

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

March 13, 2024

Rodd Weber (Management)
William Speilberg (Labor)
Jorge Macias (Management)
Scott Fullerton (Labor)
Frank Milligan (Public)
Tyson Hollis (Public)

On March 13, 2024, 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 9:02, a.m., on March 13, 2024.

1. Roll Call.

Board members present in Las Vegas were Chairman Rodd Weber, Secretary William Spielberg, and Members Scott Fullerton, Jorge Macias, Frank Milligan and Tyson Hollis. Mr. Hollis is the alternate public member of the Board. He was present only for the Pacific Bath matter because of his attendance at the February 2024 meeting of the Board when Specialty Contractors Northwest LLC dba Pacific Bath Company (Pacific Bath), Docket No. LV 22-2146, was heard with deliberations continued to the March 2024 meeting of the Board. Mr. Hollis participated in the disposition of Pacific Bath because Frank Milligan, public Board member was absent from the February meeting of the Board. On this date, Mr. Hollis' presence, now gave the Board an uneven in number for completing disposition of Pacific Bath, thereby, eliminating the possibility of a tie vote to resolve the Specialty Pacific Bath matter. As Five members of the Board were present for the disposition of Pacific Bath, and five members were present including two members representing labor, one member representing the public at large and two members representing management, to hear the remaining items on the March Agenda, a quorum was present for the Board to conduct its business on this date.

Also present were Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Legal Counsel to the Board of Review, Salli Ortiz, Esq., Counsel to the Administrator, Christopher A. Eccles, Esq., Counsel to the Director of the Division of Industrial Relations, and Justin Vance, Esq., Counsel to Sierra Concepts Construction, a matter to be heard second on the contested docket for the Board for this meeting.

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 timely 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>

2. Public Comment.

There was no public comment originating from either the Board or the office of Board counsel.

3. Contested Case Hearings.

a. LV 22-2146, Specialty Contractors Northwest LLC dba Pacific Bath Company.

Chairman Weber called to be heard Specialty Contractors Northwest LLC dba Pacific Bath Company, LV 22-2146. This matter was continued from the February 2024 meeting of the Board. The Board voted on the disposition of this matter but because one member of the Board was absent for part of the hearing on this matter, only four Board members could vote. The vote, then, resulted in an 2-2 tie, leaving the matter unresolved and, therefore, it was continued over until today. The Board members participating in the deliberations on this date were Tyson Hollis, alternate Public member of the Board, who sat in because Frank Milligan was absent for the February 2024 meeting of the Board and did not participate in the hearing on this matter. Mr. Hollis, however, attended the February 2024 meeting of the Board and participated, hearing all of the testimony and reviewing all of the evidence in this matter. Also present to hear this matter were Chairman Rodd Weber, and members Scott Fullerton, and Jorge Macias. Secretary William Spielberg was the Board member absent for part of the meeting on this matter during the February 2024 session of the Board. He was, however, supplied a copy of the transcript of the hearing and received all of the exhibits, also, entered into evidence in this matter. He was,

therefore, eligible to participate in the continued deliberations of this matter. David Lee, Esq., of the law firm of Lee, Landrum & Ingle, was present on behalf of Pacific Bath. Also, Andrea Cordova, Executive Vice-President, participated virtually on behalf of Pacific Bath.

No additional evidence was taken concerning this matter during the hearing on this date. The Board members deliberated, discussed and analyzed the regulations and the evidence before it. It was moved by Scott Fullerton, seconded by Rodd Weber to dismiss the complaint in this matter against Pacific Bath. A vote was taken, the motion was adopted with a vote of 3 in favor and 2 against (Hollis and Macias) and 1 abstention, Frank Milligan, who abstained for the reasons cited. The State's Complaint was dismissed because the Board determined that the State brought its complaint under the wrong administrative section of the Code, 29 CFR 1926.1011(k)(3)(i), had not amended its complaint to plead the correct regulation, and therefore, could not prove essential elements of a *prima facie* case.

b. RNO 22-2141, Sierra Concepts Construction.

Chairman Weber then called Sierra Concepts Construction, Docket No. RNO 22-2141, to be heard. Appearing for respondent Sierra Concepts Construction (Sierra Concepts) was Justin Vance, Esq., of Dotson Law. Appearing with Ms. Ortiz on behalf of the 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, (the State) was Christopher Eccles, Esq., legal counsel to the Director of the Division of Industrial relations.

