

STATE OF NEVADA
Minutes for the
Nevada Occupational Safety and Health Review Board
Reno, Nevada

May 12, 2021
Via teleconferencing and audio conferencing (WebEx)

Rodd Weber (Management)
Frank Milligan (Public at Large)
William Spielberg (Labor)

On May 12, 2021, 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 as modified by Governor Sisolak's Emergency Directive 006, permitting meetings to be conducted by Teleconferencing and Audio conferencing (WebEx) and providing for a refined publication process for posting of the publication of Agendas or Notices of the Meeting. This meeting took place by Teleconferencing. 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 was called to order by Acting Board Chairman Rodd Weber at approximately 9:00 a.m., on May 12, 2021.

1. Roll Call.

Board members participating and present by virtual hearing were Secretary Rodd Weber and Board Members Frank Milligan and William Spielberg. Chairman Steve Ingersoll was absent from the meeting, being out of state on employer business. There is still one vacant position on the Board. As William Spielberg is a labor representative and as Rodd Weber is a management representative, a properly compositioned quorum of three Board members was present and able to conduct the meeting and business of the Board.

Also present and in attendance variously during the course of the meeting were Salli Ortiz, Esq., attorney for the State of Nevada OSHA, Charles R. Zeh, Esq., Board legal counsel, Craig Mueller, Esq., counsel for Pole Fitness Studio, LLC, Victoria Carreon, Director, Division of Industrial Relations and Tristan Dressler, Operations Compliance Officer of the Division of Industrial Relations.

The meeting was chaired by Rodd Weber, Board Secretary, in the absence of Board Chairman, Steve Ingersoll.

The hearing on this date was reported by Court Reporter Christy Joyce.

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, as modified through the

Governor Sisolak's Emergency Directives. 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 as further modified by the Governor's Emergency Directives 006.

2. Public Comment.

Board Chairman Weber called this matter to be heard. There was no public comment offered during in the course of the meeting. Board Counsel advised that his office had received no public comment in writing in advance of the meeting.

3. Contested Hearings.

Board Chairman Weber called the continued hearings portion of the Agenda to order. He pointed out that the first four cases on the Board's stacked docket were settled in advance of the hearing on this date. He called, therefore, Pole Fitness Studio, LLC, matter, LV 21-2060 to be heard.

Board counsel set the matter for hearing. This matter was recorded by a Court Reporter, Christy Joyce of Capital Reporting.

Salli Ortiz, Esq., legal counsel to the complainant, appeared on behalf of the State. Craig Mueller, Esq., of Mueller and Associates, appeared on behalf of Pole Fitness Studio, LLC.

Board counsel pointed out that the State had submitted two exhibits for admission into evidence in advance of the hearing, exhibit 1 consisting of pages 1 through 85 and exhibit 2 consisting of pages 86 through 121. No objection to the admission of these documents had been received in advance of the hearing as required by the Amended General Procedural Order governing the pre-hearing process of the hearing on this matter. The State's exhibits are, therefore, eligible to be admitted without objection.

Once Board counsel had set the case, Mr. Mueller, on behalf of Pole Fitness Studio, LLC, asked to be heard. He moved to dismiss the matter on the grounds that the Governor's Emergency Order relied upon to prosecute this matter was ineffective as a matter of law. In lieu of a dismissal, he asked for a continuance because the owner of the business, Fawnia Mondey, was either having a baby, had just had a baby or was on the way to the hospital to have a baby and would be unable to appear and attend to defend herself and her business in this matter.

He offered to present his paralegal Suzie Ward to explain Ms. Mondey's status to the Board in support of the motion to continue. She was sworn in and testified that Ms. Mondey was not hospitalized to have the baby, had already had the baby, she is not certain when she had the baby but she knew that she had a young baby at home. Ms. Ward also admitted that Ms. Mondey did not get back to her, meaning Ms. Ward, to pin down her availability for this hearing. Ms. Ward's testimony added little to Ms. Mondey's availability to appear and defend in this case.

In light of this revelation, the Board deliberated, after which Chairman Weber announced that the Board denied the motion to dismiss and denied the motion to continue, save and except that the Board would delay hearing this case by one day in order to give the respondent's counsel time to present Ms. Monday at the hearing to be heard. Mr. Mueller was directed to produce any documents and records in support of the defense of this matter to Board counsel by noon, this date, May 12, 2021. He was instructed to baste stamp the exhibits.

Mr. Mueller indicated that he understood. He thanked the Board and excused himself until tomorrow when this matter will be picked up to be heard where it was left off on today's proceedings.

This concluded the contested hearing portion of the agenda for this date.

4. Administrative Meeting:

Board Chairman called the Administrative portion of the meeting to order. He called Item 4(a) to be heard.

- (a) Approval of the previous Review Board minutes of March 5, 2021 and April 14/15, 2021.

Item (a) was left to be picked up at a later date.

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

Board Chairman next called Item 4(b) to be heard.

- i. RNO 21-2072, Weigl Concrete, LLC, was called to be heard.

