ortiz had no objection to the admission of this letter into evidence. Both Parties' exhibits were admitted without objection.

The first item addressed under this matter was the question of jurisdiction. The land the site of the asbestos work at issue in this matter was situated on Federal land that had been ceded by the State of Nevada to the Federal government in connection with the construction of the Hoover Dam. The land, therefore, met the definition of a Federal Enclave. In Core's answer to the Complaint, Core asserted the affirmative defense of the want of jurisdiction of State OSHA over activity on this Federal Enclave where the allegations regarding the handling of asbestos took place. It is well settled that questions of jurisdiction must be resolved before proceeding to the merits. The Board, therefore, took up the question, whether the State has jurisdictional over activity on this Federal land enclave. Ms. Ortiz argued in favor of jurisdiction. Mr. Winston opposed the notion that the State had jurisdiction over this matter on Federal enclave land. The Board heard oral arguments from both parties and on a motion by Scott Fullerton, seconded William Speilberg, the Board affirmed that the State had jurisdiction over this matter on the Federal Enclave land. **The vote was unanimous.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

The Board then proceed to hear the merits of the claim. Ralph Poznecki testified for the State. He was the CSHO for this claim. He was the State's only witness. The State rested its case in chief upon the conclusion of Mr. Poznecki's testimony.

Mr. Winston, acting as counsel for Core Contracting Group, explained as best he could why the Complaint on the merits should be dismissed. The Board deliberated. The question before the Board was whether Core Contracting Group had adequately monitored the asbestos site where the subcontractor was hired to abate the asbestos on the site. Mr. Winston conceded that they had not monitored the performance of the subcontractor in the abatement of asbestos on the work site. In effect, he conceded the alleged violation of the Code cited by the State, namely, 29 CFR 1926.1101(d)(5) which required the general contractor on asbestos abatement sites to mentor the work in progress. It was accordingly, moved by Jorge Macias, seconded by Scott Fullerton, to affirm the violation and the penalty, in the amount of \$2,603. **The motion was unanimously adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

Next, Chairman Weber called RNO 17-1896, Reno Forklift, Inc., to be heard. The matter was before the Board on a motion to dismiss filed by Reno Forklift on the grounds of a failure to prosecute. No one appeared on behalf of counsel for Reno Forklift. Counsel for Reno Forklift had submitted, however, a letter complaining to Ms. Ortiz, counsel for the State, that the State was delinquent in the submission of the proposed Findings of Fact and, therefore, the case should be dismissed for the want of prosecution. Ms. Ortiz appeared for the State. She filed an opposition with the Board. Reno Forklift eschewed filing a reply to Ms. Ortiz's opposition.

The Board is familiar with this issue having decided several failure to prosecute cases in the near term. The Board also had before it Ms. Ortiz's opposition to Mr. Mundy's letter which the Board understood to be a motion to dismiss for the want of prosecution. It was moved by,  
///

Jorge Macias, seconded by Scott Fullerton, to deny the motion to dismiss. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

This matter will be brought back to the Board to review the proposed Findings of Fact, Conclusions of Law, and Final Order to determine their consistency with the Board's decision, the last piece of business to be concluded with this case.

This concluded the contested hearing portion of the Agenda and the Chairman moved the Board to consider the Administrative portion of the Agenda. The Chairman called 4(a) and 4(b) to be considered, the approval of previous Review Board minutes for August 9 and 10, 2023, and for September 13 and 14, 2023. It was moved by William Spielberg, seconded by Scott Fullerton, to approve as read both sets of minutes. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

Chairman Weber then called Item 4(c) to be heard, the review of contested case settlements, motions, draft decisions, or procedural issues pending on the status report, for approval and issuance of final orders:

- i. LV 19-1996, Ambridge Hospitality LP.

Ms. Ortiz appeared on behalf of the State and Frank Davis, Esq., appeared virtually on behalf of Ambridge Hospitality. It was moved by Scott Fullerton, Jorge Macias to approve the settlement of this matter which tracks a companion Ambridge Hospitality case previously heard by the Board concerning a neighboring property. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

- ii. LV 21-2112, C and S Company, Inc.

