

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

Held at DEPARTMENT OF OCCUPATIONAL  
SAFETY & HEALTH  
4600 Kietzke Lane, Building I, Suite 204  
Reno Nevada on  
Wednesday, December 13, 2017  
Commencing at 9:00 o'clock a.m.

PRESENT

James Barnes (public)  
James Halsey (labor)  
Steve Ingersoll (labor)  
Sandra Roche (management)  
Rodd Weber (management)  
Fred Scarpello, Esq., Legal Counsel

ABSENT

Frank Milligan (alternate)

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting at 9:00 a.m., December 13, 2017. The Chairman called the Board to order. 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. Chairman Barnes announced the meeting would be limited to only administrative matters subject of the published agenda. He noted for the record that contested case hearings require personal attendance of members for appropriate consideration of sworn testimony and submittal of documentary evidence; however meetings limited to only administrative matters may be conducted telephonically dependent upon the subject matter.

On roll call, the Chairman recognized the telephonic appearance of the members identified above and he personally present.

The Chairman referenced the published agenda and noted the electronic publication and postings completed in accordance with applicable law. He directed Board attention to the subject matters referenced on the published agenda:

A. The Board approved the previous Board meeting minutes of November 8, 2017 as distributed on motion, second and unanimous vote of all members present.

B. The Board discussed the current scheduled hearing calendar of pending contested cases, and reviewed the most recent weekly status report distributed to all members. The Board discussed the various aspects as to each.

C. The Board reviewed the case settlements submitted for approval and consideration for the issuance of final orders. The Board determined that the supporting documented rationale met the Board criteria and compliant with NAC 618. On motion, second and unanimous approval, the following settlements were approved with instructions for counsel to prepare and submit to the Chairman Final Orders for service on all parties: LV 17-1909, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Earth Resource Group and LV 18-1924, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Morpheus Investment.

D. The Chairman identified docket RNO 17-1881, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Pelican, LLC. The draft decision has been distributed to all Board members for review, comment and subject of final approval unless any Board members have any questions or concerns. Members acknowledged receipt and review of the draft decision. On discussion, each commented the final determination and supporting rationale were in accordance with the voted decision rendered at the last public meeting. On motion, second and unanimous vote, the decision in RNO 17-1881, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Pelican, LLC was approved as drafted, subject only to testimonial edits after transcript review. Counsel was instructed to complete the decision in final and effectuate service on the parties.

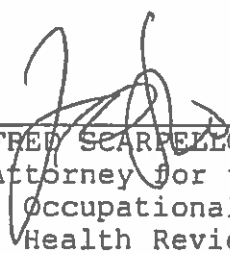
E. Board members discussed and reviewed the continued problems associated with implementation of the Barnes legal counsel services contract as approved by the Board and submitted to DIR for processing on September 15, 2017. The Board heard reportings from the committee designated to pursue the matter. The limited information available to date based upon conversations with Administrator Decker (AD) and review of the BOE published agenda reflects the legal services contract has not been submitted for consideration by the BOE. Committee members reported previous telephone conferences and exchanges with AD resulted in only general reasons for delays including more information needed, budget office constraints to pay the fee rate, and lack of AG consent approval as required for state contracts. AD continued

indications of his efforts and intention to submit the legal services contract to BOE.

Board committee members reported they addressed the subject issues with AD to assist him in resolution of the obstacles. Members again discussed with AD the September 15, 2017 correspondence noting the detailed minutes confirming review of the Barnes high qualification resume, reasonable fee rate, two year approved minimum contract term, lack of any legal conflicts, and contract documentation all sent to DIR Senior Legal Counsel Smith demonstrating Board reliance upon NRS 618.585(2) as the authorizing "special statute" and the NAC 333.150 "exceptions" to the uniform independent contract hiring procedures for specialized attorney services as the applicable and precedent processing rules followed.

On motion of member Weber, second by member Ingersoll, and unanimous vote of all members, Board counsel was instructed to formally schedule a special meeting of the OSHRB in Las Vegas on December 21 or 22, to assure the personal attendance of AD and DIR legal counsel. Board counsel advised he would contact DIR counsel Smith to set a specific time convenient for his and AD's schedule and formally notice and set the meeting.

There being no further business before the Board, on motion, second and unanimous vote, the meeting of the Nevada Occupational Safety and Health Review Board was adjourned at approximately 10:15 a.m.



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