

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
For

Wednesday, October 1, 2008

10:00 AM

Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: September 19, 2008

RE: Closed Session of the Board on October 1, 2008

Pursuant to Government Code section 11126, subdivisions (a), (c) (3), and (e) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge (ALJ). The decision summarizes the evidence received from the Division of Occupational Safety and Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. CEN-CAL SERVICES, INC., 07-R6D1-2752 THROUGH 2761
2. NORTHRUP GRUMMAN, 06-R1D2-5015 AND 5016
3. SCELZI ENTERPRISES, INC., 06-R2D5-1819
4. UNITED PARCEL SERVICE, 05-R2D1-3271

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge (ALJ) after a pre-hearing conference in which the Division of Occupational Safety and 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.)

1. ACCURATE FIRE PROTECTION, INC., 07-R2D4-2104 THROUGH 2106
2. ACE AIR CLEAN ENVIRONMENT, 07-R3D5-1435 AND 1436
3. ADECCO, 03-R3D2-3195
4. AERIES, INC., 08-R4D5-217 AND 218
5. ALBERTSON'S INC., 07-R4D4-4468 AND 4469
6. G.T. ALDERMAN, 07-R4D3-4912
7. ARBO BOX INC., 07-R4D4-4740 AND 4741
8. ARBORGUARD INC. dba ARBORWELL, 07-R1D1-4992
9. BLF dba LARRABURE FRAMING, 08-R4D3-602 AND 603
10. B & W REFRIGERATION, 08-R6D3-1678, 08-R6D3-2929
11. BARNEYBILT CONSTRUCTION CORP, 08-R3D3-1736 AND 1737
12. BAYVIEW ROOFING, 07-R2D2-4015
13. BELTMANN GROUP, 08-R4D4-762
14. BERGELECTRIC CORP., 07-R4D4-2974
15. BICKERTON INDUSTRIES INC., 08-R3D5-585
16. BLOCKA CONSTRUCTION INC., 06-R2D2-5268 AND 5269
17. BURRTEC WASTE INDUSTRIES, INC.—WEST VALLEY, 07-R3D3-5009
18. CCA ASSOCIATES, INC., 07-R4D4-2331 THROUGH 2335
19. CLP RESOURCES INC., 08-R3D3-741

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 3

20. CAL-COAST CONSTRUCTION SPECIALIST, INC., 06-R4D3-2361 THROUGH 2362
21. CALPINE LOS MEDANOS ENERGY CENTER LLC, 07-R2D2-5158
22. CAR SOUND EXHAUST SYSTEMS INC, 08-R3D1-1397 AND 1398
23. CARDINAL SHEET METAL, INC., 08-R6D5-1557 AND 1558
24. CARLSON DRYWALL & SPRAYING INC. dba CARLSON DRYWALL, 07-R1D5-2307 AND 2308
25. GREG CARPENTRY, 07-R2D4-3770 AND 3771
26. CENTURY TRUCK & EQUIPMENT, 08-R3D3-1738 AND 1739
27. CERRO PACIFIC LUMBER INC., 07-R1D5-4819 THROUGH 4823
28. CHERNE CONTRACTING CORPORATION, 07-R6D3-1764
29. COMFORT CONTROL CORP., 08-R4D1-1352
30. CORNERSTONE MASONRY INC., 07-R1D2-4996 AND 4997
31. D & K CONCRETE FLOORS, INC., 08-R3D3-434
32. DVR CONSTRUCTION, INC., 08-R4D1-194 AND 195
33. DE PLAYA EXTERIORS, INC., 08-R4D2-1464 THROUGH 1466
34. DESERT MIRAGE HIGH SCHOOL, 07-R3D3-3581 AND 3582
35. DILBECK AND SONS, INC., 07-R1D2-720
36. DO-ABLE PRODUCTS, 06-R6D2-2998 THROUGH 3007
37. DURHAM SCHOOL SERVICES LP, 07-R3D1-4028
38. FTR INTERNATIONAL, INC., 07-R4D2-4728
39. FASTENER TECHNOLOGY CORP., 07-R6D2-4753 THROUGH 4757
40. FOUR SEASONS ROOFING, 08-R3D3-737 THROUGH 739

