

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on October 15, 2014
Sacramento, California

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Kari Johnson, Executive Officer
Jeff Mojcher, Chief Counsel
Neil Robinson, Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Judy Whitall-Lee, Staff Services Manager
Theresa McKeever, Staff Services Analyst
Lee Berlin, Executive Secretary
Marti Fisher, California Chamber of Commerce

MINUTES OF OCTOBER 1, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the October 1, 2014 Board meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the October 1, 2014 Board meeting.

ADMINISTRATIVE MATTERS:

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

BOARD CALENDAR 2015:

(Review proposed calendar dates)

ACTION: The Board reviewed suggested meeting dates for 2015. Meetings are scheduled for the first and third Wednesdays of each month.

APPEALS VOLUME REPORT:

(Appeals volume statistics for prior month and year to date)

ACTION: The Board reviewed the appeal volume for the calendar year to date. A new report format allows the Board to view appeal volume for the previous year. While the volume report has always concentrated on the number of docketed and disposed appeals, the new format also shows the number of cases received and disposed.

HEARING CALENDAR REPORT:

(Review and discuss statistical information)

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ACTION: The Board reviewed a new format for the hearing calendar. Staff Services Analyst Theresa McKeever simplified the report by putting hearings statistics on one page, and a chart of hearing locations on another page. She also created a sample chart showing the timelines and disposition of the seven cases brought to hearing in September.

NEW BUSINESS:

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

STAKEHOLDER MEETING:

(Planning for stakeholder meeting to be held on November 6)

ACTION: In order to be compliant with the recently-signed AB1634, the Board must amend its regulations through the official rulemaking process. The process requires that stakeholders be involved as the new regulations are formulated, so the Board has scheduled a stakeholder meeting on November 6, 2014. The Board reviewed a draft of a new proposed Section 362 regarding the stay of abatement period and abatement changes. The draft will be presented for stakeholder review at the meeting.

In addition, the Board is in the process of procuring a new document handling, case management and calendaring computer system. That system may require changes to the way the Board completes its business. ALJ Robinson, who serves as the Board's business lead for the OASIS project, discussed possible rule changes that may be needed to accommodate such new processes as filing appeals electronically, enabling electronic signatures, and service of documents via email, requiring email addresses to be captured the time the appeal is filed. These issues will also be discussed at the stakeholder meeting on November 6.

OLD BUSINESS:

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

MANDATORY SETTLEMENT CONFERENCE PILOT PROJECT:

ACTION: The Board sent stakeholders a new draft of the Mandatory Settlement Conference Notice, and an amendment to the Notice correcting a grammatical error. 41 cases were selected for the pilot project, which will be completed in November. Executive Officer Johnson reported that the Board can expect to hear preliminary results of the project in early December.

LEGISLATION:

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

ACTION: No report

CHAIRPERSON'S REPORT:

(Chair's report of 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)

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.

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:

PETITIONS FOR RECONSIDERATION:

BENJAMIN KIMMICH DBA KIMMICH CONSTRUCTION, 14-R1D4-9107

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

CLASSIC BATH DESIGNS, INC., 14-R6D2-9104

ACTION: Member Lowry moved that the Board vote to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to grant this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

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

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:

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

ORDER DENYING LEAVE TO FILE LATE APPEAL:

CALIFORNIA CONCRETE PUMPING, INC. DBA ASSOCIATED CONCRETE PUMPING, 14-R2D1-9105

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

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)
BELLINGHAM MARINE INDUSTRIES, 12-R2D2-3144 THROUGH 3146

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.

CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186

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.

HARRIS CONSTRUCTION, 03-R2D5-3914

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HHS CONSTRUCTION, 12-R3D2-0492-0497

ACTION: The Board discussed this matter

LANGER FARMS, LLC, 13-R4D7-231 THROUGH 0233

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

ACTION: The Board discussed this matter

NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791

ACTION: The Board discussed this matter

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

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.

