

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

**April 13 and 14, 2022**

**Rodd Weber (Management)**  
**Frank Milligan (Public at Large)**  
**William Spielberg (Labor)**  
**Jorge Macias (Management)**  
**Scott Fullerton (Labor)**

On April 13, 2022, a meeting of the Nevada Occupational Safety and Health Review Board was convened.

The Board elected to exercise its option under AB 253 in light of the COVID-19 pandemic and conduct the April 2022 meeting of the Board on a HYBRID basis. The parties, public and participants had the option of participating in person or by means of a remote technology system. Participation in person was by attendance at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.

If the election was to participate by electronic means, participation was only through the use of the remote technology system deployed by the Board of Review. Accordingly, joinder in the meeting by electronic means was through the Webex Access portal.

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 Rodd Weber, called to order the Hybrid meeting of the Board of Review for the State of Nevada Occupational Safety and Health administration proceeding. The meeting originated from the State OSHA offices located at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.

Board Secretary William Spielberg and Board member Scott Fullerton attended the meeting in person at the State offices. Appearing by video conferencing/electronic means were Chairman Rodd Weber, and members Frank Milligan and Jorge Macias. Board counsel Charles R. Zeh, Esq., also appeared by electronic means. As all five members of the Board participated in the meeting, a quorum was present to permit the Board to conduct its business. Board Chairman Rodd Weber convened the meeting at approximately 9:00 a.m. on April 13, 2022, and called Item 1, Roll Call.

## **1. Roll Call.**

Those present at the meeting were Board Chairman Rodd Weber, Vice Chairman William Spielberg, and Members Frank Milligan, Jorge Macias and Scott Fullerton. As all of the members participated in the meeting, including representatives of labor and management, a duly constituted quorum was present to conduct the business of the Board.

Present on behalf of the Board was Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Also in attendance was Salli Ortiz, Esq., Division Counsel, Division of Industrial Relations. William Curphey, Esq., appeared for the respondent, Sofidel America Corp. dba Sofidel America, by electronic means. Allison Kheel, Esq., Fisher and Phillips, appeared in person for Sofidel.

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 or amended through Governor Sisolak's Emergency Directives and AB 253. 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 amended by AB 253.

Notice was posted at the following locations:

The Law Offices of Charles R. Zeh, Esq.,  
50 West Liberty Street, Suite 950  
Reno, Nevada 89501

Division of Industrial Relations  
3360 West Sahara Avenue, Suite 175  
Las Vegas, Nevada 89102

This Notice was also posted at the following website addresses:

State of Nevada, Department of Business and Industry, Industrial Relations (DIR)  
website at <http://dir.nv.gov/Meetings/Meetings>

Nevada Public Notices at <http://notice.nv.gov>

## **2. Public Comment.**

Chairman Weber called this item to be heard. There was no public comment either in person or electronically and Board Counsel advised that his office had received no written public comment in advance of the meeting.

### 3. Contested Case Hearings.

Chairman Weber called this item to be heard. He pointed out that all matters on the contested docket of the Board for this date except Sofidel America Corp. dba Sofidel America, LV 19-1991 and the oral argument for Specialty Contractors Northwest, LLC dba Pacific Bath Company, LV 22-2146 had been removed from the contested docket. Only these two matters were left to be heard. Accordingly, Chairman Weber called to be heard Sofidel America Corp. dba Sofidel America, LV 19-1991.

Salli Ortiz, Esq., DIR Division Counsel, appeared on behalf of 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, complainant. William Curphey, Esq., Curphey Badger, P.A., and Allison L. Kheel, Esq., Fisher & Phillips, appeared on behalf of the respondent, Sofidel America Corp.

Board Counsel set the hearing on this matter, including, the admission of documents and records into evidence and identification of witnesses. Admitted into evidence with a general objection on relevance and hearsay grounds were State's exhibits 1 through 3, consisting of pages 1 through 138. The respondent offered only 1 exhibit, consisting of 2 pages, a job description for the Safety Manager for Sofidel. Mr. Curphey identified Kevin Brown and Jim Ruiz, as witnesses he intended to call as a part of his defense of this matter. Ms. Ortiz advised that she intends to call Crystal Rodriguez, the CSHO to this matter and three other employees of Sofidel, Albert Chacon, Christian Azar and Edwin Lopez, to testify.

