

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on July 28, 2016
Sacramento, California

PRESENT:

Art Carter, Chair
Judith Freyman, Member
Han Ha, Interim 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

MINUTES OF July 14, 2016 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the July 14, 2016 Board meeting as amended. Chair Carter seconded. The Board voted to approve the draft minutes of the July 14, 2016 Board meeting 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: The Board had a brief discussion on AB-2895 authored by Roger Hernandez

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter shared information on his schedule for the next week.

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)

OPERATIONS UPDATE:

ACTION: Executive Officer Ha reported that a Transition Team has been formed to facilitate the transfer to the OASIS Operating system. She also reported that the advertisement for the Hearing Officer 1 position has closed and we have received several applications. The Legal Analyst position will be posted within the next few days.

Lee Berlin, Staff Service Manager, reported about the project of re-configuring space and replacing the aged modular furniture. The project is estimated to take about a year to complete.

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 internal Go-Live date is September 27, 2016. The interface with Accounting will start testing next week. Also the migration of existing cases into the OASIS system will begin next week as well.

Training continues for staff in West Covina and Sacramento.

The Transition Team is training and developing plans for the transition from Oracle and the paper generating system to OASIS and a paperless system. The team consists of Kathleen Voloria, Grace Johnson, Han Ha, Lee Berlin, Neil Robinson, Nichole Franco, Mirna Lopez, Howard Chernin, and Ursula Clemons.

LITIGATION UPDATE:

ACTION: No Report

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: NONE

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

INTERNATIONAL LINE BUILDERS, INC., 15-R4D1-0498

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

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.)

KIMCO STAFFING SERVICES, 15-R3D3-4594

ACTION: Member Freyman moved that the Board vote to deny this Petition for Reconsideration, but reduce the penalty due to duplicity of the citations. Chair Carter seconded. The Board voted to deny this Petition for Reconsideration, but reduce the penalty due to duplicity of the citations.

SYNERGY TREE TRIMMING, 15-R2D1-0828

This Petition was submitted by the Division, however the Board took this matter up for reconsideration by its own motion at a previous meeting. Member Freyman moved that the Board vote to grant this Petition for Reconsideration by the Division. Chair Carter seconded. The Board voted to grant this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

ORDERS DISMISSING APPEAL:

APLUS CONSTRUCTORS, INC., 15-R4D7-4114 AND 4115

LUCKY MAR'S INC. DBA STEREO PROS AND WHEELS, 15-R6D5-4743

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

ORDER DENYING LEAVE TO FILE LATE APPEAL

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
BARRETT BUSINESS SERVICES, INC., 12-R3D1-1204 THROUGH 1206
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
FIRST PRIORITY DESIGN & CONSTRUCTION, 16-R3D5-9073
FOUNDATION BUILDING MATERIALS LLC, 14-R1D2-3533 THROUGH 3535
GATEWAY PACIFIC CONTRACTORS, INC., 10-R2D3-1502 THROUGH 1508
GIBRALTAR PARTNERSHIP LP, 15-R3D2-4782 THROUGH 4785
HERMAN WEISSKER, INC., 13-R3D1-3279
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

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

ACTION: Member Freyman moved that the Board vote to approve this draft Decision After Reconsideration for signature. Chair Carter seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

NOLTE SHEET METAL, INC., 14-R6D7-2777 through 2783
RUSSELL FABRICATION CORP. dba AMERICAN FABRICATION,
15-R6D2-9008

SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP.,
11-R3D1-2562 THROUGH 2570

UNITED PARCEL SERVICE, 13-R3D2-2664 and 2665
ACTION: The Board discussed this matter.

WALT OXLEY ENTERPRISES INC. dba CIARRA CONSTRUCTION,
16-R1D2-9075

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)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For July 28, 2016

Page 6

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

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191
THROUGH 1193)
1. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
2. 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.)

