

STATE OF NEVADA

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

September 11, 2019

**Steve Ingersoll (Labor)
Frank Milligan (Public at Large)
Lance Semenko (Management)**

On September 11, 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, 4600 Kietzke Lane, Bulding G, Suite 160, Reno, Nevada. Participating in person were Chairman Steve Ingersoll and members Frank Milligan and Lance Semenko. Secretary Rodd Weber and member James Halsey were absent. In accordance with the Nevada Open Meeting Law, each Board member participating in the meeting either had before him all written materials to be considered during the deliberations or was obliged to refrain from voting if not in possession of the materials.

The meeting of the NVOSHA Board was called to order around 10:00 a.m., by Chairman Steve Ingersoll. The start time was deferred to give counsel for State OSHA and counsel for the Ponderosa Hotel, Inc., more time to discuss settlement of claims, RNO-19-1974 and RNO-19-1975. As reflected in the minutes, the parties were partially successful in settling these matters.

1. Roll Call.

Participating in person were Chairman Steve Ingersoll and members Frank Milligan and Lance Semenko. Secretary Rodd Weber and member James Halsey were absent. As three members of the Board participated in the meeting including a representative of labor and a representative of management, 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., and Salli Ortiz, Esq., Division Counsel, Department of Business and Industry, Division of Industrial Relations (DIR).

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.

Board Chairman Ingersoll called this item to be heard and asked Board legal counsel to update the Board. Board legal counsel advised that the hearings for items 3.a., 3.d., 3. e., and 3.f., were vacated as they were settled or continued. The two Ponderosa Hotel Inc., cases, RNO 19-1974 and RNO 19-1975 and the Bains Motels, Inc., case, RNO 19-1998 had not been resolved and those cases remain on the contested, stacked docket to be heard commencing September 11, 2019.

b. RNO 19-1974, Ponderosa Hotel, Inc.

Chairman Ingersoll called Ponderosa Hotel, Inc., case RNO 19-1974, first to be heard. The complainant State was represented by Salli Ortiz, Esq., and the respondent, Ponderosa Hotel, Inc., was present by and through its legal counsel, Mark Thierman, Esq., Thierman and Buck. Also present for the respondent was Kami Keshmiri, the manager of the limited liability company (LLC) that owns the Ponderosa Hotel, Inc.

Mr. Thierman and Ms. Ortiz advised the Board that in this case, it was stipulated that the Ponderosa Hotel, Inc., was in fact guilty of each of the charging citations of the complaint, Citation 1, Item 1, Item 2, Item 3, Item 4, and Citation 2, Item 1, Item 2, Item 3, Item 4 and Item 5. Citation 1, Items 1 through 4 carried with them a penalty of \$1,800, each. The remaining citations carried with them no fines. The parties also stipulated that the State would provide assistance and cooperation for the abatement of the violations. The parties could not agree on the amount of the fines levied and so, they were present to contest the proposed fines being levied. The parties stipulated, further, that the allegations in the complaint were true, save and except the amount of the fines proposed to be levied, and they stipulated to the admission into evidence, of State's Exhibit 1, pages 1 through 172, and State's Exhibit 2, pages 173 through 174. Both Exhibits were entered into evidence without objection.

The parties proceeded to present their argument and evidence on the size of the fines being levied. The fine or penalty phase was the only issue left pending.

At the conclusion of the presentation of the evidence on the propriety of the amount of the fines levied, and closing argument, the parties rested. The Board took the matter under advisement, and after hearing the next case, RNO 19-1975, the Board took up deliberations about the fines levied, with the State arguing that the fines levied were appropriate.

After due deliberation, it was moved by Frank Milligan, seconded by Lance Semenko, in RNO 19-1974 to accept the stipulation that the respondent, Ponderosa Hotel, Inc., was guilty as charged for each of the citations set out in the complaint. He further moved the fines levied for Citations 1, Items 1 through 4, in the amount of \$1,800 for each, or a total levy of \$7,200, were correct and should be sustained. The motion was adopted on a vote of 3-0. The charges and fines

as levied were sustained and affirmed by the Board and the Citations against the Ponderosa Hotel, Inc., were confirmed as charged.

c. RNO 19-1975, Ponderosa Hotel, Inc.

Chairman Ingersoll called this item, RNO 19-1975, next to be heard. The State, the complainant, was again represented by Salli Ortiz, Esq., and the Ponderosa Hotel, Inc., respondent, was again represented by Mark Thierman, Esq., Thierman and Buck. Also present for the respondent was Kami Keshmiri, the manager of the limited liability company (LLC) that owns the Ponderosa Hotel, Inc.

Counsel for both parties represented that it again was stipulated that the Ponderosa Hotel, Inc., was in fact guilty of the charging citations of the complaint, consisting of Citation 1, Item 1, Item 3, Item 4, Item 5, Item 6 and Item 7, Citation 2, Item 1 and Citation 3, Item 1.

Citation 1, Item 1, Item 3, Item 4, Item 5, Item 6 and Item 7 carried with them fines of \$1,800, each. Citation 3, Item 1 carried with it a proposed fine of \$360. The parties also stipulated that the State would provide assistance and cooperation for the abatement of the violations. The parties could not agree on the fines being levied, and therefore, a contested hearing on the issue of the propriety of the fines proposed to be levied would be conducted.