ROEBBELN CONTRACTING, INC., 12-R2D2-3248

ROSENDIN ELECTRIC, INC., 12-R2D1-3028

ACTION: The Board discussed this matter

SIERRA FOREST PRODUCTS, 09-R2D5-3979

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

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.

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)

3. MASCON, INC., 34-2011-80000819 (08-R2D1-4278 AND 4279)

ACTION: Chief Counsel Mojcher reported that the Board prevailed in this matter.

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4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)

ACTION: The Chief Counsel informed the Board that OSHAB also prevailed in 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)
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)

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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)
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.)

ACTION: Under the provisions of California Government Code Section 11125.3(2), the Board became aware of items omitted from the Agenda posted on October 3, 2014, due to misdirection of email as a result of an improper technology repair action. This was subsequent to the agenda being timely posted. The Appeals Board amended its agenda on October 7, 2014 for the October 15, 2015 meeting under the provisions of 121125.3(b) by adding items to the Agenda as shown below in the section headed "Added to Agenda By Amendment:"

ALL AMERICAN FRAME & BEDDING CORP., 14-R6D2-1402 THROUGH 1406
ALLIANCE ROOFING CO., 14-R2D2-1756
AMPCO SYSTEM PARKING DBA ABM, 13-R3D1-3826 *
A & M VICTORIAN DECORATIONS INC., 13-R6D2-2637 THROUGH 2641
BARNARD IMPREGILO HEALY JV, 13-R5D1-3867
BARRETT BUSINESS SERVICES, INC. (BBSI), 14-R3D3-2538
BELFOR USA GROUP INC. DBA BELFOR PROPERTY RESTORATION,
14-R1D4-2170
BLAKE ROOFING, INC., 14-R3D3-2597
BORDEN RANCHES, LLC., 14-R3D2-2061 THROUGH 2063
BRAD STONER PAINTING, INC., 14-R3D2-2899 THROUGH 2901
BRYTE BEND WATER TREATMENT PLANT – CITY OF W. SACRAMENTO,
14-R6D3-0459 THROUGH 0461
CALIFORNIA SCREW PRODUCTS, 14-R6D2-1742 THROUGH 1744
CITI STAFFING, LLC, 14-R6D2-2001
CHANGE OF SCENERY, INC., 12-R4D3-0792 THROUGH 0794
CLOSETMAID, INC., 14-R6D2-1363
CRI SOCIAL, INC., 14-R3D1-0986

