

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on April 21, 2016
West Covina, California

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Jeff Mojcher, Chief Counsel
Neil Robinson, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Andia Farzaneh, Graduate Student Assistant

MINUTES OF April 7, 2016 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the April 7, 2016 Board meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the April 7, 2016 Board meeting.

NEW BUSINESS:

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

ACTION: No report.

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: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair Carter plans to attend the Cal/OSHA Advisory Committee meeting on May 5 in Oakland.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: Member Freyman is beginning the confirmation process and is working on her responses to questions from the Senate.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: No report.

STAFF REPORTS:

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

OASIS PROJECT:

ACTION: Neil Robinson, OSHAB's business lead for the project, reported that the "go live" date may be delayed for about 30 days because of challenges in creating the reporting interface to the DIR A/R system.

LITIGATION UPDATE:

ACTION: The legal staff is preparing for a hearing on the Blue Diamond case in mid-May.

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 discussion of each agenda item of the Open Meeting.)

ACTION: No report

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

DYNAMIC CONSTRUCTION SERVICES, INC., 15-R4D1-1471 And 1472

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.

EVERGREEN NURSERY, 15-R3D2-0083 and 0084

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.

JOSEPH J. ALBANESE INC., 14-R1D3-2499

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.

PAR ELECTRICAL CONTRACTORS, INC., 13-R4D3-2357 THROUGH 2359

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:

NOLTE SHEET METAL, INC., 14-R6D7-2777 THROUGH 2783

This item was listed on the agenda in error.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

SILVERADO CONTRACTORS, INC., 14-R4D7-3044

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

TRUCK ACCESSORIES GROUP, LLC, 16-R2D1-9019

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

ORDERS DISMISSING APPEAL:

ORDER DENYING LEAVE TO FILE LATE APPEAL

TEAMS GENERAL ROOFING, INC., 16-R1D4-9042

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

UPS GROUND FREIGHT, INC DBA UPS FREIGHT, 16-R1D2-9043

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

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.)

BIGGE CRANE & RIGGING CO., 14-R1D2-1798

CALSTRIP STEEL CORPORATION, 12-R3D6-1998 & 1999

COAST WASTE MGNMT OF CA, INC., 11-R3D2-2385 & 2386

COMPASS CONTAINER GROUP, INC., 16-R1D4-9014

CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364

DAVEY TREE SURGERY CO., 13-R3D3-1018 THROUGH 1021

FEDEX FREIGHT, INC., 14-R2D1-0144

GATEWAY PACIFIC CONTRACTORS, INC., 10-R2D3-1502 THROUGH 1508

HERMAN WEISSKER, INC., 13-R3D1-3279

JM ENVIRONMENTAL, INC., 15-R2D1-9232

L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822

MAGNA TOOL INC., 15-R3D1-9214

MASTER CARE WINDOW WASHING, 15-R1D4-9230

MDB MANAGEMENT INC., 14-R4D1-2373 AND 2374

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.

MORROW-MEADOWS CORP., 12-R4D1-0717 THROUGH 0719
RUSSELL FABRICATION CORP. dba AMERICAN FABRICATION,
15-R6D2-90
SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 11-R3D1-2562
THROUGH 2570
UNITED PARCEL SERVICE, 13-R3D2-2664 and 2665

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.)

SUPERIOR COURT:

1. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
2. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
3. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
4. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
5. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
6. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
7. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
8. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
9. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
10. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
11. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)

12. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
13. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
14. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
15. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
16. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
17. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817
(09-R6D2-2238 ~ 2241)
18. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
19. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
20. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360
THROUGH 3362)
21. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL
(14-R3D2-1935 & 1936)
22. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
23. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 ~ 3098)
24. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
25. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
26. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204
(12-R3D1-0781)
27. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
28. NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
29. TRI STATE STAFFING, 12-R6D2-0378
30. CHEVRON U.S.A., N15-2013 (13-R6D3-0655 THROUGH 0662)

31. T & R CONSTRUCTION GROUP, BS159712 (14-R4D3-4120 & 4121)
32. ABM FACILITY SERVICES, INC. dba ABM BUILDING VALUE,
30-2016-00831661, 12-R3D6-3496 ~ 3498
33. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851 ~ 3854)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)
2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456 (11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953, 34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

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.)

