

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on October 1, 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
Judy Whitall-Lee, Staff Services Manager
Lee Berlin, Executive Secretary

MINUTES OF SEPTEMBER 17, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the September 17, 2014 Board meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the September 17, 2014 Board meeting.

ADMINISTRATIVE MATTERS:

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

MANDATORY PRE-HEARING CONFERENCE (MPHC) PILOT PROJECT UPDATE:

ACTION: The Board discussed a change to the MPHC pilot project as a result of the stakeholder meeting on September 18. Eliminating the pre-conference statement from the requirements for the MPHC may lessen the burden on stakeholders. Because of this change, new Notices of Mandatory Settlement Conference were sent out for 41 cases scheduled for conferences in November. The Board requested that a copy of the “new” notice should be sent separately to stakeholders for their information.

EO Johnson reported that the participating judges will use a more detailed outcome form to report results of each case in the project. The Board also discussed ways to solicit feedback from participants. In particular, the Board is interested in how well-prepared the parties are -- and how well-prepared they believe they are--when they come to the Mandatory Settlement Conference. Several methods of polling the participants were suggested.

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NEW BUSINESS:

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

ACTION: EO Johnson reported that she is assisting DOSH with some new language pertaining to the appeal process for their citation package (the letter and instructions that are attached to citations).

OLD BUSINESS:

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

IRAC DECISION MODEL PILOT PROJECT:

ACTION: The Board agreed that the Decision model tested during the pilot project is better than the one currently in use, and should be approved and implemented by the Chair as part of his administrative position.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: Chair Carter reported that AB 1634 has been signed by the Governor and will become effective January 1, 2015. Because implementation of the new law will require regulation changes, the Board plans to hold a stakeholder meeting on November 6.

CHAIRPERSON'S REPORT:

(Chair's report of activities and issues affecting the Appeals Board.)

ACTION: Chair Carter, ALJ Neil Robinson and EO Johnson met with the DIR OASIS team last week to discuss funding and further action required for the OASIS project. EO Johnson explained that the project will receive extensive review from state control agencies as it moves into the procurement phase.

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)

ACTION: No report.

STAFF REPORTS:

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

ACTION: No report.

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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:

LANGER FARMS, LLC, 13-R4D7-0231 THROUGH 0233

ACTION: 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.

MICROWAVE ANTENNA SPECIALTIES, A NEVADA CORPORATION,
12-R1D4-3132 THROUGH 3138

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:

C. R. ENGLAND, INC., 14-R3D3-0649

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):

ADVANCED RIGGERS & MILL WRIGHTS, LLC, 13-R3D1-2057

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.

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

ACTION: Member Lowry moved that the Board vote to approve this draft

Denial of Petition for Reconsideration for signature as amended. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature as amended.

ORDERS DISMISSING APPEAL:

FELIX HARO CONSTRUCTION INC., 13-R2D4-2885

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:

ORDER DENYING LEAVE TO FILE LATE APPEAL:

COLORADO QUARTZ GOLD CORPORATION, 14-R5D1-9132

LEVEL 3 CONSTRUCTION, INC., 14-R1D5-9131

NORTH AMERICAN SPECIALTY PRODUCT, LLC., 14-R2D4-9133

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

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

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

B & B ROOF PREPARATION, INC., 12-R3D6-2946

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.

BELLINGHAM MARINE INDUSTRIES, 12-R2D2-3144 THROUGH 3146

ACTION: The Board discussed this matter.

CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
ACTION: The Board discussed this matter.

DOUBLE S. FASHION, INC., 14-R6D5-1751 AND 1752
ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

HARRIS CONSTRUCTION, 03-R2D5-3914
ACTION: The Board discussed this matter.

HHS CONSTRUCTION, 12-R3D2-0492-0497
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
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
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

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.

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.)

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-8000820 (03-R1D1-5170)

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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)
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)
21. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
22. AC TRANSIT, RG13687314 (08-R1D4-0135)

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23. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
24. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)
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)

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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, A142799, RG13-687314 (08-R1D4-0135)
6. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 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.)

