

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on June 9, 2016
Sacramento, California**

PRESENT:

Art R. Carter, Chair
Judith Freyman, Member
Han Ha, Interim Executive Officer
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Andia Farzaneh, Graduate Student Assistant
Emmanuel Jimenez, Office Assistant
Amy N. Lara, Office Assistant
Ryan Woolsey, California Legislative Analyst's Office

MINUTES OF May 12, 2016 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Freyman moved that the Board approve the draft minutes of the May 26, 2016 Board meeting. Chair Carter seconded. The Board voted to approve the draft minutes of the May 26, 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: Chair Carter reported that the legislature is in session through July.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter announced that he has appointed Han Ha as Executive Director. The paperwork to complete the appointment is in progress.

BOARD MEMBERS' REPORTS:

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

ACTION: Member Freyman reported that she is still in the midst of the confirmation process.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: Executive Director Han announced the Appeals Board has hired two Office Assistants, Emmanuel Jimenez and Amy N. Lara. The new staffers will work mainly with the Appeals Initiation team, but will also lend support throughout the operation as needed.

STAFF REPORTS:

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

REGULATIONS UPDATE:

ACTION: The "OASIS" package of procedural regulations was reposted and the comment period will end on June 17. To date no comments were received. The Board will meet on June 20 at a special meeting to give final consideration to the procedural regulations package.

OASIS PROJECT:

ACTION: The OASIS team is holding user acceptance testing in Sacramento and West Covina for the Appeals Initiation team, Senior Legal Typists and Administrative Law Judges. The next step is to create step by step instructions for using the OASIS system and then staff training will begin.

LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported that a new writ was filed since the last meeting.

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:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & 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.)

JENSEN ENTERPRISES INC DBA JENSEN PRECAST, 15-R3D3-0047 THROUGH 0049

ACTION: Member Freyman moved that the Board approve this Decision of an Administrative Law Judge. Chair Carter seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

KEY ENERGY SERVICES, LLC., 15-R4D7-0255 AND 0256

ACTION: Member Freyman moved that the Board vote to reconsider this matter on its own motion. Chair Carter seconded. The Board voted to reconsider this matter on its own motion.

VRAM GEVORKYAN DBA GOODFELLAS AUTO REPAIR, 15-R6D5-3116

ACTION: Member Freyman moved that the Board approve this Decision of an Administrative Law Judge. Chair Carter seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & 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.)

AVALON BAY COMMUNITIES, INC., 15-R3D2-0751

BARRETT BUSINESS SERVICES, INC., 12-R3D1-1204 through 1206

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

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

EVERGREEN NURSERY, 15-R3D2-0083 & 0084

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

ST. JERIES ENTERPRISES INC. dba EXPRESS AUTO SERVICES, 16-R6D5-9083

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

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WALT OXLEY ENTERPRISES INC dba CIARRA CONSTRUCTION, 16-R1D2- 9075

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

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

BIG Q AUTO REPAIR LLC, 16-R6D5-9060

ACTION: Member Freyman moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Chair Carter seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

UPS GROUND FREIGHT, INC. dba UPS FREIGHT, 16-R1D2-9043

ACTION: Member Freyman moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Chair Carter seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

ORDERS DISMISSING APPEAL:

AUSTIN SUNDT JOINT VENTURE, 15-R3D2-4308

ACTION: Member Freyman moved that the Board approve this Order Dismissing Appeal from an Administrative Law Judge. Chair Carter seconded. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

CHARTWELL STAFFING SOLUTIONS, INC., 15-R2D4-3935

ACTION: Member Freyman moved that the Board approve this Order Dismissing Appeal from an Administrative Law Judge. Chair Carter seconded. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

ORDER DENYING LEAVE TO FILE LATE APPEAL

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.

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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 TO Z TREE NURSERY, INC. dba A TO Z SPECIMEN TREE MOVERS,
15-R6D1-2277 through 2279
ATKINSON CONSTRUCTION, LP, 14-R3D1-4111
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
FIRST PRIORITY DESIGN & CONSTRUCTION, 16-R3D5-9073
GATEWAY PACIFIC CONTRACTORS, INC., 10-R2D3-1502 THROUGH 1508
HERMAN WEISSKER, INC., 13-R3D1-3279
JD MILLER CONSTRUCTION, INC. dba M & M FRAMING, 16-R4D4-9058
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
MORROW-MEADOWS CORP., 12-R4D1-0717 THROUGH 0719
NOLTE SHEET METAL, INC., 14-R6D7-2777 through 2783
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)

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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)

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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)
34. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
35. BURTECH PIPELINE, INC., 13-R3D2-0830 and 0831, 37-2016-00013806

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300(08-R1D2-1191
i. 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)
5. KEY ENERGY SERVICES, INC., F073567, S-1500-CV-283958-LHB

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.)