This matter was before the Board to determine whether to approve or disapprove or take such other action as the Board might be informed by the hearing on this date regarding the settlement agreement entered into between the State and the Respondent. This matter was previously heard by the Board on October 11, 2023, at which time the Board determined that the Settlement Agreement did not fulfill the requirements of NAC 618.833(1) and NRS 618.015(1) which provide that the purpose of State OSHA is to preserve and protect the health and welfare of employees in the workplace and their employment. In the tentative Order entered by the Board, however, at the conclusion of the hearing on October 11, 2023, the Board amended the Settlement Agreement to conform it to this purpose. The Board then gave the parties 15 days from the date of the Order to object to the Board's disposition of this matter. According to the Board's Order, if an objection was filed, the Order would not become a final order and the matter would be set for hearing on the objection. As it turned out, both the State and the Employer Respondent lodged objections to the Board's tentative Order following the hearing on October 11, 2023. Thus, the tentative Order dated October 16, 2023, never became final.

On this date, during their presentation and argument against the Board's tentative disposition of the Settlement Agreement, the parties asserted that they did not have the opportunity to argue to the Board and present evidence to the Board as to why the Board was wrong when rejecting the Settlement Agreement, amending it, in part, by adjusting the fine levied upwards to an amount that was, nevertheless, less than the amount of the fine as prayed for by the State in its Complaint.

The Board took umbrage with the claim by the Respondent and the State that they did not have the opportunity to challenge the tentative disposition by the Board with respect to the Settlement Agreement. The Board pointed out, the notice for the hearing on this date stated:

"[a]s a reminder to the parties Respondent will go first and will be given 30 minutes to argue its Objection **and present any evidence in support thereof.** (Emphasis added). Thereafter the Complainant will be given 30 minutes to state its position regarding the Amended Settlement **and to present any evidence in support thereof.** (Emphasis added). Thereafter, the Respondent will be given 10 minutes to argue in rebuttal, if needed, as to why the Board's Amendments set forth in its Order dated October 16, 2023, should not stand and the Settlement as proposed, should be accepted.

The Board reserves the right to question the parties and their counsel about the matters before the Board. At the conclusion of hearing on the objection(s), the Board may resolve the dispute over the amendments set forth in the Order dated October 16, 2023 or take this matter under advisement. If the Board is satisfied the objection(s) are well founded, the Board may reinstate the settlement as originally proposed and this matter will be concluded by a final order of the Board. Similarly, if the Board concludes the objections are not well founded, the order approving the settlement as amended by the Board may be affirmed as the final order of the Board. The Board may take such other relief as the proceedings would inform the Board. *See*, Order Vacating and Rescheduling Hearing, dated and served February 7, 2024. The matter was heard on March 13, 2024.

The parties had every opportunity, the Board finds and concludes, to present whatever they felt was necessary to convince the Board to revise its tentative order in this matter. The claim otherwise by the parties is simply unfounded.

The Parties also argued, in part, that they were denied due process because they did not know what the Board was thinking and, therefore, had not no opportunity to be able to frame an opposition to the action taken by the Board. As in all cases where a settlement is presented to the Board for review, the parties would not know beforehand the precise thought process of the Board save and except that they should know that according to NAC 618.833 the Board is obligated to review proposed settlement agreements and approve them, IF the settlement is "... consistent with the provisions and objectives of Chapter 618 of NRS." NAC 618.833(1). The provisions and objectives of Chapter 618 of the Nevada Revised Statutes are set forth in NRS 618.015 where it states that is "... the purpose of this chapter to provide safe and healthful working conditions for every employee..."

That is the nature of the inquiry before the Board. That is the duty the Board is obligated to discharge. A reading of the regulations and the statute would tell the parties that they have the burden to show that the Settlement Agreement is consistent with obligations to provide safe and healthful working conditions for every employee. This statute and this regulation frame the Board's inquiry. This statute and regulation form the burden placed upon the State and Respondent when submitting a proposed Settlement Agreement for review by the Board. In truth, given the second opportunity afforded the State and Respondent to convince the Board to accept the settlement proposal, the State and Respondent in this matter had more information at their disposal about the Board's thinking because of the content of the hearing on October 11, 2023, when this Settlement was first presented as well as to be informed by the content of the amendatory action taken by the Board with its tentative Order.

As a result, Respondent and the State here had more due process, rather than less due process. They had a second opportunity to convince the Board to approve their settlement proposal as written, being informed in advance of the Board's concerns.

Accordingly, it was moved by Frank Milligan, seconded by William Speilberg, to make final the tentative Order of October 16, 2023, thereby affirming the Settlement Agreement as amended by the Board on October 11, 2023. The motion was unanimously adopted on a vote of 5-0. The Board members voting on this matter were Chairman Weber, Secretary Speilberg, and members Milligan, Macias and Fullerton.

The Chairman then called Item 4, the administrative portion of the meeting to be considered.

