

MINUTES OF THE MEETING OF  
THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Held at Enterprise Library  
4600 Kietzke Lane, Building B, Suite 111  
Reno Nevada on  
Wednesday, September 9, 2015  
Commencing at 9:00 o'clock a.m.

PRESENT

Joe Adams (management)  
James Barnes (public)  
Steve Ingersoll (labor)  
Chris Velvin (management)  
Fred Scarpello, Esq., Legal Counsel

ABSENT

Nicole Baker (labor)  
Sandra Olson (alternate)

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 9:00 a.m., September 9, 2015. 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.

The Chairman noted settlement of the cases previously noticed and set for hearing as follows, docket no. RNO 15-1800, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. K2 Development Corp., dba H&L Custom Builders and RNO 15-1770, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Greenwood Homes, Inc.

The Chairman called the Board to order for hearing of the contested calendar, namely docket no. RNO 15-1789, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Sierra Barajas Roofing. The hearing was partially delayed awaiting the arrival of Mr. Barajas. The Chairman noted the appearance of division counsel, Ms. Salli Ortiz, Esq. on behalf of complainant, Chief Administrative Officer of the Occupational Safety and

Administration, Division of Industrial Relations of the Department of Business and Industry and Mr. Barajas on behalf of respondent Sierra Barajas Roofing. The Chairman announced the subject contested hearing was duly noticed in accordance with Chapter 618 and 241 of the Nevada Revised Statutes and applicable law.

Prior to the presentation of evidence and testimony, the parties requested a brief recess to discuss possible settlement. After a brief discussion the parties returned and announced they had reached a settlement to resolve the contested matter without a formal hearing. The Chairman requested they present the terms of the settlement on the record for the purposes of providing written documentation of the parties positions. The Chairman, with acquiescence of the Board, accepted the proposed settlement and directed counsel to prepare and circulate a proposed Final Order for review and consideration by the Board.

The Chairman reconvened the Board after a brief recess to conduct the administrative meeting. The Chairman referenced the public agenda and the items for discussion.

The Board approved the previous minutes as distributed on motion, second and unanimous vote.

The Board reviewed the scheduled hearings, pending matters, calendar and status report. Members discussed continuation of "stacking" the settings to finish the month of December 2015 and move into January and February of 2016. The Board recognized the "stacking" methodology as maintaining timely adjudication of contested cases and should continue.

The Board reviewed the previous Board case decisions in dockets LV 15-1778, Cooper Roofing & Solar, and LV 15-1784, Dave Peterson Framing. The Board approved the final draft, after edits and revisions in docket no. LV 15-1778, Cooper Roofing & Solar, and instructed counsel to complete any edits required after transcript reviews to final and serve the decision on all parties.

The Board considered LV 15-1784, Dave Peterson Framing, particularly memoranda from counsel recommending review and reconsideration of the case. Counsel advised that study of the transcript received after the initial decision draft reflected a potential error in a material fact relied upon by the Board at its preliminary decision. The Board referenced the memorandum and copies of transcript extracts reflecting confusion from the testimonial evidence presented at time of hearing. After receipt and study of the transcript it was noted the location of alternate means of compliance scaffolding was incorrect, thereby requiring a

reconsideration of the matter on the element of exposure to the identified cited hazard. After discussion, reference to the full transcript and review of the previous violation relied upon for the Repeat classification, the Board on motion, second and unanimous vote rescinded the prior vote and finding of non-violation and voted unanimously to confirm the violation, classification and proposed penalty. Counsel was instructed to revise the decision in accordance with the Board vote, and after review, proceed with service on all parties, unless any Board member contacted counsel after a 5 day allowance to request same be again placed on the next meeting calendar.

The Board reviewed the continuing unresolved issue of case settlements concluded through the procedure of withdrawing contests and complaints in place of written stipulations for Board approval and Final Order. The Chairman noted the subject matter had been twice before reviewed with enforcement counsel requesting compliance with the long standing Board policy requiring informative settlement terms be subject of disclosure in a written stipulation for approval and Final Order. He explained the policy based upon compliance with the Board mandate to assure settlements are consistent with the governing law under NRS Chapters 618, 233B and 241, and the spirit and intent of Nevada occupational safety and health act.

The Chairman confirmed the Board position to withhold approval and issuance of any Final Orders in case resolutions effectuated through only withdrawals of contest and/or complaints once the case subject of Review Board jurisdiction through the filing of a complaint. The Chairman restated the Board policy and rationale. He referenced Board member input and confirmed the Board would not recognize case settlements nor issue any Final Order or dismissal if Board review is bypassed through use of merely withdrawal of contest/complaint. The Chairman noted the Board and public rights to know that fair and reasonable settlements are effectuated under an independent review process has long been recognized as the appropriate policy and procedure of this Board in compliance with the governing statutory scheme as well as the direct and implied intent of Nevada occupational safety and health act.

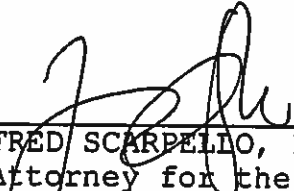
The Chairman directed Board counsel to prepare and circulate proposed correspondence to be sent to OSHES counsel reconfirming the Board policy. Counsel was further instructed to advise counsel for any matters currently pending settlement approval without meaningful written stipulations, or effectuated through the withdrawal of contest methodology, the matters are not recognized nor approved for resolution and remain subject of compliance. Counsel was instructed to additionally inform any subject case

complainant and respondent counsel that no Final Orders would be considered or issued except through the established procedure recognized as compliant by the Nevada Occupational Safety and Health Review Board.

