

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on April 30, 2014
Sacramento, California

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Ursula Clemons, Presiding Administrative Law Judge
Kari Johnson, Executive Officer
Jeff Mojcher, Chief Counsel
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Executive Secretary

MINUTES OF APRIL 16, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the April 16, 2014 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the April 16, 2014 Board meeting.

ADMINISTRATIVE MATTERS:

(Information and discussion regarding the general administration of cases pending before the Appeals Board)

ACTION: No report.

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 updates on legislation are being distributed by a staff analyst.

CHAIRPERSON'S REPORT:

ACTION: Chair Carter is scheduled to attend the meeting of the Cal/OSHA Advisory Committee in Oakland on May 8. Executive Officer Johnson and Member Freyman will also be in attendance.

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BOARD MEMBERS' REPORTS:

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

ACTION: Member Lowry reported that he recently spoke with members of the construction trades at the annual Safety Expo held at Consumnes River College. Member Freyman also reported on her recent talk with members of the California Chamber of Commerce Employers Advisory group.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OASIS PROJECT:

ACTION: EO Johnson reported that the OASIS team will soon be reviewing responses to the RFI document that requested demonstration of customizable off the shelf (COTS) software that could address OSHAB's business needs. She and business lead Neil Robinson also visited the State Personnel Board to review its workflow software, and also plan to review other court calendaring systems.

STAFF REPORTS:

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

ACTION: PALJ Clemons updated the Board on the progress of the remodel project at the West Covina office. The new counters, window frame and carpet have been installed, and painting completed. She is awaiting the schedule for installation of the glass in the window and new modular furniture. She also worked with Verizon to correct some phone programming problems.

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 the discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

ROSENDIN ELECTRIC INC., 12-R2D1-3028

ACTION: The Board agreed to issue an order extending time and to discuss this matter at a later date. It was later agreed that the Board would

recess this meeting and reconvene the discussion on Tuesday, May 6 at 10 a.m.

Following the recess, 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.

TTM TECHNOLOGIES TTM SANTA CLARA DIVISION, 13-R1D3-3095

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:

BAY CITIES PAVING & GRADING, INC., 12-R3D2-1665

ACTION: Member Lowry moved that the Board vote to extend the time for addressing the petition for reconsideration, and to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to extend the time for addressing the petition for reconsideration, and to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

BHC FREMONT HOSPITAL, INC., 13-R1D2-0204

ACTION: Member Lowry moved that the Board vote to extend the time for addressing the petition for reconsideration, and to hold it over for review at the next meeting. Member Freyman seconded. The Board voted to extend the time for addressing the petition for reconsideration, and to hold it over for review at the next meeting.

FRANK M BOOTH, INC., 12-R2D3-0601

ACTION: Member Lowry moved that the Board vote to extend the time for addressing the petition for reconsideration, and to hold it over for review at the next meeting. Member Freyman seconded. The Board voted to extend the time for addressing the petition for reconsideration, and to hold it over for review at the next meeting.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

KEVIN SEMIEN, 13-R1D11499

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.

VISTA CONSTRUCTION, 14-R6D7-9015

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:

CALIFORNIA CONSTRUCTION CONSULTANTS, INC., 13-R4D1-2122 AND 2123

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 GRANTING LEAVE TO FILE LATE APPEAL:

MASONRY DESIGN, 14-R3D2-1037 AND 1038

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

ORDER DENYING LEAVE TO FILE LATE APPEAL

M. UNITED PLASTERING INC., 14-R3D1-9029

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

PRIMO CORP., 14-R4D1-9043

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

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
JAMES BALDWIN DBA LYON'S MUFFLER & BRAKE, 14-R6D5-9019
BELLINGHAM MARINE INDUSTRIES, 2012-R2D2-3144 THROUGH 3146
BRAD STONER PAINTING, INC., 13-R3D2-9200
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
COFFMAN SPECIALTIES, INC., 10-R3D3-3532

COMMERCIAL METAL FORMING, 09-R3D1-1592

ACTION: The Board discussed this matter.

CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960

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

CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

ACTION: The Board discussed this matter.

DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362

DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455

FERMA CORPORATION, 12-R2D2-1669

GMAC ELECTRIC, INC., 13-R6D5-9138

HARRIS CONSTRUCTION, 03-R2D5-3914

HHS CONSTRUCTION, 12-R3D2-0492-0497

IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272

KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014

K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375

LABOR READY, 13-R3D2-0164

LA VALENCIA HOTEL, 2013-R3D2-9199

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

M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223

MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
08-R2D1-3093 THROUGH 3098

MARCO RUFO DBA MARCO RUFO, 13-R6D5-9217

McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406

MCCARTHY BUILDING CO., INC., 12-R1D4-3458

MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298

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MORROW MEADOWS CORP., 09-R3D3-2295
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186
O.C. JONES AND SONS, INC. 13-R2D2-0310

OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
ACTION: The Board discussed this matter.

JIM PARKER, 2014-R4D1-9009
PERSONNEL PLUS, INC., 11-R3D5-1302
ROEBBELEN CONTRACTING, INC., 12-R2D2-3248
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048

SIERRA FOREST PRODUCTS, 09-R2D5-3979
ACTION: The Board discussed this matter.

SONIC DRIVE-IN, 12-R2D5-2734
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
STARBUCKS DBA STARBUCK'S COFFEE #5867, 12-R3D2-3675 THROUGH 3678
TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 AND 0097
TREASURE ISLAND MEDIA, INC., 2010-R6D1-1093 THROUGH 1095
VICTORY SCREEN PRINTING 12-R3D1-3673 & 3674

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.)

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. SMUD, 34-2010-80000723 (08-R2D1-4887)
3. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-8000820 (03-R1D1-5170)
4. MASCON, INC., 34-2011-80000819 (08-R2D1-4278 AND 4279)
5. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)

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6. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
7. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
8. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
9. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
10. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
11. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
12. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
13. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
14. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
15. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
16. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
17. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
18. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
19. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
20. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
21. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
22. HOME DEPOT USA, INC., BS141301 (10-3284)
23. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
24. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
25. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
26. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)

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27. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
28. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
29. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)
30. AC TRANSIT, RG13687314 (08-R1D4-0135)
31. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
32. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)
33. CA PRISON INDUSTRY AUTHORITY, 13 C 0327 (08-R2D5-3426 ~ 3429)
34. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
35. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749
(2008-R2D1-3414 THROUGH 3418)
36. SHIMMICK-OBAYASHI, 34-2014-80001750 (2008-R3D3-5023 THROUGH 5025)
37. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
38. BAY AREA RAPID TRANSIT DISTRICT, RG14715710 (10-R1D1-3056 THROUGH
3058) (DOSH)
39. LAND O'LAKES PURINA FEED, LLC, RG14715717 (08-R2D4-1843 AND 1844)
(DOSH)
40. BAY AREA RAPID TRANSIT DISTRICT, RG14715720 (10-R1D1-3056 THROUGH
3058) (3rd Party)

APPELLATE COURT:

1. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, C075477,
34- 2011-80000640 (08-R2D1-0027 THROUGH 0030)
2. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191
THROUGH 1193)

ACTION: Chief Counsel Mojcher reported that a brief has been filed in the Appellate Court for this matter.

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3. SHERWOOD MECHANICAL, INC., D065322, 37-2012-00101466 (08-R3D2-4690 ~ 4693)

