

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

Reno, Nevada
December 14, 2022

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

On December 14, 2022, a meeting of the Nevada Occupational Safety and Health Review Board was convened by Chairman Rodd Weber, appearing virtually, at 9:00 o'clock a.m. Chairman Weber was situated in the State of Florida.

The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at the Division of Industrial Relations, 4600 Kietzke Lane, Building F, Suite 150, Reno, NV 89502. The Board convened at the Division of Industrial Relations offices located at 4600 Kietzke Lane, Building F, Suite 150, Reno, NV 89502. 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.

1. Roll Call.

Chairman Weber called roll call: William Speilberg appeared electronically from Las Vegas, Rodd Weber appeared electronically from Florida, Scott Fullerton appeared electronically from Elko, and Jorge Macias and Frank Milligan attended the meeting in person in Reno, Nevada. As all the of the Board were present for the meeting, including two members representing labor and one member representing management, a quorum was present for the Board to conduct its business.

Salli Ortiz, Esq., Legal Counsel to the Administrator, was present in person in Reno. Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., appeared virtually from Reno.

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 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>

Each Notice was timely posted.

2. Public Comment.

Chairman Weber called this item to be heard. There was no in-person public comment and Board Counsel advised that his office had received no public comment in written form.

3. Contested Case Hearings.

Chairman Weber called this matter to be heard and pointed out that all of the contested cases were off the calendar for one reason or the other with the exception of the Pole Fitness Studio, LLC matter, LV 21-2060, where the Motion hearing was scheduled to be heard at 2:00 p.m., on December 15, 2022. Counsel for Pole Fitness was traveling on this date, December 14, 2022, and, therefore, the Motion hearing could not be rescheduled to be heard on this date, December 14, 2022.

Board Chairman suggested that it might be advisable to continue the meeting of this date and pick up on the 15th of December 2022, with the Pole Fitness motion hearing and the dispense at that time also with the administrative matters left on the Agenda, in light of the fact that the contested case hearings agenda was reduced only to Pole Fitness Studio, LLC.

He queried the Board as to whether, to vacate the rest of the hearing on this date and pick up on December 15, 2022 with the balance of the Agenda including the Pole Fitness Motion hearing. Frank Milligan and Jorge Macias both indicated that they were fine with recessing the hearing this date and picking up with the balance of the Agenda on December 15, 2022. Scott Fullerton advised the same, indicating that he had anticipated being present on December 15, 2022, for the Board meeting in any event. William Spielberg offered the same opinion. The Chairman, therefore, moved to recess the meeting of the Board for December 14, 2022 and reconvene at 1:00 p.m. on December 15, 2022, to dispose of the remaining elements of the Agenda for the meeting scheduled for December 14, 2022 and December 15, 2022. The motion was seconded by Frank Milligan. **Motion adopted.**

Vote: 5-0.

After the vote was taken on this matter, William Curphey, Esq., interrupted the meeting wondering what was going on and where his matter, Sofidel America Corp., lies in all of this. Board Counsel explained that his item was a consent agenda wherein six items would be dispensed with upon one motion. Mr. Curphey then asked, if it was necessary for him to be present? Board Counsel advised, he would never advise a party not to attend a hearing but that the Sofidel matter along with the other consent agenda items would be dispensed with in less than five minutes. Mr. Curphey was, however, free to appear and be on the phone if he wanted to spend the time to do so. Mr. Curphey indicated he would decline that invitation and discontinued the phone connection into the meeting.

Public Comment.

Board Chairman called public comment again to be heard. There was none offered during the course of the meeting and Board Counsel advised that his office received no additional public comment during the course of the meeting.

Adjournment.

Board Chairman Rodd Weber moved and William Spielberg seconded a motion adjourn the meeting and to reconvene on December 15, 2022, at 1 o'clock p.m., to dispense with the remaining portions of the Board's Agenda. **Motion adopted.**

Vote: 5-0.

The meeting is adjourned until December 15, 2022, at 1 o'clock p.m.

Minutes for the Continuation of the OSH Review Board Hearing

On December 15, 2022, at 1 o'clock p.m., Board Chairman Rodd Weber convened the continuation of the OSH Review Board December 2022 meetings.

1. Roll Call:

Rodd Weber presently virtually, William Speilberg present virtually, Frank Milligan present in person in Reno, Jorge Macias present in person in Reno and Scott Fullerton present in person in Reno. In addition, Salli Ortiz, Esq., legal counsel to the State was present in person in Reno, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., appeared virtually from Reno.

2. Public Comment:

There was no public comment offered at the commencement of the meeting. Board Counsel advised that his office had received no written public comment prior to the commencement of the meeting.

3. Contested Case Hearings:

The Chairman called this matter to be heard. Board Counsel advised that with the exception of Pole Fitness Studio, LLC, LV 21-2060, a Motion hearing, scheduled for 2 o'clock p.m. on this date, all other matters under the Contested Case Hearings heading had been vacated.

4. Administrative Meeting:

- (a) Approval of the previous Review Board meeting minutes of November 9, 2022.

