

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on January 22, 2014
Sacramento, California**

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Kari Johnson, Executive Officer
Jeff Mojcher, Chief Counsel
Autumn Gonzalez, Industrial Relations Counsel
Lee Berlin, Executive Secretary

MINUTES OF JANUARY 8, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the January 8, 2014 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the January 8, 2014 Board meeting.

ADMINISTRATIVE MATTERS:

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

BOARD CALENDAR REPORT:

(Appeal volume statistics for previous month and calendar year to day)

ACTION: The topic under consideration was mislabeled and the Board instead discussed the appeal volume statistics for 2013. The Board docketed 3946 appeals in 2013, and disposed of 3896. The average time to complete an appeal was 266 days.

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)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

January 22, 2014

Page 2

ACTION: Chair Carter commented on a piece of legislation that may provide an update to a current rule by removing “telegraph” from the list of methods recommended for communicating with the Board.

CHAIRPERSON’S REPORT:

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

ACTION: Chair Carter reported that ALJ Training has been rescheduled to the last week in March. The Board will continue this meeting until Thursday, January 30 to discuss the training needs, schedule and materials in more depth.

Chair Carter will be attending the DOSH Advisory Committee meeting on February 6 and will provide that group with a brief update on videoconferencing and the OASIS project. ALJ Robinson, as the business lead on the OASIS project, will also attend the meeting.

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)

OASIS PROJECT:

ACTION: Executive Officer Johnson reported that the Rene Taylor Consulting group is holding meetings with Board staff to better understand OSHAB business rules and restrictions.

PALJ Ursula Clemons reported from West Covina that she is in weekly meetings with the telephone system project manager and expects a firm date for the T-1 line installation and system within the week.

She also reported that the long-awaited remodel of the office has begun. The project will include new cubicles and carpet, a more secure entrance and waiting area, and a door to link the two suites.

STAFF REPORTS:

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

ALJ TRAINING SCHEDULE, 2014:

ACTION: ALJ Training has been rescheduled to March 25, 26 and 27. The Board plans to reconvene this meeting on Thursday, January 30 to firm discussed training needs and materials.

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:

BEST CONTRACTING SERVICES, INC., 12-R3D3-3786

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.

McCARTHY BUILDING CO, INC, 12-R1D4-3458

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.

TREASURE ISLAND MEDIA, INC., 11-R6D1-1093 THROUGH 1095

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:

DAMION MANTLE DBA DAMION MANTLE PAINTING AND DECORATING,
2012-R1D1-2569 AND 2570

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

LA VALENCIA HOTEL, 2013-R3D2-9199

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):

BODEGA LATINA CORP, DBA EL SUPER, 2012-R3D6-2545 THROUGH 2547

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.

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-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature as amended. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature as amended.

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
BELLINGHAM MARINE INDUSTRIES, 2012-R2D2-3144 THROUGH 3146
BODEGA LATINA CORP., DBA EL SUPER, 12-R2D2-3500
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455
FERMA CORPORATION, 12-R2D2-1669
GMAC ELECTRIC, INC., 13-R6D5-9138
HARRIS CONSTRUCTION, 03-R2D5-3914
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
KANA PIPELINE, INC., 13-R3D3-9108
KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
LABOR READY, 13-R3D2-0164
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714

ACTION: The Board discussed this matter.

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

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

January 22, 2014

Page 5

M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
08-R2D1-3093 THROUGH 3098
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
MORROW MEADOWS CORP., 09-R3D3-2295
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186
ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC., 08-R2D1-0025 AND 0026
PERSONNEL PLUS, INC., 11-R3D5-1302
ROEBBELEN CONTRACTING, INC., 12-R2D2-3248
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SIERRA FOREST PRODUCTS, 09-R2D5-3979
SONIC DRIVE-IN, 12-R2D5-2734
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
STARBUCKS DBA STARBUCK'S COFFEE #5867, 12-R3D2-3675
THROUGH 3678
SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850
TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 AND 0097
VICTORY SCREEN PRINTING 12-R3D1-3673 & 3674

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.)

ORDERS DISMISSING APPEAL:

BEYOND COMFORT, HVAC CORP., 12-R4D3-3619
BROWNSTONE UPHOLSTERY CORPORATION, 13-R6D5-1090 THROUGH 1094
KOOSHAREM LLC DBA SELECT STAFFING, 13-R6D2-1487
GEORGE REISS DBA REISS RACING & RESTORATION, 13-R6D5-2717 AND 2718
ROCKET FARMS HERBS, INC., 13-R3D2-3549 THROUGH 3551

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal from Administrative Law Judges.

LEGISLATION:

ACTION: No report

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. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. SMUD, 34-2010-80000723 (08-R2D1-4887)
ACTION: The Board discussed this matter.
3. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
4. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
5. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965
(10-0188~0191)
6. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459
THROUGH 2461)
7. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
8. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
9. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
10. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
11. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
12. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
13. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
14. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219
AND 0220)
15. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
16. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258
(05-R2D4-2650 AND 2651)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

January 22, 2014

Page 7

17. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
18. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
19. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
20. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
21. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
22. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
23. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
24. HOME DEPOT USA, INC., BS141301 (10-3284)
25. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
26. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
27. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
28. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)
29. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
30. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
31. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)
32. AC TRANSIT, RG13687314 (08-R1D4-0135)
33. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
34. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)

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)

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.)