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DE LA MARE ENGINEERING, INC., 14-R6D4-2486 AND 2487
DEVELOPMENT CONTRACTOR INC., 14-R3D2-1584
DICK FARRELL INDUSTRIES INC., DBA DF INDUSTRIES, 14-R6D2-1325
THROUGH 1328
DREES WOOD PRODUCTS INC., 14-R6D2-2099 THROUGH 2101
DUNCAN FAMILY FARMS, LLC., 13-R4D7-3611 THROUGH 3613
EPPINK OF CALIFORNIA, INC., 14-R6D2-2343 AND 2344
FLOWLINE CONTRACTORS INC., 13-R2D1-3316
FLOWSERVE CORPORATION, 14-R4D1-2177
GARDENER TRUCKING, INC., 14-R3D1-0177 *
GOLDEN STATE FIRE PROTECTION, INC., 13-R3D3-3305
JADE RANGE, LLC., 13-R3D1-3464 THROUGH 3466
JENSEN MEAT COMPANY, 14-2043 THROUGH 2046
JL FURNISHINGS LLC., 14-R3D5-2089 AND 2090
J L STUCCO, 14-R3D2-0966 AND 0967
KAY DIX INC., 14-R2D1-0470 AND 0471
MARUCHAN, INC., 13-R3D1-3334
MARY'S GONE CRACKERS, 13-R2D1-2734
MCM CONSTRUCTION, INC., 13-R2D1-1376 THROUGH 1378
MERCY HOUSING INC – BEVERLY TERRACE APARTMENTS, 14-R2D1-1382
NEV-CAL CONSTRUCTION, 14-R3D5-2147
OCEAN TERMINAL SERVICES, INC., 14-R3D5-2176
ORANGE COUNTY FIRE AUTHORITY RISK MANAGEMENT DEPARTMENT,
14-R3D1-2423
OR EXPRESS LOGISTICS, 14-R2D5-1578
PACIFIC WIRE PRODUCTS, INC., 13-R4D3-1660 AND 1661
PARAMOUNT PICTURES, 14-R4D1-2654 AND 2655
PAR ELECTRICAL CONTRACTORS, INC., 13-R3D3-1585
PLANTATION, 14-R6D2-2199 THROUGH 2205 *
PULMUONE FOODS USA, INC., 14-R3D1-2128
QUAD GRAPHICS, INC., 14-R3D3-2114 AND 2115
RCA INVESTMENTS INC., DBA LONG BEACH BMW MOTORCYCLES,
14-R3D5-2145 AND 2146
REALM CATALYST, INC., 12-R4D3-0660 THROUGH 0668
RIVIERA BRONZE, 14-R6D2-1275
R & M ZAMORA CORPORATION DBA ALL SIZE FOAM & FABRIC,
14-R4D1-0875 THROUGH 0878 *
SANTA FE RUBBER PRODUCTS, 14-R6D2-2445 THROUGH 2448
TAOBAO INC., DBA GRAND AMERICAN DOORS, 13-R6D2-3685 *
TIME WARNER CABLE, INC., 13-R4D1-2026
THE FILTER FACTORY, 14-R6D2-2074 THROUGH 2076
ADAM TOMLINSON, 14-R3D1-0864 AND 0865 *
THUY DIEM TRAN DBA SIMPLY MAID HOME, 14-R1D5-1549
TRISTAR PLASTICS AND MOLDING, INC., 13-R3D1-2542 AND 2543
TSA STORES, INC., DBA SPORTS AUTHORITY, 14-R3D3-2555 THROUGH 2557
UNITED AIRLINES, INC., 14-R4D1-2287

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UNIVERSAL ALLOY CORPORATION, 13-R3D1-2631
VISITING NURSE ASSOCIATION OF INLAND COUNTIES DBA VNA CALIFORNIA,
14-R3D3-1422
WALTER N. COFFMAN, INC., 13-R3D2-3651
STEVE WINKLER DBA WINKLER FAMILY FARMS, 14-R2D1-0769 THROUGH 0771
YOUNG'S ROOFING, INC., 14-R1D1-1546 THROUGH 1548

ADDED TO AGENDA BY AMENDMENT:

CALIFORNIA NEWSPAPERS, LP DBA PARADISE POST PRINTING, 14-R2D3-2329
THROUGH 2332
VICTOR MANUEL CANELA DBA CANELA AUTO SERVICE, 14-R6D7-2379
AND 2380
CLEAN HARBORS ENVIRONMENTAL SERVICES INC., 13-R1D3-3724
THROUGH 3728
RANDY FREEMAN DBA AUTO LIMITS AUTOMOTIVE REPAIR, 14-R6D7-1428
AND 1429
HUMBOLDT COUNTY PUBLIC WORKS, 14-R2D3-0227
WILLIAM JENKINS DBA JENKINS CONSTRUCTION, 14-R6D7-1492
JAE B KIM DBA CALIFORNIA DOG & CAT HOSPITAL, 14-R2D4-0609
MALCOLM DRILLING CO., INC., 14-R2D2-0509
MORGAN HILL PLASTICS, INC., 14-R1D2-2365
NUEVA CASTILLA IRON WORKS INC., 14-R6D1-1448
RICHARD MACDONALD STUDIOS INC., 14-R1D2-2943
SOUTH BAY SODA SYSTEMS INC., 14-R6D1-2034 AND 2035

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 12:19 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 12:20 p.m.