

VOSHA REVIEW BOARD SPECIAL MEETING MINUTES
13 Baldwin Street, Montpelier, VT 05633

October 21, 2021

The VOSHA Review Board (VRB) Meeting began at 8:45 A.M. and was attended by Leigh Keyser Phillips (Chair), Benjamin R. O'Brien (Member) Mark J. Gregoritsch (Board Member who joined the meeting at 9:00 A.M.), and Carolyn Desch (Clerk). Also in attendance during the meeting was Brenda Berry, Deputy Financial Officer of the VT Agency of Administration Financial Services Division, who joined the meeting at 8:45 A.M. Lastly, Hearing Officers Alan Rome and Curtis Carpenter joined at 9:00 A.M.

ADDITIONS OR DELETIONS TO THE AGENDA

None.

APPROVAL OF MINUTES

RESOLUTION PASSED: After discussion and upon motion made by Benjamin R. O'Brien and seconded by Leigh Keyser Phillips, the Board unanimously voted to approve the August 20, 2021, VRB meeting minutes. - PASSED

FINANCIALS (See VOSHA Review Board FY23 Budget Preparations and September financials on SharePoint)

Brenda Berry discussed the budget and actuals to budget status. Agencies across State Government were given a 3% increase which is reflected in the budget document. Actuals to budget are in line with each other except under the Clerk salary and benefits. Each year, foreseeable increases in those items are not factored into the budgeting process, and therefore, they are always over budget by fiscal year end.

BOARD MEMBER PARTICIPATION IN HEARINGS (See Clerk's Report)

The topic of whether a Board Member may participate in Hearings was first brought up in the July 16, 2021, meeting, but a conclusion was not identified in the minutes.

- Participation is important, because:
 - (1) The Board Member can report to the full board on the nuances of any testimony given, such as body language and witness behavior, to determine if a witness is being truthful, and
 - (2) The Board Member can ask questions to clarify testimony provided.

- Participation is unnecessary, because:
 - (1) There are ways to listen or watch a recording of the hearing or to read the transcript,
 - (2) It effects the ability of the Board to be impartial, and
 - (3) In Civil Courts, there are no appellate judges or other hearing officers participating.

During this meeting of October 21, 2021, there was discussion around the idea that a Board Member could sit and watch but not engage. However, Review Board concluded that it is

unnecessary for Board Members to attend Hearings.

CLERK ASSISTANCE TO HEARING OFFICERS (See Clerk's Report)

The topic of whether the Clerk can provide assistance to the Hearing Officers was first brought up at the August 20, 2021, meeting. Alan Rome voiced concern about the dual role of the Clerk because she answers to the Review Board as well as assists the Hearing Officer. After a discussion, the Review Board determined that while she is providing help to both, the type of overlap was not a conflict of interest. Therefore, the Review Board agreed that the Clerk may provide research and other appropriate assistance to the Hearing Officer upon request.

DOCKET REVIEW

The Review Board discussed the information presented in the attached Clerk's report, tracking sheet for FY22 and docket summary.

RULES OF PROCEDURE REVIEW (See Clerk's Report)

Even though the Rules of Procedure were adopted in August, there will still be updates regarding forms and rule interpretation from time to time. The Review Board discussed the information provided in the Clerk's report. In addition, there was discussion about the caption (aka Title of Cases) as presented under Rule 31. The Clerk reported that the Vermont Commissioner of Labor (DOL) has for some time been captioning documents as "Petitioner" even though the Rules of Procedure under 31(a) require the Commissioner of Labor to be titled as the "Complainant". In a recent case, an individual, who filed a work safety complaint with DOL, was referred to in several documents as the "complainant". Clearly, it could be confusing to refer to both an individual, who filed a complaint with DOL, and the DOL as the "Complainant" in a case. There was some brainstorming around what to call a person who has filed a complaint with DOL. Benjamin O'Brien shared that anyone, who calls the fire department, is referred to as "caller" or "reporter". The Review Board discussed a couple of possible terms, including "reporting party", "reporter", or "violation Reporter". Carolyn Desch will let the DOL know that they should use "Complainant" in pleading captions for their title and to suggest using "complaining" or "reporting" party or individual for anyone calling in a work safety complaint.

PRESERVATION OF PARTY RIGHTS TO APPEAL TO SUPERIOR COURT

The Review Board discussed the information from the Clerk's Report. Leigh Keyser Phillips added that the reason the question came up when a pro se employer, whose case is in collections, claimed that he did not understand the appeal process and thought that he could appeal his case directly to the Vermont Superior Court.

CONTRACTS

Carolyn Desch added that in addition to the information provided in the Clerk's Report that the contracts have been signed by her and are in effect until the dates stated in the report.

SALE OF 13 BALDWIN STREET

The Review Board discussed the information provided in the Clerk's Report. They voiced concern about Carolyn needing extra help to move, but she assured them that she would be fine. Some boxes are going to be archived with Vermont State Archives and Records Administration, which will be picked up by Vermont Buildings, Grounds and Services. The only thing that Carolyn said she would like to have for the new space is a tall cabinet. She said that she would hold off on any

purchases in hopes that she could find used items from another agency moving or from State of Vermont Surplus.

STATUS OF CHAIR'S RETIREMENT:

Carolyn Desch reported that Victoria Biondolillo, who is tasked with finding board and commission member replacements in the Governor's office, has a couple of candidates for the VRB Chair situation. If she does not have a favorable response, she will place an advertisement in with Human Resources.

SCHEDULING OF BOARD MEETINGS

No meeting was scheduled at this time. However Carolyn Desch said that she would be in touch with the Board by email to set up its next meeting.

ADJOURN

The meeting of the VOSHA Review Board was adjourned at 10:15 A.M.