

STATE OF NEVADA

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

July 10 and 11, 2019

Present (July 10, 2019)

**Steve Ingersoll (Labor)
Rodd Weber (Management)
James Halsey (Labor)
Frank Milligan (Public at Large)**

On July 10, 2019, a meeting of the Nevada Occupational Safety and Health Review Board was convened. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at the Department of Occupational Safety and Health, 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102. Participating in person were Chairman Steve Ingersoll, Board Secretary, Rodd Weber, and members James Halsey and Frank Milligan. In accordance with the Nevada Open Meeting Law, each Board member participating in the meeting either had before him or her all written materials to be considered during the deliberations or was obliged to refrain from voting if not in possession of the materials.

1. Roll Call.

Chairman Steve Ingersoll called the meeting of the State Occupational Health and Safety Review Board to order at approximately 9:10 a.m. Board members personally present were Chairman Steve Ingersoll, Board Secretary, Rodd Weber, and members James Halsey and Frank Milligan. The new Board member Lance Semenko, was not present. As four members of the Board were in attendance and one labor representative and one management representative were present, a quorum was present to conduct the Board's business.

Also, personally in attendance were Board legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq, Salli Ortiz, Esq., Division of Industrial Relations (DIR), and Jess Lankford, Chief Administrative Officer, NV OSHA.

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. LV 19-1977, Brady Linen Services (*Hearing on Motion to Recover Costs and Fees*) - **For Possible Action**
 - b. LV 18-1941-1943 Brady Linen Services (*Hearing on Motion to Determine Appropriate Sanctions*) - **For Possible Action**
 - c. LV 19-1979 Hirshi Masonry, LLC - **For Possible Action**
 - d. LV 19-1954, Integrity Masonry - **For Possible Action**
 - e. LV 18-1940, Las Vegas Paving - **For Possible Action**
 - f. LV 18-1933, Nalco Company - **For Possible Action**
 - g. LV 19-1986, Club K9 LLC - **For Possible Action**
 - h. LV 19-1990, Sofidel America Corp. - **For Possible Action**
 - i. LV 19-1991, Sofidel America Corp. - **For Possible Action**
 - j. LV 18-1952, Westcor Construction - **For Possible Action**
- b. **LV 18-1941-1943 Brady Linen Services (*Hearing on Motion to Determine Appropriate Sanctions*)**

Chairman Ingersoll then called to be heard the Brady Linen motion for attorneys fees and sanctions, for LV 18-1941-1943. Appearing for the State of Nevada OSHA was Salli Ortiz, Esq., and for Brady Linen, Whitney J. Selert, Esq., of Garg Golden Law Firm. Brady Linen was the moving party, seeking attorney's fees and costs of \$30,182.10. Brady Linen also moved the Board to issue an order striking Citation 1, Item 1 from the complaint in LV 18-1941, a claim that carries with it a fine of \$70,000.00. Brady Linen brought the motion for fees and sanctions pursuant to Rule 37, NRCP, after the Board granted in an order dated May 29, 2019, Brady Linen's motion to compel the State to more adequately answer interrogatories propounded to the State. Both parties presented their position orally and previously through briefs on the issue. At the conclusion of the hearing, it was moved by Rodd Weber, seconded by Frank Milligan, to deny the motion for attorney's fees. **Motion adopted.**

Vote: 4-0.

It was next moved by Rodd Weber, seconded by Frank Milligan, to deny the portion of the Brady Linen motion seeking an order striking Citation 1, Item 1 of the complaint in LV-18-1941.

Motion adopted.

Vote: 4-0.