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 4

41. G & M PLASTERING INC., 07-R4D1-3336 THROUGH 3338
42. GILS 888 GROUP, INC. dba BUENA PARK CAR WASH, 08-R3D1-412 THROUGH 414
43. H.J. BAKER & BRO., INC., 07-R3D5-1194 THROUGH 1196
44. HLT SAN JOSE LLC dba DOUBLE TREE HOTEL, 08-R1D2-527
45. H & M ROOFING, INC., 07-R2D1-3764
46. HARRIS FARMS, 06-R2D5-4132
47. HAYDEN AUTOMOTIVE, 08-R3D3-1877 AND 1878
48. HEADSTART NURSERY, INC., 07-R3D3-5183 AND 5184
49. VI HINH & MINJIE CHEN dba S & R BUILDERS, 07-R1D1-4528 AND 4529
50. IM CONSTRUCTION, 07-R2D1-3555
51. IMPERIAL STATIONS, INC., 08-R3D1-171 THROUGH 172
52. INNOVATIVE STEEL ERECTORS INC., 06-R2D2-4709 AND 4710
53. JBD CONSTRUCTION, INC., 07-R3D2-3457 AND 3458
54. J.B. FINE INC. dba J & B PATTERN SERVICE, 07-R4D1-4438 AND 4439
55. J MONJARAS TRANSPORT, 08-R3D3-309
56. JIM FASHION, INC., 08-R6D5-2296 AND 2297
57. JOE APODACA PLASTERING, INC., 08-R6D5-118
58. KE-NEW BUILDERS & DEVELOPERS, 08-R6D5-1552 THROUGH 1554
59. KF FIBERGLASS INC., 07-R6D2-2071 THROUGH 2075
60. K.V. MART CO dba TOP VALU MARKET, 08-R4D1-1000 AND 1001
61. KAWEAH CONSTRUCTION COMPANY, 06-R2D5-2745 AND 2746
62. KI HO KIM dba SUN TRIM, 07-R4D1-3348 THROUGH 3350, 08-R4D1-3389

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 5

63. KIRKHILL TA, 07-R3D1-3670 THROUGH 3672
64. KWAN WO IRONWORKS, INC., 07-R2D2-2572
65. L.A. COUNTY SHERIFF – FACILITIES SERVICE, 08-R4D1-1513
66. L.A. DEPT. WATER & POWER – L.A. AQUEDUCT FILTRATION PLANT, 07-R6D4-4525 AND 4526
67. LAUSD – LOCKE EARLY EDUCATION CENTER, 05-R4D2-1797
68. LAUSD – LOREN MILLER ELEMENTARY SCHOOL, 08-R4D1-1096
69. LAUSD – SUN VALLEY MIDDLE SCHOOL, 08-R4D1-750
70. LESLIE RUDD INVESTMENT COMPANY, 07-R1D5-4818
71. M & A INDUSTRIAL CONCRETE, INC., 08-R4D4-760 AND 761
72. MCM CONSTRUCTION CO, 07-R4D1-3339
73. MARK BEAMISH WATERPROOFING, 07-R4D4-2250 THROUGH 2253
74. MARRIOTT CONSTRUCTION, 08-R4D2-2584, 08-R4D2-81 AND 82
75. MEDICO PROFESSIONAL LINEN SERVICE, 08-R4D1-1353
76. MEDWAY PLASTICS CORP, 07-R6D2-988 THROUGH 996
77. MELCAST LITHO, 08-R4D2-202 THROUGH 205
78. MISSION LINEN SUPPLY INC., 07-R1D2-4993 THROUGH 4995
79. MOKELUMNE-MILLER ENTERPRISES, INC. dba PREMIER STAFFING, 06-R2D4-4027
80. NATIONAL RETAIL TRANSPORTATION, 08-R4D2-1355
81. MARSHALL FRANK NEIL dba GORILLA TREE SERVICE, 07-R1D5-3762
82. NIBBI BROTHERS ASSOCIATES INC. dba NIBBI CONCRETE, 06-R1D2-3341 AND 3342

