

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on April 24, 2024
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Jeff Mojcher, Chief Counsel
Patricia Hapgood, Acting Executive Officer
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Kevin Reedy, Administrative Law Judge
Karen Halbo, Staff Counsel
Scott Pease, Staff Services Manager
Janis Jonas, Executive Secretary
Christine Vandermeer, Senior Legal Typist
Marlene Harris, Office Technician, OSHAB
Rocio Reyes, Assistant Chief Counsel, DOSH
Lauren Ocadiz, Staff Counsel, DOSH
Rachel Brill, Staff Counsel, DOSH
Ramesses Surban, Staff Counsel, DOSH
Kathryn Woods, Staff Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
John Steve Barnett, Staff Counsel, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California
Kevin Bland, Attorney, Ogletree Deakins
Dave Wiseman, Staff Counsel, Cal Fire

Request remote attendance: Member Marvin Kropke made a motion asking to be permitted to attend the May 8, 2024, Board meeting remotely to accommodate a physical condition. He requested this consideration under Government Code section 11123.2, subdivision (j)(2)(A).

This motion was seconded by Ed Lowry.

The Board voted to approve the remote attendance request 3-0.

Minutes of April 10, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the April 10, 2024, Board meeting.
Moved by Marvin Kropke.
Seconded by Judith Freyman.
The vote was 3-0.

New Business:

(The Appeals Board hears and discusses new reports presented by staff.)

Action: There was no new business.

Old Business:

(The appeals Board hears and/or discusses matters on a follow-up basis.)

1. Discuss scheduling future Round Table Discussions.
Action: This topic is being held for the next meeting.
2. Discuss rescheduling a future Board meeting to be held at the West Covina Appeal Board's office.
Action: This topic is being held for the next meeting.
3. Discussion of precedential index.
Action: There is no additional report.
4. Discuss process for purging of files in OASIS.
Action: Scott Pease updated the Board on progress in creating protocol for purging files in OASIS.
5. Discussion regarding ideas to improve the efficiency and effectiveness of the Board's prehearing and hearing practices and procedures, including the Board's appeals initiation and prehearing conference processes.
Action: No report.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: No report.

Chairperson's Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Attorney General released an updated guide for Bagley Keene Open Meeting rules. Mr. Lowry asked the Board to review the guidelines and report any thoughts or comments.

Board Members' Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

Action: No report.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood informed the Board that a new Administrative Law Judge has been hired for the Sacramento office and will begin May 1, 2024.

The Board is awaiting approval from the Human Resource office for the hiring of a new Administrative Law Judge for the West Covina office. Ms. Hapgood hopes to hear from HR within a week.

Christine Vandermeer was hired and started Monday as Senior Legal Typist in the Sacramento office.

Ms. Hapgood also updated the Board on the office Zoom contract. It appears the Board will be able to submit an exception request to maintain our current contract. We are waiting for final approval.

Staff Reports:

(Reports from the Supervising ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss whether there are any proposals for new regulations or proposals for modifications to current regulations. In addition, discuss whether any concerns exist regarding regulations.

Action: There was no report made.

2. Litigation update:

Action: Jeff stated he had no report on current litigation. The Board is waiting for the Appellate Court decision on the RND Contractors, Inc. matter.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

Public Comment:

(Public comments will be entertained during discussion of each agenda item of the open meeting.)

Action: Kevin Bland shared that he has noticed that the length of hearings has been longer since moving to the Zoom platform compared to in-person hearings. There was a consensus that the biggest reason is probably the ease to which parties can bring witnesses to a Zoom hearing, lengthening the hearing time.

The Board recessed to its closed session.

Decisions of Administrative Law Judges:

(Written decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The board members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

There are no Decisions for review.

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1666704 C H D S, Inc.
Action: The Board voted to deny taking this matter under submission.
Moved by Marvin Kropke.
Seconded by Judith Freyman.
The vote was 3-0.

1355061 Republic Electric West, Inc. (ER PFR)
Action: The Board voted to take this matter under submission.
Moved by Marvin Kropke.
Seconded by Judith Freyman.
The vote was 3-0.

