

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on May 23, 2012
Sacramento, California**

PRESENT:

Ed Lowry, Member
Michael Wimberly, Executive Officer
Martin Fassler, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Kari Johnson, Industrial Relations Counsel III
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary

Chairman Carter Authorized Member Lowry to act as Chairperson and deputized Executive Officer Wimberly to act as a Deputy Board Member in his absence.

MINUTES OF May 9, 2012:

(Approval of minutes recording actions of previous Board meeting)

ACTION: Executive Officer Wimberly moved that the Board approve the draft minutes of the May 9, 2012 Board Meeting. Member Lowry seconded. The Board voted to approve the draft minutes of the May 9, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

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

1. STATISTICS
(Review and discuss most current Board statistics)

ACTION: No report.

2. 2012 RULEMAKING MATTER
(Discuss potential Board rulemaking changes)

ACTION: No report.

3. FUTURE BOARD MEETING DATES
(Set future meeting dates)

ACTION: The Board agreed to add a Closed Session meeting on Wednesday, June 13, 2012.

NEW BUSINESS:

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

1. ADVISORY COMMITTEE MEETINGS
(Discuss planning and preparation for meeting)

ACTION: The next meeting of the Advisory Committee is scheduled for June 1, 2012.

2. 2012/2013 BUDGET

(Review and discuss budget issues for the fiscal year)

ACTION: Executive Officer Wimberly reported that the Governor's new budget reduction plan may have some impact on the Appeals Board staff and its operating processes.

OLD BUSINESS:

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

1. 2011/2012 BUDGET

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

ACTION: Executive Officer Wimberly explained that he is currently reviewing an expenditure report received from the Department of Industrial Relations in preparation for the end of the fiscal year.

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: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters and news from the Department and Appeals Board.)

ACTION: Executive Officer Wimberly reported that the Board has selected a new Office Assistant to start on May 31. He also reported that he is currently reviewing quotes for the replacement of the West Covina phone system, and that the Board has purchased a new copier to better handle the volume in the Sacramento office.

STAFF REPORTS:

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

ACTION: Chief Counsel Mojcher reported that the Board has received new litigation items from The Herrick Corporation, Underground Construction Co., Inc. and Duinck Bros., Inc. to be discussed in the Closed Session.

Any matter not completed at this meeting may be continued to subsequent meetings.

PUBLIC COMMENT:

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

CLOUT CONSTRUCTION, 11-R4D1-1889 AND 1892

DUTKO HARDWOOD FLOORS, INC., 11-R4D1-0030 THROUGH 0034

MARK GARRETT DBA GARRETT WOODWORKING, 11-R6D2-2543 THROUGH 2547

ACTION: Executive Officer Wimberly moved that the Board approve these Decisions of Administrative Law Judges. Member Lowry seconded the motion. The Board voted to approve these Decisions of Administrative Law Judges.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