4. Administrative Meeting:

a. Approval of previous Review Board meeting minutes of February 14-14, 2024.

It was moved by Jorge Macias, seconded by Tyson Hollis, to approve the minutes as read for the meeting of February 14-15, 2024. Secretary Speilberg and member Milligan abstained as they were not present for all or a portion of the meeting of February 14-15, 2024. Motion was adopted 3-0-2.

At this stage, Tyson Hollis concluded his participation in the Board's hearing.

Chairman Weber then called Item 4, b.

b. Review of contested case settlements, motions, draft decision or procedural issues pending on the status report, for approval, rejection or amendment and possible issuance of final order.

LV 22-2147, Pacific Paper Tube, Inc., was removed from the docket and will be placed on the docket for the April 2024 meeting of the Board. Also LV 23-2216 Complete Demo Services, was pulled from the Docket and will be heard during the meeting of April 2024. The remaining cases were taken in order as they set forth in the amended agenda for the meeting of the Board.

i. RNO 17-1896, Reno Forklift (consideration of the Findings of Fact, Conclusions of Law and Final Order (FOF) as the Board's FOF)

Chairman Weber called this matter to be heard to consider the Findings of Fact, Conclusions of Law and Final Order of the Board. It was moved by Frank Milligan, seconded by Jorge Macias to approve the Findings of Fact, Conclusions of Law and Final Order submitted by the State. Motion adopted. Vote: 5-0.

**ii. RNO 23-2185, Peek Brothers Construction Incorporated
(consideration of the draft decision as the decision of the Board)**

Chairman Weber then called this matter for consideration, the draft decision as the decision and final order of the Board. It was moved by Scott Fullerton, seconded by Frank Milligan, to approve the draft decision as the decision of the Board. Motion adopted. Vote: 5-0.

iii. LV 21-2123, Core Contracting Group (consideration of the draft decision as the decision of the Board)

Chairman Weber then called this matter for consideration, the draft decision as the decision of the Board. It was moved by William Speilberg, seconded by Scott Fullerton, to approve the draft decision as the decision of the Board. Motion adopted. Vote: 5-0.

iv. LV 23-2216, Complete Demo Service.

This matter was held over to the April 2024 meeting of the Board.

The Board then directed its attention to the settlement of the following cases.

v. LV 21-2117 - Logistical Solutions

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Jorge Macias, seconded by Frank Milligan, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0. Charles Keller, Esq., appeared for Respondent.

xxiv. LV 19-2002, Redrock Property Services.

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0. Charles Keller, Esq., appeared for Respondent.

Chairman Weber allowed Mr. Keller to make a public comment, expressing concern about the length of time it had taken to move this case along. Until resolved it must be reported and the public and insurance carriers are aware of the pendency of the case, which has a negative impact on the Respondent's business.

vi. LV 22-2139, Las Vegas Paving Corporation

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Jorge Macias, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

vii. LV 21-2081, Lisa/Carrison Ltd., dba Putter's Bar & Grill

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Jorge Macias, seconded by Frank Milligan, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

viii. RNO 22-2134, Highland Stores, Inc. Db a Bit-Rite Market

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Scott Fullerton, seconded by Frank Milligan, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

ix. LV 22-2169, Albertson's LLC

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

x. RNO 21-2114, Plenium Builder fka Dianda Construction Inc.

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Jorge Macias, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xi. LV 21-2118, 2441 Highland Drive, LLC

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xii. LV 22-2162, Expo And Convention Center, LLC

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Jorge Macias, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xiii. LV 22-2142, KTI, LLC

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by William Speilberg, seconded by Frank Milligan, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xiv. LV 21-2129, AMPB Acquisition Corp.

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Jorge Macias, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xv. RNO 21-2125, Luxe Industries, LLC

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xvi. RNO 22-2150, MRH Auto-Reno, LLC dba Mountain West Auto

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by William Speilberg, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xvii. RNO 22-2153, Pam Specialty Hospital of Reno LLC

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Jorge Macias, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xviii. RNO 22-2138, Panasonic Corporation of North America

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xix. LV 22-2155, Ninyo & Moore Geotechnical and Environmental Science Consultants

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xx. LV 22-2156, Bluegreen Vacations Holding Corp. dba BlueGreen Vacations Club 36

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxi. RNO 22-2151, Dan Mills Construction Nevada, Inc.

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Jorge Macias, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxii. LV 22-2147, Pacific Paper Tube, Inc.

This matter was removed from the Agenda to be considered at a later date.

xxiii. LV 22-2158, Nucor Insulated Panel Group LLC

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxiv. LV 19-2002, Red Rock Property Services.