24 HOUR STAFFING, INC DBA TSC STAFFING, 15-R6D5-4269 THROUGH 4271
AA MEAT PRODUCTS INC., 15-R4D1-1461 THROUGH 1463
AAA PAVING CO., 15-R3D3-4470 THROUGH 4472
A & B FIRE PROTECTION AND SAFETY, INC., 15-R6D7-4689 THROUGH 4691
ACE HARDWARE, CORP, 16-R2D1-0659 AND 0660
ABBOTT LABEL INC., 15-R4D4-4352 THROUGH 4357
ALCAL ARCADE SPECIALTY CONTRACTING INC., 16-R2D3-0509
ALLIED TECHNICAL SERVICES INC, 16-R2D5-0003
ALL-WEATHER ARCHITECTURAL ALUMINUM, INC., 15-R6D1-1709 AND 1710
ALTA BATES SUMMIT MEDICAL CENTER, 16-R1D4-0904 AND 0905
ALUMAFOLD DBA AFP METAL PRODUCTS, 15-R4D4-4258
AMERON INTERNATIONAL WATER TRANSMISSION GROUP,
11-R3D3-2298 THROUGH 2300
AMES CONSTRUCTION, INC., 16-R3D3-0616 AND 0617
B & B DOORS & WINDOWS, INC., 16-R6D2-0401 AND 0402
BECHTEL CONSTRUCTION OPERATIONS INC., 13-R4D7-3026
THROUGH 3030

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For April 21, 2016

Page 8

BELFOR PROPERTY RESTORATION, 16-R2D3-0918
BELL CARTER OLIVE CO, 16-R2D3-0760 AND 0761*
ELIO RUIZ BERRERA DBA ADVANCE MUFFLER, 15-R6D5-4582 AND 4583
BROWN PACIFIC, INC., 16-R4D4-0691
C-1 CONSTRUCTION, 15-R4D1-0958 AND 0959
CA DEPARTMENT OF WATER RESOURCES, 16-R2D4-0765
CALIFORNIA PAVING & GRADING CO. INC., 15-R4D1-3706
CARDINAL SHEET METAL, INC. 15-R6D2-2190 THROUGH 2194
C.F.Y. DEVELOPMENT, INC., 15-R2D1-4324
CIRCLE CITY CABINETS, 15-R6D2-1712 THROUGH 1716
CIRCLE CITY CABINETS, 15-R6D2-1717
CITY VENTURES, 15-R4D1-4112
CKKM, INC., 15-R6D2-2102 THROUGH 2109
CONSOLIDATED FABRICATORS CORPORATION, 15-R2D1-4428
THROUGH 4431
CONTRA COSTA COUNTY, 15-R1D5-1982
CONTRA COSTA COUNTY, DEPARTMENT OF INFORMATION TECHNOLOGY,
16-R1D5-0417
BRUCE CORNETT DBA CUSTOM MASONRY AND CONCRETE, 16-R6D5-0350
CROP PRODUCTION SERVICES, 16-R7D1-0902
CRYSTAL MARIE OROZCO DBA C & C FASHION, 16-R6D5-0650 AND 0651
CUSTOM PRODUCT DEVELOPMENT CORPORATION, 15-R6D1-2841
THROUGH 2844
DALE CANFIELD CONSTRUCTION INC, 15-R4D1-3443
DIESELMOTIVE COMPANY INC., 16-R2D3-0369
DL STORM ENTERPRISES INC, 15-R3D5-2916
DRISCOLL FAMILY FARMS, LLC DBA K & R FARMS, LP, 15-R6D5-4681
DYNAMITE SIGN GROUP, INC., 16-R6D5-0202 AND 0203
EL ALTENO TIRES, INC., 15-R6D5-3778 AND 3779
ES VERDAD, LLC DBA COMAL, 16-R1D4-0416
ETCHEGARAY FARMS LLC, 14-R2D5-0254 THROUGH 0260
EUREKA OXYGEN COMPANY, 15-R2D3-3086
FONSECA & FONSECA INC, 16-R2D1-0755
FOSTER FARMS, 15-R2D4-4100
GARY HANSEN WELDING INC, 15-R3D5-2914
GAUSTON CORP, 15-R3D3-4604 THROUGH 4606
GOLDEN R, INC., 15-R2D4-4758
GREAT CENTRAL TRANSPORT, INC, 15-R3D5-4244 AND 4245
GRID ALTERNATIVES, 16-R2D3-0759
GROVER LANDSCAPE SERVICES, INC., 16-R2D4-0094
GUDGEL ROOFING, INC DBA YANCEY ROOFING, 15-R2D1-1071
STACIE NICOLE HARDY DBA 28 AG SERVICE, 16-R6D5-0407 AND 0408
HIDDEN VALLEY LAKE ASSOCIATION, 15-R2D1-4692 AND 4693
HILLPOINTE CONSTRUCTION, INC., 14-R4D3-0593 AND 0594