- a. **LV 19-1977, Brady Linen Services (*Hearing on Motion to Recover Costs and Fees*)**

Chairman Ingersoll then called to be heard, the Brady Linen motion for attorney's fees and sanctions, in LV-19-1977. Appearing for the State of Nevada OSHA was Salli Ortiz, Esq., and for Brady Linen, Whitney J. Selert, Esq., of Garg Golden Law Firm. Brady Linen was, again, the moving party, seeking attorney's fees and costs of \$6,863.00. Brady Linen brought this motion for fees and sanctions pursuant to Rule 37, NRCP, after the Board granted in an order

dated May 29, 2019, Brady Linen's motion to compel the State to answer interrogatories it had propounded to the State. In this case, the State refused to answer the interrogatories propounded, altogether. Again, both parties presented their position orally and previously through briefs on, the issue. At the conclusion of the hearing, it was moved by Rodd Weber, seconded by James Halsey, to deny the motion for attorney's fees. **Motion adopted.**

Vote: 4-0.

f. Nalco Company, LV18-1943:

Chairman Ingersoll next called this matter to be heard. Nalco filed a motion pursuant to NAC 618.752(2) and 618.797(1), to take the deposition in this case of the CSHO, Kerry Burns. NAC 618.797(1), requires a showing by a party seeking to take a deposition in a case before the Board of special circumstances. Salli Ortiz, Esq., appeared for the State. Patrick D. Joyce, Esq., and Mark A. Lies, Esq., of Seyfarth Shaw LLP, appeared by telephone for Nalco. Both parties were heard on the motion. Finding no special circumstances to support the motion to take a deposition, it was moved by Rodd Weber, seconded by James Halsey, to deny the motion to take a deposition of Kerry Burns. **Motion adopted.**

Vote: 4-0.

c. Hirshi Masonry, LLC, LV-19-1979.

Chairman Ingersoll next called this case to be heard. Appearing for the State was Salli Ortiz, Esq. Appearing for Hirshi Masonry, LLC, was Rick D. Roskelley, Esq., of Littler Mendelson, P.C., together with co-counsel, Amy Thompson, Esq. The Board heard the presentation, orally and in writing from each party. Oral argument was also presented. Hirshi Masonry conceded all elements of a *prima facie* case except for employer knowledge. It argued in the alternative, if the State proved its *prima facie* case, the matter should still be dismissed in this scaffolding case due to unpreventable employee misconduct. The Board took the matter under advisement, deliberated, and first, it was moved by Rodd Weber, seconded by Frank Milligan, to affirm the citation on the *prima facie* case, including the degree of gravity, serious, and the fine of \$7,000, given the serious nature of the injury in this fall from at least 10 feet. **Motion adopted.**

Vote: 4-0.

The Board then considered Hirshi's affirmative defense of unpreventable employee misconduct. Considerable debate ensued, until it was moved by Rodd Weber, seconded by Steve Ingersoll, to affirm Hirshi's affirmative defense of unpreventable employee misconduct. The vote was 2 in favor of the motion, and 2 against the motion, with members Halsey and Milligan voting no. As the burden was on Hirshi to prove the affirmative defense and as the vote was deadlocked, the motion to approve the affirmative defense failed and the citation, therefore, stands.

Given the lateness of the hour, the Chairman then directed the Board to consider the Administrative portion of the Agenda.

4. Administrative Meeting:

a. Approval of previous Review Minutes of June 12, 2019.

Chairman Ingersoll then called for consideration the minutes of June 12, 2019. It was moved by Robb Weber, seconded by Frank Milligan, 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. LV 18-1936, Genesis Gaming Solutions, Inc.

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

Vote: 4-0.

ii. LV 19-1973, Cordan, LLC

Chairman Ingersoll called this matter next. It was moved by Frank Milligan, seconded by James Halsey, to approve the settlement. **Motion adopted.**

Vote: 4-0.

iii. LV 18-1950, Arizona Partsmaster, Inc. dba AZ Partsmaster

Chairman Ingersoll called this matter next. It was moved by James Halsey, seconded by Frank Milligan, to approve the settlement. **Motion adopted.**

Vote: 4-0.

iv. LV 19-1956, Universal Protection Service, LP aka Universal Protection Service, LLC dba Allied Universal Security Services