The parties also advised the Board that they could reach no agreement on Citation 1, Item 2 and, therefore, there would be a contested hearing on the merits for Citation 1, Item 2, as well as the proposed fine. The parties also stipulated to the admissibility into evidence of the State's evidence packet, Exhibits 1, pages 1 through 124, and 2, pages 125 through 176, save and except to the extent that the Exhibits might bear on Citation 1, Item 2. Finally, save and except for Citation 1, Item 2, it was stipulated that the allegations of the complaint were true and that the respondent was guilty as charged.

For this matter, then, the issues left pending were the propriety of the fines proposed to be levied, plus the merits of the charges in Citation 1, Item 2.

At the conclusion of the presentation of the evidence on the propriety of the amount of the fines levied, the merits of the charge against the respondent in Citation 1, Item 2, and closing argument, the parties rested. The Board then, after a brief recess, and after deliberating on RNO-19-1974, deliberated on RNO-19-1975.

Once the Board concluded its deliberations, it was moved by Lance Semenko, seconded by Frank Milligan, to accept the stipulation that the respondent was guilty as charged for all charges except Citation 1, Item 2, for which there was no stipulation, that the fines levied for Citation 1, Item 1, Item 3, Item 4, Item 5, Item 6 and Item 7 were correct in the amount of \$1,800, each, that the fine levied in the amount of \$360, for Citation 3, Item 1 was correct and that each of these fines should be affirmed and should be sustained. It was further moved that the State had proved its case on the merits for Citation 1, Item 2 and, therefore, the respondent was guilty as charged in Citation 1, Item 2, and a fine of \$1,800, should be sustained and approved by the Board for Citation 1, Item 2. The motion was adopted on a vote of 3-0. As a result of the vote on the

motion, the respondent was guilty of each charge as alleged, that each citation was sustained, and that each fine was sustained and affirmed. As a result, fines were levied, sustained and affirmed by the Board in the total amount of \$12,960.

4. Administrative Meeting:

a. Approval of previous Review Board Minutes of August 21, 2019.

Chairman Ingersoll called this matter to be heard. It was moved by Frank Milligan, seconded by Lance Semenko, to approve the minutes as read. **Motion adopted.**

Vote: 3-0.

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

i. LV 19-1985, Kanani Foods II, Inc.

Chairman Ingersoll then called this item to be heard, a settled case. It was moved by Frank Milligan, seconded by Lance Semenko, to approve the disposition of this matter. **Motion adopted.**

Vote: 3-0.

ii. LV 19-1954, Integrity Masonry

Chairman Ingersoll then called this item to be heard, a settled case. It was moved by Lance Semenko, seconded by Frank Milligan, to approve the disposition of this matter. **Motion adopted.**

Vote: 3-0.

iii. RNO 14-1684, Sierra Packaging and Converting, LLC.

The Chairman then called this item for consideration, the draft decision of the Board on remand of Sierra Packaging and Converting, LLC, RNO 14-1684. Board counsel advised that this matter needed to be continued due to the want of a quorum as no management member was present who could vote on whether the written decision comported with the Board's understanding of the disposition of this matter on remand.

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.

There were no matters discussed.

ii. Old and New Business.

There was no old and new business discussed.

iii. Board Counsel's contract renewal.

The Board reconfirmed that a letter from the Chairman on behalf of the Board should be sent to the Board of Examiners re-affirming its right to choose its own legal counsel, that legal counsel must be adequately funded and compensated, and that the Board has elected to continue the relationship for at least another two years with the incumbent legal counsel.

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

Because of the issue with room prices in the Las Vegas area on or about January 8 and 9, 2020, the Board tentatively moved the date for the meeting in Las Vegas to January 28 and January 29, 2020. Chairman Ingersoll advised, also, he would be absent on October 9 and 10, 2019. He would check with James Halsey to make sure one labor representative would be present.

The Board has scheduled the following meetings.

- * **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.

5. Public Comment.

There was no public comment.

6. Adjournment.

Chairman Ingersoll called this matter next. It was moved by Frank Milligan, seconded by Lance Semenko, to adjourn the meeting on this date and reconvene, tomorrow, to take up Bains Motels, Inc., RNO-19-1998. **Motion adopted.**

Vote: 3-0.

September 12, 2019

Steve Ingersoll (Labor)
Frank Milligan (Public at Large)
Lance Semenko (Management)

Chairman Steve Ingersoll called to order on September 12, 2019, the meeting of the Board of Review (Board) of the continuation of the Board's stacked docket which commenced on September 11, 2019.

1. Roll Call.

Present in person, Steve Ingersoll, Frank Milligan and Lance Semenko. Absent, were James Halsey and Rodd Weber. Also present in person were Salli Ortiz, Esq., legal counsel for the Chief Administrative Officer of the Occupational Health and Safety Administration, State of Nevada, and Charles R. Zeh, Esq., the Law Offices of Charles R. Zeh, Esq., Board legal counsel.