AMERICAN SECURITY PRODUCTS COMPANY, 14-R3D3-1105 AND 1106
ANITA'S MEXICAN FOODS CORP., 14-R3E3-2576 THROUGH 2578
ARCO NATIONAL CONSTRUCTION COMPANY, INC., 14-R3D5-0665
THROUGH 0667
SUKHJINDER SINGH BRAR DBA TRAILS END, 14-R6D7-2009
BUILDING MATERIALS & CONSTRUCTION SERVICES INC DBA BMC,
14-R2D1-2536
CAL LOWBED, 14-R4D7-1878
CENTRAL VALLEY CONCRETE, INC., DBA CENT VALLEY TRUCKING,
13-R2D4-3825
CHMAIT DBA THE OLIVE'S BRANCH, 14-R6D5-1686 AND 1687
CKD INDUSTRIES INC., 14-R6D2-0481 THROUGH 0486
COORSTEK, INC., 14-R4D3-2091 THROUGH 2093
CORTEZ FURNITURE MANUFACTURING, 14-R6R2-0198 THOROUGH 0201
CYR INTERNATIONAL INC., DBA GREEN CHOPSTICKS, 13-R6D2-3433
THROUGH 3437
DATA SPECIALTIES, INC., 13-R2D3-3081
DAVIS DEVELOPMENT COMPANY, INC., 13-R1D4-3504
DEVCO SANDBLASTING AND INDUSTRIAL COATING, INC., 13-R3D3-2162
AND 2163
DRILL TECH DRILLING & SHORING INC., 14-R5D1-1618
DUTRA CONSTRUCTION CO INC., 14-R5D1-2097 AND 2098
EAST BAY MUNICIPAL UTILITY DISTRICT, 14-R1D4-1345
EAST & WEST GOURMET AFGHAN FOOD, INC., DBA BOLANI, DBA EAST
& WEST GOURMET FOOD., 14-R6D1-0400 *

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BRANDON EATON DBA CASCADE POOLS & SPAS, 14-R6D7-1331
STEVEN JOHN EBERSON DBA PRECISION MUFFLER & WELDING,
14-R6D5-0028
ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC., 13-R4D7-1606
AND 1607 *
EXXON MOBIL, 14-R6D4-1364
FIESTA AUTO INSURANCE CENTER, 14-R2D5-0162 AND 0163
FIESTA AUTO INSURANCE CENTER, 14-R2D5-0164 AND 0165
FOLSOM FIRE DEPARTMENT – STATION 35, 13-R2D1-3663
GARZA, INC., 13-R6D5-3590
J. GINGER MASONRY, LP., 13-R3D3-2980
GOLDEN STATE ELEVATORS SERVICE INC., 13-R3D5-0461 AND 0462
GOLDEN STATE FOODS CORP., 13-R4D4-1949 AND 1950
GOLDEN STATE WATER COMPANY, 14-R4D4-1027
GRANITE CONSTRUCTION COMPANY, 13-R3D3-3143
HANSON AGGREGATES PACIFIC SOUTHWEST INC., 14-R5D2-1071
HUTCH HEATING & AIR INC., 13-R6D7-2011
JEFFREY COURT, INC., 10-R3D3-1953 THROUGH 1956
JOHN MADONNA CONSTRUCTION CO INC., 14-R4D3-1977
JAMES A. KEENAN DBA JAMES A. KEENAN CONSTRUCTION, 14-R1D1-0859
LABOR READY SOUTHWEST, INC., 13-R2D4-3964
LAND O LAKES DBA PURINA ANIMAL NUTRITION LLC., 14-R2D4-1451
LIQUI-BOX CORPORATION, 14-R2D1-2419 THROUGH 2421
LONG BEACH CONVENTION ENTERTAINMENT CENTER/ SMG,
13-R3D5-0971 AND 0972
MASONITE INTERNATIONAL CORPORATION, 14-R2D4-0104
MAT HOLDINGS INC. DBA MIDWEST AIR TECHNOLOGIES, 14-R4D4-0392
AND 0393
MCM CONSTRUCTION, INC. 13-R2D1-3916 THROUGH 3918
MERCURY PLASTICS, INC., 13-R4D4-1443 THROUGH 1446
DEANNA MIRANDA DBA PASO ROBLES COLLISION CENTER, 14-R6D7-1280
MODESTO CITY SCHOOLS TRANSPORTATION DEPT, 14-R2D4-0472
O.M. CONTRACTING, INC., 13-R6D5-3961
ON TIME STAFFING, LLC., 13-R3D3-3145 AND 3146
VICTOR OSORIA dba VEVOA ROOFING SYSTEMS, 14-R1D4-1244
PCTC CABINETRY, INC., 13-R3D1-3254 AND 3255
PACIFIC PROVIDENCE CONSTRUCTION, INC., 14-R6D5-2524
PARKER PERSONNEL, INC., 14-R3D5-0319
PET PARTNERS INC. DBA BARNEY'S PETS AND SUPPLIES 13-R4D4-3175
AND 3176
PETERSEN-DEAN INC. DBA PETERSENDEAN, 13-R1D3-1502 THOROUGH 1505
JESUS RAMOS DBA 4 LEAF LABOR CONTRACTOR, 13-R2D1-3250
RHYS VENEYARDS LLC., 13-R6D1-3108 THROUGH 3111
MARK J RISKEY CONSTRUCTIONS & DESIGN, 14-R2D4-0390
EMILE RUE DBA JAPANESE MOTORS, 14-R6D7-1533
SACRAMENTO BAKING COMPANY, INC., 14-R6D7-0443 AND 0445

