

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

December 11, 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 December 11, 2024, at approximately 9:03 a.m.

The Board members presents at this time for the hearing consisted of the Chairman Jorge Macias, the Secretary William Spielberg and Board members Scott Fullerton, Tyson Hollis and Gled Bautista.

Approximately 3 minutes into the hearing Salli Ortiz, Esq., Counsel to the State in the matters before the Board asked for a brief recess because of some unstated difficulties that needed to be resolved. Approximately 9:20 a.m., Ms. Ortiz returned. Board Chairman Macias reconvened the Board at approximately 9:20 a.m. Ms Ortiz advised that there was a storage problem with the computer/video recording system deployed by the State to record these matters. It was uncertain whether there was sufficient storage to preserve the record being developed in the Board meeting. This is an untenable situation as a permanent record needs to be established from which minutes may be drafted to record contested cases. In addition, there was, once again, technical difficulties with the microphone system. Some of the participants' comments were garbled and unintelligible by reason of the sound system being deployed.

A brief recess ensued for Board Counsel and Board Chairman to confer in light of the untenable situation being developed.

At approximately 9:23 a.m., Board Chairman Macias reconvened the Board. There was a brief discussion amongst Board members, Ms. Ortiz, the Board Chairman and Board Legal Counsel. He advised that a record of these proceedings must be obtained and proceeding without such assurances was unacceptable. The discussion turned to giving the State a chance to correct the problem with the recording system vendor by 4:00 p.m. This meeting was posted to be heard by the Board on December 11, 2024 and December 12, 2024. The prospect of reconvening on Thursday, December 12, 2024, was therefore, discussed. The State was given until 4:00 p.m. to advise the Board, Board Chairman and Board Counsel whether these technical difficulties were resolved and if not, whether a Court Reporter could be retained to record the proceedings commencing on December 12, 2024, at 9:00 a.m.

If a Court Reporter could be obtained or the technical difficulties resolved, the Board would then reconvene at 9:00 a.m., on December 12, 2024, pick up with the items in the order set forth in the agenda and to, therefore, take care of as much business as was possible on December 12, 2024. It was therefore, so moved by Scott Fullerton, seconded by Tyson Hollis, to proceed with this plan and in order to permit the Board to reconvene on December 12, 2024, assuming that either the technical difficulties are resolved or a Court Reporter can be retained to record the proceedings. The motion was adopted, unanimously by the Board with a Vote of 5 in favor and 0 against. Board Counsel's office will notify all parties on the Agenda for December whether the Board will reconvene on December 12, 2024.

The Board will be in recess until advised that the technical difficulties had been resolved and the Board could pick up with the hearings left pending by these events.

Board Chairman then recessed the meeting to reconvene at 9:00 a.m. December 12, 2024, pending the resolution of the technical problems that have made necessary to recess the proceedings of December 11, 2024.

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.

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Jorge Macias, Chairman of the Board of the Nevada Occupational Safety and Health Review Board convened the recessed meeting of the Board after being advised that the State had cured its sound system problems permitting the Board to proceed and meet on the second day, December 12, 2024, that the meeting of the Board was noticed.

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 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.

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

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 Chairman called the next item Public Comment to be heard. There was no public comment to be heard. There was no public comment offered, in the meeting and Board Legal Counsel advised that his office had received no public comment.

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

Board Chairman called this item to be heard. All of the duly noticed Contested cases had been either settled or vacated and continued with the exception of LV 24-2243, Harber Company, Inc. dba Mountain Cascade of Nevada. The State was represented by Salli Ortiz, Esq., in this matter. The Respondent, Harber Company, was represented by Perry Poff, Esq., of the lawfirm of Donnell, Melgoza & Scates LLP.

This case involved the precautions necessary to keep the job and working conditions safe for employees working in a trench. The parties presented their respective positions, with the State claiming unsafe conditions persisted. Respondent disagreed with the position taken by the State. The hearing lasted nearly the entire day. Several witnesses were called to testify during the course of the hearing. The State alleged in Citation 1, Item 1, a serious offense in violation of 29 CFR 1926.651(j)(2), requiring that employees shall be protected from excavated materials or other materials or equipment that could pose a hazard by falling or rolling into excavations on top of the workers.