ABCO LABORATORIES, INC., 11-R2D2-0502 AND 0535

ABRASIVE BLASTING AND COATING, INC., 11-R2D2-0434

ALCO IRON AND METAL CO., 12-R1D2-0200

ALL-AMERICAN SCAFFOLD, 10-R1D5-3924 AND 3925

APPTRON, INC. DBA SMITH & LARSEN, 11-R4D2-1204 AND 1205

ASHLEY FURNITURE INDUSTRIES INC., 12-R6D2-0725

A. TEICHERT & SON INC., DBA TEICHERT READY MIX, 09-R2D1-3973
THROUGH 3976

BCI COCA COLA BOTTLING COMPANY OF LOS ANGELES, 11-R4D2-2573

BEAUMONT CHERRY VALLEY WATER DISTRICT, 12-R3D3-0129

BECHO, INC., 12-R5D1-0723

BETTENDORF ENTERPRISES DBA BETTENDORF TRUCKING, 09-R2D1-1671
AND 1672

BRISTOW GROUP DBA BRISTOW ACADEMY, INC. 11-R2D2-0545

CARAVAN TRAINING COMPANY, 12-R1D4-0771 THROUGH 0773

CBC FRAMING, 11-R4D3-2908 *

CITY OF L.A. GENERAL SERVICES, PARKING SERVICES, 12-R4D3-0101

CLYDE CONSTRUCTION INC., 11-R6D7-1830

STEVEN CORNELL, 11-R4D3-1553 AND 1554 *

CVUSD LEUZINGER HIGH, 11-R4D1-2679

DAN DRAKE ENTERPRISES LLC, 10-R6D7-3173 AND 3174

DEVINCENZI CONCRETE CONSTRUCTION, 11-R1D5-0599

EL BAJIO PACKING, INC., 11-R6D7-2489

ENDPACK PACKAGING, INC., 12-R3D6-0062 AND 0063

FREMONT BANK, 11-R1D4-1594

G&G REBAR INC., 09-R1D5-1059 AND 1060

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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GOLDEN TOUCH LANDSCAPING, INC., 11-R1D3-1489 AND 1490
GROVER GONZALES, INC., 11-R6D7-1868 AND 1869
J.A. CONTRACTING LABOR MANAGEMENT INC., 11-R6D7-2623 *
J. McLOUGHLIN ENGINEERING CO., INC., 11-R3D6-2676
JOHNSON TREE SERVICE, LLC, 10-R2D2-3097 THROUGH 3099
JOHN MOURIER CONSTRUCTION, INC., 11-R6D7-2450
JOHN T. MALLOY, INC., 11-R4D3-3160
JOSEPH J. ALBANESE, INC., 11-R1D3-0835 THROUGH 0837 *
KENNY BLEVINS LATH PLASTERING INC., 11-R6D7-2482 THROUGH 2488
K.S. INDUSTRIES, 10-R2D5-3277 AND 3278 *
KUDU INCORPORATED DBA SAHARA PACKING, 11-R3D2-2438
LANCASTER BURNS CONSTRUCTION INC., DBA LB CONSTRUCTION,
11-R6D7-2449
LA VOIE & SONS CONSTRUCTION, 10-R2D2-1355 AND 1356
MENZIES AVIATION, 11-R4D1-2180
MICHAELS/JAYDEE/COLUCCIO JOINT VENTURE, 11-R5D1-0388
MI PUEBLO SAN JOSE, INC. DBA MI PUEBLO FOOD CENTER, 10-R1D4-2888
AND 2889
THOMAS, FRANK & LOUIE MULLER DBA JOE MULLER & SONS, 11-R2D1-2496
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK), 10-R1D4-4102
NORTH AMERICAN FOAM & COMBINING CO., 11-R3D6-2897 AND 2898
OLDCASTLE GLASS, 10-R1D2-2483 *
OMNISTONE MASONRY INC., 10-R1D5-4008 AND 4009
ELIE R. OREIRO DBA E.M. OREIRO CONSTRUCTION, 11-R2D4-0440 AND 0441
PACIFIC STEEL CASTING COMPANY, 12-R1D4-0421
DONALD E. PEARA DBA DONALD E. PEARA, DDS, 12-R2D4-0941 *
JASON PEARCE DBA PEARCE CONSTRUCTION, 11-R3D5-2364 *
POWAY GARDEN RD SELF STORAGE & OFFICES, 11-R3D2-0956 THROUGH 0959
QUALITY STRUCTURES INC., 11-R3D2-1927 AND 1928
R. COOPER CONSTRUCTION, INC., 08-R2D1-3274
RDO DBA VERMEER PACIFIC, 11-R4D2-2442
CHAKRADHER REDDY (OWNER), 10-R6D7-3499 AND 3500
RND CONTRACTORS INC., 11-R6D2-1584 AND 1585
ROBERT MONDAVI ENTERPRISES, INC. DBA WOODBRIDGE WINERY,
11-R6D3-1215 THROUGH 1219 *
CARLOS RODRIGUEZ DBA TIGERS AUTO BODY, 11-R6D7-1401 AND 1402,
11-R6D7-1481
RUBEN'S GLASS SERVICE INC., 12-R6D2-0931
SAN DIEGO UNIFIED SCHOOL DISTRICT, 12-R3D2-0706
SANTA FE AGGREGATES, 10-R5D1-2953 AND 2954
SANTA FE AGGREGATES, 10-R5D1-3660
SECURE STAFF, INC., 12-R6D2-0587 THROUGH 0590
SIERRA LABOR INC., 11-R2D5-0474
SIERRA PACIFIC INDUSTRIES, 09-R2D1-1727 THROUGH 1730
SOLARCITY CORP. DBA SOLAR CITY, 11-R1D1-2557 AND 11-R1D1-2653
SONNY CARWASH LLC, 12-R2D1-0047

SPECIALTY RESTAURANTS CORP. DBA MONTEREY HILL STEAK,
11-R4D2-1167 THROUGH 1169
STANFORD UNIVERSITY, 11-R1D3-0570 *
STEEP HILL LABS, INC., 11-R1D4-1369 AND 1370 *
TARGET CORP., 11-R3D5-2503 AND 2504
TEEN CHALLENGE, 11-R2D5-1118 *
TFG MANAGEMENT HOLDCO TOLL GLOBAL FORWARDING, 12-R6D2-0459
THROUGH 0464
VALVOLINE INSTANT OIL CHANGE, 10-R3D2-1206 AND 1207 *
VORTOX AIR TECHNOLOGIES, INC., 11-R6D2-1063 THROUGH 1071 *

ACTION: Executive Officer Wimberly moved that the Board 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.

SODEXO HEALTH CARE, 11-R4D2-0200 AND 0201

ACTION: This order was inadvertently placed on the agenda as an Order of an Administrative Law Judge. The Order is an Order Of Remand and the action taken by the Board is noted under that section of the minutes.

