

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

November 13, 2024

Jorge Macias (Management)
William Spielberg (Labor)
Scott Fullerton (Labor)
Tyson Hollis (Alternative)
Gled Bautista (Management)

The meeting of the State of Nevada Occupational Safety and Health Review Board was called to order by Chairman Jorge Macias on November 13, 2024 and November 14, 2024, if necessary. The commencement of the meeting was immediately continued for 30 minutes because of equipment failure with the microphones used to conduct the hearing. Once the equipment problems were resolved, the Board continued the meeting.

The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at the Division of Industrial Relations, 2300 West Sahara Avenue, Suite 750, 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.

Board members present at the meeting were Board Chairman Jorge Macias, Secretary William Spielberg, and Board members Scott Fullerton, Tyson Hollis and Gled Bautista. As all the members of the Board were present for the meeting, including two members representing labor, one member representing the public at large and two members representing management, a quorum was present for all matters for the Board to conduct its business on this date.

Salli Ortiz, Esq., was present on behalf of the State. Board counsel Charles R. Zeh, Esq., the law offices of The Law Offices of Charles R. Zeh, Esq., was also present.

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
2300 West Sahara Street, Suite 300
Las Vegas, NV 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.

The Board Chairman called for open comment. He advised that there was no public comment offered from those in attendance at the hearing or on the internet. Board Legal Counsel advised that there was no public comment received in his office in connection with the Board meeting.

At this time, however, Ms. Ortiz advised that case DNN, LLC dba Best Western Plus North Las Vegas Inn and Suites, LV 24-2259 had just settled. The matter may, therefore, be removed from the Agenda for the meeting on this date. An order will be issued, however, vacating and continuing the matter but also advising that in 60 days, if the settlement documents have not been filed with the Board, the matter will be reinserted on the contested docket of the Board.

3. Contested Case Hearings.

Board Chairman then called the sole remaining matter left to be heard on the Agenda, Gramercy Bakery, LLC, LV 24-2261, to be heard.

Gramercy Bakery is, as the name implies a bonafide bakery. The matters or violations at issue in this case, however, had little to do with the baking business, itself. Rather, major issues involved skylights on the roof and safety precautions around the perimeter of the roof which the State claims were lacking.

The Complainant, the State, was represented by Salli Ortiz, Esq., counsel for 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 Respondent, Gramercy Bakery, was represented by James Minidis, Co-President, Gramercy Bakery. He is not an attorney. The State offered for admission into evidence an evidence packet that consisted of pages C-1 to C-244. The evidence packet was admitted into evidence without objection from Mr. Minidis. Mr. Minidis had not provided to the State, however, in advance, his evidence packet consisting of approximately 80 pages which were not bated stamped as required by the pre-hearing order. Ms. Ortiz objected to the admissibility of the evidence packet on the grounds that she had not had the opportunity to review the evidence packet, having just been presented with a copy at the outset of this hearing. It was either that, or, continue the matter to give her the opportunity to review the evidence packet and register any objections she might have as well as give Mr. Minidis the time to bate stamp or otherwise number the pages to his evidence packet.

After some deliberations back and forth, Mr. Minidis agreed to proceed without his evidence packet. He also stipulated on the record that respondent was not contesting the failure to comply with the five charges of violations, three consisting of serious violations and two consisting of other-than-serious. The fine or penalty proposed for alleged violations was \$18,927. Mr. Minidis did not contest liability, in other words. He was contesting, however, the amount of the fine sought to be assessed in the amount of \$18,927. He had proposed in settlement to pay a fine of \$500, based largely upon his claim that he and his company had been zealous in the protection and safety of its employees. His main defense was that they had timely abated all of the offending conduct.

Citation 1, Item 1, Serious, was based upon unprotected skylights on the roof of the building of the business at heights of 15 to 20 feet exposing workers to serious physical injury.

Citation 1, Item 2, concerned working on the roof near the edge of the roof without adequate personal fall arrest systems in place.

Citation 1, Item 3, involved sprockets and chains not being enclosed when operating, unless they are more than 7 feet above the floor platform.

Citation 2, Items 1 and 2, were other-than-serious and no penalty was proposed for either citation.

The hearing proceeded. The State called one witness, Bao Merrell, who was CSHO on this complaint. In the course of her testimony, she explained, as set forth in the violation worksheet, how the State calculated the amount of damages or the amount of the fine proposed to be assessed in this case.

She was cross examined by Mr. Minidis. She was the only witness by the State. When her testimony was concluded, the State rested with its case in chief.

Mr. Minidis testified on behalf of the respondent. He called himself as the respondent's only witness and examined himself. His testimony revolved around mainly: A. his claim that he had abated almost immediately all of the complaints that the State had regarding his business; and B. his company was greatly concerned about safety and had made multiple recommendations of safety for the benefit of the community at large, in addition to his own business which was founded by his mother-in-law and wife.

The Board deliberated and at the conclusion of the deliberations, it was moved by Tyson Hollis, seconded by William Spielberg, to affirm the complaint in this matter including the fine of \$18,927. Motion adopted. Vote: 5-0.