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- 1355061 Republic Electric West, Inc. (DOSH PFR)
Action: The Board voted to take this matter under submission.
Moved by Marvin Kropke.
Seconded by Judith Freyman.
The vote was 3-0.
- 1575627 Ultimate Internet Access, Inc.
Action: The Board voted to reinstate this appeal and remand the matter to hearing operations.
Moved by Marvin Kropke.
Seconded by Judith Freyman.
The vote was 3-0.

Orders Dismissing Appeal:

- 1685969 Camino Real Foods
Action: The Board discussed this matter.
- 1676577 Reliable Construction Service
Action: The Board discussed this matter.

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal for review.

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters, or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

- 1431672 A. Teichert & Son, LLC
Whether the cited employer was in violation of lockout/tagout requirements.
- 1473644 Amazon.com Services, LLC
Whether the employer's training program was in compliance with the applicable safety order.

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- 1113026 Angelus Block Co., Inc.
Whether Employer violated lock out/tag out requirements as alleged.
Action: The Board voted to issue the DAR.
Moved by Judith Freyman
Seconded by Marvin Kropke
The vote was 3-0.
- 1398352 Anheuser-Busch, LLC
Whether the evidence supports the holding that employer violated lockout/tagout requirements.
- 1568252 Arana Residential and Commercial Painting, Inc.
Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.
- 1399613 BMC West, LLC
Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.
- 1466722 Bragg Investment Company, Inc.
Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.
- 1420923 Drill Tech Drilling & Shoring, Inc.
Whether the Employer failed to enforce its IIPP as required. Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.
- 1497263 Hamilton Iron Works, Inc.
section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) should be reduced.
- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1371294 KPRS Construction Services, Inc.
Whether the employer violated section 1632 as alleged? Whether the ALJ's ruling that the Division did not meet its burden of proof regarding the employer's IIPP was correct.

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- 1415736 Los Angeles County Probation Dept.
Whether the ALJ erred in reclassifying one citation from serious to general.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 1465119 Sun Belt Rentals
Whether certain information accepted into evidence was inadmissible hearsay, and whether the evidence supports a finding that Employer violated sections 3203 and 3328, as alleged.
- 1475491 Sutter Bay Medical Foundation
Whether the employer failed to comply with COVID protections as alleged.
- 1609228 The Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.
- 1488312 The Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 1486257 The Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations.

Matters Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a Decision after Reconsideration or a Denial of a Petition for Reconsideration, either one or both parties may apply to the California Superior Court for a Writ of Mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. Ashley Furniture Industries, 34-2017-800002750 (1016514)
2. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
3. Davis Development Company, 34-2020-80003373 (1226084)
4. Hill Crane Service Inc., 34-2021-80003744 (1135350)

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5. USA Waste of California, Inc., 34-2022-80003841 (1384029)
6. American Fumigation Services, LLC, 22STCP04305 (1506586)
7. General Dynamics NASSCO, 37-2023-00024521 (1300984)
8. S.C. Anderson, Inc., 24WM000039 (1405107)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Granite Construction Company, 34-2021-80003634 (1235643)
3. MWL Solutions, C097353, 34-2020-80003549 (1436014)
4. BMC West LLC, 34-2020-80003459 (1399613)
5. Hampton Tedder Electric, 34-2020-80003549 (1233597)
6. RND Contractors, Inc., CIVSB2119442 (1436785)

Other Items:

1. Discuss title 8, California Code of Regulations section 348, the Board's present regulation which adds five days to the time in which something must be done to account for mailing time.
Action: No report.
2. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
Action: No report.
3. Categorizing the Board's DARs and Denials on the DIR website.
Action: No report.
4. Superior Court cases that also involve or relate to appeals pending before the Board.
Lyft, Inc., 30-2023-01368387-CU-MC-CXC (1594664)
Uber Technologies, Inc., 30-2023-01330884-CU-JR-CXC (1594663)

Orders Of Administrative Law Judges:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the Order and decide if they will reconsider or remand the issued order.)

