

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on August 25, 2016
Sacramento, California

PRESENT:

Art Carter, Chair
Ed Lowry, Member
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

MINUTES OF August 25, 2016 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the August 25, 2016 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the August 25, 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: Chair Carter reported that the State Legislature will adjourn at the end of month.

Counsel Gonzalez reported the AB 2895 has been suspended. SB-1167 has been sent to the Assembly.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter reported having a meeting Wednesday, August 24, with Amber Rose, the Area Director for Federal OSHA.

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: Interviews have been scheduled for both the Hearing Officer and the Legal Analyst positions.

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 project is working on section three of four of the interface software with the Accounting Department. OASIS is on schedule to be activated September 27, 2016.

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: No Report

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

ACTIVAR CONSTRUCTION PRODUCTS GROUP, 15-R4D1-0878 AND 0879

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.

KEY ENERGY SERVICES, LLC, 14-R4D7-4157

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.

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.)

MOORE'S PUMPKINS AND CHRISTMAS TREES, 15-R1D4-1504

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.

HOME DEPOT, U.S.A., INC., 15-R3D3-4516 THROUGH 4518

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.

W.A. RASIC CONSTRUCTION CO., INC., 13-R4D1-1422

ACTION: Member Lowry moved that the Board issue an order extending time on this Petition for Reconsideration. Member Freyman seconded. The Board voted to extend time on this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

ORDERS DISMISSING APPEAL:

QUANTUM ENERGY STORAGE CORPORATION, 16-R3D2-0007 THROUGH 0013

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal from an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order 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
though 2279

ACTION: Member Lowry moved that the Board approve this Order of Remand. Member Freyman seconded. The Board voted to approve this Order of Remand.

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

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

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

ACTION: Member Lowry moved that the Board approve this Order of Remand. Member Freyman seconded. The Board voted to approve this Order of Remand.

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

ACTION: The Board discussed this matter.

GIBRALTAR PARTNERSHIP LP, 15-R3D2-4782 THROUGH 4785

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

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

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

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

ACTION: The Board discussed this matter.

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

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

SYNERGY TREE TRIMMING, 15-R2D1-0828

UNITED PARCEL SERVICE, 13-R3D2-2664 and 2665

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

ACTION: Member Lowry moved that the Board approve this Order of Remand. Member Freyman seconded. The Board voted to approve this Order of Remand.

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)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For August 25, 2016

Page 6

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)
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)
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.)

A & I DESIGNS INC., 16-R6D5-1689
A & M LATH & PLASTERING INC., 16-R1D4-0655 THROUGH 0658
ADECCO STAFFING, 16-R2D4-1920
ALCOA FASTENING SYSTEMS, 15-R3D5-3100 THROUGH 3103
ALL ABOUT PAINT, 16-R4D1-1335
ALLIANCE RESIDENTIAL BUILDERS II GP, INC. DBA ALLIANCE RESIDENTIAL
COMPANY, 15-R3D2-4219 THROUGH 4221
APARTMENTS HIGHLAND MEADOWS, LLP, 14-R3D3-2821 THROUGH 2823
ARTISTIC ENDEAVORS, INC., 16-R2D3-2427
AUTO RAMP SERVICES, INC., 16-R1D2-1493 AND 1494
B & A INTERNATIONAL FARM LABOR SERVICES INC, 16-R2D5-1577
BO DEAN COMPANY, INC., 16-R5D1-1011 AND 1012
BRADSHAW INTERNATIONAL, 16-R4D4-2571
RICHARD ANTHONY BRAMON DBA R.B. MASONRY, 16-R6D5-1339
AND 1340
C & H SUGAR COMPANY, 16-R6D1-0075 AND 0076
CALIDAD, INC., 15-R6D2-4677 THROUGH 4680
CAMERON RAZAVI DBA BELFORT MANAGEMENT, INC., 16-R1D1-2245
AND 2246*
CEJA-REYES, INC., 16-R2D1-0603
CEJA-REYES INC, 16-R2D1-0957 AND 0958
CHAMPION INDUSTRIAL CONTRACTORS, INC., 15-R2D4-4635
CMI MASONRY, INC., 16-R4D1-1965
COIN WRAP, INC., 16-R1D4-1258 AND 1259
COLLEDGEWOOD INC, 16-R2D1-0499
FRED COOKE DBA COOKE CUSTOM CABINETRY, 16-R6D5-1400 AND
16-R6D5-1477*
CORNERSTONE PROPERTIES FAMILY LP DBA BHATTI FARMS, 16-R6D7 0766
THROUGH 0771
CPC INTERIORS, INC., DBA RESIDENTIAL WALL SYSTEMS, 15-R1D2-3982
CURTIS BERESFORD DBA FULL SERVICE SCAFFOLD, 16-R1D1-0304
AND 0305
DANTOR MARTINEZ CONSTRUCTION, 16-R6D5-2400 AND 2401
DIRT CHEAP DEMOLITION, INC., 16-R3D2-2171 AND 2172
DRIFTWOOD DAIRY INC, 15-R4D4-4298 AND 4299
E & J TRUCKING, 16-R3D5-2184
EAST BAY LOGISTICS, INC., 16-R1D4-1567 THROUGH 1571
FABCO STEEL FABRICATION INC, 16-R3D3-0970
FACTOR SYSTEMS, INC. DBA BILL TRUST, 15-R2D1-3344 AND 3345
FAIRWAY STAFFING SERVICES, INC., 15-R3D1-1984 AND 1985

