

STATE OF NEVADA

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

April 10, 2019

Present

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

On April 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 Rodd Weber, Sandra Roche, Frank Milligan and James Halsey. Chairman Steve Ingersoll was absent. 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.

In the absence of Board Chairman Steve Ingersoll, Acting Chairman and Board Secretary, Rodd Weber, called the meeting of the State Occupational Health and Safety Review Board to order at approximately 9:04 a.m. Board members personally in attendance were Acting Chairman Weber and members Sandra Roche, Frank Milligan, and James Halsey. Chairman Ingersoll was absent from the meeting, this date.

Also personally in attendance was Board legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Salli Ortiz, Esq., Division of Industrial Relations (DIR) counsel for the complainant State of Nevada and Whitney J. Selert, Esq., Fisher & Phillips, LLP, for Brady Linen, as were other State staff and assorted observers from the public. Also present at the counsel table as the client representative for Brady Linen was Pat Angi.

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.

As four Board members were present to participate in the meeting, including one on behalf of labor and one on behalf of management, a quorum was present.

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 19-1961, Apex Linen Service (Continued from prior hearing)
- b. LV 18-1910, Platinum Plastering, Inc.
- c. LV 18-1941, Brady Linen Services
- d. LV 18-1942, Brady Linen Services
- e. LV 18-1943, Brady Linen Services
- f. LV 18-1936, Genesis Gaming Solutions (Settled)
- g. LV 18-1952, Westcor Construction (Continued for prior hearing)
- h. LV 18-1945, PRS of Nevada, LTD (Settled)
- i. LV 18-1939, Olson Precast (Continued for prior hearing)
- j. LV 19-1980, Westcor Construction (Continued for prior hearing)

Acting Chairman Weber then called this matter to be heard beginning with the three Brady cases as Salli Ortiz, Esq., the DIR counsel for the State was personally present on behalf of the State for all three Brady Linen cases and Whitney J. Selert, Esq., Fisher & Phillips, LLP, was personally present for Brady Linen, for all three of the Brady Linen cases. They are: LV 18-1941, LV 18-1942, and LV18-1943. Also present as the client representative for Brady Linen was Pat Angi.

Acting Chairman Weber asked Board counsel to reset these three matters. Board counsel advised that this was set as a scheduling conference because Brady Linen had filed a motion to compel discovery and for sanctions. The State had 10 days to reply to the motion by regulation and the State's response was not due until after today's hearing date when these matters were otherwise scheduled to be heard on the merits. Consequently, these cases could not be heard on the merits until the discovery issues had been resolved.

Board counsel asked Ms. Ortiz and Mr. Selert if they had resolved their differences regarding discovery. They replied the dispute over discovery was still pending. Board counsel stated he would recommend to the Board to set this matter for hearing on May 8/9, 2019, at which time the parties could advise the Board that they had settled their discovery differences and if not, they could then argue the pending discovery motions. At the same time in May 8/9, 2019, the three cases could be set for hearings on the merits.

Mr. Selert for Brady Linen stated he had no problem with the proposal but would also like to include a fourth Brady Linen case, where another motion to compel discovery is pending. This is Brady Linen, LV 19-1977. Ms. Ortiz did not object to including the fourth Brady case on the Board's docket to argue the motions to compel on May 8/9, 2019, and to then set the fourth Brady Linen case for a hearing on the merits. Mr. Selert also asked that when the four Brady

cases are set for hearing, all four of them be set for the same day, as a matter of judicial and personal economy.

The Board briefly discussed the proposal before it. The Chairman then stated, that it was so ordered that the motions to compel discovery in the four Brady cases be heard on the Board's stacked docket commencing on May 8, 2019, at which time the parties may inform the Board that they had resolved their differences in whole or in part on the discovery issues, and if not, oral argument will be heard on the pending motions which the Board will then decide. The Board in May will also set the hearings on the merits for all four Brady cases, LV 18-1941, LV 18-1942, LV 18-1943, and LV 19-1977. The Board will also endeavor to have all four cases scheduled for hearing on the merits on the same day in the interests of judicial and personal economy.

b. LV 18-1910, Platinum Plastering, Inc.

This case was continued until this date for the Board to complete its deliberations on the disposition of the matter. At issue were four closely related charges or citations listed. The Board got the sense that the State was piling on with the number of charges. Board members wanted to know what options they had at their disposal to mitigate against what felt like were excessive charges levied even though the Board also thought the evidence showed that each of the charges were proved by the State.

Board counsel reported that in his opinion, Citation I, Item 1, 29 CFR § 1926.451(b)(1) was not a stand alone standard which could, itself, support a violation. It is the preamble to the rest of the regulation that followed under 29 CFR § 1926.451(b)(1). Thus, as a matter of law, in Board counsel's opinion, 29 CFR § 1926.451(b)(1) could not be a violation, standing alone, as charged and, therefore, Citation I, Item 1 should be dismissed as a stand alone violation. As the Board had found, however, according to its previous deliberations on this claim that the State had proved violations of Citation I, Items 2, 3 and 4, those citations should and could be affirmed.

After considerable discussion, it was moved by Sandra Roche, seconded by Frank Milligan, to dismiss Citation I, Item 1 for the reasons stated, above, and to uphold Citations I, Items 2, 3 and 4. Included in the motion was approval of the classification, in each instance, as non-serious with no fine. The motion was approved, on a vote of 4-0, with one Board member absent.

At the conclusion of the disposition of these two matters, Acting Chairman Weber advised that Apex Linen, LV-19-1961 was continued to the May 9, 2019 stacked docket and that Westcor LV-18-1952 and LV-19-1980, and Olson Precast, LV-18-1939 were vacated and continued to dates yet to be determined. He also advised that Genesis Gaming, LV -18-1936 and PRS of Nevada, LV-18-1945 were settled.

4. Administrative Meeting:

a. Approval of the previous Review Board minute of March 13 and 14, 2019.

Acting Chairman Weber next asked the Board to consider the minutes for the Review Board meeting of March 13 and 14, 2019. It was moved by Sandra Roche, 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. RNO 19-1966, Reliable Framing, Inc., dba RFI

Acting Chairman Weber called Reliable Framing, case number RNO 19-1966, to be heard. Being continued from the March 13, 2019 Agenda, this was on today's Agenda because, when the case was presented on the March 13, 2019 docket, no justification for settlement of the case was offered by the parties to give reason for the Board to approve settlement, as required by NAC 618.773. This date, Sally Ortiz, Esq., advised that the State was willing to settle because the employer had promised to initiate an enhanced fall protection training program in addition to paying a reduced fine. It was accordingly moved by Frank Milligan, seconded by Sandra Roche, to approve the settlement pursuant to NAC 618.773. **Motion adopted.**

Vote: 4-0.

c. General administration and/or procedural issues.

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.

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

The next scheduled meeting is set for May 8 and 9, 2019, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102. The Board has also scheduled the following meetings: June 12, 2019 and June 13, 2019, at 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada 89509, 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.

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

Vote: 4-0.

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

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