Upon a review of the proposed settlement set forth in the documents before the Board, it was moved by Frank Milligan, seconded by William Spielberg, to approve the settlement in docket number RNO 21-2072. **Motion adopted.**

Vote: 3-0.

- ii. RNO 20-2044, Cruz Construction Company, Inc.; and
- iii. RNO 21-2051, Cruz Construction Company, Inc.

Board Chairman called these two Items to be heard. They were taken together in a global settlement of both matters. It was moved by Frank Milligan, seconded William Spielberg, to approve the global settlement of these two case as presented and read to the Board. **Motion adopted.**

Vote: 3-0.

- iv. LV 18-1933, Nalco Company, LLC.

Board Chairman called this matter to be heard. Portions of the complaint and the settlement agreement were read into the record. It was moved by William Spielberg, seconded by Frank Milligan, to approve the settlement as read into the record by Board counsel. **The motion was adopted.**

Vote: 3-0.

- v. RNO 19-1974, Ponderosa Hotel, Inc.; and
- vi. RNO 19-1975, Ponderosa Hotel, Inc.

Board Chairman called these two items to be heard. The deliberation on the proposed decisions drafted for the Board's consideration was continued because the presence of Chairman Ingersoll was required in order to deliberate and approve, modify or reject draft decisions in these two cases. The deliberation on the draft decisions is continued to be considered at the next earliest date when a proper quorum can be marshaled to consider the disposition of these two decisions.

- (c) General administration and/or procedural issues.

Chairman Weber called this item to be considered beginning with item i.

- 1. General matters of import to Board members.

Frank Milligan expressed concern and some consternation regarding the continuance of Pole Fitness Studio, LLC. He did not feel that there were adequate grounds to continue the matter. He wondered what the standard was for deciding whether to continue matters and he indicated that he was fully prepared to hear the matter on this date rather than on a different date, if and as when continued. William Spielberg also indicated that he prepared to hear the case today and thought it should have been heard this date. Chairman Weber apologized stating that he thought there was a consensus that the matter be continued at least for one day. There was no dispute over the decision to deny the motion to dismiss. Board Chairman Weber advised he would be more cautious before disposing of a matter like this, again. The Pole Fitness Studio, LLC, matter will proceed to be heard tomorrow, May 13, 2021, at 9:00 a.m. There were no other general matters of import to the Board members discussed at the hearing.

- ii. Old and New Business.

There was no old or new business discussed.

- iii. Conduct of contested case hearing.

Board Chairman called this item to be heard. He pointed out that according to the Governor's Emergency Order No. 044, commencing June 1, 2021, the waiver of the requirement of a physical place for a meeting will be withdrawn and a physical place for Board meetings will again be required under Nevada's Open Meeting Law. The Board did have, however, an option to conducting a hybrid meeting consisting of both in person participation and virtual participation. Frank Milligan advised that his employer still had clamped down on out-of-town travel and, therefore, requested that the Board adopt a hybrid approach which would permit

participation by video or by in person participation. The Board members were sympathetic to that plight, leaving it to Board counsel to work out the logistics of a hybrid form of meeting.

Board counsel advised that a new notification of meeting will have to be crafted in order to take in to account the hybrid nature of the proceedings. It was also understood that under the new regime of the emergency orders which commence June 1, 2021, face masks will still be required and according to Victoria Carreon, Director, Division of Industrial Relation, social distancing will still have to be practiced until further order from the Governor.

The location of the Reno meeting place was also discussed. The State was offering a new location for meetings in the North in room F-150, in the 4600 Kietzke Lane Plaza of offices suites. Board counsel advised that he had inspected the premises. They are approximately the same size as the location previously utilized by the Board and the new location had more technical capacity to open up meetings to the public through teleconferencing. This concluded the discussion under this item.

- iv. The Board will discuss the efficacy of using teleconferencing or video conferencing to hear cases or consider deferring hearings until "in-person" hearings may be held, or it may continue this issue to a later date.

This matter was discussed in item iii.

- v. Board Counsel's Contract.

Board counsel advised that this was still under advisement and should be put on the Board's agenda for the next meeting of the Board in June. The only issue is compensation as the Board has already voted to retain Board counsel.

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

Chairman Weber called this matter to be heard. The schedule remains the same, save and except the reference to the Kietzke Lane office building should now refer Building F, Suite 150, for the Reno, Nevada meetings.

- * **June 9 and 10, 2021** - 4600 Kietzke Lane, Building F, Suite 150, Reno, Nevada 89502.
- * **July 14 and 15, 2021** - 4600 Kietzke Lane, Building F, Suite 150, Reno, Nevada, 89502.
- * **August 11 and 12, 2021** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **September 8 and 9, 2021** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **November 9 and 10, 2021** 4600 Kietzke Lane, Building F, Suite 150, Reno, Nevada 89502.
- * **December 8 and 9, 2021** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.