The Board and counsel reviewed alternatives and options available should the OSHES legal counsel continue the announced practice of settling cases through withdrawal of notice of contest and/or complaints without providing the Board a meaningful written stipulation on the bases, terms and/or conditions of the settlement, with or without any Final Orders or dismissals. Counsel reviewed the various legal options available to the Board for consideration.

The Board discussed matters currently subject of the next meeting requiring public notification on the published agenda under the Nevada Open Meeting Law. Counsel again noted the need for early advisories on any additional requested items for inclusion on the published agenda, at least 10 days in advance of publication date requirement.

There being no further business before the Board the meeting was adjourned at approximately 11:45 a.m.

  
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FRED SCARPELLO, ESQ.  
Attorney for the Nevada  
Occupational Safety and  
Health Review Board

THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Held at Enterprise Library  
25 East Shelbourne Avenue  
Las Vegas, Nevada  
Commencing at 10:00 o'clock a.m.

Wednesday, October 14, 2015

PRESENT

Joe Adams, Management, Chairman  
Nicole Baker, Labor  
James Barnes, Public at Large  
Sandra Olson, Management  
Frank Milligan, Alternate  
Public at Large  
Fred Scarpello, Esq.,  
Legal Counsel

ABSENT

Steve Ingersol, Labor

Thursday, October 15, 2015

PRESENT

Joe Adams, Management, Chairman  
Nicole Baker, Labor  
James Barnes, Public at Large  
Sandra Olson, Management  
Fred Scarpello, Esq.  
Legal Counsel

ABSENT

Steve Ingersol, Labor  
Frank Milligan, Alternate  
Public at Large

Wednesday, October 14, 2015

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the Review Board at 10:00 o'clock a.m., Wednesday, October 14, 2015. The notice of meeting was duly provided to all parties and posted 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.

The Chairman recognized the presence of newly appointed board members, Mrs. Sandra Olson, Management and Mr. Frank Milligan, Public at Large (Alternate). The Chairman welcomed the new board members. He noted Mr. Milligan's presence as an observer based upon his alternate public member status authorizing service in the absence of public member Barnes.

The Chairman reviewed the advisories from division counsel on negotiated settlements in the following cases previously noticed and set for the contested hearing docket as follows: Docket No. LV 15-1794, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. The Range USA, dba The Range, 702; LV 15-1797, Occupational

Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. First Transit, Inc.; LV 15-1796, Mad Dog Construction, Inc., dba Petra Construction, LV 16-1807, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Earth Resource Group and LV 16-1811, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Lone Mountain Excavation & Utilities, LLC. The Chairman further noted all of the foregoing case resolutions except The Range US occurred within one week of the scheduled Board contested hearings.

The Chairman called the Board to order for hearing of the sole remaining scheduled contested case namely Docket No. LV 15-1798, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Walker Specialty Construction, Inc. The Chairman announced the subject hearing was duly noticed in accordance with Chapters 618 and 241 of the Nevada Revised Statutes, Chapter 618 of the Nevada Administrative Code and applicable law. The Chairman recognized the appearance of counsel, Ms. Salli Ortiz, Esq. on behalf of complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry and Mr. Shan Davis, Esq. on behalf of respondent, Walker Specialty Construction, Inc.

Documentary evidence and witness testimony were presented during the course of the hearing and the hearing was concluded at 4:20 p.m.

After a brief recess, the Chairman reconvened the Board at approximately 4:30 p.m. for deliberations on the contested matter heard, namely docket no. LV 15-1798, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Walker Specialty Construction, Inc. After study of the hearing notes, pleadings, exhibits and extended deliberations, a final question for the vote was called. The Board reached a decision subject of drafting, edits, additional legal research and final review as follows:

On motion, second and unanimous vote of the Board members present, the violative conduct at Citation 1, Item 1(a) was found "de minimus," the citation amended to a notice in lieu of citation and reclassified to a minor violation without penalty as defined in NRS 618.465.

On motion, second and unanimous vote of the Board members present, the violative conduct at Citation 1, Item 1(b) was found "de minimus," the citation amended to a notice in lieu of citation and reclassified to a minor violation without penalty as defined in NRS 618.465.

On motion, second and unanimous vote of the Board members present, Citation 1, Item 2 was denied.

On motion, second and unanimous vote of the Board members present, Citation 2, Item 1 was found "de minimus," the citation amended to a notice in lieu of citation and reclassified to a minor violation without penalty as defined in NRS 618.465.

On motion, second and unanimous vote of the Board members present, Citation 2, Item 2 was confirmed as a Serious violation and the proposed penalty of \$50.00 approved.

Board counsel was instructed to draft and distribute a written decision to Board members for revisions, edits, and comments accordingly.

The Chairman announced the expiration of time for utilization of the hearing facility at 5:30 p.m., requiring the Board reconvene as duly scheduled Thursday, October 15<sup>th</sup> at 10:00 for conduct of the administrative meeting and any remaining Board business subject of the administrative agenda. The meeting was adjourned at 5:30 p.m.

#### Thursday, October 15, 2015

The Chairman convened the Board to order at approximately 10:00 a.m. on Thursday, October 15, 2015 and announced the continued meeting of the Nevada Occupational Safety and Health Review Board. The Chairman referenced the administrative agenda and proceeded with the following:

The minutes of the previous meeting of September 9<sup>th</sup>, 2015 were approved as distributed.

The Board reconfirmed the revised decision in the docket no. LV 15-1784, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Dave Peterson Framing.