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SAFEWAY FOOD AND DRUG, 14-R2D4-0985
SAFEWAY SERVICES LLC., 14-R1D2-0835
SAN BENITO SUPPLY, 14-R5D1-2514
SAN FRANCISCO SCAFFOLDING CO., INC., 14-R2D2-1570
SAN MIGUEL PRODUCE INC., 13-R4D3-3740 THROUGH 3742
S C ANDERSON, INC., 14-R6D7-2465
SEE'S CANDY SHOPS, INC., 13-R6D2-1076 THROUGH 1085
SEPULVEDA CONSTRUCTION, 13-R4D4-3239
SIMONTON BUILDING PRODUCTS INC AKA SIMONTON WINDOWS,
12-R2D2-3249 AND 3450 *
SMITH PACKING, INC., 13-R4D3-0898 AND 0899
SO CAL DYE HOUSE, INC., 14-R6D5-0194 THROUGH 0196
SOLARBOS, INC., 14-R6D1-1295
SOLARIS PAPER, INC., 13-R4D4-3055 *
SOURCE LOGISTICS LOS ANGELES LLC., 14-R4D4-1007
STONELEDGE FURNITURE LLC, DBA ASHLEY FURNITURE HOMESTORE,
14-R3D3-2713
TECHNI-CAST CORPORATION, 14-R6D2-1083 AND 1084
TITAN STEEL CONSTRUCTION, INC., 14-R4D7-0539 THROUGH 0542
TORTUGA PROPERTIES LLC DBA LINCOLN GARDEN APTS, 14-R2D4-1450
TREE ISLAND WIRE (USA), INC., 13-R4D4-3325 *
TRITON FOODS, 14-R4D4-0976
UNITED BARK PRODUCTS INC., 14-R2D3-3252
VENTURA REGIONAL SANITATION DISTRICT, 13-R4D3-2890
VIKING CONSTRUCTION, 12-R2D3-2417
VILLAGE NURSERIES WHOLESALE, LLC 14-R3D3-2622 AND 2623
WEST BEACH MAINTENANCE, 14-R3D5-1333 THROUGH 1336 *
WORLD ASIA LOGISTICS, INC., 14-R6D1-0398 AND 0399
YAEGAKI CORPORATION OF USA, 13-R4D1-2140 THROUGH 2146

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 Closed Session was adjourned at 12:03 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 12:04 p.m.