

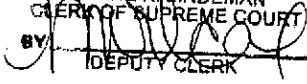
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SILVER STATE WIRE ROPE &
RIGGING,
Appellant,
vs.
CHIEF ADMINISTRATIVE OFFICER OF
THE OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION,
DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY,
STATE OF NEVADA,
Respondent.

No. 68895

FILED

AUG 22 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for judicial review in a labor matter. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

After receiving an unfavorable ruling from the Nevada Occupational Safety and Health Review Board (Review Board), appellant Silver State Wire Rope & Rigging (Silver State) sought judicial review of that decision. Respondent, the chief administrative officer of Nevada's Occupational Safety and Health Administration (Nevada OSHA), moved to dismiss the petition based on Silver State's failure to name the Review Board as a party as required by statute. The district court granted Nevada OSHA's motion based on the failure to name the Review Board as a party and, thus, dismissed the petition. On appeal, the only issue raised is whether the Review Board must be named as a party to the petition for judicial review.

The Nevada Supreme Court has previously held that “pursuant to NRS 233B.130(2)(a), it is mandatory to name all parties of record in a petition for judicial review of an administrative decision, and a district court lacks jurisdiction to consider a petition that fails to comply with this requirement.” *Washoe Cty. v. Otto*, 128 Nev. 424, 432-33, 282 P.3d 719, 725 (2012). We review compliance with NRS Chapter 233B’s naming requirement de novo. *Id.* at 430-31, 282 P.3d at 724.

On appeal, Silver State argues, as it did in the district court, that by naming the chief administrative officer of Nevada OSHA as a party, it effectively named the Review Board as a party as well because the two are not separate agencies, citing the United States Supreme Court case *Ingalls Shipbuilding, Inc. v. Director, Office of Workers’ Compensation Programs, Department of Labor*, 519 U.S. 248 (1997), as supporting authority. Nevada OSHA argues that Nevada law differs from the federal law relied on in *Ingalls* and that the district court correctly decided the issue. We agree with Nevada OSHA.

In *Ingalls*, the Supreme Court examined what agencies are considered to be proper party respondents in an appeal of an administrative decision under a federal appellate rule similar to NRS 233B.130. *Id.* at 262, 267. At issue in *Ingalls* was whether the Department of Labor’s Benefits Review Board was the proper party respondent or if it was the Department of Labor, the overarching agency. *Id.* at 267-69. The Court recognized that some agencies “have a split-function regime in which Congress places adjudicatory authority outside the agency charged with administering and enforcing the statute.” *Id.* at 267. In deciding whether the adjudicatory authority—the Benefits Review

Board—was the proper party respondent or whether only the overarching agency under which the adjudicatory authority operated—the Department of Labor—was the proper party respondent, the *Ingalls* court considered the amount of control that the Department of Labor had over the board. *Id.* at 268-69. The *Ingalls* court ultimately held that the Department of Labor’s power to appoint the members of the Benefits Review Board and establish its rules of procedure demonstrated the Department of Labor’s “indirect but substantial control over the [Benefits Review Board] and its decisions.” *Id.*


Here, the members of the Review Board are appointed by the governor, not Nevada OSHA. See NRS 618.565(1). Although the statute states that the Review Board is “created under [Nevada OSHA],” NRS 618.565(1), it also states that “[n]o person employed by [Nevada OSHA] may serve as a member of the [Review] Board.” NRS 618.565(4). The Review Board also chooses the time and place to hold its review hearings, employs its own legal counsel, and enacts its own rules and regulations governing the conduct of its hearings. NRS 618.585(1)-(2). Thus, Nevada OSHA does not have the type of control over the Review Board that the Department of Labor did over the Benefits Review Board in *Ingalls*.


Because Nevada OSHA lacks control over the Review Board and its decisions, the Review Board is an independent agency that must be named separately from Nevada OSHA in a petition for judicial review. Indeed, without naming Nevada OSHA as a party, the district court lacked jurisdiction to hear the petition. See *Washoe Cty.*, 128 Nev. at 432-

33, 282 P.3d at 725.¹ Accordingly, we affirm the district court's order dismissing appellant's petition for judicial review for failure to separately name Nevada OSHA as a party.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Linda Marie Bell, District Judge
Nathaniel J. Reed, Settlement Judge
Holley, Driggs, Walch, Fine, Wray, Puzey
& Thompson/Las Vegas
Dep't of Business and Industry/Div. of Industrial
Relations/Henderson
Dep't of Business and Industry/Div. of Industrial
Relations/Carson City
Eighth District Court Clerk

¹The holding in *Washoe County*, 128 Nev. at 432-33, 282 P.3d at 725, directly negates Silver State's additional argument that even if the Review Board should have been named as a party to the petition, the failure to do so did not result in the district court lacking jurisdiction to hear the petition. Therefore, we decline to address that argument further.