

STATE OF NEVADA

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

March 10, 2020

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

On March 10, 2020, 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 Enterprise Library, 25 E. Shelburne Avenue, Las Vegas, Nevada 89123. Participating in person were Chairman Steve Ingersoll, Board Secretary Rodd Weber and members James Halsey, for a major portion of the hearing, and Frank Milligan. Member Lance Semenko was 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.

Chairman Steve Ingersoll called the meeting to order at 12 o'clock noon, at the Enterprise Library, 25 E. Shelburne, Las Vegas, Nevada. The meeting convened at noon, on this date, rather than 10:00 a.m., as noticed because the Court Reporter assigned to this matter had a flat tire on her way to the hearing. It took until noon, approximately, for the reporter service to find a replacement court reporter to report the hearing.

1. Roll Call.

Participating in person were Chairman Steve Ingersoll, Board Secretary Rodd Weber and members James Halsey, for a major portion of the hearing, and Frank Milligan. Member Lance Semenko was absent. As four 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 Salli Ortiz, Esq., counsel to the Chief Administrative Officer of the Occupational, Safety and Health Administration of the Division of Industrial Relations, of the Department of Business and Industry, State of Nevada, Whitney J. Selert, Esq., Garg Golden Law Firm, on behalf of Brady Linen, respondent, and Board of Review legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Witnesses and members of the public were also present.

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.

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

3. Contested Case Hearings.

a. LV 18-1940, Las Vegas Paving Corp.

This matter was continued prior to the meeting date.

b. LV 18-1943, Brady Linen Services, LLC.

Chairman Ingersoll then called this item to be heard, the contested cases on the docket for this date. The first matter to be heard was the Brady Linen matter, LV 18-1943. The State was represented by Salli Ortiz, Esq., DIR legal counsel, and Brady Linen, LLC, was represented by Whitney Selert, Esq., of the Garg Golden Law Firm. The matter is more fully captioned, *Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry, State of Nevada, complainant, vs. Brady Linen, LLC, respondent.*

Board legal counsel, at the request of the Chairman, set the case for hearing. Ms. Ortiz advised that she had four witnesses to be heard, including two of the respondent's employees, one of whom was the injured worker. She also offered for admission into evidence the State's Exhibits 1 and 2, consisting of pages 1 through 173. Over a partial objection, all were admitted into evidence.

Mr. Selert advised that he had three witnesses he intended to call at least at this point in the hearing. He also offered a three-hole binder for admission into evidence, consisting of tabbed materials 1 through 62. There was an objection by the State to the admission of major portions of the offering of the binder. Eventually, at the end of the day, Tabs 5-11, and 25-27 were admitted into evidence without objection. Then, near the conclusion of the hearing for this date, Mr. Selert offered into evidence Tabs 11-15. It was pointed out that Tab 11 was already admitted into evidence. The Chairman admitted Tab 13 into evidence, and declined for purposes of the hearing on this matter to admit Tabs 12, 14 and 15.

The State declined to give an opening statement. Mr. Selert, however, provided an opening statement, describing how his client viewed this matter.

The State then called four witnesses. The hearing proceeded with only brief, intermittent recesses until the State rested its case for Citation 1, Item 1, the State's general duty clause, NRS 618.375, and Citation 2, Item 1, NAC 618.540(1)(d). Prior to the State's closing at around 3:15 p.m., Member Halsey excused himself and departed the hearing room.

After the State rested, Mr. Selert presented his first witness in defense. Testimony was taken until this witness was excused. By this time, it was nearly 5:00 p.m., the time when the Board was required by the Library to conclude its business for the day. The matter was continued. Tomorrow, Mr. Selert will present his remaining witnesses or witness, as the case might be, to be followed by closing arguments and the Board's deliberations. The hearing was ended, accordingly, on this matter for the day.

Public Comment: There was no public comment.

Adjournment: It was moved by Rodd Weber, seconded by Frank Milligan, to adjourn the meeting. **Motion approved.**

Vote: 3-0 (Halsey absent).

The hearing will resume at 1:30 p.m., tomorrow, the start time dictated by the Library's schedule.

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March 11, 2020

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

Chairman Ingersoll called to order the continuation of the Board of Review's docket commencing March 11, 2020. The meeting commenced at approximately 1:30 p.m., because of the schedule dictated by the Las Vegas Enterprise Library, the location for the meeting.

1. Roll Call.

Participating in person were Chairman Steve Ingersoll, Board Secretary Rodd Weber and members James Halsey, and Frank Milligan. Member Lance Semenko was absent. As four 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 Salli Ortiz, Esq., counsel to the Chief Administrative Officer of the Occupational, Safety and Health Administration of the Division of Industrial Relations, of the Department of Business and Industry, State of Nevada, Whitney J. Selert, Esq., Garg Golden Law Firm, on behalf of Brady Linen, respondent, and Board of Review 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 Hearing.

b. LV 18-1943, Brady Linen Services, LLC.

Board Chairman Ingersoll called the Brady Linen matter, LV 18-1943, to be heard and asked Board counsel to set the case. He advised that this was the continuation of the hearing which commenced on March 10, 2020. The State had rested its case-in-chief, yesterday and Mr. Selert had commenced the presentation of Brady Linen's defense, the continuation of which was to be heard on this date.