Chairman Ingersoll called this matter next. It was moved by Rodd Weber, seconded by Frank Milligan, to approve the settlement. **Motion adopted.**

Vote: 4-0.

v. **LV 18-1945, PRS of Nevada, Ltd., dba Professional Roofing Services**

Chairman Ingersoll called this matter next. It was moved by Rodd Weber, seconded by Frank Milligan, 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 consideration.

i. **General Matters of Import to Board Members.**

Chairman Ingersoll announced that Sandra Roche is no longer a Board member and Chairman Ingersoll thanked her for her service to the State, a sentiment endorsed by the rest of the Board. Board counsel suggested that the Board agendaize for the next meeting, adopting a resolution honoring and recognizing her service to the Board. The Board members endorsed the idea.

Chairman Ingersoll also advised the Board that Lance Semenko, of Q&D Construction, has been appointed to the Board.

ii. **Old and New Business.**

There was no old or new business discussed.

iii. **Board Counsel's contract renewal.**

Board counsel advised that he was operating on a temporary contract, he believes, through December 31, 2019, while a new contract is being worked out, and that he will keep the Board apprised. Meanwhile, the Board has already voted to retain current Board counsel as its lawyer. This item is to be re-agendized for the next Board meeting.

d. **Schedule of hearings on pending cases, calendar and status report. The Board has scheduled the following meetings.**

- * **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.
- * **October 9, 2019 and October 10, 2019**, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.
- * **November 13, 2019 and November 14, 2019**, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.
- * **December 11, 2019 and December 12, 2019**, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.

Reviewing the dates of the next meetings, it was discovered that due to the absence of Chairman Ingersoll and member Halsey, the two labor members of the Board, the scheduled August 14 and August 15, 2019 meeting of the Board needs to be rescheduled because they are committed to being in Washington, D.C. A quorum cannot be had as there would be no labor representation present. Board counsel is to determine if a meeting could be scheduled for August 21 and August 22, 2019, and in any event, to find another date for the August meeting as the Agenda is another full docket.

5. Public Comment.

There was no public comment.

6. Adjournment.

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

Vote: 4-0.

July 11, 2019

Present

James Halsey (labor)
Rodd Weber (management)
Frank Milligan (public at large)

1. Roll Call.

The continuation of the Board meeting from July 10, 2019, to July 11, 2019, was called to order by Acting Chairman and Board Secretary, Rodd Weber at approximately 9:10 a.m. Board members personally present were Acting Chairman and Board Secretary, Rodd Weber, and members James Halsey and Frank Milligan. New Board member Lance Semenko, was not present. Board Chairman Steve Ingersoll was also absent the meeting. Attending in person was Board legal counsel, Charles R. Zeh, Esq., the Law Offices of Charles R. Zeh, Esq.

2. Public Comment.

There was no public comment.

3. Contested Case Hearings.

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- f. LV 18-1933, Nalco Company - **For Possible Action**
- g. LV 19-1986, Club K9 LLC - **For Possible Action**
- h. LV 19-1990, Sofidel America Corp. - **For Possible Action**
- i. LV 19-1991, Sofidel America Corp. - **For Possible Action**
- j. LV 18-1952, Westcor Construction - **For Possible Action**

Acting Chairman Weber then returned to the contested cases portion of the Agenda.

h. LV 19-1990, Sofidel America Corp.

Acting Chairman then called this matter to be heard. Salli Ortiz, Esq., appeared personally on behalf of the complainant, State OSHA. William Curphey, Esq., of Curphey & Badger, P.A., and Allison L. Kheel, Esq., of Fisher & Phillips LLP, personally appeared on behalf of Sofidel America Corporation. The Board heard the presentation, orally and in writing from each party.