4. Administrative Meeting.

- a. Approval of previous Review Board meeting minutes for October 9, 2024.

It was moved by Gled Bautista, seconded by William Spielberg to approve the minutes for the October 9, 2024 as written. Motion was adopted. Vote: 4-0-1 (Scott Fullerton absent and, therefore abstaining).

The Chairman then called 4.b.

- b. Review Contested Case Settlement, Withdrawal of Citation, Motions, Draft Decisions.

There are four draft decisions before the Board to review and approve if the Board determined that the draft decisions are consistent with the action taken by the Board when heard and decided. The four decisions are Solar Star, LLC, dba Vegas Solar, LV 22-2177, Focus Framing, Doors and Trim, LLC, LV 21-2108, Olson Precast Company, LV 18-1939 and Las Vegas Paving Corp., LV 19-1940. The Board members eligible to pass on the draft decisions are Chairman Macias, Board Secretary, Spielberg and Board member Fullerton. All three participated in the disposition of these matter when heard and decided. The Board Chairman advised that the four cases would be considered in one motion unless there was an objection. He asked if there were any objections concerning the four cases being considered in one motion. No objections were registered. It was, therefore, moved William Spielberg, seconded by Scott Fullerton, to approve the decisions as written, subject to corrections for typographical errors for each of the four decisions. Motion adopted. Vote: 3-0-2. (Tyson Hollis and Gled Bautista abstaining as they were not members of the Board or in attendance when any of these matters were decided).

Board Chairman then called, next to be heard two cases with proposed settlements to be considered. Those matters are Walmart Inc. dba Walmart #2189 aka Walmart Supercenter #2189, RNO 23-2202 and AMPB Acquisition Corp. dba Gerber Collision & Glass, LV 24-2229.

The same procedure would be followed for review of these two settlements as was applied to the draft decisions. One motion would dispose of the two subject to any objection registered to either of the settlements. Board Chairman asked if there were any objections to consider the two matters in one motion. None were registered. In this case, all of the Board

members could vote. It was accordingly moved by William Spielberg, seconded by Tyson Hollis, to approve the two settlements, RNO 23-2202 and LV 24-2229. Motion was adopted. Vote: 5-0.

The Chairman called to be heard the items under the heading of Status Conferences, beginning with Production Pattern and Foundry Co., Inc., RNO 18-1923, to be heard for the status conference. Board counsel pointed out that the matter had been stayed for a prolonged period because of the automatic stay in the bankruptcy of this respondent. Board Counsel advised that as a matter of law, the matter should not have been stayed by the virtue of the automatic stay in bankruptcy because the Board, in hearing this case, was exercising its police power authority which is an exception to the automatic stay. Ms. Ortiz, Esq., counsel for the State OSHA, advised that there was a notice to proceed in this matter. The case is, therefore, going to be set for hearing. Ms. Ortiz shall provide a copy of the notice to proceed.

The Chairman then called for a status conference on DNA Framing, Inc., RNO 18-1946. The decision in this case has been written by Board legal counsel and filed in the record for this matter. Findings of fact and conclusions of law had not been prepared, however, by counsel for the respondent, the prevailing party in this matter. During this period, the Board's procedure was for the Board to draft the decision in the case and thereafter, the prevailing party is to draft the findings of fact and conclusions of law, consistent with the Board's decision. The decision of the Board was drafted and approved by the Board.

Counsel for the respondent had failed in his responsibility to draft the findings of fact and conclusions of law. To solve this impasse, the Board concluded that the decision of the Board was sufficiently comprehensive to include or be considered to include findings of fact and conclusions of law, therefore, eliminating the need to impose upon respondent's counsel to draft a proposed set of findings of fact and conclusions of law. It was, therefore, ordered that the Board's decision shall also constitute the Board's findings of fact and conclusions of law for this matter. A notice of this order and disposition will be composed, filed and served on the parties.

Board Chairman then called Pole Fitness Studio, LL aka Pole Fitness Studio, LV 21-2060, to be heard. This matter was taken up for appeal at the district court level. There was an email advising that the case had been dismissed on appeal by stipulation. No formal pleading was provided, however, dismissing the case by stipulation or otherwise. Hence, the case languished. Subsequent to the status conference, Ms. Ortiz produced on November 18, 2024, a stipulation and order filed in the Las Vegas District Court on July 13, 2024, dismissing the appeal based on the Stipulation. Accordingly, an order of dismissal of the case before the Board will be drafted and filed.

Board Chairman then called Pier Construction & Development, LLC, LV 18-1948, for a status conference. Ms. Ortiz, for the State, advised that this matter had been continued to the December meeting. Accordingly, this matter is, therefore, continued to the December 2024 meeting of the Board for a status conference at that time.

Board Chairman then called Sofidel American Corp., LV 19-1990, for a status conference. Ms. Ortiz appeared for the State. The matter was taken up on appeal to the district court and a decision in favor of the appellant, Sofidel was issued. The order on appeal stated:

"Counsel or (sic) Petitioner to submit the Order." No such order has been submitted or served upon the Board. The minute order of the court memorializing its decision is dated August 9, 2022. The Board is to inform Sofidel it is responsible for an order on remand after appeal and that no remand will take place unless and until the order on remand required in the minute order is provided and served upon the Board.

