

.STATE OF NEVADA

**Minutes for the
Nevada Occupational Safety and Health Review Board
Reno, Nevada**

June 12, 2019

Present

**Steve Ingersoll (Labor)
Rodd Weber (Management)
Sandra Roche (Management)
James Halsey (Labor)**

On June 12, 2019, a meeting of the Nevada Occupational Safety and Health Review Board was convened. Chairman Ingersoll called the meeting to Order at approximately 9:00 a.m., as duly noticed. The meeting was actually conducted from Building F, Suite 153, State OSHA offices in Reno, Nevada, to enable the Las Vegas Board members to participate in the meeting by telephone from Las Vegas. The meeting was noticed to be convened at 4600 Kietzke Lane, Building G, Suite 160, in Reno, Nevada, but when it became apparent that it was unnecessary for the Las Vegas Board members to travel to Reno for an abbreviated meeting of the Board of Review, the meeting was relocated to Building F, Suite 153, because Building G, Suite 160, had no telephone service to the room. A sign was posted at Building F, Suite 153, advising that the meeting had been relocated to Building F, Suite 153, in Reno, Nevada, a distance of about 60 feet.

1. Roll Call.

Chairman Ingersoll participated in person from Building F, Suite 153. Vice-Chairman Rodd Weber and members Sandra Roche and James Halsey participated by conference call-in throughout the meeting. Member Frank Mulligan was absent. As there were four members of the Board who were in attendance and one management and one labor member participated, a quorum was present for the Board to conduct its business.

Also personally in attendance was Board legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. and Salli Ortiz, Esq., Division of Industrial Relations (DIR), and Jess Lankford, Chief Administrative Officer, NV OSHA. Ray Fierro, Administrator, DIR, also joined the meeting in progress in person.

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.

2. Public Comment.

There was no public comment.

3. Contested Case Hearings.

- a. RNO 19-1978, Tesla, Inc. - **For Possible Action**
- b. RNO 19-1974, Ponderosa Hotel, Inc. - **For Possible Action**
- c. RNO 19-1975, Ponderosa Hotel, Inc. - **For Possible Action**
- d. RNO 19-1988, Sierra Products, Inc. - **For Possible Action**
- e. RNO 19-1989, Sierra Products, Inc. - **For Possible Action**

Chairman Ingersoll called this matter to be heard and asked Board counsel to explain. He stated that there were no contested cases to be decided as either the hearing dates were vacated and rescheduled or the cases were settled.

4. Administrative Meeting:

- a. **Approval of the previous Review Board minute of May 8 and 9, 2019.**

Chairman Ingersoll then called for consideration the minutes of the Board meeting for May 8 and 9, 2019. It was moved by Sandra Roche, seconded by James Halsey, to approve the minutes as read. **Motion adopted.**

Vote: 4-0.

- b. **Review Contested case settlements, motions, draft decisions, or procedural issues pending on status report, for approval and issuance of final orders:**

- i. RNO 18-1953, Pacific West Contractors of Nevada, LLC.
- ii. RNO 18-1934, Pitney Bowes, Inc. dba Newgistics, Inc.
- iii. RNO 19-1962, Aqua Metals, Inc.
- iv. LV 18-1938, Clark County Water Reclamation (Fatality)

Chairman Ingersoll next called for consideration items b(i), b(ii) and b(iii). Board counsel advised that item 4.b(iv), had to be continued due to the want of a proof of service on one of the parties to be noticed for this matter. Board counsel advised that these case settlements should be considered separately, rather than in one, over arching motion. The Board, thus, took these items up in order.

i. RNO 18-1953, Pacific West Contractors of Nevada, LLC.

Chairman Ingersoll called this matter next. It was moved by Steve Ingersoll, seconded by Sandra Roche, to approve the settlement. **Motion adopted.**

Vote: 4-0

ii. RNO 18-1934, Pitney Bowes, Inc. dba Newgistics, Inc.

Chairman Ingersoll called this matter next. It was moved by Steve Ingersoll, seconded by Sandra Roche, to approve the settlement. **Motion adopted.**

Vote: 4-0

iii. RNO 19-1962, Aqua Metals, Inc.