ORDER OF REMAND:

SODEXO HEALTH CARE, 11-R4D2-0200 AND 0201

ACTION: Executive Officer Wimberly moved to approve this Order Of Remand of an Administrative Law Judge. Member Lowry seconded. The Board voted to approve this Order of Remand 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.)

NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791 AND 3792

ACTION: Executive Officer Wimberly moved that the Board vote to accept the Legal Unit's recommendation to Grant this Petitions for Reconsideration. Member Lowry seconded. The Board voted to accept the Legal Unit's recommendation to Grant this Petitions for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFTS):

FRG OIL, INC. DBA INSTANT SMOG CHECK, 11-R3D2-1056

ROSAL AUTO RECYCLERS, INC. DBA CONTINENTAL TOWING, INC., 10-R2D2-1050 THROUGH 1052

ACTION: Executive Officer Wimberly moved that the Board vote to

approve these draft Denials of Petitions for Reconsideration for signature. Member Lowry seconded. The Board voted to approve these draft Denials of Petitions for Reconsideration for signature.

WILLIAMS JANITORIAL, 12-R2D5-9047

ACTION: This item was held over for the next meeting of the Board.

MATTERS PENDING RECONSIDERATION:

1. A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
2. A-CO TEMPORARY POWER, 10-R4D1-3110 AND 11-R4D1-9206
3. ALLIED SALES & DISTRIBUTION, INC., 11-R6D2-0480
4. AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
5. AC TRANSIT, 08-R1D4-0135
6. AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
7. AGWOOD MILL & LUMBER, INC., 08-R1D5-1068
8. VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY
DBA ANTONSEN CONSTRUCTION, 06-R2D3-1272
9. ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
10. BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221
11. BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
12. BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH
2241
13. BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND
3448
14. BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
15. CA RASMUSSEN, INC., 08-R4D5-219 AND 220
16. C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
17. CENTRAL VALLEY ENGINEERING & ASPHALT, INC.
08-R2D1 5001 AND 5002

18. COFFMAN SPECIALTIES, INC., 10-R3D3-3532
19. COMMERCIAL METAL FORMING, 09-R3D1-1592
20. CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
21. CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
22. CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
23. DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
24. DELTA TRANSPORTATION, INC., 08-R2D1-4999
25. DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431
26. DESIGN BUILDERS, INC., 08-R4D4-1901
27. DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896
28. DUKE PACIFIC, INC., 08-R3D3-574
29. EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
30. EZ MIX, INC., 08-R4D3-1898
31. FDO INC. DBA GRAND AMERICAN DOORS, 10-R6D2-1215 THROUGH 1219
32. FORTUNA IRON WORKS 06-R2D3-4222
33. GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
34. HOLLINGER CONSTRUCTION INC., 11-R4D1-0891
35. HOME DEPOT, 10-R3D6-3284
36. HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
37. LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
38. LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
39. LION RAISINS, INC., 08-R2D5-2253 AND 2254

40. LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
41. MARINE TERMINALS, 08-R6D2-1920
42. McPHERSON ENTERPRISES, INC., 10-R2D5-0995
43. MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274
44. MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
45. NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494
46. ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
47. OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
48. PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
49. PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING, INC., 08-R2D1-0025 AND 0026
50. POUK & STEINLE, INC., 09-R3D3-0491
51. ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
52. JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
53. SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196
54. SDUSD – PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297
55. SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
56. SHERWOOD MECHANICAL, INC., 08-R3D2-4690 THROUGH 4693
57. SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
58. SMUD, 08-R2D1-4887 THROUGH 4889
59. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414 THROUGH 3418
60. STAFFCHEX, 10-R4D3-2456 THROUGH 2458
61. SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850

62. A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
63. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION,
05-R2D4-2650 AND 2651
64. A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459
AND 0460
65. THAYER CONSTRUCTION, INC., 09-R3D3-4206 THROUGH 4208
66. VIC ROSS'S MASONRY, INC., 11-R3D2-0708 AND 0709

LEGISLATION:

ACTION: Executive Officer Wimberly provided an update on AB2346.

PENDING LITIGATION

SUPERIOR COURT:

1. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB)
(00-440)
2. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
3. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
4. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
5. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
6. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-
R5D1-3611)
7. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
8. SMUD, 34-2010-80000723 (08-R2D1-4887)
9. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
10. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
11. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-
0188~0191)

12. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010
(08-R2D1-3273)
13. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459
THROUGH 2461)
14. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
15. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
16. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
17. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)

COURT OF APPEAL

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)
ACTION: Chief Counsel Mojcher provided an update on this matter.

PERSONNEL:

ACTION: No report.

The Closed Session adjourned at 11:05 a.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 11:05 a.m.