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 FUMIGATION, 13-R3D5-1187 AND 1188
AGWOOD MILL AND LUMBER INC., 13-R2D3-1560 THROUGH 1562
A.L.L. ROOFING MATERIALS OF SAN JOSE, LLC., 13-R1D4-3361
AMORCAST PRODUCTS COMPANY, 13-R6D2-3686 THROUGH 3692
AMPAC FINE CHEMICALS LLC., 14-R2D1-0361 THROUGH 0363 *
ANGELUS BLOCK CO., INC., 13-R3D3-2337
WILLIAM AVILES DBA PINNACLE FLOOR COVERING, 13-R6D7-3945
THROUGH 3948 *
BELLINGHAM MARINE INDUSTRIES, INC., 13-R2D2-2385 AND 2386
CACTUS MAT MANUFACTURING (A CORP), 13-R6D2-2892 THROUGH 2899
CA STATE UNIVERSITY EAST BAY, 14-R2D2-0717 *
CENTURY MOBILE HOMES, 14-R2D3-0373
CHURCH & LARSEN, INC., 13-R3D5-1941
COMPASS FOODS, INC., 13-R2D4-3460 AND 3461
D'ARRIGO BROS. CO., OF CALIFORNIA, 13-R6D7-3500 AND 3501 *
DH SMITH COMPANY, INC., 13-R2D2-1627
FREON FREE, INC., 14-R2D2-0208 AND 9209
FPI MANAGEMENT INC., 14-R2D1-1016
G4S SECURE SOLUTIONS (USA) INC., 14-R2D1-0557
ROBERT GILL DBA REVEILLE FARMS, 14-R2D2-0448
GRAPEMAN FARM DBA LUCHICH FARM-STEVECO, 13-R3D5-1591
THROUGH 1594
GREEN MOUNTAIN ENGINEERING, 13-R3D3-3416
CLINTON AND MARY HALL, 14-R2D3-0229 AND 0230
HONEYBAKED HAMS, 13-R3D1-0941 *
INTEMATIX CORPORATION, 13-R1D2-3844 AND 3845
KELLY SERVICES, INC., 13-R2D5-1519 AND DOCKETS 14-R2D5-0359 AND 0360
K-MART CORPORATION DBA K-MART STORE #3337, 13-R3D5-2860
LA CASA BUILDING CONTRACTORS, 13-R3D5-2338
L.A. CITY WATER & POWER, 13-R4D1-1655 AND 1656 *
L.A. CITY WATER & POWER, 13-R4D1-2197
MC METAL CREATIONS, INC, 13-R6D2-2908 THROUGH 2911
MOORE BROS DRYWALL INC. DBA CONSTR SPECIALTIES, 14-R2D1-1060
AND 1061
CHOO WOO NAM DBA AR CONSTRUCTION, 13-R3D3-1752 AND 1753
NBC UNIVERSAL, 13-R4D3-1425 THROUGH 1436
OLTMANS CONSTRUCTION CO., 13-R1D3-2690
OTIS ELEVATOR COMPANY, 13-R1D1-3529

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PALS DOWNEY, 13-R3D5-2552
RANDAZZO ENTERPRISES INC., 10-R1D2-3841 THROUGH 3843
RIZO-LOPEZ FOODS, INC DBA DON FRANCISCO CHEESE, 13-R2D4-3876
RMT CONTRACTING, INC., 13-R6D7-3673
ROCHA BROTHERS FARMS, LLC., 13-R6D7-3621 AND 3622
ROCKET FARMS, 13-R3D3-2488
SANTA ROSA ENTERTAINMENT GROUP DBA METRO 4 CINEMAS, 13-R2D5-3303
SAVS ENTERPRISES, 13-R4D2-2280
SCOTT ALLEY ASSOCIATES, LLC DBA 5A5 STEAK LOUNGE, 14-R1D1-0423
SC TERMITE CONTROL, INC., 13-R3D1-1031
SEARS OUTLET STORES LLC DBA SEARS OUTLET STORE, #4618, 13-R2D1-3645
SEVEN BROTHERS, INC., 13-R4D7-3432
SHIMEK PROPERTIES LLC DBA DIVISADERO TOUCHLESS CAR, 13-R1D1-2851
SOUTH BAY CONSTRUCTION, 14-R1D2-0765
SOURCE REFRIGERATION & HVAC, INC., 13-R2D4-3462
STEEL STRUCTURES, INC., 13-R2D5-3923
STEVEN D. JESSER FARMS, 13-R2D5-2257 THROUGH 2259
STUDIO D, 14-R1D1-0937 THROUGH 0939
TAOBAO, INC. DBA GRAND AMERICAN DOOR, 13-R6D2-3756 THROUGH 3765
UNITED CARE NETWORK, LLC., 13-R4D3-2063 AND 2064
UNITED PARCEL SERVICE, 13-R4D3-0230
VALLEY PROTEIN, LLC., 13-R2D5-3218
WARNER BROS TELEVISION/SOUTHLAND, 13-R4D1-2061
WATSONVILLE GRADING & EXCAVATION, INC., 13-R1D2-3890
WS PACKAGING GROUP, INC., 14-R3D1-0114

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. 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 meeting was recessed until Tuesday, May 6 at 10 a.m.

The Closed Session was adjourned at 10:18 a.m. on Tuesday, May 6, 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 10:19 a.m.