This matter was heard earlier on this date.

xxv. LV 23-2193, Bricestone Management, LLC

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Jorge Macias, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxvi. LV 21-2064, Precision Opinion, Inc.

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxvii. LV 21-2065, Precision Opinion, Inc.

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by William Speilberg, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxviii. RNO 21-2062, Devon Construction Inc.

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Jorge Macias, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxix. RNO 22-2174, Pershing County Sheriff's Office

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Scott Fullerton, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxx. LV 19-1994, Roofing Wholesale Co., Inc. dba RWC Building Product

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxxi. LV 20-2040, Probuild Co LLC, dba Builder's Firstsource

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by William Speilberg, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxxii. RNO 20-2043, Silverwing Development

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

xxxiii. RNO 22-2176, Dollar Tree Stores, Inc. dba Dollar Tree Store #2523

Chairman Weber then called this matter for consideration, the settlement of the parties. It was moved by Jorge Macias, seconded by Frank Milligan, to approve the settlement agreement of the parties. Motion adopted. Vote: 5-0.

As a result of the action by the Board, each of the cases where settlement was approved, was dismissed and absent on appeal, each will be closed.

c. Status Conference Hearings.

i. LV 23-2189, The Original Roofing Company, LLC

Salli Ortiz, Esq., informed the Board that the Original Roofing Company had paid the fine and sent a letter that they are withdrawing their opposition to the Complaint, levied by the State. Board Chairman, therefore, directed that this case LV 23-2189, the Original Roofing Company, LLC, be closed.

d. General Administration and/or procedural issues.

i. General matters of import to Board members.

There was no discussion.

ii. Old and New Business.

The Board had previously been advised that the State was changing office locations and, therefore, the Board wondered where the meeting would take place in April. Ms. Carreon advised that she would get that information to the Board in advance of the hearing. Ms. Carreon advised the Board that there were eight cases that are still pending or decisions have not been written. She would like a discussion at the next Board meeting about the case load and the status of these matters. The Board Chairman directed that this item be placed on the Agenda for the April 2024 meeting of the Board.

The Board Chairman also pressed the State on getting the interview process completed for the Board's selection of its Legal Counsel, in order for Board Legal Counsel to continue working as of July 1, 2024, in order to avoid the chaos of 2023. Then, the State failed to provide a contract to Legal Counsel for the Board as chosen by the Board which resulted in a six month shut down of the Board to conduct business. Ms. Carreon advised that she would move this along in order to avoid any gap in legal services for the Board as of July 1, 2024.

iii. Discussion and possible vote on Board Officers (Chairman and Secretary) commencing July 1, 2024.

Board Chairman Weber advised the Board that he is term limited out as of June 30, 2024, and as a result, an election needs to take place to identify a Chairman of the Board to fill the position as of July 1, 2024. Actually, annually, prior to July 1 of the fiscal year of the Board, Board elections for the position of Chairman and Secretary are to take place in any event. After discussing the issue and canvassing Board members regarding their interests in the position of Board Chairman, it was moved by Frank Milligan, seconded by Scott Fullerton, to appoint Jorge Macias Chairman of the Board commencing July 1, 2024. The motion was adopted on a vote of 5-0. Commencing July 1, 2024, Jorge Macias will preside as Chairman of the Board of Review for State OSHA.

William Spielberg was asked if he wanted to continue as Board Secretary. He said that he would be willing to do so. It was moved by Scott Fullerton, seconded by Frank Milligan, to appoint William Spielberg as the ongoing Secretary of the Board. The motion was adopted unanimously on a vote of 5-0.

Before moving on from this item, however, Jorge Macias stated that in light of the term limits to the Board Chairman, Rodd Weber, the State needs to be poised to appoint a replacement in order to avoid tie votes as was experienced last month because of the absence of a Board member. Ms. Carreon stated that she will advise the Governor's office and have them move forward on pursuing a replacement for a member.

iv. Discussion of pending cases.

This was subsumed above and will be continued at the next meeting.

e. Schedule of hearing on pending cases, calendar and status report.

After canvassing the Board members, it appear that while Board members may be absent at various times, the Board would still have a quorum available to hear and conduct business on April 10 and 11, 2024, May 8 and 9, 2024, June 12 and 13, 2024.

5. Public Comment.

Chairman Weber then called public comment to be heard. There was no public comment offered at the Board meeting itself and no public comment had been received at the office of Board Legal Counsel.

6. Adjournment.

Board Chairman Weber then called for adjournment of the meeting. It was moved by Jorge Macias, seconded by Scott Fullerton, to adjourn the meeting. Motion adopted. Vote 5-0.

Dated this 8th day of May, 2024.

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

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