

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on September 3, 2014
Sacramento, California

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Kari Johnson, Executive Officer
Jeff Mojcher, Chief Counsel
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Lee Berlin, Executive Secretary
Maria Rios, Legal Secretary
Marti Fisher, California Chamber of Commerce

MINUTES OF AUGUST 20, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the August 20, 2014 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the August 20, 2014 Board meeting as amended.

ADMINISTRATIVE MATTERS:

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

EXPEDITED PROCEEDINGS:

(Report on general administration of expedited proceedings)

ACTION: The Board reviewed the Expedited Proceedings report for August, which shows a 12-month rolling breakdown of the number of Expedited Proceedings and the timeline as cases proceed through the process.

The Board also reviewed a “narrative” report of Expedited Proceedings, which outlines abatement timelines and general industry codes noted among the Expedited cases for the fiscal year 2013-2014.

According to the reports, 45% of the Expedited cases were abated within the first 30 days, 15% of the Expedited cases abated between 31-60 days, 20% abated between 61-90 days, 16% abated between 91-120 days and 4% abated after 120 days.

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NEW BUSINESS:

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

STAKEHOLDER MEETING;

(Planning for meeting on September 18, 2014)

ACTION: This week the Board will post and mail notices of a Stakeholder Meeting on September 18, 2014 to explain a new Pilot Project for Mandatory Prehearing Conferences – In Person. The Board discussed draft materials to be included with the meeting Notice and Agenda, and made suggestions to the staff for items that should be included in the materials.

The Board also discussed the duration of the pilot project, which will begin in November. PALJs Fassler and Clemons suggested three week-long testing periods followed by analysis could provide measurable outcome in April or May of 2015.

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 one bill the Board has been discussing, AB 1634 , is now on the Governor's desk.

CHAIRPERSON'S REPORT:

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)

OASIS PROJECT:

ACTION: The Feasibility Study Report for the purchase of a new calendaring, case management and document handling software system for the Board is nearly ready for review by the DIR Office of Information Services. The report was authored by OSHAB personnel in conjunction with the project vendor Rene Taylor Consulting and the OIS team.

Presiding Administrative Law Judge Clemons reported that she had visited the Orange County Superior Court, which has a new calendaring and document management system, and she was impressed by the functionality.

STAFF REPORTS:

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

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 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:

ROPLAST INDUSTRIES, INC., 12-R2D3-3709

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:

A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 11-R5D1-1895 (ER)

A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 11-R5D1-1895 (DOSH)

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

840 THE STRAND, LLC, 13-R3D3-3353 AND 3354

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration

MF MILLER COATINGS, INC., 12-R2D1-3488 AND 3489

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

ORDERS DISMISSING APPEAL:

ADVANCED RIGGERS AND MILLWRIGHTS, 13-R3D1-2057
DOYLE McNATT DBA DOYLE'S BODYWORKS & PAINT SPECIAL, 13-R6D5-2096
PACHECO BROTHERS, INC., 14-R4D7-0353 AND 0354
PROVIDIAN STAFFING CORPORATION, 13-R4D4-1863 AND 1864
SELECT STAFFING, 13-R3D1-3647

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

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

ORDER DENYING LEAVE TO FILE LATE APPEAL:

BORRMANN METAL CENTER, 14-R4D3-9109
CLASSIC BATH DESIGNS INC., 14-R6D2-9104
DA YUH DEVELOPMENT, INC., 14-R6D7-9106
LANZA VINEYARDS, INC. DBA WOODEN VALLEY WINERY, 14-R2D2-9103
BENJAMIN KIMMICH DBA BENJAMIN KIMMICH CONSTRUCTION, 14-R1D4-9107
MERIT FRAMING, 14-R6D2-9108

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

CAL PAC SHEET METAL, INC., 13-R3D1-0547

ACTION: The Board discussed this matter.

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.)

B & B ROOF PREPARATION, INC., 12-R3D6-2946
BELLINGHAM MARINE INDUSTRIES, 12-R2D2-3144 THROUGH 3146
CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
DOUBLE S. FASHION, INC., 14-R6D5-1751 AND 1752
FEDEX GROUND, 13-R3D1-1220

ACTION: The Board discussed this matter

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HARRIS CONSTRUCTION, 03-R2D5-3914

HHS CONSTRUCTION, 12-R3D2-0492-0497

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

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.

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

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.

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

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

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

MORROW MEADOWS CORP., 09-R3D3-2295

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.

NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791

NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186

ACTION: The Board discussed this matter.

O.C. JONES AND SONS, INC. 13-R2D2-0310

REPUBLIC FURNITURE MFG., INC., 14-R6D2-9083

ROEBBELEN CONTRACTING, INC., 12-R2D2-3248

ROSENDIN ELECTRIC, INC., 12-R2D1-3028

SIERRA FOREST PRODUCTS, 09-R2D5-3979

SONIC DRIVE-IN, 12-R2D5-2734

TREASURE ISLAND MEDIA, INC., 10-R6D1-1093 THROUGH 1095

VICTORY SCREEN PRINTING 12-R3D1-3673 & 3674

WC STAFFING INC., DBA WEST COAST STAFFING, 13-R6D2-3522 AND 3523

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.)