- A-1 ROOF MANAGEMENT AND CONSTRUCTION INC, 16-R1D3-0738
THROUGH 0740
AARON METALS HAYWARD INC., 16-R6D1-2123 THROUGH 2125
AG SERVICES, INC., 16-R1D2-1503 AND 1504
ANSAFONE CONTACT CENTERS, 16-R3D1-0608
APPLE VALLEY BV RESTAURANT, LLC DBA ONO HAWAIIAN BBQ,
16-R3D3-1953 THROUGH 1954
ARIES BUILDERS, 15-R1D3-4526 THROUGH 4528
AXNER EXCAVATING, INC., 16-R2D3-2011
BART KEEFER, 15-R3D2-3528
BIG 5 SPORTING GOODS, 16-R1D5-0750 AND 0751
BIXBY ROYAL HOME OWNER ASSOCIATION, 16-R3D5-0892

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For July 28, 2016

Page 8

BUTLER AMUSEMENTS INC, 14-R2D5-1413 THROUGH 1415*
CALIFORNIA LUXE DBA CALLUXE DBA CALIFORNIA LUXE FARM, ENT,
INC., 15-R6D1-3818
CLOVIS TRUE VALUE HARDWARE STORE, 16-R2D5-1010
CORRAL CONSTRUCTION & DEVELOPMENT INC, 16-R3D5-1377
THROUGH 1380
COUNTRY FURNITURE MANUFACTURING COMPANY INC., 16-R6D5-
1464 AND 1465
COUNTRYSIDE MUSHROOMS, INC., 13-R1D2-2589 THROUGH 2591
D 7 ROOFING SERVICES INC, 16-R1D5-0633
DASCO COMMERCIAL CONSTRUCTION INC., 16-R6D7-1472 AND 1473
DEL MONTE FOODS, INC., 16-R2D4-0911 AND 0912
DEPINHO ROOFING INC., 16-R3D5-1093 AND 1094
DT CONSTRUCTION, 15-R3D1-2911
E.E. HALL, INC., 15-R2D5-2231
EISENMANN CORPORATION, 15-R1D2-4360
EISENMANN CORPORATION, 16-R1D2-0150
ELITE PAIN MANAGEMENT, INC., 16-R3D1-1755
ERIC J BROMS CONSTRUCTION, INC., 15-R6D5-4427
ESPARZA ENTERPRISES, INC., 16-R4D7-0198
EVANS ROOFING CO., INC., 16-R3D1-0643 AND 0644
GAVILAN MACHANICAL, INC., 15-R1D2-4521 AND 4522
GREENONE INDUSTRIES INC. DBA GREENONE INDUSTRIES, 16-R3D2-
0886 AND 0887
H A RIDER & SONS, 16-R1D2-1412 AND 1413
H & H GENERAL CONTRACTORS INC, 16-R3D3-1772 AND 1773
HELIX ELECTRIC. INC., 15-R1D2-4380 THROUGH 4383
J GINGER MASONRY LP, 15-R6D5-3771
J. MATT MCNICKLE GENERAL CONTRACTOR, 15-R6D7-3677
J & S WINDOWS CORP, 15-R6D2-4494
JCM ENGINEERING CORP., 16-R4D4-2149 AND 2150
JDI ELECTRICAL SOLUTIONS, 16-R4D4-0341 AND 0342
JOSH RUPPERT CONSTRUCTION, 16-R2D1-1120
KENYON PLASTERING OF FRESNO, INC., 15-R2D5-2144 AND 2145
KEVIN RAY DEMOLITION, 15-R3D1-3906 THROUGH 3908
LA AMAPOLA, INC., 15-R3D5-3630 THROUGH 3632
LA JOLLA HILLS AUTOMOTIVE, INC. DBA CASS STREET AUTOMOTIVE,
16-R6D5-1991
LONGVIEW FIBRE PAPER AND PACKAGING, INC. DBA KAPSTONE
CONTAINER CORPORATION, 15-R1D4-4321 AND 4322
M. BETTENCOURT CONSTRUCTION, 16-R2D4-1921 AND 1923
M CARATAN INC DBA COLUMBINE VINEYARDS, 15-R6D5-3457
JERRY AND SHERRY MALTBY DBA BROKEN BOX RANCH, 15-R2D1-4625
MARK AMAN CONSTRUCTION INC, 16-R6D7-1327 THROUGH 1330
MICHIGAN INVESTORS, LLC, 15-R3D2-1771 THROUGH 1773

