

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on June 30, 2016
Sacramento, California

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Executive Officer
Jeff Mojcher, Chief Counsel
Neil Robinson, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Andia Farzaneh, Graduate Student Assistant
Marti Fisher, California Chamber of Commerce

MINUTES OF June 9 and June 20, 2016 MEETINGS:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the June 9 and June 20, 2016 Board meetings as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the June 9 and June 20, 2016 Board meetings as amended.

NEW BUSINESS:

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

ACTION: No report.

OLD BUSINESS:

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

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: No report.

BOARD MEMBERS' REPORTS:

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

ACTION: Member Freyman reported the she was approved for reappointment by the Senate Rules Committee.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE

ACTION: Executive Officer Ha reported that we have reached the end of the fiscal year and will be working with the DOSH and the Federal OSHA departments to prepare the new budget for the following fiscal year. Ms. Ha also reported that new computers have been installed in the office. To prepare for the launching of OASIS, there has been a shuffling of offices to place employees in a more advantageous configuration. She also reported that the West Covina office will be conducting interviews for a Graduate Student Intern.

STAFF REPORTS:

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

OASIS PROJECT:

ACTION: Judge Robinson reported that the OASIS team is in the process of writing step by step instructions on using the new program. He also reported that training will begin July 5, 2016 in West Covina. And he reported that there will be a delay in launching the new program by a couple of months due to building the interface with the accounting department.

LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported on upcoming court dates.

REGULATIONS

ACTION: Counsel Gonzalez reported that the Board's regulations in the Stay of Abatement rulemaking package, sections 362, 364, and 364.1, will be published and go into effect on July 1, 2016. The Board's Practice and Procedure rulemaking package has completed its 15 day public notice process and is currently at OAL awaiting review.

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 comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: Ms. Marti Fisher reported on attending the Senate Rules Committee Hearing for Member Freyman. She also reported the Federal OSHA will be raising penalty fees due to inflation and California will be doing so as well.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

CALIFORNIA FORESTRY AND FIRE PROTECTION DBA CAL FIRE, 13-R3D3-3561 AND 3562

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

CLARK PACIFIC CORPORATION, 15-R2D1-0484 AND 0485

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

SYNERGY TREE TRIMMING, INC., 15-R2D1-0828

ACTION: Member Lowry moved that the Board vote to reconsider this matter on its own motion. Member Freyman seconded. The Board voted to reconsider this matter on its own motion.

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has 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.)

AVALON BAY COMMUNITIES, INC., 15-R3D2-0751

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

BARRETT BUSINESS SERVICES, INC., 12-R3D1-1204 THROUGH 1206

ACTION: Member Lowry moved that the Board vote to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to grant this Petition for Reconsideration.

FOUNDATION BUILDING MATERIALS LLC, 14-R1D2-3533 THROUGH 3535

ACTION: Member Lowry moved that the Board vote to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to grant this Petition for Reconsideration.

GIBRALTAR PARTNERSHIP LP, 15-R3D2-4782 THROUGH 4785

ACTION: Member Lowry moved that the Board vote to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to grant this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

EVERGREEN NURSERY, 15-R3D2-0083 AND 0084

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

ST. JERIES ENTERPRISES, INC. dba EXPRESS AUTO SERVICES, 16-R6D5-9083

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

ORDERS DISMISSING APPEAL:

CRANKLIN SOLUTIONS, LLC., 16-R3D1-0237 THROUGH 0240

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

ORDER DENYING LEAVE TO FILE LATE APPEAL

TUTOR PERINI CORPORATION, 16-R5D1-9088

ACTION: Member Freyman moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Lowry seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge.

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

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.)

A TO Z TREE NURSERY, INC. dba A TO Z SPECIMEN TREE MOVERS,
15-R6D1- 2277 through 2279

ATKINSON CONSTRUCTION, LP, 14-R3D1-4111

BIGGE CRANE & RIGGING CO., 14-R1D2-1798

CALSTRIP STEEL CORPORATION, 12-R3D6-1998 & 1999

COAST WASTE MGNMT OF CA, INC., 11-R3D2-2385 & 2386

COMPASS CONTAINER GROUP, INC., 16-R1D4-9014

CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364

DAVEY TREE SURGERY CO., 13-R3D3-1018 THROUGH 1021

DYNAMIC CONSTRUCTION SERVICES, INC., 15-R4D1-1471 AND 1472

FEDEX FREIGHT, INC., 14-R2D1-0144

Board discussed this matter.

