

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on February 15, 2012
Sacramento, California**

PRESENT:

Art R. Carter, Chairperson
Candice A. Traeger, Board Member
Ed Lowry, Board Member
Michael Wimberly, Executive Officer
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Kari Johnson, Industrial Relations Counsel III
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary

MINUTES OF FEBRUARY 1, 2012:

(Approval of minutes recording actions of previous Board meeting)

ACTION: Member Traeger moved that the Board vote to approve the draft minutes of the February 1, 2012 Board meeting for posting. Member Lowry seconded. The Board voted to approve the draft minutes of the February 1, 2012 Board meeting for posting.

ADMINISTRATIVE MATTERS:

(Information regarding the general administration of matters pending before the Appeals Board)

1. PROPOSED BOARD MEETING DATES

ACTION: The Board discussed and approved meeting dates through June 2012.

2. CALENDARING/CASELOAD REPORT

(Review and discuss current calendaring/caseload information)

ACTION: Member Traeger reported on Board statistics for 2004-2011.

3. 2012 RULEMAKING MATTERS

(Discuss potential Board rulemaking changes)

ACTION: Counsel Johnson and Executive Officer Wimberly discussed the current rulemaking package.

NEW BUSINESS:

(The Appeals Board hears and/or discusses new matters brought before the members.)

1. 2011/2012 BUDGET

(Review and discuss budget issues for the next fiscal year)

ACTION: No report

2. ELECTRONIC APPEALS BOARD REGULATORY BOOKLET

ACTION: Executive Officer Wimberly discussed the project to provide the Appeals Board Regulatory Booklet in an electronic format on the website.

OLD BUSINESS:

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

1. ADVISORY COMMITTEE MEETINGS

ACTION: Chairperson Carter reported on several of the issues and statistics discussed at the recent Cal OSHA Advisory Committee Meeting.

LEGISLATION:

ACTION: No report.

CHAIRPERSON'S REPORT:

ACTION: No report.

BOARD MEMBER'S REPORT:

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

ACTION: Executive Officer Wimberly gave a positive report on the activities of the new-to-staff Administrative Law Judges.

STAFF REPORTS:

ACTION: Counsel Johnson reported that the Office of Administrative Law has approved the regulatory package.

PUBLIC COMMENT:

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

CHALLENGER ORNAMENTAL IRON WORKS, INC., 10-R6D2-2307 THROUGH 2311

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

COFFMAN SPECIALTIES, INC., 10-R3D2-3532

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

ORDERS OF ADMINISTRATIVE LAW JUDGES:

ADULT INDUSTRY MEDICAL HEALTHCARE FOUNDATION, 09-R6D2-4299
THROUGH 4301

ANGELUS BLOCK CO. INC., 11-R4D1-0712 AND 0713

APPLIED TECHNOLOGIES ASSOCIATE, INC., 11-R4D3-2727

BAY AREA NEWS GROUP EAST BAY LLC, 10-R2D2-2570 *

BENJAMIN LOPEZ ORTEGA DBA BENJAMIN LOPEZ FARM LABOR,
10-R2D1-0347

BROWARD BUILDERS INC., 09-R2D1-1701

BLOIS CONSTRUCTION. INC., 11-R4D3-1956

BURKE, 11-R4D3-1514 AND 1515

CLP RESOURCES, INC., 08-R2D1-4618 AND 4619

COUSINS DIST. DBA NATURAL FRESH CHOICE TOBACCO, 10-R6D1-3030 AND 3031

THE DAVEY TREE SURGERY COMPANY, 11-R4D3-0628

ENVIRONMENTAL SOLAR DESIGN, INC., 08-R4D1-4368 AND 4369

FOLSOM RV, 09-R2D1-4106 AND 4107 *

GLOBAL LOGISTICS MANAGEMENT LLC, 11-R3D3-1767 AND 1768

GREENHECK FAN CORPORATION, 08-R2D1-4198

KEISER CORPORATION, 11-R2D5-0802 AND 0803

KWAN WO IRONWORKS INC., 08-R1D1-4161 THROUGH 4165 *

LOS ANGELES DEPARTMENT OF WATER AND POWER, 11-R4D2-1857

MCPHERSON ENTERPRISES, INC., 10-R2D5-0995

NABORS DRILLING USA, LP., 11-R4D3-2205

REITER BROTHERS, INC., 11-R4D3-2109

ROEL'S CONSTRUCTION COMPANY, 11-R2D5-2169 THROUGH 2171

SARDEE INDUSTRIES, INC., 11-R2D4-0975

STRUCTURAL STEEL FABRICATORS, INC., 11-R4D1-0854 *

UNITED STORM WATER INC., 11-R3D6-1989

VENTURA COASTAL LLC, 09-R2D5-3057
WEST COAST GRAPE FARMING, INC., 09-R2D1-0103 *
WINCO, 11-R2D1-0371
XIUYAN CHEN DBA HOMETOWN NOODLE, 09-R2D1-1895 THROUGH 1897
ZACK'S SECURITY ONE, 09-R2D5-3831 AND 3832 *