Chairman then called this matter to be heard. This was another settlement case. No one appeared on behalf of the Respondent. Ms. Ortiz was present for the State. It was moved by Scott Fullerton, seconded by William Spielberg, to approve the settlement. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

- iii. LV 22-2136, Drai's Management Group, LLC dba Drai's Beachclub/Nightclub/Drai's Afterhours

The Chairman then called this matter next to be heard. No one appeared on behalf of the Respondent. Ms. Ortiz was present on behalf of the State. It was moved by Scott Fullerton, seconded by William Speilberg, to approve the settlement. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

- iv. RNO 22-2141, Sierra Concepts Construction Inc.

The Chairman then called this matter next to be heard. This case involved residential construction with employees working at altitudes on planks and scaffolds that were not code compliant. The employees were working at altitudes, also, without personal fall protection. Ms. Ortiz appeared on behalf of the State and no one appeared on behalf of Sierra Concepts Construction, Inc. Given the gravity of the situation, the Board was not in favor of the settlement and as written. Instead, after considerable deliberation, it was moved by member Jorge Macias, seconded by Scott Fullerton, to approve the settlement subject to the following conditions:

- (a) the 30 percent reduction or discount in the civil fine is changed to 10%;
- (b) if the Respondent is found by the Board to have committed a repeat offense of any of the offenses the subject of this case prior to the time the civil fine in this matter has been paid off in full, the 10% discount will be removed and the civil fine will revert to the unamended amount of \$58,298, with credit given for any amounts already paid on the civil fine, as discounted;
- (c) if Respondent fails to make any payment on time or commits a repeat violation, all previous violations in the Complaint are reinstated; and
- (d) the remaining terms and conditions of the Settlement as otherwise written are approved. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

- vi. LV 21-2115, Breakthru Beverage Nevada, LLC

The Chairman then called this matter to be heard. Gregory Peters, Esq., appeared by the phone on behalf of the Respondent. Salli Ortiz, Esq., appeared on behalf of the State. The issue here revolves around the size of the reduction or discount being offered by the State to settle this matter. The fine levied as stated in the Complaint was in the amount of \$157,881. The State agreed to a 50 percent across the board reduction in the fine to be assessed reducing it to \$78,940.50 or a reduction of \$78,940.50. The State also proposed to reduce for Citation 1, Item 1, a classification of Willful-Serious to Serious. This matter consisted of four citations with one item each. The Board heard from both Ms. Ortiz and Mr. Peters in defense of the settlement. The Board amended the proposed settlement as follows:

- (a) Respondent will employ a consultant to complete a comprehensive evaluation of the Respondent's safety and health program; and
- (b) The comprehensive evaluation shall be submitted to State OSHA; and
- (c) The health and safety program will be adjusted to address the findings of the comprehensive evaluation; and

(d) Respondent will provide proof to State OSHA of the results of the third party consultant's report; and

(e) Respondent will provide proof to State OSHA that Respondent will timely address each of the safety and health issues identified in the comprehensive report within Respondent's health and safety program and provide proof to State OSHA that the health and safety issues the report identifies will be abated; and

(f) The completion of the consultant's report and its inclusion in the health and safety program shall be submitted to State OSHA within 30 days from the date of service upon Respondent of this Order; and

(g) The remaining terms and conditions of the Settlement as otherwise written are approved.

With these amendments it was moved by Jorge Macias, seconded by Scott Fullerton to approve this settlement as stated, above. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

vii. LV 21-2067, William Charles, Inc.

The Chairman then called this matter to be heard. This is a COVID 19 matter, wherein the State proposed to reduce the fine levied in the amount of \$10,796 to \$0. During the course of the discussion on this matter Board Secretary Spielberg disclosed that he had a former relationship with one of the parties to this dispute but he did not believe it would influence his ability to be fair and just when considering this case. Ms. Ortiz said that she had no objection of Mr. Spielberg hearing on this matter. Member Scott Fullerton made a similar disclosure. It was moved by Scott Fullerton, seconded by Jorge Macias, to approve the settlement as proposed by the State and Respondent. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