Oral argument was also presented. Sofidel was cited for multiple violations, specifically, 29 CFR Section 1910.212(a)(1), for failing to provide proper guarding of a machine at the nip point of operation. Sofidel was also cited for 29 CFR Section 1904.32(a)(1), for incomplete or inaccurate OSHA 300 Logs. Finally, Sofidel was cited for an alleged violation of 29 CFR Section 1910.132(d)(2), for allegedly failing to have certified a workplace hazard assessment for the jobs performed in the workplace. At the conclusion of the evidentiary hearing which lasted late into the afternoon hours, the Board deliberated. When the Board exhausted its analysis of each charge, it was moved by Frank Milligan, seconded by James Halsey, to uphold Citation 1, Item 1, 29 CFR 1910.212(a)(1), the amount of the fine in the amount of \$5,670.00 and the serious classification of the violation. **Motion adopted.**

Vote: 3-0.

Next, it was moved by James Halsey, seconded by Frank Milligan, to reject Citation 2, Item 1, 29 CFR Section 1904.32(a)(1) on grounds of a *de minimis* violation. **Motion adopted.**

Vote: 3-0.

Finally, it was moved by Frank Milligan, seconded by James Halsey, to uphold Citation 2, Item 2, 29 CFR Section 1910.132(d)(2), the fine of zero dollars, and the classification of “other” for this alleged offense, a failure to have certified, the workplace hazard assessment. **Motion adopted.**

Vote: 3-0.

This concluded the hearing on this matter. Given the lateness of the hour, counsel for the State, Sofidel, and the Board concurred that it would be ill-advised to start the hearing on Sofidel, LV 19-1991, as there was insufficient time left in the day to complete the hearing on the merits. Breaking up the hearing with a significant gap in time before the date the matter would next be heard would counterproductive to all concerned. Sofidel LV-19-1991 will be rescheduled.

Acting Chairman Weber, therefore continued Sofidel LV-19-1991 to a date mutually convenient to all parties with an interest.

g. LV 19-1986, Club K9 LLC

Acting Chairman Weber next called Club K9 LLC to be heard, as it was thought that since no one appeared on behalf of Club K9 LLC, the State’s presentation could be completed before the meeting had to be concluded. Salli Ortiz, Esq., appeared personally on behalf of the complainant, the State OSHA. No one appeared on behalf of respondent, Club K9 LLC (Club K9). It was established in the record that Club K9 was duly noticed and served with notice of the time, date and place of the hearing. Ms. Ortiz also explained that her office was in contact with the owner of Club K9, Susan Davis, and from that contact, it was clear to Ms. Ortiz that the owner was aware of the hearing before the Board for this date. The Board, accordingly, heard from the State as to why Club K9 was cited by the State for the multiple violations consisting of the use of hazardous chemicals that aided in the grooming of pet dogs. Club K9 was cited for

violations of 29 CFR Sections 1910.132(d)(1)(i), 29 CFR Section 1910.132(d)(1)(ii), 29 CFR Section 1910.132(d)(2), 29 CFR Section 1910.133(a)(1), 29 CFR Section 1910.1200(e)(1), 29 CFR Section 1910.1200(e)(1)(i), 29 CFR Section 1910.1200(g)(8), 29 CFR Section 1910.1200(h)(1). These charges were labeled Serious, and brought with them fines totaling \$9,450.00. The State's case went into evidence, unopposed. With no opposition presented to the charges and good cause appearing, it was moved by Frank Milligan, seconded by James Halsey, to affirm each of the charges levied, their classification as serious, and the individual fines assessed which in total amounted to \$9,450.00. **Motion adopted.**

Vote: 3-0.

There was no time left to hear any more cases on this date. Thus, West Corp. LV-18-1952 was continued to be rescheduled as was Sofidel LV-19-1991. Those were the two remaining cases on the agenda that had not been heard and rescheduled, as of this date.

5. Public Comment.

Acting Chairman Weber called this matter next, and asked if there was any public comment. None was offered.

6. Adjournment.

It was moved by Frank Milligan, seconded by James Halsey, to adjourn the meeting. **Motion adopted.**

Vote: 3-0



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