Chairman Ingersoll called this matter next. It was moved by Steve Ingersoll, seconded by Sandra Roche, to approve the settlement. **Motion adopted.**

Vote: 4-0

c. General administration and/or procedural issues.

Chairman Ingersoll then called this general administrative and procedural matter for consider of the Board.

i. General Matters of Import to Board Members.

There were no matters discussed.

ii. Old and New Business.

There was no old or new business discussed.

iii. Board Council's Contract Renewal.

Chairman Ingersoll called this item to be heard and asked Board counsel to explain. Board counsel advised that on June 11, 2019, the day before this meeting, without notice or any explanation, he received a phone call and e-mail advising that: (a) the matter of Board counsel's contract to continue as Board counsel, scheduled to be considered on June 13, 2019, before the Board of Examiners (BOE) had been pulled; and (b) therefore, that there would be no Board meeting for July 2019, as Board Counsel's contract expires June 30, 2019 . His renewed contract scheduled for consideration by the BOE, had been approved all along the way up the chain, until this decision to pull the contract, without forewarning.

Board counsel advised that the Board has set cases to be heard through October 2019, that there are 11 cases to be heard at the July session of the Board, and that if there is not going to be a Board meeting, due to the withdrawal of Board counsel's renewed contract commencing for two years, July 1, 2019, notices need to go out for at least July, vacating the hearing date for these 11 cases. This, in turn, might apply to the August docket of the Board, and then, there will be the matter of rescheduling the vacated hearing dates.

Board counsel advised that he had no knowledge as to why this sudden action had been taken. It came as a bolt out of the blue.

Board counsel advised, further, in his opinion, the Board sets the meetings as an independent body for deciding OSHA cases and that if the Board wanted to continue with the July calendar as set, that was the Board's prerogative, especially to avoid the ensuing chaos, if the Board has to stop business and start cancelling hearing dates.

Board counsel further advised that the choice of its legal counsel rests with the Board, that if the Board no longer wanted Board counsel's services, he would quietly depart, but that if the Board continued to want Board counsel's services as Board counsel, he would continue to represent the Board, with or without a contract, to enable the July 2019 meeting to go forward and to continue a seamless operation of the Board while this contract issue is resolved.

Board members immediately expressed satisfaction with the work of Board counsel, that they intended to employ Board counsel as the Board's counsel, that the choice of Board counsel rests with the Board, and that it would create a huge problem for the Board, were the Board to vacate and continue even just the July 2019, docket of the Board. The Board expressed the sentiment that the Board proceed with the meeting in July 2019, that no action to vacate the meeting in July would be taken, and that Board counsel would be present to represent the Board, with compensation provided Board counsel, retroactively, once this contract situation is resolved.

It was accordingly moved by James Halsey, seconded by Sandra Roche, to retain Mr. Zeh, as counsel to the Board. **Motion adopted.**

Vote: 4-0.

The Board exercised its authority to retain independent legal counsel of its own choosing as evidenced by the vote on this motion.

d. Schedule of Hearings and Pending Cases, Calendar and Status Report.

Board Chairman Ingersoll called this matter to be heard, which includes the Board's schedule of next meetings. No action was intentionally taken, meaning that the Board's current schedule of meetings remains in tact. As such, the Board's meeting of July 10 and 11, 2019, will proceed as already scheduled.

July 10, 2019 and July 11, 2019, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102; August 14, 2019 and August 15, 2019, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102; September 11, 2019 and September 12, 2019, at 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada 89509.

5. Public Comment.

There was no public comment.

6. Adjournment.

Chairman Ingersoll called this matter next. It was moved by James Halsey, seconded by Rodd Weber, to adjourn the meeting. **Motion adopted.**

Vote: 4-0.



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

S:\Clients\OSHA\Minutes\2019\June 12 13, 2019 R3.wpd

STATE OF NEVADA
OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

NOTICE OF MEETING

You are hereby given notice that a meeting of the NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD will conduct a public hearing on **Wednesday, June 12, 2019 and Thursday, June 13, 2019**, commencing at **9:00 a.m.**, at 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.