viii. RNO 14-1684, Sierra Packaging and Converting, LLC

The Chairman then called this matter to be heard. This matter originally was before the Board on Sierra Packaging's a motion to dismiss for the want of prosecution. Sierra Packaging withdrew the motion and allowed the matter to go forward to determine whether the Findings of Fact and Conclusions of Law were consistent with the Board's decision in this matter. The Board concluded that the proposed Findings of Fact and Conclusions of Law were consistent with the Board's decision and accordingly, it was moved by William Spielberg, seconded by Jorge Macias to approve the Findings of Fact and Conclusions of Law presented to the Board by the State. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

ix. LV 18-1935, Walker Specialty Construction

The Chairman then called this matter next to be heard. This matter was before the Board to consider whether the State's proposed Findings of Fact and Conclusion of Law were consistent with the decision of the Board. Ms. Ortiz appeared on behalf of the State and no one appeared on behalf of the Respondent. It was moved by Rodd Weber, seconded by William Spielberg, to approve the proposed Findings of Fact and Conclusions of Law as consistent with the Board's decision. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

This concluded section for 4(c) of the Agenda. The Board Chairman then called for the Consent Agenda to be heard. The matter on the Consent Agenda was Gradex Construction Company, RNO 20-2049. There was no objection to this matter as it appeared on the Consent Agenda. The Consent Agenda was approved and, therefore, Gradex affirmed. It was moved by Scott Fullerton, seconded by Jorge Macias to approve the Consent Agenda. As a result, the Gradex settlement was approved. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

The Chairman then called 4(e) to be heard, Status Conference Hearings. Board counsel advised that the remaining matter on the Agenda, MCA Cheyenne, LLC, had been vacated and rescheduled for the December meeting of the Board.

The Chairman then called 4(f) General Administration and/or procedural issues to consider.

i. General matters of import to Board members.

Jorge Macias brought up again the need to have an alternate member appointed to the Board in the event that one more Board member might be needed to preserve a quorum and allow the Board to conduct its business. Ms. Carreon informed the Board that she would check to see what the status was with the Governor's office regarding the appointment of an alternate to the Board.

ii. Old and New Business.

There was no old or new business discussed.

iii. Discussion of the length of Board Counsel's contract.

The Board made it clear that it did not want to have the situation that was recently experienced in order to timely retain legal counsel without any delay in hearing of cases before the Board. Ms. Carreon informed the Board that a process would be established so that the Board will by April have before it the candidates for representation of the Board, in order for the Board to exercise its right to select its legal counsel in time for the contract to be presented to the Board of Examiners for consideration at the June 2024 meeting of the Board of Examiners and,

therefore, to avoid any gap in services provided by the Board's legal counsel which would correspondingly cause the Board to pause the Board from conducting business. The Board does not want this to happen again. It creates too many new issues and creates more work for the Board and its legal counsel.

g. Schedule of Hearing on pending cases, calendar and status report.

A Status Report is ready for submission to the Board. Ms. Carreon asked if she could be copied. Board Chairman directed Board legal counsel to provide Ms. Carreon with a copy when it is sent to the Board members. Scott Fullerton advised the Board that he would not be available on December 13 and 14, 2023. Secretary Speilberg indicated that he may have a possible conflict if the Board meeting was moved to December 6 and 7, 2023. Scott Fullerton advised that he would be available if the Board meeting was moved to December 6 and 7, 2023. The scheduling issue will be revisited at the November Board meeting.

Chairman Weber then brought up again for consideration the 8:00 a.m., start time for Board meetings. He felt it would be unnecessary to begin the meeting at 8:00 a.m., and the Board could revert back to the 9:00 a.m. start time. Scott Fullerton stated a 9:00 a.m. start time would permit him to travel to Las Vegas the morning of the first day of hearings and eliminate the cost of a second night of a hotel in Las Vegas in addition to the time saved. There was general agreement in a 9:00 a.m. start time and so, the Chairman decreed the start time for Board meetings could revert to 9:00 a.m.

5. Public Comment.

The Board Chairman called for public comment. There was none and Board Counsel advised that his office had received no public comment during the course of the meeting on this date.

6. Adjournment.

It was moved by Jorge Macias, seconded by Scott Fullerton, to adjourn the meeting. **The motion was adopted.**

**Vote: 4-0-1, (Milligan absent for the reason stated).**

Dated this 8<sup>TH</sup> day of November, 2023.

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