Board Chairman then called Dillard's, LV 14-1703, to be heard. The Board then convened Dillard's, case number LV 14-1703 to be convened for its status conference. Ms. Ortiz appeared for the State. The case was on appeal to the district court, when counsel for the appellant, Dillard's, past away. The case got lost in the resultant shuffle. The Board informed the law firm for the decedent of the continued pendency of this matter. Lisa Alstead Wilshire, Esq., of the McDonald Carano firm, appeared and advised the Board that her firm has been retained to continue representation and that she will continue to straighten out the procedural quagmire of this matter and inform the Board of the status at the next meeting of the Board, December 11 and 12, 2024.

Next the Board Chairman called the status conference for Platinum Plastering, Inc., LV 18-1910, to be heard. Ms. Ortiz appeared for the State. Here, the prevailing party, in this case, the State, had not drafted and submitted proposed findings of facts and conclusions of law. This was another of those cases where the Board would draft the decision and the prevailing party, in this case the State, would draft the findings of fact and conclusions of law. Rusty Graf, Esq., appeared on behalf of the respondent. An exchange of dialog occurred between complainant and respondent's counsel. Respondent's counsel stated he had no objection to the complainant's draft of the findings of fact and conclusions of law. The State's counsel advised that she would have the findings of fact and conclusions of law in the hands of the Board in time to consider during the December 11 and 12, 2024 session of the Board.

Board Chairman Macias called for a status conference, Nevada Paving, RNO 23-2224. This matter was called for a status conference because of the revelation at the last meeting that the parties have a total of 11 witnesses to present their respective cases in total at trial. Eleven witnesses will probably take two days if not more for the case to be heard and the Board is not in a position to afford a two day hearing, unless absolutely necessary. Consequently, the status conference was called to determine ways that the parties and the Board could determine would streamline the process and reduce the hearing time to one day.

A discussion ensued and to speed up the process, the parties stipulated and it was so ordered that they admit in evidence the evidence package of each party. Each party stipulated to their admissibility with the exception that Kevin Warren, counsel for the respondent, reserved the right to object to specific exhibits depending upon the manner for which they were offered. The parties were to exchange, however, immediately their respective evidence packets with Mr. Warren reserving his right to object to individual documents depending upon the manner and reason for which they were being offered.

The Chairman ordered that the parties exchange Exhibit packages immediately, if they have not done so already, their respective evidence packets with Mr. Warren reserving his right to object to specific documents and records, depending upon the reason for which the document was being offered for use and admission in evidence during the course of the hearing.

The Board then took up the issue of the number of witnesses. The respondent objects to the testimony Mr. Magana. The State intends to offer nine witnesses to testify. The remaining two witnesses would be called by the respondent. No agreement on witnesses and the testimony of Mr. Magana could be reached. The Board disposed of this issue by directing the parties to simultaneously exchange memorandums as to the admissibility of the testimony of Mr. Magana. Simultaneous briefs on the testimony of Mr. Magana should be exchanged, the Chairman ordered, no later than eight days before the commencement of the hearing on the merits of this matter.

The parties will argue their position on the testimony of Mr. Magana. The Board will decide that issue before the hearing on the merits commences and then proceed to the merits once Mr. Magana's testimony is resolved by order of the Board. This concluded the status conference concerning Nevada Paving and the issues that the parties identified that might be resolved to expedite the conduct of the hearing on this matter.

This concluded the status conference portion of the hearing on Items 4(b)(vii-xiv).

Chairman called Item 4, c, to be heard. General administration and/or procedural issues.

i. General Matters of Import to Board Members.

The question was asked whether, if Mr. Tyson Hollis is appointed to the Board to fill the vacant position left by Frank Milligan, would there still be a need to appoint an alternate Board member. The question was answered in the affirmative. It will be necessary to have an extra Board member to guard against the lack of a quorum because of insufficient members of the Board present to conduct a Board meeting.

ii. Old and New Business.

There was none to be discussed.

iii. Discussion of Pending Cases.

None were discussed.

d. Scheduled of Hearings on Pending Cases, Calendar and Status Report.

The dates of the upcoming Board meetings were discussed and no Board member indicated an inability to attend any of the meetings of the Board on the dates as currently scheduled. There was a question, however, about whether July 9 and 10, 2025, would be in Reno or Las Vegas. Then, where would the meeting of August 13 and 14, 2025 take place. That concluded the discussion of this item on the agenda. It is to be continued.

5. Board Chairman called Item 5 to be heard, Public Comment.

Chairman advised that no public comment was being offered at the conclusion of the meeting from persons in attendance at the Board meeting. Board Counsel advised that no public comment had been received in his office during the course of the meeting.

6. Adjournment.

It was moved by William Spielberg, seconded by Gled Bautista, to adjourn the meeting.
Vote: 5-0.

The meeting was adjourned.

Dated this 11th day of December, 2024.

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

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