The hearing on Sofidel commenced with the State as complainant proceeding first. At the 1:30 p.m. mark of the first day of the hearing on this matter, the Sofidel hearing was recessed to permit the Board to hear oral argument and decide a Motion to Dismiss by Specialty Contractors Northwest, LLC, dba Pacific Bath Company, LV 22-2146 to be heard and decided. Chairman Weber accordingly called this matter to be heard. Natasha A. Landrum, Esq., Lee, Landrum & Ingle, appeared electronically to argue the Pacific Bath Company's motion to dismiss the case. Salli Ortiz, Esq., appeared to argue on behalf of the State. The Board also had before it the written motion, opposition and reply. The parties were given and took 30 minutes a side to argue their position. At the conclusion of the oral argument, the Board conferred in open session and denied the motion to dismiss, when it was moved by William Spielberg, seconded by Scott Fullerton, to deny the Motion to Dismiss. **Motion adopted.**

**Vote: 5-0.**

Chairman Weber then reconvened the hearing on Sofidel. All the witnesses except James Ruiz were called to testify during the first day. As the time approached 5:00 p.m. the hearing was continued to take the testimony of Mr. Ruiz and to conclude with closing arguments from the parties the next day, beginning at 9:00 a.m.

Upon continuing the Sofidel hearing, Chairman called the Administrative portion of the meeting of the Board, Item 4(a), to be heard.

**Item 4(a). Approval of March 9, 2022, minutes.**

It was moved by Frank Milligan, and seconded by Scott Fullerton, to approve the minutes as read for March 9, 2022. **Motion adopted.**

**Vote: 5-0.**

Chairman Weber then called to be heard Item 4(b), the review of a contested case settlement for RNO 21-2090, PKVINO dba VINO 100. It was moved by Scott Fullerton, seconded by William Speilberg, to approve the withdrawal of this matter and the issuance of a Final Order. **Motion adopted.**

**Vote: 5-0.**

Chairman Weber then called Item 4(c) General Administration and/or procedural issues to be discussed.

**Item 4(c)(i), general matters of import to Board members.**

There was no discussion.

**Item 4(c)(ii), old and new business.**

There was no old or new business discussed by the Board.

**Item 4(c)(iii), discussion of the Board's Status Report.**

The Board decided to take this matter up during the proceedings tomorrow, April 14, 2022, given the lateness of the hour and volume of material to consider.

**Item 4(c)(iv), consider whether to increase the number of monthly hearings.**

Because the status report shows 176 matters pending before the Board in one form or another, the prospect of reducing this case load by holding an additional day or two a month for meetings of the Board to dig into the case load was brought up by the Chairman. The Board was in general agreement that they were willing to make that time commitment to appear to decide matters on a third day of each month. Chairman Weber pointed out, however, there were some budget constraints that needed to be discussed with Victoria Carreon, the DIR Administrator, to provide the funds for the additional work that would be involved by adding an additional day each month to the Board's calendar to hear cases. Ms. Carreon indicated that, in effect, the budget was the budget for 2022-2023, but that in the current budget there was some slack that could be used to address additional costs. It is unlikely, however, that the slack in the current budget would be sufficient to handle the additional case load in the next year's budget or even be available to use to cover budget short fall in 2022-2023.

There was some discussion about streamlining the existing process through regulation. Ms. Carreon advised the Board that the Board's counsel has experience amending regulations for other State Boards he has represented along the way. She also indicated that there was a procedure for adopting emergency regulations which would stay in effect for 120 days. The Board discussed this and tabled it for further discussion after having had the opportunity to digest these suggestions. Board counsel pointed out that some of the means for expediting hearings to handle more cases could be addressed by order of the Board as opposed to amending the regulations. Again, the Board members could take that suggestion also under advisement.

No action was taken on this item.

**4. Item 4(d). Schedule of Hearings.**

The Chairman called Item 4(d) to be heard. At this time no changes were made in the Board's calendar of cases.

**5. Public Comment.**

The Chairman called this matter to be heard. He advised that there was no public comment being offered at this end of this meeting. Board counsel advised that his office had received no written comment during the course of the meeting.