AGENDA

Notice: (1) Items on the Agenda may be taken out of order; (2) The Board may combine two or more Agenda items for consideration; and (3) The Board may remove an item from the Agenda or delay discussion relating to an item on the Agenda at any time.

1. Roll Call.
2. Public Comment - The opportunity for public comment is reserved for any matter listed below on the Agenda as well as any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person. Public comment is 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.
3. Contested Case Hearings - 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 public - all in accordance with Chapter 241 of Nevada Revised Statutes, commonly known as the Nevada Open Meeting Law.
 - a. RNO 19-1978, Tesla, Inc. - **For Possible Action**
 - b. RNO 19-1974, Ponderosa Hotel, Inc. - **For Possible Action**
 - c. RNO 19-1975, Ponderosa Hotel, Inc. - **For Possible Action**
 - d. RNO 19-1988, Sierra Products, Inc. - **For Possible Action**
 - e. RNO 19-1989, Sierra Products, Inc. - **For Possible Action**

- e. RNO 19-1989, Sierra Products, Inc. - **For Possible Action**
- 4. Administrative Meeting:
 - a. Approval of the previous Review Board minutes of May 8 and 9, 2019. **For Possible Action**
 - b. Review contested case settlements, motions, draft decisions, or procedural issues pending on status report, for approval and issuance of final orders:
 - i. RNO 18-1953, Pacific West Contractors of Nevada, LLC- **For Possible Action**
 - ii. RNO 18-1934, Pitney Bowes, Inc. dba Newgistics, Inc. - **For Possible Action**
 - iii. RNO 19-1962, Aqua Metals, Inc. - **For Possible Action**
 - iv. LV 18-1938, Clark County Water Reclamation (Fatality) - **For Possible Action**
 - c. General administration and/or procedural issues.
 - i. General matters of import to Board members;
 - ii. Old and New Business; and
 - iii. Board Counsel's contract renewal. - **For Possible Action**
 - d. Schedule of hearings on pending cases, calendar and status report. Next scheduled meeting: **July 10 and 11, 2019**, at 3360 West Sahara Ave., Suite 175, Las Vegas, Nevada. **For Possible Action**
- 5. Public Comment - The opportunity for public comment is reserved for any matter listed below on the Agenda as well as any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person. Public comment is 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.
- 6. Adjournment. **For Possible Action.**

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.

This Notice has been posted at the following locations:

Division of Industrial Relations, Department of Occupational Safety and Health,
4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada 89509

Division of Industrial Relations, Department of Occupational Safety and Health,
4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada 89509

Division of Industrial Relations, 3360 West Sahara Ave., Suite 250, Las Vegas,
Nevada 89102

Washoe County Courthouse, 75 Court Street, Reno, Nevada 89509

Carson City Library, 900 North Roop Street, Carson City, Nevada 89701

Clark County Library, 833 Las Vegas Blvd. North, Las Vegas, Nevada

Clark County Court, Regional Justice Center, 200 Lewis Avenue, Las Vegas,
Nevada

This Notice has also been posted at the following website addresses:

State of Nevada, Department of Business and Industry, Industrial Relations (DIR)
website at <http://dir.nv.gov/Meetings/Meetings>

Nevada Public Notices at <http://www.notice.nv.gov>

A copy of supporting (not privileged and confidential) material provided to the Board Members may be obtained upon request made to: Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., 50 West Liberty Street, Suite 950, Reno, Nevada 89501, or by calling (775) 323-5700.

Copies of the supporting (not privileged and confidential) material may also be obtained upon request at the offices of the Division of Industrial Relations, Nevada OSHA Legal Counsel, Salli Ortiz, Esq., 400 West King Street, Suite 201, Carson City, Nevada, 89701, or by calling (775) 684-7286, or by contacting the Division of Industrial Relations, Nevada OSHA General Legal Counsel, Donald C. Smith, Esq., at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102, or by calling (702) 486-9070.

DATED this 23rd day of May, 2019.

By: _____ s/CHARLES R. ZEH, ESQ.
Charles R. Zeh, Esq.
Counsel for the Board