ACOSTA AND SONS INC., 13-R1D1-2464 AND 14-R1D1-0029
ALADDIN AIR CONDITIONING & HEATING, INC., 13-R4D3-2062
AR PIPELINE, 13-R4D3-2227 AND 13-R4D3-2310
AUTOZONE PARTS, INC., 13-R1D4-3594
BANDEL MANUFACTURING, INC., 13-R6D2-2912 THROUGH 2916
BLACK DIAMOND BLADE, INC DBA CUTTING EDGE SUPPLY, 13-R2D1-1806
AND 1807
BRAUN ELECTRIC COMPANY, INC., 13-R4D7-2000
CAMPBELL SOUP SUPPLY COMPANY, LLC, 13-R2D1-0206
CA STATE METROPOLITAN STATE HOSPITAL, 11-R3D6-1311 AND 1312
CA TRANSPORTATION, 13-R2D1-3112 THROUGH 3117
CHEVRON ENERGY TECHNOLOGY COMPANY, 13-R2D2-2184
CHEVRON PRODUCTS COMPANY, 13-R6D4-3506 AND 3507

ACTION: Member Lowry moved that the Board grant reconsideration of this matter on its own motion. Member Freyman seconded. The Board voted to grant reconsideration of this matter on its own motion.

DINO & HOPE CLARIZIO, 13-R4D1-0353 AND 0354
COMMAND PACKAGING VERNON, INC., 13-R4D1-0420 AND 0421 *
COSTCO WHOLESALE CORPORATION, 13-R1D4-3539
COUNTRY BUILDERS CONSTRUCTION, INC., 13-R1D1-2588
DELGADO BROTHERS, 13-R3D5-3071
DIXON HAY COMPANY, 13-R2D2-1218 AND 1219
ELECTRO-FORMING CO., 13-R2D2-3211 THROUGH 3216
EXTRA CHEESE, LLC/PAPA JOHN'S PIZZA, 13-R4D1-1424 *
FRANK FRIEDMAN DBA FRANK FRIEDMAN CONSTRUCTION,
13-R4D1-1413 AND 1414
GARAWAN FARMING INC., 13-R2D5-0208 AND 0209
GARDENA PLYWOOD INC., DBA VAN NUYS PLYWOOD & LUMBER,
13-R4D3-1947 AND 1948
HARBOR VIEW FARMS, LLC., 13-R4D3-3177
HARTY PIPELINES, INC., 13-R1D1-3207
HIRE STANDARDS POOL MAINTENANCE, INC., DBA HIRE STANDARDS
AMERICA'S POOL SERVICE, 13-R3D3-0455 THROUGH 0457 *
HP HOOD LLC DBA HOOD DAIRY, 13-R2D1-2721
FARAH & SAZZADUL KHAN DBA ARBOR APARTMENTS, 13-R2D4-3547 AND 3548
KLICKS CORE CO., 13-R3D5-1321 THROUGH 1325
KOHL'S DEPARTMENT STORE, INC., 13-R6D2-1161 THROUGH 1164

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

January 22, 2014

Page 9

LABEL ID TECHNOLOGIES, INC., 13-R3D2-3231 THROUGH 3233
LATHROP CONSTRUCTION ASSOCIATES, INC., 13-R2D2-1815
LONG BEACH CONTAINER TERMINAL, INC., 12-R3D5-3531
NABORS COMPLETION & PRODUCTION SERVICES CO., 13-R4D7-2303
AND 2304
NUTTER INSTALLATIONS INC., 13-R4D3-0763 AND 0764
OAK TREE FURNITURE, INC., 13-R4D4-0221 AND 0222
OKLAND CONSTRUCTION, 13-R2D5-2832
PHILLIPS 66, 13-R6D3-1145
RECON ENVIRONMENTAL INC., DBA NATIVE PLANTS, INC., 13-R4D3-1921
SACRAMENTO COCA COLA BOTTLING CO., INC., 13-R2D1-1290
THROUGH 1293
TOMAS M SALINAS DBA HEARTWOOD DESIGN/BUILD, 13-R2D3-3366
SHEA HOMES, LP, 13-R3D2-1042 AND 1043
SOLAR COMPANY INC., THE, 13-R2D3-1382 AND 1383
SONIC ELECTRONIX, INC., 12-R4D3-2597 AND 2598
SOUTH COUNTY PACKING, INC., 13-R1D2-1795
LANCE TODD DBA L T CONSTRUCTION, 13-R4D1-1191 THROUGH 1193 *
U.S. BORAX, INC., 13-R5D2-3057 *
VALLEY FIG GROWERS, INC., 13-R6D1-0983 THROUGH 0991
WESTERN FOAM, INC., 13-R2D3-2284 AND 2285

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.

The Closed Session recessed at 11:50 a.m.

The Board resumed its Closed Session meeting at 10:15 on January 30.

PERSONNEL:

(Issues regarding staff)

ACTION: The Board discussed specific training issues and needs for the ALJ training session scheduled in March.

The Closed Session was adjourned at 12:30 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 12:31 p.m.