The Board reviewed the schedule of hearings, pending cases, status report, and projections for contested matters set through the month of January 2016.

The Chairman referenced item D on the published agenda regarding possible action on the draft final order for approval of the stipulation in docket RNO 15-1789, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Sierra Barajas Roofing. The Chairman noted that two Board members acting on the matter at the previous meeting requested the case be recalled for full Board review. The Chairman noted Mr. Ingersoll's absence and Mr. Velvin's term expired. On motion, second and unanimous vote, the Board agreed to delay review of the draft final order until such time as the settlement terms could be reviewed and include Board member Ingersoll. Counsel was instructed to continue the matter on the public agenda. The subject case would be scheduled for final action no later than the December meeting calendar.

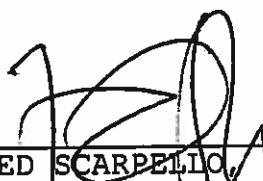
The Board again reviewed the continuing unresolved issue of case settlements and/or resolutions being concluded through a process bypassing Board review and the approval required under the governing law, including particularly NAC 618.773 and 618.833. The Board discussed correspondence from Chief Administrative Officer Lankford. After extensive discussions the Board concluded the letter offered no proposals for compliance; nor legal or factual support for non-compliance. The Board reconfirmed the plain meaning and historical interpretation of the legal responsibilities by both OSHES and the Board under the statutory scheme to comply with the mandates. Board members discussed the positions, issues and questions raised by the Chief Administrator for response. Members provided suggestions and comments for inclusion in responsive correspondence and instructed counsel to assemble, redraft and circulate drafts amongst all Board members. After review, approval, comment and edits to the draft, counsel is authorized to forward the response to Chief Administrator Lankford.

The Board reviewed options and alternatives that might be available to the Board, including the request for a formal Attorney General Opinion (AGO). Counsel was instructed to first continue exploring any options/alternatives that could satisfy the Board's concerns with compliance under the Nevada Administrative Code and mandate to conclude cases within the jurisdiction of the Review Board after a formal complaint filed. The Board also instructed counsel to invite Mr. Lankford to attend the December meeting to discuss any mutually agreeable resolutions. Thereafter, on motion, second and unanimous vote, the Board confirmed that all matters subject of undocumented case resolutions, whether through settlements or withdrawals of notice of contest or complaints, remain pending without approval or issuance of any dispositive or



final orders, until further efforts to find a possible mutually acceptable resolution.

There being no further business, the meeting of the Occupational Safety and Health Review Board was adjourned for the day at approximately 11:45 a.m.



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FRED SCARPELIO, ESQ.  
Attorney for the Nevada  
Occupational Safety and  
Health Review Board

**NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD**  
**NOTICE OF MEETING OF THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD**

You are hereby given notice that a meeting of the NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD will be conducted on Wednesday and Thursday, the 14<sup>th</sup> and 15<sup>th</sup> day of October 2015 at the LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT, ENTERPRISE LIBRARY, 25 East Shelbourne Avenue, Las Vegas, Nevada, commencing at 10:00 o'clock a.m. and terminating immediately after the conclusion of the matters hereinbelow referenced.

**1. AGENDA ITEMS SUBJECT OF MEETING:**

Hearing on Docket No. LV 15-1794, The Range USA dba The Range 702  
Hearing on Docket No. LV 15-1797, First Transit, Inc.  
Hearing on Docket No. LV 15-1796, Mad Dog Construction, Inc., dba Petra Construction  
Hearing on Docket No. LV 15-1798, Walker Specialty Construction, Inc.  
Hearing on Docket No. LV 16-1807, Earth Resource Group  
Hearing on Docket No. LV 16-1811, Lone Mountain Excavation & Utilities, LLC

2. The contested matters shall be heard in a quasi-judicial forum pursuant to Chapter 618 of the Nevada Administrative Code and applicable Nevada Revised Statutes conferring jurisdiction. The hearing proceedings will be transcribed by a certified court reporter. You are further notified: meetings and contested hearings are open to the public; deliberations which involve alleged misconduct, professional competence, and/or character may be held privately; any final decisions will be made publicly - all in accordance with Chapter 241 of Nevada Revised Statutes, commonly known as the Nevada Open Meeting Law.

3. The contested cases may be set as either primary or alternate settings and subject to change as to time of commencement by the Nevada Occupational Safety and Health Review Board.

The Board regularly meets on the second (2<sup>nd</sup>) Wednesday and Thursday of each month, unless otherwise specially designated. All contested cases are noticed for hearing at 10:00 a.m. on Wednesday. Hearing times, order of case presentation, and/or the agenda for administrative matters can vary depending upon settlements, continuances, and/or cancellations. Any interested persons may contact the review board legal/administrative office for advance or additional scheduling information at (775) 882-4577 or by mail directed to Board Chairman, 600 E William St., Ste. 300, Carson City NV 89701. Additional information may be obtained by contacting the Department of Occupational Safety and Health at the address/telephone below referenced.

4. Additional items to be discussed at the administrative portion of the Review Board meeting are as follows:

- A. Approval of the previous Review Board minutes.
- B. Schedule of hearings on pending cases; contested hearing docket, calendar and status report.
- C. Review case settlement resolutions and procedure of withdrawals of contest/written stipulation in general and re RNO 15-1765 (John Ascuaga's Nugget), LV 15-1777 (Mandalay Bay Resort), RNO 15-1802 (CVC), RNO 15-1803 (Bill Dickson Const) (for possible action).
- D. Review draft final order in docket RNO 15-1789, Sierra Barajas Roofing (for possible action)
- E. Review previous board action and revised case decision in docket LV 15-1784 (Dave Peterson Framing (for possible action)
- F. General administration and/or procedural issues.
- G. Administrative matters for next published meeting agenda.