FARMERS RANCH MARKET, LLC DBA FRESH CHOICE MARKETPLACE,
15-R3D1-4399 THROUGH 4402*
FENCE MENDERS INC, 16-R6D2-0470 THROUGH 0472
FOWLER PACKING COMPANY, 16-R2D5-2115
FRED LEEDS PROPERTIES, 16-R3D5-0116
GARDNER TRUCKING INC, 15-R2D5-2451
GEOPHONICS, INC., 16-R2D5-2021
GLENNWOOD MOUNTAIN HOMES, INC., 16-R2D1-0754
HENKEL CORPORATION, 13-R2D2-3010 THROUGH 3016
HPS MECHANICAL, INC., 15-R3D2-2357 THROUGH 2359
ISLANDS RESTAURANT, L.P., 16-R6D7-2432
JANAK MEHTANI, MD DBA FAIR OAKS PSYCHIATRIC ASSOCIATES,
16-R2D1-0637 AND 0638
JAVIER RODRIGUEZ FARM LABOR CONTRACTING, INC., 16-R4D7-0465
JUMP FOR FUN INC, 16-R3D5-0648
KING PLACE RESTAURANT, LLC, 16-R6D7-0842
KRISHLANI MULIA DBA KRIS CONSTRUCITON, 16-R6D7-0376
LA CITY PUBLIC WORKS, 16-R4D1-1381*
LAUSD, 16-R4D3-1385
LAZ PARKING CALIFORNIA, LLC, 16-R4D1-1964
LILY HUEY, 16-R1D1-2276
RAMIRO MENDEZ LOPEZ DBA NEW WORLD REMODELING, 15-R4D1-4194 AND 4195
LOS 3 AMIGOS TORTILLERIA INC. DBA LA PIEDAD TORTILLA FACTORY, 16-R2D4
2017 AND 2018
MNM MANUFACTURING, 16-R6D2-1390
MNM MFG, 16-R3D5-1372 AND 1373
MAGIC PLASTIC, INC., 15-R4D3-2745 AND 2746
MCCARTHY FRAMING CONSTRUCTION INC, 16-R3D5-0647
MINAMI GREENHOUSE INC, 16-R6D1-0641 AND 0642
MYERS & SONS CONSTRUCTION AND J. BANICKI CONSTRUCTION
INC. DBA MYERS-BANICKI A STERLING CONSTRUCTION COMPANY JOINT
VENTURE, 15-R4D1-2657
N.M.N. CONSTRUCTION, INC., 15-R4D1-2780
PACIFIC AMERICAN FISH CO., 15-R3D1-2912
PACIFIC COAST TREE EXPERTS, 15-R4D3-4310
PADENA HOLDINGS, INC. MIDAS, PADENA HOLDINGS INC. SAN JUN
PARK, 15-R3D1-1242 AND 1243
PETERSON-DEAN INC DBA PETERSONDEAN, 16-R2D4-1131
WILLEM POSTMA DBA WILLIAM POSTMA DAIRY FARM, 16-R2D4-0315 AND 0316
PRECISION FINISHING, 16-R3D2-1182
PROGRESSIVE DRYWALL, INC., 16-R2D3-0507
FRANCISCO JAVIER ROMO RAMIREZ DBA ROMO'S FRAMING, 16-R6D5 2216
THROUGH 2219
RAMOS WOODWORKS, INC., 16-R6D7-1075 THROUGH 1078
RODOLFO LOYA CONTRACTOR INC, 16-R3D5-0936

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
Minutes of the Public Meeting and Closed Session
For August 25, 2016
Page 10

RSI INSTALLATIONS, INC., 15-R4D3-3251
RTL EQUIPMENT RENTAL INC DBA RTL, 16-R3D2-1364
SAFEWAY, INC., 16-R2D4-0099
SAN JOAQUIN HARVESTING DBA SAN JOAQUIN HARVESTING,
16-R2D5-2020
JOSE SANCHEZ DBA SANCHEZ CONCRETE, 16-R6D7-1646 AND 1647
SCL GROUP, INC. DBA CENTURY WINDOW CLEANING, 15-R1D1-2459 THROUGH
2461
SERVICE CONNECTION, INC., 16-R4D4-1828
SSA PACIFIC INC, 16-R3D5-1091 AND 1092
STUART JAMES CONSTRUCTION INC, 15-R2D3-2640
TAYLOR FARMS PACIFIC, INC., 15-R2D4-0135 AND 0136
TEHRAN SANAAT INC DBA CALIFORNIA STEEL SERVICES, 16-R3D3-1767
THROUGH 1771
THE BOEING COMPANY, 16-R3D1-1524
THERMALAIR INC, 15-R3D5-4642 AND 4643
TLK INDUSTRIESK, INC. DBA THOMAS CNC MACHINING, 16-R3D1-1081
TRACH VAN TRAN DBA AUTO ELECTRIC BUILDERS, 16-R6D5-2405 THROUGH 2411
TRAPAC, INC., 13-R1D4-3412 AND 3413
TURNER CONSTRUCTION COMPANY, 15-R2D1-3516
VALLEY ADULT DAY HEALTH CARE CENTER, INC., 16-R2D5-0916
WESTSIDE BRAKE & TIRES, INC., 16-R6D5-2207 THROUGH 2209
WHELAN SECURITY OF CALIFORNIA, INC. 15-R3D3-3202
ZARMINA WAHID & ZARGHONA YOSOFI, A PARTNERSHIP DBA ZALLA
AFGHAN GRILL, 16-R6D7-0722 AND 0723

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)

ACTION: No Report

The Closed Session was adjourned at 11:24am 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 11:25am.