1673330	AB Brand Fashion, Inc.
1560244	Agustin Ceballos-Baca
1718824	AJAY Hospitality Inc.
1610283	Andy's Roofing Co., Inc.
1697803	APG Roofing Inc.
1721559	Aranda's Tortilla Company Inc.
1642067	Arctic Glacier U.S.A., Inc.
1437250	Argonaut Constructors Inc.
1684214	Artsons Manufacturing Company
1636763	Augustin Miranda, An Individual
1603075	Barrett Business Services, Inc.
1670985	Bay Area Rapid Transit District - Richmond Yard
1666696	Bragg Investment Company, Inc.
1691824	Calavo Growers Inc.
1705463	California Greenhouses, Inc.
1524579	Ceja-Reyes, Inc.
1703257	Coastal Demo, Inc.
1555880	Cobra Performance, Inc.
1632272	Costco Wholesale Corporation
1698696	Costco Wholesale Corporation
1696327	Dana Kitchens & Associates, Inc.
1680813	Daniel Alejo
1728759	Doomsday Entertainment LLC
1536490	Drill Tech Drilling & Shoring, Inc.
1435293	E. & J. Gallo Winery
1501912	Employbridge, LLC
1706621	Escarate's Tree Service
1672445	First Point, Inc.
1698767	First Point, Inc.
1680877	Flavorchem Corporation
1685706	G.L. Mezzetta, Inc.
1687262	Gat Airline Ground Support, Inc.
1662137	Ghiringhelli Specialty Foods Inc.
1671108	H & M Logging Inc.
1696556	Hathaway Dinwiddie Construction Company

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1488964	Hi-Grade Materials Co.
1462983	Image Tree Service, Inc.
1687582	Intertex Inc.
1688364	J. Carr Contracting, Inc.
1697505	Kevin D. Woody Landscape Maintenance, Inc.
1703710	LCR Contracting, Inc.
1691636	Luster Cote, Inc.
1620878	Melinda Glenn
1668262	Monticelli Painting & Decorating Inc.
1661980	Nationwide Contracting Services Inc.
1546045	Newco Distributors, Inc.
1670722	Northern California Fire Protection Services
1711203	Nutri-Bon Distribution Co Inc.
1672452	Pacifica Linda Mar Inc.
1548273	Paganini Electric Corporation
1675096	Pallet Market Inc.
1507334	Perdue Foods, LLC
1686338	Pods Enterprises, LLC
1717288	Prime Healthcare Anaheim LLC
1686743	PUSD Mckinley School
1403360	R & A Roof Structures, Inc.
1513537	Ralph's Grocery Company
1665225	Restaurant Depot Inc.
1693851	RJG Construction Company, Inc.
1533628	Rokstad Power, Inc.
1709642	Rooftek & Waterproofing Systems, Inc.
1561973	Roscoe Moss Manufacturing Co.
1571278	Rose & Shore, Inc.
1688916	Rustic Bakery, Inc.
1710042	S Z Development, Inc.
1721883	Saavan Hospitality Inc.
1699851	SBM Fumigation Inc.
1442834	Schultz Industrial Services, Inc.
1684437	Shed World LLC
1689283	Sid Ceballos Construction Inc.
1693976	Smith Packing, Inc.
1562596	Standard Lumber Company, Inc.
1662207	Staples Designers Services, Inc.
1648036	Strategic Materials Inc.
1691874	Strawberry Farms Golf Club

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1633363	STS Ranch, LLC
1680672	T & R Construction Group
1626271	Tractor Supply Co.
1516285	Trademark Construction Co., Inc.
1699277	Trademark, Inc.
1708230	Tri Star Foods, LLC
1690887	Tyler Development Corporation
1610322	Uni-Tile & Marble, Inc.
1647621	Universal Plant Services of California, Inc.
1489846	Vellutini Corporation
1558448	Wall Panel Systems, Inc.
1580702	Walt Oxley Enterprises, Inc.

Action: The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 10:37 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated, by reference, its actions in the Closed Session as indicated above. The Board meeting was adjourned at 10:38 a.m.