The State also alleged a violation Citation 1, Item 2, serious, asserting 29 CFR 1926.652(a)(1) was also violated by the Respondent which requires that each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section except when excavations are made entirely of stable rock or the excavations are less than 5 feet in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

The parties gave closing arguments. The Board deliberated exhaustively, analyzing the claims. It was moved by Tyson Hollis, seconded by William Spielberg, to affirm Citation 1, Item 1, with a penalty assessment of \$6,250, and to dismiss Citation 1, Item 2, for a failure of proof. **The Motion was adopted on a vote of 4 in favor and 1 against.**

#### **4. Administrative Meeting.**

The Chairman then called for commencement of the administrative portion of the meeting beginning with Item 4.

- a. Approval of previous Review Board meeting minutes for November 13, 2024.

It was moved by Scott Fullerton, seconded by Tyson Hollis, to approve the minutes of the November 13, 2024 as read. **Motion was adopted. Vote: 5-0.**

Chairman Macias then called Item 4.b.

- b. Review Contested Case Settlements, Withdrawal of Citations, Motions, Draft Decisions.

The Draft Decisions/Findings of Facts and Conclusions of Law portion of the administrative hearing began with 4.b.i.

- i. LV 18-1910, Platinum Plastering, Inc.

This was one of those cases under the regime where the Decision was written by Board Legal Counsel and afterwards, the Findings of Fact and Conclusions of Law were drafted by the prevailing party. In this case the prevailing party was the State. The State finally prepared the proposed Findings of Fact and Conclusions of Law, the only issue was whether those Findings of Fact and Conclusions of Law were consistent with the Decision of the Board. It was moved by Scott Fullerton, seconded by Tyson Hollis, to approve the Findings of Fact and Conclusions of Law as they were consistent with the Decision of the Board. **Motion adopted, Vote 5-0.**

- ii. LV 23-2227, Creative Printing, Inc. dba Creative Digital Printing.

Then, the Board turned to be considered the draft Decision in Creative Printing, Inc. dba Creative Digital Printing. Here it was moved by William Spielberg, seconded by Gled Bautista, to approve the Decision of the Board. **Motion adopted, Vote 5-0.**

The Board Chairman then called for consideration the Proposed Settlements before the Board. Those cases were:

RNO 24-2287, Walmart Inc. dba Walmart Supercenter #2453;  
RNO 24-2234, Sierra Wes Wal Systems, Inc. dba Sierra West Drywall;  
RNO 24-2292, Polaris Sales, Inc. dba Polaris Industries, Inc.;

RNO 21-2091, Dayton Valley Tire and Services LLC; and  
LV 24-2264, Sunshine Minting Nevada.

All five settlements were taken at one time. It was moved by Gled Bautista, seconded by Tyson Hollis, to approve the Settlement in each of the five cases aforementioned. **The Motion was adopted. Vote 5-0.** The record shall reflect that each of the five Proposed Settlements were approved by the Motion of Gled Bautista, seconded by Tyson Hollis and voted upon unanimously by the Board.

The Chairman then called for consideration of the matters under the heading of Status Conferences, beginning with Westcor Construction.

viii. LV 18-1952, Westcor Construction.

This matter was before the Board because the Complaint in this case was filed on June 15, 2018. The case was decided on October 15, 2023. The case was taken up on appeal by the Respondent. The Board has not been advised of the results of the appeal. Without being apprised of the results of the appeal, the Board cannot either close out the file or take further action depending upon the outcome of the appeal. Ms. Ortiz advised that she would provide the record on appeal and the Board expects that it will be provided before the next meeting of the Board, in January 2025.

ix. RNO 19-1960, B&C Cabinet and Mill Work, Inc.

A Decision was written in this case and served as of July 2020. This case dates back to the time when the prevailing party was required to draft the Findings of Fact and Conclusions of Law after the Board prepared the Decision. The case has been languishing since July 8, 2020, through no fault of the Board. Ms. Ortiz advised that there has been a change counsel for the Respondent in this matter and she will bring the Board current by the next meeting of the Board January 8/9, 2025.

x. LV 19-1980, Westcor Construction.

The Board was given notice that the case had settled as of September 1, 2021. The Board is still awaiting Settlement documents from the parties. If Settlement documents are not provided to the Board by the next meeting, this matter will be set for a hearing on the Contested Docket.

xi. LV 19-1987, Clark County School Transportation Department.