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1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-8000820 (03-R1D1-5170)
ACTION: The Board discussed this matter.
3. MASCON, INC., 34-2011-80000819 (08-R2D1-4278 AND 4279)
ACTION: The Board discussed this matter.
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965
(10-0188~0191)
ACTION: The Board discussed this matter.
5. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
6. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
7. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
8. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
9. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
10. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219
AND 0220)
11. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
12. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258
(05-R2D4-2650 AND 2651)
13. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
14. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
15. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
16. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
17. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
18. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-
R4D5-0459 & 0460)
19. HOME DEPOT USA, INC., BS141301 (10-3284)
20. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)

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21. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
22. AC TRANSIT, RG13687314 (08-R1D4-0135)
23. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
24. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)
ACTION: The Board discussed this matter.
25. CA PRISON INDUSTRY AUTHORITY, 13 C 0327 (08-R2D5-3426 ~ 3429)
26. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
27. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749
(2008-R2D1-3414 THROUGH 3418)
28. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
29. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
30. BAY AREA RAPID TRANSIT DISTRICT, RG14715710 (10-R1D1-3056 THROUGH
3058) (DOSH)
31. LAND O' LAKES PURINA FEED, LLC, RG14715717 (08-R2D4-1843 AND 1844)
(DOSH)
32. BAY AREA RAPID TRANSIT DISTRICT, RG14715720 (10-R1D1-3056 THROUGH
3058) (3rd Party)
33. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817
(09-R6D2-2238 ~ 2241)
34. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
35. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
36. BHC FREMONT HOSPITAL INC, RG13731145 (13-R1D2-0204)
37. IRWIN INDUSTRIES, BS14-9634 (12-R4D3-3276 & 3277)
38. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303
THROUGH 1310)
39. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360
THROUGH 3362)

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)
3. SHERWOOD MECHANICAL, INC., D065322, 37-2012-00101466 (08-R3D2-4690 ~ 4693)
4. ORANGE COUNTY FIRE AUTHORITY, G050220, 30-2013-00628178 (CONSOLIDATED)
5. AC TRANSIT, RG13-687314 (08-R1D4-0135)
6. THYSSENKRUPP ELEVATOR CORPORATION, 34-2013-80001456 (11-R2D1-2217 ~ 2219)

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 BAR AG ENTERPRISES / BARCELLOS, ET AL, 14-R2D4-0531
ANCHOR FENCE COMPANY, INC., 14-R6D1-0510 THROUGH 0512
ARAMARK FACILITY SERVICE, 14-R3D5-2213
A V DECKING, INC. DBA A V METAL DECKING, 14-R3D5-0655
BASAW MANUFACTURING INC., 13-R6D2-3938 THROUGH 3941
B & B ROOF PREPARATION, INC., 14-R3D1-0178
BEST AUTO WHOLESALE INC., 14-R3D2-0035
CALIBER INTERIORS, 14-R3D3-0129
HUMBERTO A CASTANEDA DBA CASTANEDA PRODUCE, 14-R6D7-0495
THROUGH 0499
CA TRANSPORTATION, 13-R2D1-0742
CHOICE PAINTING, 13-R4D1-2266 THROUGH 2269
CITY OF HUNTINGTON BEACH FIRE DEPT., 14-R3D1-0111
COASTAL EMPLOYMENT, INC., 13-R4D4-1722 AND 1723
COMPLETELY FRESH FOODS INC., 13-R4D4-1722 AND 1723 & 13-R4D4-1724
AND 1725
CORNERSTONE PACKING & COOLING, 14-R2D5-0084 AND 14-R2D5-1561
C R BRIGGS CORPORATION, 13-R5D3-2032
CREATIVE PARTNERS WEST INC., 14-R4D4-1005 AND 1006
DARRYL WILSON DESIGN, INC., 14-R4D1-0063 AND 0064