Board Chairman called this matter to be heard. He was not present for the meeting of November 9, 2022 and announced that he would be abstaining from consideration of the minutes. It was moved by William Speilberg, seconded by Jorge Macias, to approve the minutes as read for November 9, 2022. **Motion adopted.**

Vote: 4-0-1 (Weber abstaining for the reasons stated).

- (b) Review contested case settlements, motions, draft decisions, or procedural issues pending on status report, for approval and issuance of final orders:
- i. The Board will consider for approval, rejection or modification of the draft Decision of the Board for the following:
 - (1) LV 21-2060, Pole Fitness Studio, LLC.

This matter will not be heard on this date because its disposition pended the outcome of the Motion for Reconsideration to be heard at 2 o'clock p.m. on this date.

(2) LV 20-2003, M.J. Dean Construction, Inc.

It was moved by William Speilberg, seconded by Frank Milligan that the written decision accurately reflects the action taken by the Board and the Board's rationale for the action it took, and therefore, the draft decision should be approved. **Motion adopted.**

Vote: 5-0.

ii. The Board will consider the Withdrawal of Complaint/Settlement for the following:

The Board Chairman called this item to be heard. Board Counsel read into the record the settlement proposals for each of the cases under this heading:

(1) RNO 20-2017, Interstate-Rim Management Company, LLC.

It was moved by Frank Milligan, seconded by William Speilberg, to approve the settlement of this matter as presented. **Motion adopted.**

Vote: 5-0.

(2) RNO 20-2018, Interstate-Rim Management Company, LLC.

It was moved by Jorge Macias, seconded by Scott Fullerton, to approve the settlement of this matter as presented. **Motion adopted.**

Vote: 5-0.

(3) LV 18-1942, Brady Linen Services, LLC.

It was moved by Scott Fullerton, seconded by Frank Milligan, to approve the settlement of this matter as presented. **Motion adopted.**

Vote: 5-0.

(4) LV 19-1977, Brady Linen Services, LLC.

It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the settlement of this matter as presented. **Motion adopted.**

Vote: 5-0.

(c) Consent Agenda.

The Chairman called this item to be heard. Consent items may be approved together, with a single motion, be taken out of order, and/or be heard and discussed individually.

Chairman Weber asked if any of the Board members wanted to pull any of the items comprising the Consent Agenda. Those items are:

- i. RNO 20-2034, High Desert Plumbing, LLC
- ii. LV 19-1991, Sofidel America Corp.
- iii. LV 20-2011, DHS Sign Services, Ltd.
- iv. LV 22-2145, Hair Club for Men, LLC
- v. RNO 22-2144, SR Construction, Inc.
- vi. LV 21-2116, Trident Construction Corp.

Each of these are cases wherein the Respondent chose to withdraw contest, pay the fine and take care of the abatement. No Board member objected to any of the items on the Consent Agenda. It was moved by Frank Milligan, seconded by William Spielberg, to approve the Consent Agenda. **Motion adopted.**

Vote: 5-0.

At this time the Chairman called for LV 21-2060, Pole Fitness Studio, LLC, the Motion hearing, to be heard by the Board. Salli Ortiz, Esq., appeared on behalf of the State. Lindsey Dibbler, Esq., appeared on behalf of the Respondent. Board Chairman Weber advised that Respondent would go first and would have 15 minutes for oral argument to be followed by Ms. Ortiz on behalf of the Complainant, the State of Nevada. She would be given 15 minutes, as well too. Thereafter, Mr. Dibbler would be given 10 minutes in rebuttal. Both counsel exercised their time to argue the motion and to oppose the motion. The Board took the matter under advisement, deliberated and decided that the motion to rehear the case or modify the draft decision being presented to the Board for review should be denied. It was moved by Scott Fullerton, seconded by William Spielberg, to deny the Motion to Reconsider the Board's disposition of this matter. **Motion adopted.**

Vote: 5-0.

(d) General administration and/or procedural issues.

- i. General matters of import to Board members.

Board Chairman Weber called this item to be heard. He raised the issue of travel arrangements and asked the Board members whether or not the logistics for making travel arrangements had been resolved. Jorge Macias indicated that he had no problem making arrangements to travel to Reno for these meetings in December. Frank Milligan advised that his

experience for making the travel arrangements to Reno also was effortless. There were no issues. There was no further discussion, under item 4(d)i.

ii. Old and New Business.

Board Chairman Weber called this matter to be heard and basically indicated that this item was subsumed by the discussion that follows under this heading before the Board. Discussion was accordingly deferred.

iii. Omnibus discussion about Board Legal Counsel; the "suggestion" by Tori Carreon that Board Business for January 2023 be discontinued, including the postponement of the January Board meeting for the want of funding for the Court Reporter and/or Board Legal Counsel.

The Board Chairman asked Tori Carreon for an update from her. She advised the Board that the Contract for Board Legal Counsel ends December 31, 2022. Also, the State's general contract for a Court Reporter ended as well on December 31, 2022. On the Court Reporter issue, she wanted to know whether the Board wanted to utilize a Court Reporter Service which could be contracted on a month-to-month base or switch over long term to a transcription service. The Board made it clear that it wanted to continue utilizing a Court Reporter and made it clear that Ms. Carreon should contract on a monthly interim base with a Court Reporter service until a long term Court Reporter contract can be executed and approved by the State's contract approval process.