The Board was noticed that this case had settled as of August 16, 2019. No Settlement documents have been provided, hence, this Status Conference. Either the Settlement documents will be produced by the January 2025 meeting or this matter will be set on the Docket for Contested hearings and, therefore, heard on the merits.

xii. LV 19-1997, Capriati Construction Corp., Inc.

This matter was taken up on appeal after it was decided on October 18, 2022. The case cannot be closed because the Board has not been served the results of the appeal. According to Ms. Ortiz, the case is now sitting before the Court of Appeals have been remanded there from the Supreme Court. The parties are awaiting disposition of the matter by the Court of Appeals. There is nothing that the Board can do to move this matter along.

xiii. RNO 20-2028, Caliber Holdings Corp.

The Board was advised that this matter settled as of July 12, 2021. The Board gave notice on July 13, 2021, that it needed the Settlement documents to close out this matter. As of this date, the Board has yet to receive the Settlement documents. The Settlement documents are to be produced as of the Board meeting of January 8/9, 2025, or the matter will be set on the Contested Docket to be heard on the merits.

xiv. RNO 20-2029, Caliber Holdings Corp.

Here again, the Board received Notice of a Settlement as of July 12, 2021 from the State of Nevada. On July 13, 2021 the parties were advised that they were obligated to submit Settlement documents for Board review or the matter would be rescheduled for a hearing on the merits. No Settlement documents have been received. If Settlement documents are not received by the January 2025 meeting of the Board, this matter will be set on the Contested Docket to be heard on the merits.

xv. RNO 20-2046, Bridgestone Hosepower, LLC.

The Complaint was filed on June 12, 2020. No answer to the Complaint was ever filed. At the previous Status Conference, Julie O'Keefe, Esq., appeared on behalf of the Respondent and advised the Board that her firm had just been retained and she had no time to review the file. She would review the file by the next meeting of the Board. Ms. O'Keefe did not attend the Status Conference hearing on this date. Ms. Cordic appeared on her behalf and advised that the parties were working to resolve this matter. This case will be placed on the agenda for a Status Conference on the meeting of January 2025, at which the Board will take concrete steps to move this along. If it continues to languish, it will be set to be heard on the Contested Docket.

xvi. LV 19-1965, EyeFi Holdings, LLC.

This Complaint was filed on October 18, 2018. No pleading was filed in response to the Complaint. The State has not taken steps to default the Respondent and allowed the case to languish. The Board was advised that the parties are working to resolve this matter and that a change in ownership of the company had transpired. This matter will be reset for a Status Conference in January 2025. If nothing concrete is proposed at that time, the matter will be set on the Contested Docket.

xvii. LV 18-1948, Pier Construction & Development, LLC.

The Decision in this matter was written and served on February 20, 2019, on April 3, 2019 an amended Decision was filed and served. The Respondent is represented by Eric Zimbelman. The parties are apparently negotiating the terms of the Settlement. The matter will be placed for a status in January 2025 and if not resolved by that time the matter will be placed on the Contested Docket for disposition.

Chairman Macias then called Item 4.c., General Administration and/or procedural issues to consider.

i. General matters of import to Board members.

The Chairman brought up the fact that the Board is still minus one member. The slot has not yet been filled. Tyson Hollis has been, as the alternate, filling the position but there is no backup if a Board member is absent. In that case, the Board will be deciding cases with only a four member Board without the appointment of an alternate to the Board. The Board hoped that an appointment was imminent.

ii. Old and New Business.

The Chairman called this matter to be heard. There was no discussion under this item.

iii. Discussion of pending cases.

The Chairman called this item next to be heard. The Chairman stated that the Status Conference discussion of matters would satisfy Item 4(c)(iii).

d. Schedule of hearings on pending cases, calendar and status report. The Board has scheduled the following meetings.

No Board member indicated a calendar conflict with any of dates set off in the future for hearings by the Board.

5. Public Comment

Chairman Macias then called for Public Comment. He advised that there was no public comment originating from the meeting itself and Board Counsel advised that there was no public comment received in his office.



6. Adjournment.

Board Chairman called for Item 6 to be heard. Before adjourning, the Board members, counsel, and Ms. Ortiz, wished each other a happy holiday season and a productive and healthy New Year. Then, it was moved by Scott Fullerton, seconded by Gled Bautista to adjourn the meeting. **Motion adopted.**

**Vote: 5-0.**

Dated this 11<sup>th</sup> day of December, 2024.

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

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