

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

**November 4, 2020**

The Review Board Meeting began at 8:35 a.m. and was attended remotely via instantaneous transmission of video through Microsoft Teams by Leigh Keyser Phillips (Chair), Mark J. Gregoritsch (Board Member), Benjamin R. O'Brien (Member), and Carolyn Desch (Clerk).

APPROVAL OF MINUTES

RESOLUTION PASSED: After discussion and upon motion made by Benjamin O'Brien, and seconded by Mark J. Gregoritsch, the Board unanimously voted to approve the September 15, 2020 Review Board meeting minutes. - PASSED

BUDGET

Carolyn Desch reviewed the attached budget history spreadsheet per the Clerk's report.

DOCKET REVIEW

The Board reviewed the attached FY20-21 Docket Summary and tracking sheet and discussed the status of open cases, including which hearing officer is attached to each case. The Board also discussed more in depth the details around the new case VRB1032 United Rentals (North America) Inc, and why a rental company might be charged with a violation.

HEARING OFFICER STATUS

There was a discussion about the need for an additional hearing officer. Curtis Carpenter has a conflict of interest with one of the law firms that currently has two cases open with the Review Board. He also has a family emergency, which will limit his availability as a Hearing officer for a period of time. In addition, it was also noted that Alan Rome may decide to retire at some point, although he has not said so directly. In addition to the required posting of the position through the State of Vermont, Leigh Keyser Phillips suggested listing the position with the Vermont Bar Association. After further discussion and upon motion by Benjamin O'Brien and seconded by Mark Gregoritsch the Board unanimously voted to authorize the Clerk to place the hearing officer position out for bid. – PASSED

BOARD MEMBER STATUS

Benjamin O'Brien is up for reappointment in February. He informed the Board that he is not sure that he will seek reappointment. Discussion surrounded the various options including waiting until he retires in three years. Leigh Keyser Phillips plans to retire from the Board sometime in the first half of 2021 and would like to see the revised Rules of Procedure through to their adoption before doing so.

REMOTE HEARING GUIDELINES DISCUSSION

Discussion was around the process for submission of exhibits for hearings, including having a separate PDF for each proposed exhibit and not retaining any exhibits that were not admitted during the hearing. The Board did not think they need to specifically approve the guidelines, since they are not an APA document, but did find them acceptable, with the understanding that they may need to be updated as the remote hearing process evolves.

RULES OF PROCEDURE REVIEW

The Review Board discussed the comments submitted during the formal comment period. Of note, it was proposed that the rules relating to discovery, including depositions, be changed to reflect the OSHA Review Commission Language. Whether or not a facsimile should be considered an electronic transmission was also discussed, as under the Vermont Rules for Electronic Filing, specifically Rule 5(d), a fax is considered a nonelectronic document.

Carolyn Desch and Leigh Keyser Phillips will meet next week to go over additional edits to the rules, based upon the public comments, including those from the Department of Labor. Any further revisions will be provided to the individuals who provided public comments, and a written response to its comments will be prepared for the Department of Labor. A telephone conference will also be set up with the Department of Labor to go over their comments to try to resolve any concerns which they may have raised.

### SCHEDULE UPCOMING MEETINGS

The next meeting will be set after the following have been completed:

1. Leigh Keyser Phillips and Carolyn Desch to meet next Monday or Tuesday to review the comments and Rules of Procedure changes.
2. Get proposed revisions to the commenters within the next couple of weeks.
3. Have a meeting with the Department of Labor before or after Thanksgiving.

### ADJOURN

Upon motion made by Mark J. Gregoritsch and seconded by Benjamin O'Brien, the meeting of the VOSHA Review Board was adjourned at 11:05 a.m. – PASSED