Public comment is restricted and not permitted during Review Board contested hearings which are specifically governed by NRS 618, NRS 233B, and NAC 618. The applicable legislation and codified procedures mandate assurance of a fair and impartial administrative hearing, a transcribed record, and a protected appellate process for an aggrieved party to seek redress in the district courts.

5. Any persons with a disability as defined by the Americans with Disabilities Act, and requiring special assistance to participate in the meeting, may contact the Board at least five (5) days prior to the meeting to endeavor the arrangement of reasonable accommodations.

DATED this 28<sup>th</sup> day of September 2015 NEVADA OCCUPATIONAL SAFETY AND  
HEALTH REVIEW BOARD

By:   
JOE ADAMS, Chairman

Contact information pursuant to NRS 241.020(2):

Nevada OSHA General Legal Counsel  
Donald C. Smith, Esq.  
1301 N. Green Valley Parkway, Ste.  
200  
Henderson, NV 89074  
(702) 486-9070

Nevada OSHA Legal Counsel  
Salli Ortiz, Esq.  
400 W. King Street, Ste. 201  
Carson City NV 89701  
(775) 684-7286

NV OSHA Review Board Legal  
Counsel  
Fred Scarpello, Esq.  
600 E William St., Ste. 300  
Carson City NV 89701  
(775) 882-4577

Places Posted: Clark County Library; District III OSHES Office; Clark County Court; Enterprise Library, Carson City Library, State Website

MINUTES OF THE MEETING OF  
THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Held at Enterprise Library  
4600 Kietzke Lane, Building B, Suite 111  
Reno Nevada on  
Monday, November 9, 2015  
Commencing at 9:00 o'clock a.m.

PRESENT

Joe Adams, Chairman  
Nicole Baker  
James Barnes  
Sandra Olson  
Fred Scarpello, Esq., Legal Counsel

ABSENT

Steve Ingersoll  
Frank Milligan, Alternate

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 9:00 a.m., Monday, November 9, 2015. 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.

The Chairman noted settlement and continuation of the cases previously noticed and set for hearing as follows: settled - docket no. RNO 16-1805, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. A. R. Mays Construction; continued - RNO 15-1799, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Summit Roofing, LLC.

The Chairman called the Board to order for hearing of the first contested case subject of hearing, namely docket no. RNO 16-1813, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Northern California Nail, Inc. The Chairman noted the appearance of division counsel, Ms. Salli Ortiz, Esq. on behalf of complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations

of the Department of Business and Industry and Mr. Robert Peterson, Esq. on behalf of respondent Northern California Nail, Inc. The Chairman announced the subject contested hearing was duly noticed in accordance with Chapter 618 and 241 of the Nevada Revised Statutes and applicable law.

Evidence and testimony were presented during the course of the hearing. The case was concluded and submitted at 10:45 a.m.

After a brief recess, the Chairman reconvened the Board at 11:00 a.m. for the second contested case subject of hearing, namely docket no. RNO 16-1814, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Panelized Structures. The Chairman noted the appearance of division counsel, Ms. Salli Ortiz, Esq. on behalf of complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry and Mr. Robert Peterson, Esq. on behalf of respondent Panelized Structures. The Chairman announced the subject contested hearing was duly noticed in accordance with Chapter 618 and 241 of the Nevada Revised Statutes and applicable law.

Evidence and testimony were presented during the course of the hearing. The case was concluded and submitted at 12:15 p.m.

The Board reconvened at 1:15 p.m. after a luncheon recess. The Chairman called the third contested case for hearing, namely docket no. RNO 16-1808, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Jackson Quality Drywall. The Chairman noted the appearance of division counsel, Ms. Salli Ortiz, Esq. on behalf of the complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry and Mr. Shane Jackson, company representative, on behalf of respondent Jackson Quality Drywall.

Evidence and testimony were presented during the course of the hearing. The case was concluded and submitted at 2:45 p.m.

After a brief recess, the Board reconvened at 2:50 p.m. to hear the final contested case, namely docket RNO 16-1810, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Urban Group of Companies dba Urban Metals. The Chairman noted the appearance of division counsel, Ms. Salli Ortiz, Esq. on behalf of the complainant, Chief Administrative Officer of the

Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry. There was no appearance, pleadings nor any information as to the failure of respondent to appear to defend the cited violations.

Evidence and testimony were presented by complainant during the course of the hearing. Complainant entered a motion for entry of default judgment based upon a failure of respondent to appear and/or defend the citations or otherwise contest the evidence of violation provided. The case was submitted at 3:15 p.m.

The Board concluded the contested hearing schedule at approximately 3:15 p.m. and commenced the administrative meeting. The previous minutes were approved as distributed on motion, second and unanimous vote. The Board reviewed the matters on the public agenda and considering the time limitations instructed that items 4(c) and 4(d) be carried forward to the next public meeting.

On review of the remaining pending matters from the published administrative agenda, namely item 4(e), the Board members present approved the decision as finally drafted and instructed same be finalized and served on all parties in docket no. LV 15-1798, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Walker Specialty Construction.