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DASHER LAWLESS, INC., 13-R4D1-2166 THROUGH 2169
DEL TACO #172, 14-R3D1-0085
ECOMMERCE INNOVATIONS, 14-R3D5-1579 AND 1580 *
EXACT STAFF, INC., 13-R4D3-3378 & 14-R4D3-0605 THROUGH 0608
EXECUTIVE OFFICE CONCEPTS, INC (EOC), 14-R6D2-0434 THROUGH 0440
FASHION CLICK, INC., 13-R6D5-3962 AND 3963 *
FTDI WEST INC., 14-R6D2-0052
FVO SOLUTIONS INC., 14-R4D1-0039
G & C/ APS JV, 14-R2D1-1058 AND 1059
GAS & SHOP, 14-R1D1-0980 *
GOODFELLOW TOP GRADE CONSTRUCTION, LLC, 14-R2D2-0559
GOLDEN EAGLE AUTOMOTIVE, INC., 14-R6D7-1511
GREGG DRILLING & TESTING, INC., 14-R4D1-0391
GROCERY OUTLET, INC., 14-R1D3-0202 THROUGH 0207
HAL HAYS CONSTRUCTION, INC., 14-R4D4-1881 AND 1882
HALIBURTON INTERNATIONAL FOODS, INC., 14-R6D2-1296 THROUGH 1304
HARVEST TIME PRODUCE, 14-R6D2-0493
HORIZON PERSONNEL SERVICES, 14-R3D5-0816 AND 0817
JAIN IRRIGATION, INC., 14-R2D5-2192 AND 2193
JOHN STANLEY PAVING, 14-R3D2-0180
LAUSD CABRILLO ELEMENTARY SCHOOL, 14-R3D5-1694
LEADING INDUSTRY, INC., 13-R4D3-1340 & 13-R4D3-3448 & 14-R4D3-0735
THROUGH 0738 *
LEGNON CONSTRUCTION, INC., DBA ADVANCED POOLS, 14-R6D7-0886
McCARTHY BUILDING COMPANY, INC., 14-R3D5-0728
JOHN McDANIEL DBA DIRT MOVERS, 14-R2D4-1090 THROUGH 1092
MDB MANAGEMENT, INC., 13-R4D1-3072
MILLCREEK CONSTRUCTION GROUP INC., 14-R2D4-1285
MING INTERNATIONAL DBA CARPET SOLUTIONS INC, 14-R3D5-1668
THROUGH 1670
MITSUBISHI ELECTRIC US, INC., 14-R4D1-0145
MONICO ALLOYS, INC., 14-R3D5-1695 AND 1696
MOUNTAIN F ENTERPRISES INC., 13-R2D1-3511
MPM BUILDING SERVICES, INC., 13-R4D1-2339
NEIL E. SKINNER CO., 13-R4D1-2344
NEW CENTRUY BUILDERS & DEVELOPERS INC., DBA NEW CENTURY
BUILDERS, 14-R4D1-1185
OCEAN BREEZE INTERNATIONAL, 14-R4D7-2310
PACIFIC GAS & ELECTRIC CO, 13-R5D1-3589
PACIFIC METAL FAB, INC., 14-R2D5-1103
PATER DIGNITAS, INC., DBA CARMEL HILLS CARE CENTER,
14-R6D1-1762 THROUGH 1769
PETROCHEM, 14-R6D4-0494
PHILLIPS 66 COMPANY, 13-R3D5-3337
PIERRE BUILDERS, INC., 13-R4D1-0522 AND 0523
PITMAN FAMILY FARMS, 14-R2D5-2124 THROUGH 2126

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PRIMUS BUILDERS, INC., 14-R3D3-2282 THROUGH 2285
QUALITY NATURALLY FOODS, INC., 13-R4D4-2578 AND 2579
NORMAN ROLFE DBA ROLFE CONSTRUCTION, 14-R2D4-1286
THROUGH 1288
ROOFING STANDARDS, INC., 14-R3D3-2197
ROS ELECTRICAL SUPPLY AND EQUIPMENT, LLC, 14-R3D2-0668 THROUGH 0671
ROYA AND ISAAC MUSIGHI, 12-R4D1-3437 THROUGH 3440
SAFEWAY INC., 13-R2D4-3512 AND 3513
SHORELINE BUILDERS, INC., 13-R1D3-3639 THROUGH 3641
SINCERE ORIENT COMMERCIAL CORPORATION, 13-R4D4-1766
THROUGH 1769
SINCLAIR SYSTEMS INTERNATIONAL, LLC., 13-R2D5-2471
SKYWEST AIRLINES, INC., 14-R4D1-0065
SOUTHCOAST ACOUSTICAL, 13-R4D1-3273 AND 14-R4D1-2169 *
SUNTREK INDUSTRIES, INC., 14-R6D2-0526
THE WHITING-TURNER CONTRACTING COMPANY, 13-R4D1-1335
AND 1336
TUTOR-SALIBA CORPORATION, 13-R5D1-3181
GREG UICHANO DBA WORLDWIDE ALTERNATOR & STARTER OU,
14-R6D7-0502 THROUGH 0504
UNITED RIGGERS & ERECTORS, INC., 13-R4D1-0625 THROUGH 0627
UNIVERSAL BUILDING MAINTENANCE, LLC., 14-R1D2-0586
UNIVERSAL STUDIOS HOLLYWOOD, 14-R4D1-0348 AND 0349
VALLEY TOXICOLOGY SERVICE, INC., 14-R2D1-2019
VISION ENVELOPE & PRINTING CO., INC. 14-R3D5-0278 THROUGH 0280
WILLIAMS SONOMA, INC., 13-R4D4-2124
WILCOX CONSTRUCTION, 14-R6D7-0957 THROUGH 0960
W.L. BUTLER CONSTRUCTION INC., 14-R2D5-0720
WESTERN STATES ROOF SYSTEMS, INC., 13-R4D1-1337 THROUGH 1339
WILSON WAY TIRE CO., 14-R6D1-1149

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: The Board discussed personnel matters.

The Closed Session was adjourned at 1:49 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. The meeting was adjourned at 1:50 p.m.