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 6

83. NISSHO OF CALIFORNIA, INC., 08-R6D5-2579
84. NORMAN MASONRY, INC., 07-R6D5-5254
85. NORMANDIE COUNTRY BAKERY, INC., 08-R6D2-644 THROUGH 648
86. OMEGA EXTRUDING CORP OF CALIFORNIA, 08-R3D3-2780 AND 2781
87. OMNITRANS, 07-R3D3-5050
88. O'NEAL CONSTRUCTION, 07-R4D2-1452
89. STEVE P. RADOS, 07-R4D3-3078 AND 3079
90. RAINFOREST CAR WASH, 07-R4D3-2740 THROUGH 2742
91. RAPHAEL'S PARTY RENTALS, 08-R3D2-1603 AND 1604
92. RAT OIL INC. dba AUTO CITY CARWASH, 06-R1D1-4672 AND 4673
93. RECYCLE AMERICA ALLIANCE, 07-R4D2-4568
94. RIVER RANCH FRESH FOODS LLC, 07-R6D3-4974 THROUGH 4981
95. ROOTER KING PLUMBING, INC., 07-R3D5-309 AND 310
96. RUEVAC PROPERTY SERVICES INC., 08-R3D3-913 AND 914
97. S H AUTO PARTS, INC., 08-R4D4-474 AND 475
98. SMC CONTRACTING, INC., 07-R2D1-3865
99. S & S FOODS, 08-R4D4-471 THROUGH 473
100. SAN MARINO PLASTERING, INC., 08-R4D1-1349
101. SANTA MONICA ACURA, 08-R4D1-319
102. SCHAWK, INC., 08-R4D2-1629
103. SCHIAPPA HOMES, 08-R4D1-1510 THROUGH 1512
104. SCHILLING CORPORATION, 08-R6D5-2123 AND 2124

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 7

105. SCHINDLER ELEVATOR CO, 08-R3D2-2888
106. SELECT IMPORTS, INC. dba WESTSIDE STONE, 08-R4D4-763 AND 764
107. SELECT REMEDY, 08-R4D4-213 AND 214
108. SENBA USA INC., 08-R6D1-1172
109. SHIMMICK CONSTRUCTION, 06-R1D1-5012 THROUGH 5014
110. SILVER WOOD LANDSCAPE CONSTRUCTION, 07-R3D5-187
111. SOUTHWIND CUSTOM BUILDERS, 08-R3D2-1406 AND 1407
112. SPEC IRON, INC., 08-R3D3-744 AND 745
113. SPECIALTY SOLID WASTE & RECYCLING, 06-R1D2-5019 AND 5020
114. STAFFMARK, 07-R3D3-3808
115. SUKUT CONSTRUCTION, INC., 06-R4D4-1469 AND 1470
116. SULLY MILLER CONTRACTING COMPANY, 06-R3D3-1599 THROUGH 1604
117. SUN YEOL INC., 07-R4D1-1569
118. SYSTEMS TECHNOLOGY, INC., 08-R3D3-831
119. TERRY LEE TAYLOR dba FOUR SEASONS ROOFING, 07-R2D3-3432 AND 3433
120. TOM BESMER CONSTRUCTION, INC., 06-R2D5-4606 THROUGH 4608
121. RAYMOND J. TOMLINSON dba TOMLINSON MASONRY, 08-R4D1-1228 AND 1229
122. VALLEY FORGE, 08-R4D4-765 THROUGH 767
123. VALLEY PRIDE INC., 08-R6D5-1274
124. VEOLIA TRANSPORTATION, 08-R3D2-3208
125. VERIZON, 08-R3D3-433
126. WALDO'S MERCHANDISING SERVICES, 08-R3D2-174

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 8

127. WASTE MANAGEMENT dba NU-WAY LIVE OAK RECLAMATION, INC., 07-R4D4-1315 THROUGH 1318
128. WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION, 08-R1D5-21
129. WILBUR PACKING CO., 07-R2D3-2401
130. WILBUR PACKING COMPANY, INC., 07-R2D3-1141
131. WORLD WIDE ADJUSTMENT dba WORLD AUTO BODY & REPAIR, 08-R4D1-1160
132. WORLDWIDE STONE IMPORTS, INC., 06-R3D2-745 THROUGH 747
133. YNT HARVESTING, 07-R2D5-4677 THROUGH 4679
134. JUAN CARLOS ZAPIEN, 07-R4D4-5396 THROUGH 5399

ORDERS DISMISSING APPEALS:

1. AMERICAN MUNICIPAL WASTE OF FONTANA, 06-R3D3-254
2. BLK INTERNATIONAL, INC., 08-R4D2-925 AND 926
3. GOLDEN STATE BORING & PIPE JACKING, INC., 06-R5D3-2386
4. MON-MAY FRAMING CORP., 06-R4D3-4840 AND 4841
5. MON-MAY FRAMING CORP., 06-R4D3-4842 AND 4843
6. P AND J KNITTING, 07-R4D2-3600 THROUGH 3602
7. PACIFIC OCEAN DYEING & FINISHING, INC., 07-R3D1-1407
8. Q & I INC, 07-R4D1-1727

ORDERS GRANTING APPEAL:

1. MR. JALAPENOS, 06-R3D2-2762

STIPULATIONS:

1. FREDERICK I. IDOLYANTES, FLC 06-R2D5-5271
2. KINDER MORGAN ENERGY PARTNERS, LP, 05-R2D4-2013 AND 2014
3. M & M LABOR SERVICES, 07-R2D5-4547
4. SAFEWAY INC., 06-R2D1-4938 THROUGH 4940
5. THE HERRICK CORPORATION, 03-R4D1-3247 THROUGH 3252

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety and 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.)

1. BENGARD RANCH, INC., 07-R1D2-4596 AND 4597
2. DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177
3. REICON BUILDERS, INC., 07-R4D1-4902 AND 4903
4. SUPERIOR READY MIX CONCRETE, L.P, 07-R5D3-9474
5. UPS, 07-R3D3-3322

DENIAL OF PETITION FOR RECONSIDERATION (DRAFTS):

1. FB CONSTRUCTION, 07-R1D2-3418 AND 3419

DECISIONS AFTER RECONSIDERATION (DRAFTS):

(If the Appeals Board grants a petition for reconsideration it reviews the facts of the appeal and then issues a decision after reconsideration upholding, reversing or modifying the underlying ALJ decision.)

1. A. TEICHERT & SON, INC., A CORPORATION dba TEICHERT AGGREGATES, 04-R5D2-850 AND 851
2. A & C LANDSCAPING, INC. aka A & C CONSTRUCTION, INC., 03-R4D4-4791

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 10

3. AC FRAMERS INC., 03-R2D3-3475
4. ASC PROFILES, INC., 06-R2D1-1181
5. ANNING-JOHNSON COMPANY, 06-R1D3-1976
6. BART, 03-R1D1-5170
7. BAY AREA SYSTEMS & SOLUTIONS dba BASS ELECTRIC, 01-R1D3-106
8. BIMBO BAKERIES USA, 03-R1D3-5215 THROUGH 5217
9. BLF, INC. dba LARRABURE FRAMING, 03-R4D3-4428 AND 4429
10. BLF, INC. dba LARRABURE FRAMING, 02-R4D1-4675 THROUGH 4680
11. BLUE DIAMOND MATERIALS, 02-R5D2-1268
12. CALDWELL-ROLAND ROOFING, INC., 03-R1D4-2905
13. CALIFORNIA DAIRIES, INC., 07-R6D2-2076 THROUGH 2081
14. CALIFORNIA FAMILY FITNESS, 03-R2D1-95 AND 96
15. CALIFORNIA FRESH FARMS, LLC, 06-R2D4-4127 AND 4224
16. CATHY'S PALLETS, 08-R6D5-9248
17. CENTRAL CHEVROLET, 05-R1D4-2615 THROUGH 2618
18. CENTRAL VALLEY CONTRACTING, 05-R4D3-2351
19. COX COMMUNICATIONS, 03-R3D2-1942
20. DADE BEHRING, 05-R2D1-2203
21. DAKOTA COMPANIES UNLIMITED, 05-R4D3-392 AND 393
22. DAVIS BROTHERS FRAMING, INC., 03-R3D1-114
23. DAVIS BROTHERS FRAMING, INC., 05-R3D3-634 THROUGH 636
24. DYNALECTRIC, 03-R1D1-4101