After a brief recess, the Chairman reconvened the Board for deliberation on the contested matters previously heard. The first matter considered was docket no. RNO 16-1813, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Northern California Nail Co., Inc. After study of the hearing notes, pleadings, exhibits, and deliberation, the question for the vote was called. The Board reached a decision subject to drafting, edits, additional legal research and final review for approval as follows:

On motion, second and unanimous vote of the Board members present, Citation 2, Item 1, was confirmed as a regulatory violation, and the proposed penalty of \$150.00 approved. The Board noted the respondent withdrew the notice of contest and offered no defense in the matter.

On motion, second and unanimous vote of the Board members present, Citation 1, Item 1, was confirmed as a serious violation, and the proposed penalty of \$1,200.00 approved.

Board counsel was instructed to draft and distribute a written decision to Board members for review, revisions, edits, and comments accordingly.

The Chairman referenced the second case heard on the contested calendar for deliberation, namely docket RNO 16-1814, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Panelized Structures. After study of the hearing notes, pleadings, exhibits, and deliberation, the question for the vote was called. The Board reached a decision subject to drafting, edits, additional legal research and final review for approval as follows:

On motion, second and unanimous vote, the Board members found no violations at Citation 1, Items 1 and 2; the citation, classification and proposed penalties were denied.

On motion, second and unanimous vote of the Board members present, Citation 1, Item 3, was confirmed as a serious violation, and the proposed penalty of \$600.00 approved.

Board counsel was instructed to complete research, draft and distribute a written decision to Board members for review, revisions, edits, and comments accordingly. The Board noted the decision was conditioned upon case law research to support the interpretation of "dual" controlling employer liability, other than a general contractor, on a multi-employer worksite.

The Chairman referenced the third case heard on the contested calendar for deliberation, namely docket RNO 16-1808, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Jackson Quality Drywall. After study of the hearing notes, pleadings, exhibits, and deliberation, the question for the vote was called. The Board reached a decision subject to drafting, edits, additional legal research and final review for approval as follows:

On motion, second and unanimous vote of the Board members present, Citation 1, Item 1, was confirmed as a serious violation, and the proposed penalty of \$2,500.00 approved.

On motion, second and unanimous vote of the Board members present, Citation 1, Item 2, was confirmed as a serious violation, and the proposed penalty of \$1,000.00 approved.

Board counsel was instructed to draft and distribute a written decision to Board members for review, revisions, edits, and comments accordingly.

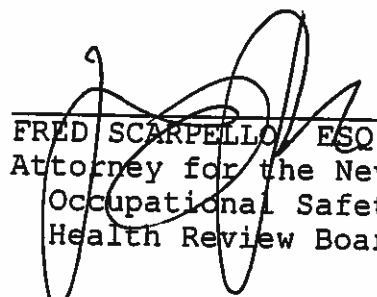
The Chairman referenced the final case heard on the contested calendar namely docket RNO 16-1810, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Urban Group Companies dba Urban Metals. After study of the hearing, notes, pleadings, exhibits and deliberation, particularly referencing the failure of appearance on the part of respondent directly or through a representative, and after a transcript record made, through presentation of a prima facie case of violation by complainant through witness testimony and exhibits of record, the Board reached a decision subject of drafting, edits, as follows:

On motion, second and unanimous vote of the Board members present, Citation 1, Item 1, was confirmed as a serious violation, and the proposed penalty of \$2,500.00 approved.

Based upon the default entry, Board counsel was instructed to draft and circulate a proposed order to all members for review, revisions, edits, or comment.

The Board members briefly reviewed matters for the December agenda carried over from the subject noticed agenda, and directed counsel to again include same together with any additional matters and schedule ample time for consideration and review.

There being no further business before the Board the meeting was adjourned at approximately 4:30 p.m.



FRED SCARPELLO ESQ.  
Attorney for the Nevada  
Occupational Safety and  
Health Review Board

**NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD**  
**NOTICE OF MEETING OF THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD**

**You are hereby given notice that a meeting of the NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD will be conducted on Monday and Tuesday the 9<sup>th</sup> and 10<sup>th</sup> of November, 2015 at the DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH, 4600 Kietzke Lane, Building B, Suite 111, Reno, Nevada, commencing at 9:00 o'clock a.m. and terminating immediately after the conclusion of the matters hereinbelow referenced.**

**1. AGENDA ITEMS SUBJECT OF MEETING:**

**Hearing on Docket No. RNO 15-1799, Summit Roofing, LLC**

Hearing on Docket No. RNO 16-1808, Jackson Quality Drywall

Hearing on Docket No. RNO 16-1810, Urban Group of Companies dba Urban Metals

Hearing on Docket No. RNO 16-1805, A.R. Mays Construction

Hearing on Docket No. RNO 16-1813, Northern California Nail Co., Inc.

**Hearing on Docket No. RNO 16-1814, Panelized Structures**

2. The contested matters shall be heard in a quasi-judicial forum pursuant to Chapter 618 of the Nevada Administrative Code and applicable Nevada Revised Statutes conferring jurisdiction. The hearing proceedings will be transcribed by a certified court reporter. You are further notified: meetings and contested hearings are open to the public; deliberations which involve alleged misconduct, professional competence, and/or character may be held privately; any final decisions will be made publicly - all in accordance with Chapter 241 of Nevada Revised Statutes, commonly known as the Nevada Open Meeting Law.

**3. The contested cases may be set as either primary or alternate settings and subject to change as to time of commencement by the Nevada Occupational Safety and Health Review Board.**

The board regularly meets on the second (2<sup>nd</sup>) Wednesday and Thursday of each month. All contested cases are noticed for hearing at 9:00 a.m. on Wednesday. Hearing times, order of case presentation, and/or the agenda for administrative matters can vary depending upon settlements, continuances, and/or cancellations. Any interested persons may contact the review board legal/administrative office for advance or additional scheduling information at (775) 882-4577 or by mail directed to Board Chairman, 600 E William St., Ste. 300, Carson City NV 89701. Additional information may be obtained by contacting the Department of Occupational Safety and Health at the address/telephone below referenced.