2. Public Comment.

Tristan Dressler, Nevada Supervisory Compliance Officer, advised that the hearing room in Las Vegas, Suite 175, would be made available for the Board to conduct hearings on its stacked docket for January 28 and January 29, 2020. The Board accordingly affirmed that it would move the meeting previously scheduled for January 8 and January 9, 2020, to January 28 and January 29, 2020. The Board took this opportunity to confirm these dates as the meeting dates item is noticed on the Agenda for possible action, and the Board reserved the right to move items on the Agenda for hearing out of the order as agendized.

3. Contested Hearings.

g. RNO 19-1998, Bains Motels, Inc.

Chairman Ingersoll called this item to be heard, the contested matter of Bains Motels, Inc., dba Comfort Inn & Suites Airport By Choice Hotels, (Bains or respondent) Case number RNO 19-1998. Appearing on behalf of the State (complainant) was Salli Ortiz, Esq. The respondent did not appear through legal counsel. Instead, respondent appeared by and through a non-lawyer, Sarvpreet Singh Bains, the General Manager and Proprietor, according to the answer on file of respondent.

The case is before the Board due to violations allegedly discovered during a randomly selected at risk employer inspection. This matter did not come to the attention of the State by referral. The inspection was the result of the employer list compiled of high risk industry employers. The inspection commenced on January 18, 2019, one day, coincidentally, after the respondent obtained certification for the handling of blood borne pathogens. The respondent was charged with Citation 1, Item 1, a violation of 29 CFR § 1910.151(c), involving the protection of eyes or other body areas from corrosive materials. The respondent was also charged with Citation 1, Item 2, 29 CFR § 1910.1030(c)(1)(i), requiring employers, whose employees who are exposed to

blood or other potentially infectious materials, to establish a written Exposure Control Plan designed to eliminate or minimize employee exposure. Finally, respondent was charged with a violation of 29 CFR § 1910.1200(e)(1), requiring employers whose employees work around corrosive chemicals, to have a written hazard communication program, which would educate employees to be able to identify corrosive materials in order to take precautions in the use of the same.

The State presented its *prima facie* case. After the State rested, Mr. Bains was called to the stand, was sworn, and offered his defense of the charges. The essence of his defense was that he did not dispute the violations. Rather, his defense was that within days of the initial inspection, he had abated each of the alleged wrong doings and, therefore, either the charges should be dismissed, or the fines reduced to zero because he had abated all of the alleged wrong doings, and had done so, as indicated, within days.

The State argued it had given the respondent all the discounts he was due, such as a 70% reduction in the fine, because the respondent had less than 10 employees. The State claimed, however, it could not give a 15% additional discount because the abatement was not completed within 24 hours of discovery of the violation and, therefore, the citations should stand with the designated fines attached to the charges, in each case, the sum of \$1,350. The quick fix discount is not a matter of State law or regulation. Rather, it is a policy set out in the State's OSHA operations manual.

The hearing was concluded, a recess was taken, and the Board reconvened to deliberate. The consensus was, the State had proven a *prima facie* case for all three charges. The respondent admitted as much. The Board members believed that an additional discount in the fine assessed would be appropriate for Citation 1, Item 1, if the Board had the jurisdiction to adjust fines being proposed. The Board members thought that the serious nature of Citation 1, Items 2 and 3 were such that any further discount would be inappropriate. Accordingly, for Citation 1, Item 1, it was moved by Frank Milligan, seconded by Lance Semenko, to sustain the violation as charged, but to reduce the fine of \$1,350.00 by an additional 15% and, therefore, to sustain and affirm a fine of \$1147.50 (\$1350.00 - \$202.50). **The motion was adopted.**

Vote: 3-0.

Next, it was moved by Lance Semenko, seconded by Frank Milligan, to sustain and affirm Citation 1, Item 2, and to also sustain and affirm the fine to be levied in the amount of \$1,350.00. **The motion was adopted.**

Vote: 3-0.

Finally, it was moved by Frank Milligan, seconded by Lance Semenko, to sustain and affirm Citation 1, Item 3, and to also sustain and affirm the fine to be levied in the amount of \$1,350.00. **The motion was adopted.**

Vote: 3-0.

The hearing on this matter was thus concluded.

4. Administrative Meeting:

d. Schedule of Hearings on Pending Case, Calendar and Status Report.

The Board reconfirmed that member James Halsey would be present for the meeting of October 9 and October 10, 2019, in Las Vegas, so that a quorum would be preserved, given that Chairman Ingersoll, the other labor representative on the Board would be absent for the meeting.

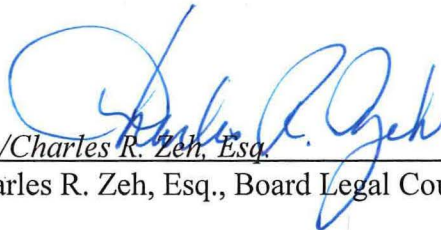
5. Public Comment.

There was no public comment.

6. Adjournment.

Chairman Ingersoll called this matter next. It was moved by Frank Milligan, seconded by Lance Semenko, to adjourn the meeting.

The meeting was adjourned.


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

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