**6. Adjournment.**

The Chairman of the Board called this matter to be heard. It was moved by William Speilberg, seconded by Frank Milligan, to adjourn the meeting. **Motion adopted.**

**Vote: 5-0.**

**STATE OF NEVADA**  
**Minutes for the**  
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**April 14, 2022**

**Rodd Weber (Management)**  
**Frank Milligan (Public at Large)**  
**William Spielberg (Labor)**  
**Jorge Macias (Management)**  
**Scott Fullerton (Labor)**

On April 14, 2022, Board Chairman called to order the continuation of the meeting of the Board of Review for the State of Nevada, Occupational Safety and Health Administration. The meeting was convened at approximately 9:00 a.m. The meeting was conducted on a Hybrid basis, originating from the State offices listed below.

**1. Roll Call.**

Appearing in person at the State of Nevada OSHA offices located at 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada, were William Spielberg, secretary to the Board, and member Scott Fullerton. Appearing electronically were Board Chairman Rodd Weber and members Frank Milligan and Jorge Macias. As all five members of the Board appeared either personally or by electronic means, a quorum was present for the Board to conduct its business. Board Legal counsel, Charles R. Zeh, Esq., was also in attendance by electronic means.

**2. Public Comment.**

Chairman Weber called for public comment to be heard. He advised that there was none offered in person by the public and Board Counsel advised that his office had not received any form of written comment.

**3. Contested Cases.**

Chairman Weber then reconvened the Board to hear the continuation of the Sofidel matter, LV 19-1991. William Curphey, electronically and Allison Kheel, in person, appeared for Sofidel.

Mr. Curphey called his last witness to be heard, James Ruiz's. His testimony was taken. Mr. Ruiz was crossed examined by Ms. Ortiz, who appeared in person from the State's offices in Las Vegas. Board Chairman and Board Counsel, also interrogated Mr. Ruiz as did the remaining Board members.

During the course of Mr. Ruiz's testimony, Mr. Curphey move to strike any of the questions propounded by Mr. Zeh as Board Counsel and Mr. Ruiz's responses. The motion was tabled.

After the conclusion of Mr. Ruiz's testimony, Mr. Curphey rested as did Ms. Ortiz on behalf of the complainant.

Both Ms. Ortiz and Mr. Curphey gave closing arguments, after which Board Chairman advised the parties that the Board would take the matter under advisement. Mr. Curphey asked when the Board actually deliberates on this matter, would it be done in open public? Mr. Curphey was told he would be noticed and could attend at his option.

This matter was, therefore, concluded for this date and Board Chairman moved on to revisit Items 4(c)(iii) and 4(c)(iv).

**4. 4(c)(iii).**

Chairman called, therefore, Item 4(c)(iii) to be heard. It was pointed out the contents of the items listed on the Status Report were discussed with particular focus on the 58 cases that had been removed from the contested calendar because of settlement or withdrawals. No final paperwork had been submitted by the State and, therefore, the matters were still shown as pending and exist as matters not concluded. Board Counsel advised his office had revised the Order Vacating such matters with the addition of the requirement that the closing paperwork be submitted by the parties in 60 days of the Order Vacating the Hearing or the matter would be reset to be heard on the contested docket. It is thought that this will move these cases along and that, therefore, no further revision in the process for handling this matter should be warranted at this time. This comment was in specific reference to the notation that perhaps the Board should convene and amend its regulation either on an emergency or long term basis. It was the general consensus amongst the Board that the Board would give this approach a try. The Board would, however, would like the Status Report submitted monthly for the foreseeable future in order to monitor progress.

Item 4(c)(iv). Chairman Weber called this item to be heard. The discussion revolved around adding an additional hearing per month. The Board members are in general agreement that they would be willing to meet an additional day each month in order to help get a handle on the status of the cases before the Board. There are some budgetary issues that need to be resolved with the addition of another day each month to hear cases and, therefore, this matter will be pended to the Agenda for May for further discussion, after, hopefully, budgetary issues will have been resolved.

Scott Fullerton advised that his calender would permit an additional meeting a month on the third Friday of each month, if that would work for the rest of the Board. This matter will appear also on the Agenda for the meeting in May.

Item 4(d). The Chairman called this item to be heard. The Chairman, again, pointed out that as of this moment there is no change in the schedule of hearings for the Board through the July 13 and 14, 2022, meeting of the Board. The May meeting of the Board will be in Las Vegas, June, in Reno, and July in Las Vegas.

**5. Public comment.**

Chairman Weber called this item to be heard. There was no public comment offered in the offices in Las Vegas and Board Counsel advised that no written public comment had been received during the course of the hearing on this date.

**6. Adjournment.**

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

**Vote: 5-0.**

Dated this 11<sup>th</sup> day of May, 2022.

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

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