**4. Additional items to be discussed at the administrative portion of the Review Board meeting are as follows:**

**A. Approval of the previous Board minutes**

**B. Schedule of hearings, pending matters; contested hearing docket, calendar and status report.**

C. Review case settlement resolutions and procedure of withdrawals of contest/written stipulation in general and all cases remaining pending submittals for board review and approval/NAC 618.833, NAC 618.773

D. Review proposed final order and disposition status in docket RNO 15-1789, Sierra Barajas Roofing (for possible action)

**E. Review previous board action and draft case decision in docket LV 15-1798, Walker Specialty Construction**

**F. General administration and/or procedural issues.**

**G. Administrative matters for next public meeting.**

Public comment is restricted and not permitted during Review Board contested hearings which are specifically governed by NRS 618, NRS 233B, and NAC 618. The applicable legislation and codified procedures mandate assurance of a fair and impartial administrative hearing, a transcribed record, and a protected appellate process for an aggrieved party to seek redress in the district courts.

5. Any persons with a disability as defined by the Americans with Disabilities Act, and requiring special assistance to participate in the meeting, may contact the Board at least five (5) days prior to the meeting to endeavor the arrangement of reasonable accommodations.

DATED this 23rd day of October, 2015

NEVADA OCCUPATIONAL SAFETY AND  
HEALTH REVIEW BOARD

By:                     /s/                      
JOE ADAMS, Chairman

**Contact information pursuant to NRS 241.020(2).**

**NV OSHA General Legal Counsel  
Donald C. Smith, Esq.  
1301 N. Green Valley Parkway, Ste. 200  
Henderson, NV 89074  
(702) 486-9070**

**NV OSHA Legal Counsel  
Salli Ortiz, Esq.  
400 W. King Street, Ste. 201  
Carson City NV 89701  
(775) 684-7286**

**NV OSHA Review Board Legal Counsel  
Fred Scarpello, Esq.  
600 E William St., Ste. 300  
Carson City NV 89701  
(775) 882-4577**

**Places Posted:** OSHA Office and Hearing Room; Washoe County Courthouse, Carson City Courthouse, Carson City Library, State Website



MINUTES OF THE MEETING OF  
THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Held at Enterprise Library  
25 East Shelbourne Avenue  
Las Vegas, Nevada  
Commencing at 10:00 o'clock a.m.

December 9, 2015

PRESENT

Joe Adams (management)  
Nicole Baker (labor)  
James Barnes (public)  
Steve Ingersoll (labor)  
Sandra Olson (management)  
Frank Milligan (public alternate)  
Fred Scarpello, Esq., Legal Counsel

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 10:00 a.m., December 9, 2015. 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.

The Chairman noted settlement of the cases previously noticed and set for hearing as follows, docket no. LV 16-1817, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Blue Iron, Inc., LV 16-1812, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Morpheus Investment, Inc., Jeff Weightman and Roshana Forootan dba Tire Works Total Car Cars, and LV 16-1821, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Apex Linen Service, Inc.

The Chairman called the Board to order to conduct the administrative meeting based on negotiated settlements reached on all contested matters scheduled for the current docket. The Board approved the minutes of the November 9, 2015 meeting as distributed without change on motion, second and unanimous vote.

Board members reviewed the previous decisions submitted in draft for consideration of any changes or final action. Each of the referenced case draft decisions were reviewed and discussed, namely: docket no. RNO 16-1808, Occupational Safety and Health

Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Jackson Quality Drywall; RNO 16-1813, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Northern California Nail Co., Inc.; and RNO 16-1814, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Panelized Structures. After completion of review and discussions, on motion, second and unanimous vote the decisions were approved as drafted, subject to non-substantiative edits and revisions. Counsel was instructed to complete the drafts in final and effectuate service on all parties.

The Chairman recognized the appearance of Chief Administrative Officer (CAO) Mr. Jess Lankford, together with division senior legal counsel Mr. Don Smith and division counsel Ms. Salli Ortiz. He noted the issue for review as identified on the public agenda which referenced procedural aspects of case settlement resolutions through withdrawals of notice of contest and/or complaints, stipulations and issuance of final orders. The Chairman identified previous correspondence exchanges regarding jurisdictional authority between the OSHEs and Board. He requested discussion accordingly. After review of the procedure, administrative practice and various collateral issues associated with case resolutions, and reference to interpretations of NRS 618/NAC 618, and NRS Chapter 241, CAO Lankford and Board members agreed to adhere to the previous historical procedure to facilitate the timely processing of contested cases and matters within recognized Board jurisdiction. All case resolutions currently held in a pending status will be subject of written settlement agreements signed by both litigating parties and promptly submitted to the Board for review, approval and issuance of Final Orders.

Additional discussions and suggestions were exchanged to support continued cooperative efforts between the enforcement section and the Board in accordance with the respective statutory mandates under NRS and NAC Chapters 618 and NRS Chapter 241, the Nevada Open Meeting Law.

Board members thanked CAO Lankford for the opportunity of discussion and cooperative resolution of the procedural issues.

