BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1660543**
WEST COAST DRYWALL & PAINT **3595 PRESLEY AVENUE** **RIVERSIDE, CA 92507**	**DECISION**
Employer	

Statement of case

West Coast Drywall & Paint (Employer) is a drywall and painting subcontractor. From March 27, 2023, to September 1, 2023, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Jennifer Horton, conducted an inspection of Employer's worksite at 678 Palladium Blvd., Palm Springs, CA 92262 (the worksite).

On September 1, 2023, the Division issued two citations to Employer, alleging two violations of the California Code of Regulations, title 8.[1] Citation 1, Item 1, alleged that Employer failed to train employees in the use of rolling scaffolds. Citation 2, Item 1, alleged that Employer removed or altered a cross bracing from a rolling scaffold.

Employer timely appealed both citations on the grounds that the safety order was not violated, and the proposed penalty is unreasonable. Employer also raised multiple affirmative defenses.[2]

This matter was heard by Administrative Law Judge Ka H. Leung for the California Occupational Safety and Health Appeals Board (Appeals Board) on October 21, 2025. John Blakely, Vice President and General Counsel of West Coast Drywall & Paint, represented Employer. Stephanie Winn, District Manager, represented the Division. The matter was submitted on January 5, 2026.

Issues

1. Did Employer ensure its employees were trained to use tower scaffolds and rolling scaffolds in accordance with section 1646, subdivision (k)?

[1] Unless otherwise specified, all references are to California Code of Regulations, title 8.
[2] Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

2. Did Employer remove uprights, braces, or supports from scaffolds?

Findings of Fact

1. Employer trained its employee in the use of rolling scaffolds.

2. Employer did not remove or alter the rolling scaffold that injured an employee.

Analysis

1. Did Employer ensure its employees were trained to use tower scaffolds and rolling scaffolds in accordance with section 1646, subdivision (k)?

Citation 1, Item 1, alleged that Employer violated section 1646, subdivision (k), for failure to train employees to recognize the hazards associated with riding on a rolling scaffold. Section 1646, subdivision (k), reads:

> (k) Training. Employees who ride on rolling scaffolds and employees that assist in moving employees riding on a rolling scaffold shall be trained in accordance with the requirements of this Section and with the requirements of the Construction Safety Orders, Section 1509 to recognize the hazards associated with riding on a rolling scaffold.

The Division's alleged violation description reads:

> Prior to and during the course of the investigation, including and not limited to, on March 27, the employer did not ensure employees who rode on and assisted in moving employees on a rolling scaffold were trained in accordance with this Section.

The Division bears the burden of proving, by a preponderance of the evidence, that a cited safety order was violated. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001).) The Appeals Board applies a reliability-based evidentiary standard in its proceedings, offering more flexibility than the strict mechanical rules of the Evidence Code. The Appeals Board must rely on "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" (§376.2), ensuring it meets the necessary reliability standard. (*Sweetheart Cup Company*, Cal/OSHA App. 95-979, Decision After Reconsideration (Nov. 5, 1999) [evidence supporting the accuracy and reliability of comparison methods was inadequate and failed to meet the standard of clear and certain proof required by a trier of fact].)

Employer's employee Martin Llamas Guerra (Llamas) testified that on March 2, 2023, he climbed onto a rolling scaffold at the worksite to perform a task. While he was on the scaffold,

another employee assisted him by pushing it. As the scaffold was being moved, it collapsed, causing Llamas to sustain serious injuries.

The Division introduced a sign-in sheet showing that both employees attended scaffold training less than four months before the incident, but the sheet contained a notation stating "Don't Input" next to their names. Employer's Safety Manager, Andrew Franco, testified that this notation indicated the employees completed scaffold user training, but not the full competent scaffold training required for certification. Section 1646, subdivision (k), however, requires only that employees be trained to recognize the hazards associated with riding on rolling scaffolds; it does not require any specific certification.

Employer also presented testimony from Eliseo Garcio, a consultant who provides scaffold training to Employer's employees. Garcio testified that both employees were trained on the proper use of rolling scaffolds and recognizing the hazards associated with riding on them.

Accordingly, the Division established only that the employees' training records contained a "Don't Input" notation, but presented no evidence that this notation indicated the employees were untrained or that the training provided was inadequate. In contrast, Employer presented affirmative evidence of compliance. Therefore, the Division did not meet its burden to prove a violation of section 1646, subdivision (k), and Citation 1, Item 1, is vacated.

2. Did Employer remove uprights, braces, or supports from scaffolds?

Citation 2, Item 1, alleged that Employer violated section 1637, subdivision (l), for altering scaffolds by removing uprights, braces, or supports without substituting other members providing equivalent strength. Section 1637, subdivision (l), reads:

> (l) Removal of Braces. Scaffolds or falsework installations shall not be altered by removing uprights, braces, or supports unless other members providing equivalent strength are substituted.

The Division's alleged violation description reads:

> Prior to and during the course of the investigation, including and not limited to, on March 27, 2023, the employer allowed an unqualified person to remove cross bracing from the rolling scaffold that was being used by employees at the employers [sic] job site.
>
> As a result, on March 2, 2023, an employee sustained serious injury when the rolling scaffolding that he was working from collapsed.

The Division relied on Llamas's testimony to establish that the scaffold involved in the incident was missing a cross brace. Llamas testified that before using the scaffold, he observed other subcontractors using the same equipment. He stated that he did not remove or alter any part of the scaffold and did not see anyone else do so. He noticed that a cross brace was missing only after the scaffold collapsed. The Division also introduced photographs of the rolling scaffold showing that a cross brace was missing.

However, the Division presented no evidence establishing whether the missing cross brace resulted from an alteration, removal, or a manufacturing defect. Section 1637, subdivision (l), requires proof that a scaffold was altered by removing uprights, braces, or supports. Without evidence that the scaffold was altered, a violation of Section 1637, subdivision (l), cannot be sustained. Accordingly, the Division failed to establish by a preponderance of the evidence that Employer removed uprights, braces, or supports, and Citation 2, Item 1, is vacated.

Conclusion

For Citation 1, Item 1, the Division did not establish that Employer failed to train employees in the use of rolling scaffolds. Accordingly, Citation 1, Item 1, is vacated.

For Citation 2, Item 1, the Division did not establish that Employer removed or altered uprights, braces, or supports from scaffolds. Accordingly, Citation 2, Item 1, is vacated.

Order

It is hereby ordered that Citation 1, Item 1, is vacated.

It is hereby ordered that Citation 2, Item 1, is vacated.

/s/ Ka H. Leung
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Ka H. Leung
Administrative Law Judge

Dated: 01/09/2026

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.