Mr. Selert called one additional witness to be heard and after the conclusion of that testimony, Mr. Selert also rested on behalf of Brady Linen. After a brief recess, the parties presented their

closing arguments after which the Board commenced deliberations on Citation 1, Item 1, a general duty alleged violation pursuant to NRS 618.375, and Citation 2, Item 1, a regulatory violation under NAC 618.540(1)(d). Before deliberations commenced, however, Board Chairman Ingersoll advised that member Halsey would be abstaining from voting and deliberating, as he was absent for part of the testimony during yesterday's hearing on this matter.

Both parties and their representatives remained in the hearing for the deliberations. After considerable discussion and debate, it was first moved by Rodd Weber, seconded by Frank Milligan, to uphold Citation 1, Item 1 and the fine of \$5,000.00. **The motion was adopted.**

Vote: 3-0-1 (Halsey abstaining for the reasons stated).

The Board then took up Citation 2, Item 1, wherein it was alleged that Brady Linen's safety program failed to include provisions describing the process for investigating accidents and the corrective actions that were to be taken, as prescribed by NAC 618.540(1)(d). In fact, Brady Linen's 2015 version of its safety policies included provisions in compliance with this regulation. Unfortunately, the 2016 updated version of those policies omitted the required provision under NAC 618.540. The Board concluded, however, that the omission was not intentional and, therefore, concluded that while there was a technical violation, the violation was at the *de minimis* level, not warranting a fine of \$1,000 as the State sought to impose. Accordingly, it was moved by Rodd Weber, seconded by Frank Milligan, to affirm the Citation violation, but find it *de minimus* and, therefore, to eliminate the fine altogether. **Motion adopted.**

Vote: 3-0-1 (Halsey abstaining for the reasons stated).

The Board then concluded that given the lateness of the hour, it would not start hearing another case on the merits, as it would result in a bifurcated proceeding that the Board felt would be unfair to both parties. The Board accordingly took up the administrative matters to be considered or decided.

4. Administrative Meeting:

- a. Approval of the previous Review Board minutes of December 11, 2019, January 28 and 29, 2020 and February 11, 12, 2020.**

December 11, 2019 The December 2019 minutes were tabled due to the want of a proper quorum.

January 28 and 29, 2020: Chairman Ingersoll called the January 28 and 29, 2020 minutes next. It was moved by James Halsey, seconded by Frank Milligan, to approve the minutes as read. **Motion adopted.**

Vote: 3-0-1 (Rodd Weber abstaining as he was absent from the meeting).

February 11 and 12, 2020: Chairman Ingersoll called the February 11 and 12, 2020 minutes next. It was moved by Frank Milligan, seconded by James Halsey, to approve the minutes as read. **Motion adopted.**

Vote: 3-0-1 (Chairman Ingersoll abstaining as he was absent from the meeting).

- b. Review contested case settlements, motions, draft decisions, or procedural issues pending on the status report, for approval and issuance of final orders:**
 - i. RNO 14-1684, Sierra Packaging & Converting, LLC (Decision on Remand).** Chairman Ingersoll called this matter to be heard, the Decision on Remand. It was moved by Rodd Weber, seconded by Frank Milligan, to approve the Decision on Remand of this case. **Motion adopted.**

Vote: 3-0-1 (Chairman Ingersoll abstaining as he was absent for the hearing on this case).

- ii. RNO 19-1982, Aspen Earthworks, Inc. (Settlement).** Chairman Ingersoll called this matter to be heard, a settled case. It was moved by Rodd Weber, seconded by James Halsey, to approve the disposition of this case. **Motion adopted.**

Vote: 4-0.

- iii. RNO 19-1978, Tesla, Inc., dba Tesla Motors, Inc. (Settlement).** Chairman Ingersoll called this matter to be heard, a settled case. It was moved by Rodd Weber, seconded by Frank Milligan, to approve the disposition of this case. **Motion adopted.**

Vote: 4-0

- iv. RNO 19-1963, Caliber Holdings Corp.; Caliber Bodyworks of Nevada, Inc., dba Caliber Collision (Settlement).** Chairman Ingersoll called this matter to be heard, a settled case. It was moved by Frank Milligan, seconded by James Halsey, to approve the disposition of this case. **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 on pending cases, calendar and status report.

Because cases are taking so long to be heard, a backlog of matters is being generated. The Board agreed to add additional hearing dates to see if the backlog can be reduced. Accordingly, hearings are now scheduled for 7/8-7/10 and 9/9-9/11. Additionally, due to quorum issues, the August 2020 docket is switched to 8/5 and 8/6.

The Board has scheduled the following meetings:

- * **April 8 and 9, 2020** - Hearing vacated due to Coronavirus issues.
- * **May 13 and 14, 2020** -3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **June 10 and 11, 2020** - 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- * **July 7, 8 and 9, 2020** - 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- * **August 5 and 6, 2020** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **September 9, 10 and 11, 2020** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **October 14 and 15, 2020** -4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- * **November 12 and 13, 2020** - *Location to be determined.*
- * **December 9 and 10, 2020** - *Location to be determined.*
- * **January 13 and 14, 2021** - 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- * **February 10 and 11, 2021** - *Location to be determined.*
- * **March 10 and 11, 2021** - *Location to be determined.*

5. Public Comment.

There was no public comment.

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

Vote: 4-0

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