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

MCPHERSON ENTERPRISES, INC., 10-R2D5-0995

ACTION: Member Lowry moved that the Board vote to reconsider this Order of an Administrative Law Judge on its own motion. Member Traeger seconded. The Board voted to reconsider this Order of an Administrative Law Judge on its own motion

ORDERS DENYING LATE APPEALS:

VAN NUYS AWNING CO., INC., 2012-R6D5-9003

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

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

ALIKA IKAIIKA ENTERPRISES INC., DBA ATTENTION TO DETAILS, INC.,
10-R1D2-1191

ACTION: Member Traeger moved that the Board vote to accept the recommendation of the legal unit to Grant this Petition for Reconsideration. Member Lowry seconded. The Board voted to Grant this Petition for Reconsideration.

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.)

BEAR LABEL MACHINE INC., 11-R2D1-9219

ACTION: Member Traeger moved that the Board Deny this Petition for Reconsideration. Member Lowry seconded. The Board voted to Deny this Petition for Reconsideration.

GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
A TEICHERT & SON INC DBA TEICHERT CONSTRUCTION, 09-R4D5-0459 and 0460

ACTION: Member Traeger moved that the Board Grant these Petitions for Reconsideration. Member Lowry seconded. The Board voted to Grant these Petitions for Reconsideration.

DENIALS OF PETITIONS FOR RECONSIDERATION (DRAFTS):

DEVCON CONSTRUCTION, INC., 09-R1D2-3398
SIGN DESIGNS INC., 08-R2D3-4686
WF HAYWARD CO., 10-R6D7-2021 AND 2022

ACTION: Member Traeger moved that the Board approve these Drafts of Denials of Petitions for Reconsideration. Member Lowry seconded. The Board voted to approve these Drafts of Denials of Petitions for Reconsideration

MATTERS PENDING RECONSIDERATION:

AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
AC TRANSIT, 08-R1D4-0135
AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
AGWOOD MILL & LUMBER, INC., 08-R1D5-1068
VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY DBA ANTONSEN CONSTRUCTION, 06-R2D3-1272
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221
BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH 2241
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
CA RASMUSSEN, INC., 08-R4D5-219 AND 220
COMMERCIAL METAL FORMING, 09-R3D1-1592
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
DESIGN BUILDERS, INC., 08-R4D4-1901
DUININCK BROS., INC., 06-R4D3-2871

DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177
DUKE PACIFIC, INC., 08-R3D3-574
EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332

ACTION: The Board discussed this Matter Pending Reconsideration.

EZ MIX, INC., 08-R4D3-1898
FORTUNA IRON WORKS, 06-R2D3-4222
HB PARKCO, 07-R4D2-1730 AND 1731
THE HERRICK CORP., 07-R3D1-0495

ACTION: The Board discussed this Matter Pending Reconsideration.

HOME DEPOT, 10-R3D6-3284
JENSEN PRECAST, 05-R2D1-2377

ACTION: The Board discussed this Matter Pending Reconsideration.

JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
MARINE TERMINALS, 08-08-R6D2-1920
MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494
ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC., 08-R2D1-0025 AND 0026
POUK & STEINLE, INC., 09-R3D3-0491
RAMON ARANDA DBA I & R PALLETS, 10-R6D5-9053
RIEZEBOS CONSTRUCTION, INC., 08-R2D5-1730
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHERWOOD MECHANICAL, INC., 08-R3D2-4690 THROUGH 4693
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
SMUD, 08-R2D1-4887 THROUGH 4889
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
08-R2D1-3414 THROUGH 3418
STAFFCHEX, 10-R4D3-2456 THROUGH 2458

SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850
A TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION,
05-R2D4-2650 AND 2651
A TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459
AND 0460
UNITED PARCEL SERVICE, 07-R3D3-3322
WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095

LEGISLATION:

(Discussion of pending legislation which may affect the Board).

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. JERLANE, 37-2009-00059323-CU-WM-NC (08-1733)

ACTION: Chief Counsel Mojcher reported that this action has been dismissed.

2. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB), 34-2007-00882192-CU-WM-GDS, (01-3261)
3. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)
4. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
5. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
6. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
7. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430 (09- 9280/9281)
8. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-R5D1-3611)
9. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
10. SMUD, 34-2010-80000723 (08-R2D1-4887)
11. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
12. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
13. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
14. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010 (08-R2D1-3273)
15. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)

COURT OF APPEAL

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)

ACTION: Chief Counsel Mojcher provided an update on this matter.

PERSONNEL:

(Issues regarding staff)

ACTION: Executive Officer Wimberly discussed personnel actions.

The Closed Session adjourned at 1:50 P.M. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. With no further business, the meeting was adjourned at 1:51 P.M.