99 CENTS ONLY STORE, 16-R2D4-0763
ALBERTONS L.L.C., 16-R3D1-0319
ALLPOINTS ADVERTISING, INC., 16-R2D3-1444 AND 1445
AMARANTO INC. DBA AMARANTO GROWERS, 16-R6D2-0296 AND 0297
ARMSTONG GROWERS, 16-R6D2-0867 AND 0868
B.A.P. NURSERY, INC., 15-R6D2-4742
BUTTONWILLOW WAREHOUSE COMPANY, INC., 16-R4D7-0071 THROUGH 0074
C & J METAL PRODUCTS 15-R6D2-2336 THROUGH 2338
CAPITOL BUILDERS HARDWARE, INC, 15-R2D1-3192
CATHEDRAL CITY CAR WASH, 16-R3D3-0112 THROUGH 0114
CLARK PACIFIC, 16-R3D3-1546
COMMERCIAL NEON, INC. DBA CNI SIGNMAKERS, 16-R6D5-1301 AND 1303
COSTCO WHOLESALE CORPORATION DBA COSTCO #679, 16-R4D4-0821
CREEKVIEW HEALTH CARE, LLC, 16-R1D4-0832 AND 0833
CSI ELECTRICAL CONTRACTORS, INC., 14-R4D7-4158
DAN'S CUSTOM METAL, INC., 16-R6D2-0405
DECISION HR, 15-R2D3-3767
E J MEYER COMPANY, 14-R3D3-4118
ECO ABSORBENT TECHNOLOGIES, INC., 16-R4D4-1337
ESPARZA ENTERPRISES, 15-R6D5-3602
ESTES EXPRESS LINES, INC., 15-R1D2-4774 THROUGH 4776*
FABCO STEEL FABRICATION INC., 16-R3D3-0383 THROUGH 0385
FRESH EXPRESS, INC., 16-R7D1-1475*
GALLETTO CONSTRUCTION, INC., 15-R2D1-4207 THROUGH 4209
GATE VIEW PAINTING CO INC, 16-R1D4-1162 THROUGH 1164
KEVIN GIMBL DBA NEW IMAGE PAINTING, INC., 15-R2D5-3701 AND 3702
JD MILLER CONSTRUCTION, DBA M & M FRAMING, 14-R3D2-2476
THROUGH 2478*
JEFF TRACY, INC. DBA LAND FORMS LANDSCAPE CONSTRUCTION,
16-R3D1-1082 AND 1083
JEFFREY TROTT INDUSTRIES, INC., 15-R6D2-1490 THROUGH 1493

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JOHANNES J. BUSSJAEGER DBA SOUTHWEST SHUTTER SHAQUE, 16-R6D2-1197
KB HOME SOUTH BAY INC., 16-R1D2-0903
KERN HIGH SCHOOL DISTRICT, 16-R4D7-0489
KIMPTON HOTEL AND RESTAURANT GROUP, LLC. DBA GOODLAND HOTEL
OUTPOST RESTAURANT, 15-R4D3-3126 AND 3127
LINEAGE LOGISTICS, LLC., 16-R3D3-0815
LIQUID DESIGN, 16-R4D1-0525 THROUGH 0529
LOS ANGELES COUNTY FIRE DEPARTMENT, 16-R4D3-0857 MASONITE,
16-R2D4-1450 AND 1451
MORLIN ASSET MANAGEMENT, 16-R4D1-0976
NOR-CAL BEVERAGE CO., INC., 16-R2D1-1070
PABCO CLAY PRODUCTS, LLC DBA H. C. MUDDOX, 15-R2D1-3645 AND 3646
PANELIZED STRUCTURES, INC., 15-R2D1-0021
MIKE PAPIAN DBA A TO Z WOODWORK, 16-R6D5-0143 AND 0144
PASADENA WINDOW SUPPLY, 16-R4D1-0118 AND 0119
PETE JENSON PINNACLE CONSTRUCTION INC, 15-R2D1-3425 AND 3426
RACKLEY COMPANY, INC., 16-R2D3-1446
RASMUSSEN R & R, INC., 15-R5D2-3476
REAL TIME STAFFING SERVICES LLC DBA SELECT STAFFING, 15-R3D5-
4005 THROUGH 4007
RECOLOGY GROVER ENVIRONMENTAL PRODUCTS, INC., 15-R2D4-3469
RELIANCE METAL RECYCLING, INC. DBA CALCO INTERNATIONAL, INC.,
16-R3D1-0540 THROUGH 0545
SCHULTZ STEEL COMPANY, 16-R3D5-0893
SEASCAPE ENTERPRISES, INC., 15-R6D5-4586
SIGNAL RESTORATION WEST LLC, 15-R6D5-2198
SPECIALTY GRANULES (IONE) LLC, 15-R5D1-4116
STEVE'S WROUGHT IRON, 15-R2D5-3698
SUPERIOR TRAILER WORKS, 16-R3D3-1288 THROUGH 1290*
THOMAS JAMES & JENNIFER YEAGER, A PARTNERSHIP DBA
CABINET EXPERTS, 16-R6D5-1404 THROUGH 1406
TIM N JONES CONCRETE & MASONRY, INC., 15-R3D1-2799
TIMEC COMPANY, INC. DBA TRANSFIELD SERVICES AMERICAS
RESOURCES AND ENERGY, 16-R7D1-1474
TRIO MANUFACTURING, 15-R3D5-3205 AND 3206
UC REGENTS UC DAVIS VET MEDICINE TEACHING HOSPITAL, 15-R2D1-3343
WESTLAND HEATING & AIR CONDITIONING, INC., 15-R3D5-2015

ACTION: Member Freyman moved that the Board approve these Orders of Administrative Law Judges. Chair Carter 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)

ACTION: The Board discussed personnel matters.

The Closed Session was adjourned at 11:42 a.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 11:43 a.m.