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

For April 21, 2016

Page 9

H.J. HEINZ COMPANY DBA ESCALON PREMIER BRANAS, 16-R2D4-3988
JAVIER MENDOZA RAMIREZ, 15-R3D2-4786 THROUGH 4793
JOHNSON & THIERMAN INC DBA J AND T TREE SERVICE, 15-R4D1-2235
KEARNEYS' ALUMINUM FOUNDRY, INC., DBA KEARNEYS', 15-R6D1-0012*
KEARNEYS' METALS, INC., DBA KMI DBA KEARNEYS' DBA
KEARNEY'S METALS, INC, 15-R6D1-0013
KLOECKNER METALS, 16-R2D5-0372
LARA LABOR CONTRACTORS, 15-R2D1-4626
LARGO CONCRETE INC., 15-R4D1-1987
LAUSD LORETO STREET ELEMENTARY, 15-R4D1-3892
LUIS G GARAY DBA KIMBER PALLETS, 16-R6D5-0347 THROUGH 0349
MADDOCK RANCH NURSERY, LP., 15-R6D2-4669
MAXIM CRANE WORKS LP, 15-R1D2-3683 AND 3684
MCSHANE'S NURSERY AND LANDSCAPE SUPPLY, LLC, 16-R6D7-0168
THROUGH 0170*
NORTH AMERICAN HOME SERVICE, 16-R2D1-0363
OFR, INC, 16-R6D5-0301
ORANGE TREE LANDSCAPING COMPANY INC., 16-R6D5-0534
PACIFIC CONSTRUCTION GROUP, 15-R3D5-4602 AND 4603
PARQUET BY DIAN, INC., 15-R6D2-2034 THROUGH 2038
PAUL LAMPKIN INDUSTRIAL DUST COLLECTION SERVICES, 16-R3D5-0060
AND 0061
PCI INDUSTRIES, 16-R6D2-0298 THROUGH 0300
PCI INDUSTRIES, INC., 15-R6D2-3112 AND 3113
PINNACLE PLASTERING INC., 15-R4D1-4012
QUALITY PRODUCTION SERVICES, 15-R4D1-2438
R-COLD INC, 15-R3D5-2808 AND 2809
RLJ HYH SAN DIEGO LESSEE, LP, 15-R3D2-4462 THROUGH 4464
ROCKET FARMS, INC., 15-R6D1-2610 THROUGH 2612
SAN DIMAS PERIODONTICS, 16-R4D4-4113
SAN JOSE HEALTHCARE SYSTEM, LP0 DBA REGIONAL MEDICAL CENTER
OF SAN JOSE, 16-R1D2-1180 AND 1181
SAN-MAR CONSTRUCTION CO INC, 15-R4D1-2917
SAPUTO DAIRY FOODS USA LLC, 16-R2D4-0370
SCHUELKE PLUMBING, INC. DBA TWIN HOME EXPERTS, 15-R4D3-2537 AND 2538
SENSIENT NATURAL INGREDIENTS, LLC, 16-R2D4-0762
SIA ENGINEERING (USA), INC., 16-R1D3-0307 AND 0308*
SOLARCITY CORPORATION, 14-R3D2-3706*
SPECTRA COMPANY, 16-R2D3-0910
STEPHEN BOLAND AND CHARLES BOLAND, A PARTNERSHIP DBA
BOLAND PLASTERING, 15-R6D5-4746 THROUGH 4752
STEVE P RADOS, INC, 15-R3D5-3848
SUN PACIFIC GLAZING INC, 15-R3D5-4562
SUPERIOR FRUIT RANCH INC, 16-R2D4-0371
SUPERIOR GAS & AUTO WASH INC., 15-R6D7-3481

TDH CONSTRUCTION INC DBA FOOTHILL PAINTING AND DRYWALL,
15-R2D4-2557
THE SANTA CRUZ MOUNTAINS PASTA FACTORY, LLC DBA SANTA
CRUZ PASTA FACTORY, 16-R1D2-0414 AND 0415*
TITAN METAL PRODUCTS, INC., 15-R6D1-3450
TORTILLERIA NUEVA, INC., DBA TORTILLERIA MEXICO #5, 15-R4D3-4450
AND 4451
UNITED ALLIANCE ENTERPRISES, LLC, 15-R1D4-1659 AND 1660
VALLEY OAK INDUSTRIES INC., 16-R6D2-0133 THROUGH 0141
ROBERT VARDANEGA, 16-R1D4-0546 THROUGH 0552
VERENGO, INC. DBA VERENGO SOLAR, 15-R4D4-4720
VERIZON CALIFORNIA INC, 16-R3D3-0034
VINE LANDSCAPING INC, 15-R1D5-3339
VIRGINIA SARABIAN DBA SARABIAN FARMS, 16-R6D5-0364
VOLPE COMPANY, INC., 15-R2D1-3549 AND 3550
WALMART STORES, INC. DBA WALMART NEIGHBORHOOD
MARKET STORE, #5606, 15-R2D1-4755
W B ELECTRIC, INC., 15-R1D4-3983 THROUGH 3985
WESTLAND ORCHIDS, INC., 15-R6D2-3667 AND 3668
Z 24 LANDSCAPING, INC DBA ZONE 24 LANDSCAPING, 16-R3D5-0175
ZACKY & SONS POULTRY, LLC DBA ZACKY FARMS, 15-R2D5-4545

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded the motion. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL:
(Issues regarding staff)

The Closed Session was adjourned at 10:29am 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 10:30am.