FIRST PRIORITY DESIGN & CONSTRUCTION, 16-R3D5-9073

GATEWAY PACIFIC CONTRACTORS, INC., 10-R2D3-1502 THROUGH 1508

HERMAN WEISSKER, INC., 13-R3D1-3279

13.JD MILLER CONSTRUCTION, INC. dba M & M FRAMING, 16-R4D4-9058

JM ENVIRONMENTAL, INC., 15-R2D1-9232

KEY ENERGY SERVICES, LLC, 15-R4D7-0255 AND 0256

L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822

MAGNA TOOL INC., 15-R3D1-9214

MASTER CARE WINDOW WASHING, 15-R1D4-9230

MORROW-MEADOWS CORP., 12-R4D1-0717 THROUGH 0719

Board discussed this matter.

NOLTE SHEET METAL, INC., 14-R6D7-2777 through 2783

Board discussed this matter.

RUSSELL FABRICATION CORP. dba AMERICAN FABRICATION, 15-R6D2-90
SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP.,
11-R3D1-2562 THROUGH 2570
UNITED PARCEL SERVICE, 13-R3D2-2664 and 2665

WALT OXLEY ENTERPRISES INC. dba CIARRA CONSTRUCTION, 16-R1D2-9075
Board discussed this matter.

LEGISLATION:

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. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
2. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
3. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
4. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
5. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
6. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
7. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
8. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
9. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
10. A.TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
11. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)

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12. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
13. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
14. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
15. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
16. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
17. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)
18. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
19. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
20. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360 THROUGH 3362)
21. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-R3D2-1935 & 1936)
22. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
23. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR, 15CV-00945 (08-R2D1-3093 ~ 3098)
24. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
25. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
26. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204 (12-R3D1-0781)
27. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
28. NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
29. TRI STATE STAFFING, 12-R6D2-0378
30. CHEVRON U.S.A., N15-2013 (13-R6D3-0655 THROUGH 0662)

31. T & R CONSTRUCTION GROUP, BS159712 (14-R4D3-4120 & 4121)
32. ABM FACILITY SERVICES, INC. dba ABM BUILDING VALUE, 30-2016-00831661, 12-R3D6-3496 ~ 3498
33. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851 ~ 3854)
34. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
35. BURTECH PIPELINE, INC., 13-R3D2-0830 and 0831, 37-2016-00013806
36. RAAM CONSTRUCTION, INC., RG16-810863 (15-R1D4-0155)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)
2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456 (11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953, 34-2011 80000965, (10-R6D2-0188 THROUGH 0191)
5. KEY ENERGY SERVICES, INC., F073567, S-1500-CV-283958-LHB

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.)

AMERI STAR WINDOWS INC, 16-R6D2-0865 AND 0866
AVIA INDUSTRIES INC., 15-R4D3-4480 AND 4481
BARBOSA CABINETS INC., 15-R2D4-4042 AND 4043
BARNES & NOBLE BOOKSELLERS, INC., 15-R3D2-3175
BURRTEC WASTE INDUSTRIES, INC., 16-R4D3-0125
BUTTE VALLEY UNIFIED SCHOOL DISTRICT, 16-R2D3-1511
CAL TECH PRECISION INC., 16-R3D1-0925 AND 0926
CALIFORNIA ACCESS SCAFFOLD, LLC., 16-R3D5-1671
CAPITOL NEON, 16-R2D1-0228 AND 0229
CEMEX CONSTRUCTION MATERIALS PACIFIC LLC, 14-R5D3-4159
CRABILL & SONS, INC., 16-R3D1-1656

