

STATE OF NEVADA

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

November 15, 2018

Present

Rodd Weber (management)
James Halsey (labor)
Sandra Roche (management)

On November 15, 2018, at approximately 9:28 a.m., in the absence of Chairman Steve Ingersoll, Acting Chairman, Board Secretary, Rodd Weber called the meeting to order of the Nevada Occupational Safety and Health Review Board. The Board meeting took place at 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada.

1. Roll Call.

Acting Chairman Weber called the roll of the Board. Those Board members present in person at the commencement of the meeting were Acting Chairman Rodd Weber, and members James Halsey and Sandra Roche. Chairman Ingersoll and Frank Milligan were absent. As all three members of the Board were present, and at least one member of the Board from labor and one member of the Board from management were present, a quorum of the Board was established to conduct the Board's business.

Also present at the meeting was the Board's legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Appearing in person on behalf of the State was Salli Ortiz, Esq., DIR legal counsel, and appearing in person on behalf of Brady Linen, respondent in the case below, was Whitney Selert, Esq., of Fisher & Phillips LLP. Also in attendance were numerous State officials and members of the public.

Notice of the meeting was posted, published or served electronically consistent with the requirements of the Nevada Open Meeting Law as shown on the proof of service apart of the Notice/Agenda attached hereto.

2. Public Comment.

The Acting Chairman called this item to be heard. There was no public comment.

3. Contested Cases Hearings.

- a. LV 18-1941, Brady Linen Services
- b. LV 18-1942, Brady Linen Services

c. LV 18-1943, Brady Linen Services

Acting Chairman Weber next called this matter to be heard, namely, the three Brady Linen cases remaining on the Agenda for hearing. Acting Chairman Weber asked Board legal counsel to set the cases for hearing. Board legal counsel advised that this was the time set by the Board to hear motions to compel discovery in the three Brady Linen Cases, LV-18-1941, LV 18-1942, and LV 18-1943. In each case, the respondent, through its legal counsel, had propounded a set of interrogatories and a request to produce documents and records. The State declined to produce documents pursuant to the discovery request, or to answer the limited interrogatories that were propounded by the respondent to the State. Therefore, respondent's motion to compel discovery was filed in each case.

Board counsel advised that these three motions to compel were set for oral argument on this date, with the parties being given 20 minutes aside to argue their positions on discovery in this case. The moving party, the respondent, would also be accorded five minutes to reply to the State's argument. Board members would also be free to question the parties.

Board counsel pointed out further to the Board that inasmuch as at least one of the Board's members present at the hearing came from labor and one came from management, there was a proper quorum, given, also, that there were three members of the Board present to decide the motions. In that regard, the legal issues were identical as were the parties to the three motions to compel. It was, therefore, unnecessary for the Board to hear the same motion three times. For purposes of the motions to compel, the argument for each motion to compel would be heard at the same time. The cases on the merits, however, to be clear, had not and would not be consolidated.

Argument began, then, with the respondent, as the moving party, going first. It was, essentially, the position of the respondent that inasmuch as these proceedings are governed by the Nevada Rules of Civil Procedure, *see*, NRS 618.680, interrogatories and requests to produce may be propounded and made, respectively, as a matter of course, absent a specific prohibition elsewhere in NAC Chapter 618. Inasmuch as there was no such prohibition to these two types of discovery in NAC Chapter 618, according to the respondent, the State should be required to respond to the discovery the respondent sought in this case.

The State of Nevada, through Salli Ortiz, took the position that discovery through interrogatories and requests to produce may only be pursued with leave of the Board, and only in special circumstances. For this, she cited NAC 618.797(1) and NAC 618.767. It was also her position that the document request could be satisfied by a Freedom of Information Request (FOIA). She also stated that she had produced all the documents she had in this matter, which begged the question of whether and to what extent the interrogatories should be answered because she admitted that a FOIA request would not be responsive to answering interrogatories.

The Board took the parties' arguments under advisement after nearly two hours of oral argument. Mr. Selert did not sit through the deliberation process, though he clearly was invited to await disposition on this date. The Board then considered the motion, opposition, and oral argument. It concluded that with reference to interrogatories and requests to produce, given the application of the Nevada Rules of Civil Procedure to these proceedings, which Rules contemplate the pursuit of discovery through interrogatories and requests to produce, leave of the Board was unnecessary to pursue discovery through these means. The Board also concluded that the requests to produce and interrogatories propounded were not onerous, a fishing expedition, or otherwise unreasonable and therefore, it was moved by Sandra Roche, seconded by James Halsey, to grant the motion to compel discovery. The State shall have 30 days from the date of service of the order memorializing the disposition of the motion to compel, to respond to the discovery propounded to the State. The disposition of this motion will be reduced to a written order. **Motion adopted.**

Vote: 3-0.

d. LV 18-1949, Titan Roofing

This matter was settled prior to the meeting and was removed from the docket.

4. Administrative Meeting.

a. Approval of the previous Review Board minutes of October 10 and 11, 2018.

Acting Chairman Weber next called this matter to be heard, consideration of the minutes for the Review Board meeting of October 10 and 11, 2018. It was moved by Sandra Roche, seconded by James Halsey, to approve the minutes as written. **Motion adopted.**

Vote: 3-0.

b. Review contested case settlement, motions, draft decision, or procedural issues pending on status report, for approval and issuance of final order:

i. LV 18-1908, Nye County

Acting Chairman Weber next called this matter to be heard. It was moved by Sandra Roche, seconded by James Halsey, to accept the settlement, approve the case for dismissal, approve the closing of this matter and to direct the Board Chairman to execute the appropriate order to carry out the effect of this motion. **Motion adopted.**

Vote: 3-0.

c. General administration and/or procedural issues.

Acting Chairman Weber next called this item to be heard. A discussion was held concerning the hearing room facilities at the State offices where this meeting was being conducted. The general consensus was that the facilities were an upgrade and it seemed advisable to continue the Las Vegas meetings here. This is a full Board decision, however, and as an action item, it must be noticed for consideration according to the Open Meeting law. Accordingly, this item will be agendaized for consideration at the next meeting of the Board.

d. Schedule of hearing on pending cases, calendar and status report.

There were no revisions in the Schedule. Board legal counsel reminded the Board that Sierra Packaging and Savage Services, are on the Agenda for the December 12 and 13 meeting of the Board in Reno. The Savage jurisdictional motion takes precedence and the Board would like that item scheduled first with the cases then to follow.

5. Public Comment.

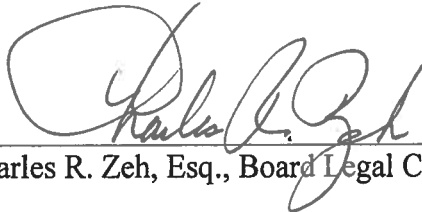
There was no public comment.

6. Adjournment.

Acting Chairman Weber called this matter next to be heard. It was moved by James Halsey, seconded by Sandra Roche, to adjourn the meeting. The motion was adopted.

Vote: 3-0.

Acting Chairman Weber then adjourned the meeting.



Charles R. Zeh, Esq., Board Legal Counsel