MONITOR AND CRT RECYCLERS OF CALIFORNIA, 16-R6D2-0400
NORTHERN CALIFORNIA PAPER RECYCLERS, INC DBA BAY
AREA SHREDDING, 16-R1D4-1572 THROUGH 1574
NU-MATIX INC, 15-R3D3-2436
O'BRYANT ELECTRIC, INC., 15-R4D1-2269 THROUGH 2271
OPENROV, INC., 16-R1D4-1616
PACIFIC STRUCTURES, INC., 15-R1D1-4511
PARKCO BUILDING COMPANY, 16-R4D1-0224 AND 0225
PEKING NOODLE CO., INC., 16-R4D1-0620 THROUGH 0624
PETROCHEM INSULATION, INC., 16-R1D2-1999
PLEASANT MATTRESS INCORPORATED, 15-R2D5-3557 AND 3558
PORTERVILLE UNIFIED SCHOOL DISTRICT, 15-R2D5-3840 AND 3841
PRO TRAILER REPAIR, INC, 16-R2D4-0095 AND 0096
RAYMOND & SUE QUARESMA DAIRY, 16-R2D4-1916
RICHARD IEST, 15-R2D5-3237 AND 3238
DARRELL ROGERS DBA ROGERS AND SON FOREST PRODUCTS,
15-R2D1-3162 THROUGH 3165
ROSS DISTRIBUTION CENTER, 16-R3D3-1201 AND 1202
RICARDO VASQUEZ SALINAS DBA AV CUSTOM CABINETS, 16-R6D5-
1542 AND 1543 AND 16-R6D5-1944
SAFEWAY INC., 16-R1D4-0259
SCOTIA TOOL & MACHINE, INC., 16-R1D4-1604 THROUGH 1607
SGL MATERIALS, INC., 16-R2D1-0500 AND 0501
SHELDON SITE UTILITIES INC., 15-R3D2-4104 AND 4105
SHIRLETTA GANTT, 16-R4D3-0389
SIERRA PACIFIC INDUSTRIES, 16-R2D3-0920 THROUGH 0922
SIERRA STEEL ERECTORS, INC., 14-R3D2-K0475 THROUGH 0477
SINCLAIR CONCRETE, 15-R2D1-3218 AND 3219
STAIRS, INC., 16-R2D1-0567 THROUGH 0570
TAYLOR FARMS PACIFIC, 15-R2D4-2689
THEISEN STEEL INC., 15-R3D3-3810
THOMAS WILLIAM BRENNAN JR. DBA TOM BRENNAN PLUMBING,
16-R3D1-0429
TIC – THE INDUSTRIAL COMPANY DBA THE INDUSTRIAL COMPANY,
15-R7D2-1410 AND 1411
TWINING, INC, 16-R3D5-0937 AND 0938
JONATHAN TOWER DBA JONATHAN TOWER CONSTRUCTION, 16-R1D5-
0311 THROUGH 0313
TSC STAFFING SOLUTIONS, INC., 16-R4D1-1036 THROUGH 1038
UNITED CONSTRUCTION, 16-R3D5-1786 AND 1787
URBANA HOLDINGS, INC. DBA BEACH RETREAT & LODGE, 15-R2D1-
4325 AND 4326
VINTAGE ROOFING AND SOLAR CO INC DBA VINTAGE ROOFING,
15-R3D3-3371 THROUGH 3373
WILLIAM LYON HOMES, INC., 15-R1D2-4073

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For July 28, 2016

Page 10

ACTION: Member Freyman moved that the Board approve these Orders of Administrative Law Judges. Chair Carter 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)

ACTION: The Board discussed personnel matters.

The Closed Session was adjourned at 11:27 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 11:28.