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CRESCO MANUFACTURING, INC., 15-R3D1-2734 AND 2735
CSULB, COUNSELING & PSYCHOLOGICAL SERVICES DEPT, 14-R3D5-3419 AND 3420
D R HORTON BAY, INC. DBA D R HORTON AMERICA'S BUILDER,
15-R1D4-1951
DAMATO ASSOCIATES, INC., 16-R3D1-0804 THROUGH 0806
DANHUA ALVAREZ DBA DLAB DRYWALL, 16-R3D1-0609 AND 0610
DE LARSHE CABINETRY, LLC DBA LG WOOD PRODUCTS, 15-R6D2-4121
THROUGH 4124
DEL SOL HARVESTING, INC., 15-R4D3-4654
DELTA DESIGN INC., 15-R3D2-4051 AND 4052
DIAMOND WIPES INTERNATIONAL, INC., 16-R4D4-0247 AND 0248
DAVID ESPINOZA DBA TRINITY PRODUCE, 15-R4D3-4685
FAMILY RANCH INC., 15-R2D5-4047
FLYING TURTLE CAST CONCRETE, 15-R2D4-4044
GLASSPLAX, INC., 16-R6D2-0625 AND 0626
GRIMMWAY ENTERPRISES INC., DBA GRIMMWAY FARMS, 15-R3D3-0393
HAND & NAIL HARMONY, INC., 15-R3D1-4404
HOLIDAY HARBOR/BRIAN RAYNER, 16-R3D1-0923 AND 0924
HORIZON UNDERGROUND, INC., 16-R4D7-1097
INLAND EMPIRE FRAMING, INC., 16-R3D3-1698 THROUGH 1700
IN-N-OUT BURGER, INC., 15-R4D3-4797
JAVIER CAMPOS AUTO ELECTRICO DBA JC AUTO ELECTRIC,
15-R3D5-2652 THROUGH 2654
JIANPING YANG DBA YF COMPANY, 15-R4D1-2960
KING'S CONSTRUCTION CO., 16-R1D4-0742 THROUGH 0748
LABOR READY SOUTHWEST INC., 15-R3D2-3439
LEADING INDUSTRY, INC DBA PINNPACK, 16-R4D3-0978 AND 0979
MACY'S, 16-R2D5-0640*
MADDOX FARMS, 16-R2D5-1638
MARINA LANDSCAPE, INC., DBA MARINA LANDSCAPE MAINTENANCE, INC.,
15-R3D1-4550
MATT LUDLOW DBA MATT LUDLOW, 16-R6D5-0199
MOHAMMAD TAHOORI DBA M & S AUTO, 16-R1D4-1014 THROUGH 1016*
MUSE MEDIA CENTER, INC. DBA MUSE AND COMPANY, INC,
16-R1D4-0630 THROUGH 0632
NAVARRO ROOFING, 15-R3D5-3512 THROUGH 3513
NESTLE DREYER'S ICE CREAM, 15-R2D5-3522 AND 3523
NMI INDUSTRIAL HOLDINGS, INC. DBA NMI INDUSTRIAL, 16-R2D4-1635
NORTH COAST MILL WORKS, 16-R1D5-0153
NZHDEH NICK VARTANIAN DBA VARTANIAN BUILDERS, 15-R4D3-4309
O'REILLY AUTO ENTERPRISES DBA OREILLY, 15-R2D4-4212
PACIFIC SALES KITCHEN AND BATH CENTERS, LLC, 16-R3D5-0450 AND 0451*
PACTIV PACKAGING, INC., 16-R2D4-1634
PAINTED RHINO, 16-R3D3-1664
PAYLESS SHOESOURCE, INC., 16-R2D1-1506
PRIORITY WORKFORCE, INC., 15-R6D2-3708 THROUGH 3711 (Amended Order attached)
PSLQ, INC. DBA GREENBEE, 15-R3D3-0385 THROUGH 0391
QUENSSENCORP, INC., DBA P.B. CERTIFIED AUTO, 16-R6D5-1563
QUEST NUTRITION LLC, 15-R4D4-4599 THROUGH 4601

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R.D. OLSON CONSTRUCTION INC, 15-R4D3-4796
RM INDUSTRIES, 15-R4D7-2003 THROUGH 2005
RIO FARMS, LLC, 16-R1D2-0919
SAFEWAY DISTRIBUTION WAREHOUSE, 16-R2D4-1498
SANDRA BIRD CUSTOM KITCHENS, 16-R1D5-0600 THROUGH 0602
SDI INDUSTRIES, INC., 15-R4D3-3384 AND 3385
SEKO WORLDWIDE LLC DBA SEKO LOGISTICS, 16-R3D3-1332
THROUGH 1334
SENECA FOODS LLC, 16-R2D4-0354
SIERRA PACIFIC INDUSTRIES, 12-R2D4-3606 THROUGH 3611
SJ VALLEY PLATING, INC DBA FARBEN, INC., 15-R1D4-4361
SLINGSHOT CONNECTIONS, LLC, 15-R2D4-0133 AND 0134
UNIVERSAL MACHINE COMPANY INC, 15-R6D5-2934 THROUGH 2939
VEST INC., 16-R4D1-0726 THROUGH 0728
WESTERN STATES CONSTRUCTION, INC., 15-R3D1-2515 THROUGH 2517
WILLIAM S. HART UNION HIGH SCHOOL DISTRICT-CANYON HIGH SCHOOL,
16-R4D3-0365 AND 0366
XLRS SERVICES, 15-R3D1-4556

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded the motion. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 11:58am and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 11:59am.