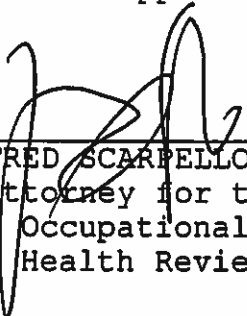
The Board discussed docket no. RNO 15-1789, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Sierra Barajas. The Chairman noted concerns expressed with regard to the previously approved negotiated case settlement which was based upon an approximate 4-1/2 year old threshold violation utilized for the Repeat classification and penalty assessment. After continued

discussion of the matter, the Board recognized the concern for future focus of long dated threshold violations for Repeat citations, but accepted a motion from Board Member Ingersoll to confirm the previous Board vote finding a violation because both parties negotiated the settlement at the time of the hearing and presented the terms on the record at the public meeting. The motion was seconded by Board member Adams. All members voted unanimously to confirm the settlement. The chairman instructed counsel to prepare and serve a Final Order to conclude the case accordingly.

After a brief luncheon recess the Board reconvened at approximately 1:00 p.m. The Chairman directed Board attention to the issues on the public agenda. Board members discussed pending matters and the schedule of hearings. The chairman instructed counsel to continue the "stacked" settings accordingly. Counsel requested early input on any special or added administrative matters which require publication on the forthcoming open meeting agenda. The Board noted the possibility of only an administrative meeting in February if the two minor cases set (docket no. LV 1806 and 1824) are continued to March for hearing. This would allow the Board to review any case decisions pending review from the previous month and address other administrative issues.

The Board discussed the extensive status report issues as well as the projected settings through April of 2016. The previous instructions to counsel were reconfirmed to stack the cases and work in conjunction with division counsel to assure any complaints filed are timely processed through the contested hearing procedures and issuance of final order.

There being no further business, on motion, second and unanimous vote, the meeting of the Nevada Occupational Safety and Health Review Board was adjourned at approximately 1:45 p.m.



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FRED SCARFELLO, ESQ.  
Attorney for the Nevada  
Occupational Safety and  
Health Review Board

**NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD**  
**NOTICE OF MEETING OF THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD**

You are hereby given notice that a meeting of the NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD will be conducted on Wednesday and Thursday, the 9<sup>th</sup> and 10<sup>th</sup> day of December 2015 at the LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT, ENTERPRISE LIBRARY, 25 East Shelbourne Avenue, Las Vegas, Nevada, commencing at 10:00 o'clock a.m. and terminating immediately after the conclusion of the matters hereinbelow referenced.

**1. AGENDA ITEMS SUBJECT OF MEETING:**

Hearing on Docket No. LV 16-1817 Blue Iron, Inc.  
Hearing on Docket No. LV 16-1812 Morpheus Investment, Inc. dba Tire Works Total Car Care  
Hearing on Docket No. LV 16-1822 Hershberger Bros. Welding, Inc.  
Hearing on Docket No. LV 16-1821 Apex Linen Service, Inc.

2. The contested matters shall be heard in a quasi-judicial forum pursuant to Chapter 618 of the Nevada Administrative Code and applicable Nevada Revised Statutes conferring jurisdiction. The hearing proceedings will be transcribed by a certified court reporter. You are further notified: meetings and contested hearings are open to the public; deliberations which involve alleged misconduct, professional competence, and/or character may be held privately; any final decisions will be made publicly - all in accordance with Chapter 241 of Nevada Revised Statutes, commonly known as the Nevada Open Meeting Law.

3. The contested cases may be set as either primary or alternate settings and subject to change as to time of commencement by the Nevada Occupational Safety and Health Review Board.

The Board regularly meets on the second (2<sup>nd</sup>) Wednesday and Thursday of each month, unless otherwise specially designated. All contested cases are noticed for hearing at 10:00 a.m. on Wednesday. Hearing times, order of case presentation, and/or the agenda for administrative matters can vary depending upon settlements, continuances, and/or cancellations. Any interested persons may contact the review board legal/administrative office for advance or additional scheduling information at (775) 882-4577 or by mail directed to Board Chairman, 600 E William St., Ste. 300, Carson City NV 89701. Additional information may be obtained by contacting the Department of Occupational Safety and Health at the address/telephone below referenced.

4. Additional items to be discussed at the administrative portion of the Review Board meeting are as follows:

- A. Approval of the previous Review Board minutes.
- B. Schedule of hearings on pending cases; contested hearing docket, calendar and status report.
- C. Review case settlement resolutions and procedure of withdrawals of contest/written stipulation in general and cases pending submittals for board action, review and/or approval; 1:00 p.m. December 9, 2015 (for possible action)
- D. Review previous board action and case decisions in docket RNO 16-1813, Northern California Nail Co., RNO 16-1814, Panelized Structures, RNO 16-1808, Jackson Quality Drywall and RNO 16-1810, Urban Metals (for possible action)
- E. Review draft final order in docket RNO 15-1789, Sierra Barajas Roofing (for possible action)
- F. General administration and/or procedural issues.
- G. Administrative matters for next published meeting agenda.

Public comment is restricted and not permitted during Review Board contested hearings which are specifically governed by NRS 618, NRS 233B, and NAC 618. The applicable legislation and codified procedures mandate assurance of a fair and impartial administrative hearing, a transcribed record, and a protected appellate process for an aggrieved party to seek redress in the district courts.

5. Any persons with a disability as defined by the Americans with Disabilities Act, and requiring special assistance to participate in the meeting, may contact the Board at least five (5) days prior to the meeting to endeavor the arrangement of reasonable accommodations.