- * **January 12 and 13, 2022** - 4600 Kietzke Lane Building F, Suite 150, Reno, Nevada 89502.
- * **February 9 and 10, 2022** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **March 9 and 10, 2022** - *Location not determined.*
- * **April 13 and 14, 2022** - *Location not determined.*
- * **May 11 and 12, 2022** - *Location not determined.*
- * **June 8 and 9, 2022** - *Location not determined.*
- * **July 13 and 14, 2022** - *Location not determined.*
- * **August 10 and 11, 2022** - *Location not determined.*
- * **September 14 and 15, 2022** - *Location not determined.*
- * **October 12 and 13, 2022** - *Location not determined.*
- * **November 9 and 10, 2022** - *Location not determined.*
- * **December 14 and 15, 2022** - *Location not determined.*

5. Public Comment.

Board Chairman called this item to be heard. There was no public comment expressed at the conclusion of the meeting.

6. Adjournment.

Board Chairman called this item to be heard. It was moved by Frank Milligan, seconded by William Spielberg, to adjourn the meeting. **Motion adopted.**

Vote: 3-0.

The meeting of the Board was continued to May 13, 2021 at 9:00 a.m.

May 13, 2021
(Continuation of Board of Review Meeting)
Via teleconferencing and audio conferencing (WebEx)
Board of Review

Rodd Weber (Management)
Frank Milligan (Public at Large)
William Spielberg (Labor)

1. Roll Call.

Acting Chairman and Board Secretary Rodd Weber called the continued meeting of the Board of Review to order at 9:00 a.m. The roll was called. Board members present were Rodd Weber, Secretary and Acting Chair, Frank Milligan, member and William Spielberg, member. Board Chairman Steve Ingersoll was absent as he was out of town on employer business. There is one remaining vacant position on the Board of Review. As William Spielberg is a labor representative and as Rodd Weber is a management representative, a properly composed quorum of three Board members was present and able to conduct the meeting and business of the Board.

Also attending by virtual hearing were Salli Ortiz, Esq., attorney representing the State of Nevada, Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry. Lindsay Dibler, Esq., representing Pole Fitness Studio, LLC, Fawnia Mondey, owner of Pole Fitness Studio, LLC, and Charles R. Zeh, Esq., the Law Offices of Charles R. Zeh, Esq., Board legal counsel were also in attendance.

The hearing on this date was reported by Court Reporter Christy Joyce.

2. Public Comment.

The Acting Chairman called this matter to be heard. He asked for public comment. There was no public comment for those participating in the meeting. Board legal counsel advised the Chairman that his office had received no written correspondence under the heading of public comment as submitted according to the notice for this meeting. There was, therefore, no public comment.

3. Contested Hearings.

Acting Chairman Weber called this item to be heard. The remaining case on the contested docket was, *Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of the Industrial Relations of the Department of Business and Industry, State of Nevada, complainant v. Pole Fitness Studio, LLC, respondent*, Docket No. LV 21-2060. This hearing was continued from May 12, 2021. Acting Board Chairman asked Board counsel to set the stage for this matter. Board counsel pointed out that this matter was continued from yesterday. The Board gave the respondent additional time to submit any documentary evidence for consideration and move the start date of the hearing from May 12, 2021, to May 13, 2021, at

9:00 a.m. Respondent Fawnia Mondey appeared personally. She was represented on this date by Lindsay Dibler, Esq., of the Craig Mueller law firm. Salli Ortiz, Esq., appeared on behalf of the complainant, Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of the Industrial Relations of the Department of Business and Industry, State of Nevada.

Board counsel pointed out that the State's evidence packet was offered for admission into evidence, when the matter was called yesterday, May 12, 2021. The State's evidence packet, Exhibit 1, pages 1 through 85, and Exhibit 2, pages 86 through 121, were tendered but not yet admitted into evidence. Board counsel asked whether respondent had any objection to the admission to the State's evidence packet into evidence. There was no objection. The Chairman therefore admitted the State's evidence packet into evidence, without objection.

The State then commenced to proceed with its case in chief. Ms. Ortiz called two witnesses to testify, Crystal Rodriguez and John Hutchinson. Both testified and were cross examined, after which the State rested its case.


Mr. Lindsay then proceeded to present the respondent's defense. He offered no documents or records into evidence but called the owner of the business Fawnia Mondey to testify. She testified and was cross examined and at the conclusion of her testimony, additional documents in the form of a podcast, video and additional documentary evidence were offered by the State in rebuttal to Ms. Mondey's testimony.

Counsel for the respondent, Mr. Dibler, informed the Board and parties that he had a hard stop at 4:00 and had to leave in order to catch an airplane. The case was, therefore, continued to June 4, 2021, at 9:00 a.m., at which time Ms. Mondey may be cross examined in light of the video and documentary evidence being offered by the State in rebuttal. There was an objection by respondent to the introduction of these additional exhibits into evidence as well as to this line of questioning. The objection was overruled. The matter was then continued to June 4, 2021, at 9:00 a.m., as stated. There was no objection by either party to the procedure for addressing the State's rebuttal documents, consisting of a podcast featuring Ms. Mondey, a video featuring Ms. Mondey and the decision in a business license revocation.

Acting Board Chairman then asked for additional public comment. There was none.

Board Chairman, therefore, asked for a motion to adjourn. It was accordingly moved by Frank Milligan, seconded by William Spielberg, to adjourn the meeting. **Motion adopted.**

Vote: 3-0


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

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