As for Board Legal Counsel, as indicated the contract ends on December 31, 2022. She said that after that unless it's renewed or extended the Board would not have the services of Legal Counsel, whereupon the Board made clear if it did not have Legal Counsel, it could not meet and conduct business. Ms. Carreon stated that under State policy contracts cannot be extended beyond two years and, therefore, a new contract needs to be executed with current Board Legal Counsel, inasmuch as the current Board Legal Counsel is the Board Legal Counsel selected by the Board, a decision that belongs to the Board, and the Board only, Negotiations are to take place with Mr. Zeh. Ms. Carreon stated that there was not sufficient time to draft and have before the Board of Examiners a new contract in place by January 2023. She stated that a request to extend the current contract pending execution and approval by the Board of Examiners of a new contract for the current Board Legal Counsel was pending before the Governor's office. Ms. Carreon made it clear that they were awaiting a decision about approval of an interim temporary contract or contract extension.

The Board members were displeased that this had not been resolved months ago when the Board made it clear its choice of legal counsel. The Board was similarly displeased with the delay in contracting with a Court Reporter service.

The Board wanted answers immediately and wanted Ms. Carreon to contact Terry Reynolds and/or the Governor's office to move this along to resolve it before December 31,

2022, so that Board business could continue. Board Legal Counsel pointed out that Board business goes on, for example, three complaints were recently filed with Board Counsel's legal office. Board Legal Counsel is in addition, in effect the clerk of the court as it were to the Board. All pleadings are filed with the Board's Legal counsel. The Answers to these three complaints will become due in January.

If there is no Board Legal Counsel, there is no place then for these Answers to be filed. In addition, other motions may come due during January, if there is no Board Legal Counsel, where are those motions to be filed? In essence, a delay or gap in the provision of Board Legal Counsel's services would prove somewhat problematic. Frank Milligan and Scott Fullerton both indicated that they wanted an answer today about the approval of a contract long term or a short term contract for Board Legal Counsel so that Board business would continue, while a full blown long term contract is prepared and submitted to the Board of Examiners.

The bottom line it appears from Mr. Carreon's presentation is that the ball lies with the Governor's office on the approval of a short term extension but it also appeared to the Board that matters had impermissibly languished elsewhere.

The meeting was then recessed for 15 minutes to give the Board Chairman the opportunity to contact Terry Reynolds. The recess was taken the Board then reconvened. Chairman Weber advised that he had called Terry Reynolds but he was unavailable. Board Chairman advised further, that he attempted Governor's Chief of Staff and left a voice-mail there.

iv. Discussion of the use of Transcript services.

The Board made it clear it wants a Court Reporter to record its hearings.

v. Discussion of the Board's Status Report, Disposition of Decision and Findings of Facts.

A lengthy discussion of the comprehensive Board's status report followed.

(e) Schedule of hearing on pending cases, calendar and status report.

Board Chairman called this item to be heard, the schedule of hearings on pending cases. The December 14 and 15, 2022 meeting of the Board was being held and about to be concluded. The Chairman then wanted to know with respect to the rest of the schedule contained in the agenda, whether Board members would be present and available. For the February 15 and 16, 2023 meeting in Las Vegas, Scott Fullerton advised that he would not be present on February 15, but would be present of February 16, 2023. Chairman Weber advised that on February 15, he would be unavailable. There would still be enough Board members participating for quorum.

March 8 and 9, 2023, Chairman Weber advised that on March 8 he would be unavailable. Also Scott Fullerton advised that he would be unavailable on March 8. Both would be available on March 9, 2023. There would be enough Board members present for a quorum on March 8,

2023. Other than those dates all Board members would be present for the meetings of January 2023 through April 12 and 13, 2023.

At this time, Tori Carreon came back on the line advised that she was unable to contact Terry Reynolds, either. She asked Board members for times and dates when they would be available in the next week so that she could try to schedule a meeting either by phone, virtual or in person with Mr. Reynolds. Board Chairman advised Board Counsel that he should be present for these discussions. Board Counsel advised that other than 10 o'clock through 1 o'clock on Friday, December 16, he would be available all day that Friday as well as all day Monday through Wednesday for the following week. Chairman Weber advised that he would be available all day Friday and all day Monday, Tuesday or Wednesday of the following week. Other Board members indicated that they would like to participate if possible. No objection to this approach was levied. Ms. Carreon indicated that she would try to set up the meeting and get back to the Board Chairman.

5. Public Comment.

Chairman Weber called this item to be heard. There was no public comment during the course of the meeting and no additional public comment had been received during the course of the meeting.

6. Adjournment.

It was moved Frank Milligan, seconded by Scott Fullerton, to adjourn the meeting.
Motion adopted.

Vote: 5-0.

The Board members and Board Counsel wished each other a happy holiday season.

Dated this 22nd day of June, 2023.

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