DATED this 20<sup>th</sup> day of November 2015 NEVADA OCCUPATIONAL SAFETY AND  
HEALTH REVIEW BOARD

By: \_\_\_\_\_

JOE ADAMS, Chairman

Contact information pursuant to NRS 241.020(2):

Nevada OSHA General Legal Counsel  
Donald C. Smith, Esq.  
1301 N. Green Valley Pkwy # 200  
Henderson, NV 89074  
(702) 486-9070

Nevada OSHA Legal Counsel  
Salli Ortiz, Esq.  
400 W. King Street, Ste. 201  
Carson City NV 89701  
(775) 684-7286

NV OSHA Review Board Legal Counsel  
Fred Scarpello, Esq.  
600 E William St., Ste. 300  
Carson City NV 89701  
(775) 882-4577

Places Posted: Clark County Library; District III OSHES Office; Clark County Court; Enterprise Library, Carson City Library, State Website

# SCARPELLO & HUSS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

BANK OF AMERICA CENTER  
600 E. WILLIAM STREET, SUITE 300  
CARSON CITY, NEVADA 89701-4052

TELEPHONE (775) 882-4577  
FACSIMILE (775) 882-0810

**RECEIVED**

MAR 03 2016

ADMINISTRATOR  
INDUSTRIAL RELATIONS

March 1, 2016

**RECEIVED**

MAR 03 2016

**WCS**

**TO:** Payroll Unit

**THROUGH:** Accountant Tech I, DIR

**FROM:** Fred Scarpello, Legal Counsel to Occupational Safety & Health Review Board

**SUBJECT: SPECIAL PAY FOR BOARD MEETING**

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This is to advise you the of Board Members who attended the Nevada Occupational Safety and Health Review Board Meeting on **December 9, 2015** and are entitled to receive \$80.00 per day in Board Pay according to NRS 618.595 .

**NRS 618.595 Compensation of members and employees.**

1. Each member of the Board is entitled to receive a salary of not more than \$80, as fixed by the Board, for each day or portion thereof for attendance at meetings of the Board.
2. While engaged in the business of the Board, each member and employee of the Board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

The attending Board Members entitled to receive the statutory \$80.00/day compensation and expense reimbursement are the following:

Wednesday, February 10, 2016

Joe Adams  
Nicole Baker  
James Barnes  
Sandra Olson  
Frank Milligan

Thank you.

Attachment: Minutes of Board Meeting

cc: Angel Corum, Travel, DIR  
Steve George, Administrator, DIR  
Jess Lankford, Chief Administrative Officer

MINUTES OF THE MEETING OF  
THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Held at Enterprise Library  
25 East Shelbourne Avenue  
Las Vegas, Nevada  
Commencing at 10:00 o'clock a.m.

February 10, 2016

PRESENT

Joe Adams (management)  
Nicole Baker (labor)  
James Barnes (public)  
Sandra Olson (management)  
Frank Milligan (public alternate)  
Fred Scarpello, Esq., Legal Counsel

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 10:00 a.m., February 10, 2016. 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.

The Chairman noted settlement of the cases previously noticed and set for hearing as follows, docket no. LV 16-1806, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. United Parcel Service, Inc. and docket no. LV 16-1824, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Western States Contracting.

The Chairman referenced the published agenda and announced all the contested cases set for hearing were settled. He called for conduct of the administrative meeting. The Board approved the minutes of the previous December 9, 2015 as distributed without change.

The Board members reviewed the previous decisions approved in draft and final, noting no further action required based upon completions effectuated since the last meeting.

The Board reviewed various pending case resolution/settlement documentation. Counsel advised follow on responses are expected from division counsel regarding support for only two remaining settlements. The Board directed counsel to report back after

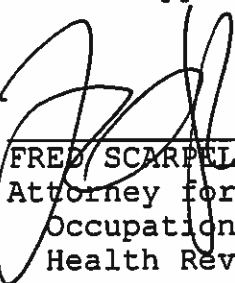
receipt of information to support resolution of those cases in furtherance of the rules and protocols confirmed by the Board and Chief Administrative Officer at the December Board meeting. Counsel was instructed to re-notice the next meeting agenda for review of dockets no. 15-1802, and 15-1803. Counsel reported that upon receipt of the foregoing, case resolutions held in pending status will be completed. The members acknowledged they will continue the recognized procedure for review of case settlements/resolutions and issuance of final orders.

Board members discussed legislative subcommittee information for periodic review, procedure and administration. Counsel noted additional comments from Board members and was instructed to provide the subcommittee with any relevant information requested.

Board members reviewed the pending hearing schedule of contested cases noting a reduction in the number of complaints being filed monthly by OSHES compared to previous years. The Board discussed time expectations for the substantial March contested hearing calendar. Counsel was instructed to continue stacking any additional cases for hearing noting matters now being set into May 2016.

Board members discussed the recent Nevada Supreme Court decision of the Terra Contracting case appealed from the district court, distinguishing the review commission and federal circuit court decisions under the burden of proof, defense of supervisory self-misconduct, and imputation of knowledge to an employer. Board members reviewed the legal distinctions as to violation foreseeability and knowledge imputation to an employer. Extended discussion occurred. Counsel was instructed to provide Board members with the background case law to assist the Board on futures cases noting the differences between the federal circuit court case law and interpretation and distinctions now drawn by the Nevada Supreme Court.

There being no further business, on motion, second and unanimous vote, the meeting of the Nevada Occupational Safety and Health Review Board was adjourned at approximately 12:15 p.m.

  
\_\_\_\_\_  
FRED SCARPELLO, ESQ.  
Attorney for the Nevada  
Occupational Safety and  
Health Review Board