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 11

25. ETTER & SON CONSTRUCTION, INC., 03-R1D5-3131
26. FORKLIFT SALES OF SACRAMENTO, INC., 05-R2D1-3477
27. G.T. ALDERMAN, INC., 05-R4D3-3513
28. GENERAL TRUSS CO. INC., 06-R2D1-783 AND 784
29. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
30. GLASS PAK, 03-R2D2-750 AND 751
31. GOLDEN STATE BORING & PIPEJACKING, INC., 05-R5D2-2359
32. HARRY L. MURPHY, INC., 06-R1D2-218 AND 219
33. HEARN CONSTRUCTION, INC., 02-R6D1-3533 THROUGH 3536
34. HELPMATES STAFFING SERVICES, 05-R3D3-2239
35. H.M. CONSTRUCTION, INC., 08-R3D2-9007
36. HUSSMAN CORPORATION, 03-R3D1-2939
37. ILH CONSTRUCTION, 02-R1D1-4172
38. INDUSTRIAL MASONRY, INC., 07-R3D2-735 AND 736
39. JENSEN PRECAST, 05-R2D1-2377
40. JOHN LAING HOMES, 04-R3D1-194 AND 195
41. JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
42. KELLY SERVICES, INC., 06-R1D2-1024
43. KENNY-SHEA-TRAYLOR-FRONTIER/KEMPER, JV, 03-R5D2-323
44. LOS ANGELES, CITY OF, FIRE DEPARTMENT, 03-R2D5-3960
45. LOS ANGELES, CITY OF, HOUSING AUTHORITY, (HACLA), 05-R4D2-2541
46. NAUTICAL ENGINEERING, INC., 06-R6D1-4868 THROUGH 4872

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 12

47. BILL NELSON GENERAL ENGINEERING & CONSTRUCTION, 06-R2D5-1552 THROUGH 1554
48. O & M INDUSTRIES, 04-R1D5-1597
49. P G & H CONTRACTING, INC., 06-R4D3-1657 AND 1658
50. PMR RACE CARS, 03-R3D3-1825
51. POUK & STEINLE, INC., 03-R4D2-1495 AND 1496
52. RII PLASTERING INC., 02-R3D1-2679
53. R & L BROSAMER, INC., 03-R1D5-4832
54. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
55. STACY & WITBECK, INC., 05-R1D1-1142
56. STATE CENTER COMMUNITY COLLEGE DISTRICT, 05-R2D5-1688 THROUGH 1692
57. STRUCTURAL SHOTCRETE SYSTEM, 03-R4D3-986
58. TEICHERT AGGREGATES, 04-R5D1-2982
59. TRIO METAL, 03-R4D4-317
60. UKIAH FORD-LINCOLN-MERCURY, INC., 06-R1D5-2256 AND 2557
61. WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095
62. WESTCOAST COMMUNICATION, 05-R2D3-2801 AND 2802

PENDING LITIGATION:

(If the Division of Occupational Safety and Health or the Employer disagrees with a decision after 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.)

SUPERIOR COURT:

1. WESTERN MILLING, LLC, 06 CE CG 04007 (06-9039/9040)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
FOR OCTOBER 1, 2008

Page 13

2. UNITED AIRLINES dba UNITED AIRLINES SFO SYC, 07CS00331 (00-2844)
3. HARRIS CONSTRUCTION COMPANY, INC., 07CS00518 (02-3914)
4. JERLANE v DIVISION OF OCCUPATIONAL SAFETY & HEALTH, 37-2007-0005631-CU-WM-NC, (01-4344/4345)
5. J.F. SHEA CONSTRUCTION, INC. (DOSH v OSHAB), 34-2007-00882187-CU-WM-GDS, (02-801)
6. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB), 34-2007-00882192-CU-WM-GDS, (01-3261)
7. BRUTOCO ENGINEERING & CONSTRUCTION, INC., 30-2007 00100159 (07-9223)
8. MURRAY COMPANY, BS112469 (07-9190/9192)
9. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (00-440)
10. KHS & S CONTRACTORS, 32-2008-00107284-CU-WM-GDS CJC (00-440)
11. ARTHUR J. BREWSTER CORP. dba PRESTIGE KITCHENS, INC., 30-2008-00110573 (08-1121)

APPELLATE COURT:

NONE

OTHER LEGAL MATTERS:

(Any legal matter that comes about after the agenda is noticed 10 days in advance of the meeting announcement and that must be acted upon or legal matters pending before the Board requiring specific Board action but do not fall within the above categories.)

PERSONNEL:

(Issues regarding staff.)

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