

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on August 6, 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
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Lee Berlin, Executive Secretary

MINUTES OF JULY 23, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the July 23, 2014 Board meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the July 23, 2014 Board meeting.

ADMINISTRATIVE MATTERS:

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

EXPEDITED PROCEEDINGS:

(Report on general administration of expedited proceedings)

ACTION: OSHAB's staff analyst, Mary Christian, revised the report to show only the past year of Expedited Proceedings activity. She added a sidebar that shows historical activity not reflected in the larger report. The Board requested further revision of the statistical presentation for next month. The basic numbers will be posted on the website.

DOCUMENT RETENTION POLICY PROJECT:

ACTION: EO Johnson reported that the staff analyst, Theresa McKeever, is completing an inventory of the Board's printed materials and correspondence, and then will inventory the electronic documents. The inventory is suggested by the California Records Management Program as a critical step to completing the formal retention policy.

NEW BUSINESS:

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

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STAKEHOLDER MEETINGS:

ACTION: The Board discussed whether a stakeholder meeting should be scheduled, but no scheduling decision was made.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

DOSH OIS TRAINING AND IMPACT ON HEARING CALENDAR IN AUGUST:

ACTION: Planned DOSH training for its new OIS system caused conflicts with several scheduled hearings. Most of the cases have now been rescheduled, but there are some dates still available in October to accommodate the remaining cases.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: Chair Carter briefly discussed AB1634, which is still in the Appropriations Committee suspense file.

CHAIRPERSON'S REPORT:

ACTION: Chair Carter reported that the Department had received a Complaint About State Program Administration (CASPA) and the Director requested a response. The response was sent on August 5.

He also mentioned that he will be attending the Administrative Law Judge training session in the West Covina office on August 18-19.

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: Staff members viewed a COTS demonstration this week and expect to view another demonstration later in August. ALJ Neil Robinson and PALJ Ursula Clemons hope to visit the Orange County Superior Court on August 20 view its new case management and calendaring software.

STAFF REPORTS:

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

POSTING OF LITIGATED CASES ON WEBSITE:
(Report on progress on design of site and list of cases)

ACTION: Chief Counsel Jeff Mojcher reported that the next court decision will be posted to the website when the Notice of Entry of Judgment is issued.

He also reported that he would be representing the Board at a hearing this week, and that no writs have been received since the last Board 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 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:

PETITIONS FOR RECONSIDERATION:

A.B.S. MANUFACTURERS, INC., 14-R6D7-9075

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.

REPUBLIC FURNITURE MFG., INC., 14-R6D2-9083

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

WC STAFFING INC DBA WEST COAST STAFFING, 13-R6D2-3522 AND 3523

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

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

DAMON, INC., 13-R6D5-1975 AND 1976

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

LEVY RESTAURANTS, 12-R1D5-2714 AND 2715

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.

ORDERS DISMISSING APPEAL:

NEW KOOSHAREM, INC., DBA SELECT STAFFING BRANCH #24, 13-R3D2-3817

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

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

ABERCROMBIE & FITCH STORES INC., 14-R3D1-2248 THROUGH 2251

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

ORDER DENYING LEAVE TO FILE LATE APPEAL:

RUBEN BARAJAS DBA CENTRAL VALLEY FARMS, 14-R2D4-9086

MANCIAS STEEL COMPANY, INC., 14-R6D7-9060

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.)

B & B ROOF PREPARATION, INC., 12-R3D6-2946
BELLINGHAM MARINE INDUSTRIES, 12-R2D2-3144 THROUGH 3146

BRAD STONER PAINTING, INC., 13-R3D2-9200

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186

DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455

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.

GMAC ELECTRIC, INC., 13-R6D5-9138

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

HARRIS CONSTRUCTION, 03-R2D5-3914

HHS CONSTRUCTION, 12-R3D2-0492-0497

KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014

K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375

LABOR READY, 13-R3D2-0164

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.

LA VALENCIA HOTEL, 13-R3D2-9199

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

LYON'S MUFFER & BRAKE, 14-R6D5-9019

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

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MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
08-R2D1-3093 THROUGH 3098

MARCO RUFO DBA MARCO RUFO, 13-R6D5-9217

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406

McCARTHY BUILDING CO., INC., 12-R1D4-3458

MORROW MEADOWS CORP., 09-R3D3-2295

NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791

NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186

O.C. JONES AND SONS, INC. 13-R2D2-0310

ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637

JIM PARKER, 2014-R4D1-9009

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

ROEBBELEN CONTRACTING, INC., 12-R2D2-3248

ROSENDIN ELECTRIC, INC., 12-R2D1-3028

SIERRA FOREST PRODUCTS, 09-R2D5-3979

SONIC DRIVE-IN, 12-R2D5-2734

STAFFCHEX, 10-R4D3-2456 THROUGH 2458

ACTION: The Board discussed this matter.

STARBUCKS DBA STARBUCK'S COFFEE #5867, 12-R3D2-3675 THROUGH 3678

ACTION: Member Lowry moved that the Board vote to issue an Order of Remand in this matter. Member Freyman seconded. The Board voted to issue an Order of Remand in this matter.

TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 AND 0097

TREASURE ISLAND MEDIA, INC., 10-R6D1-1093 THROUGH 1095

VICTORY SCREEN PRINTING 12-R3D1-3673 & 3674

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. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-8000820 (03-R1D1-5170)
3. MASCON, INC., 34-2011-80000819 (08-R2D1-4278 AND 4279)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
5. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
6. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
7. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
8. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
9. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
10. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
11. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
12. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
13. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
14. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
15. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
16. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
17. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
18. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
19. HOME DEPOT USA, INC., BS141301 (10-3284)
20. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)

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21. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
22. AC TRANSIT, RG13687314 (08-R1D4-0135)
23. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
24. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)
25. CA PRISON INDUSTRY AUTHORITY, 13 C 0327 (08-R2D5-3426 ~ 3429)
26. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
27. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749
(2008-R2D1-3414 THROUGH 3418)
28. SHIMMICK-OBAYASHI, 34-2014-80001750 (2008-R3D3-5023 THROUGH 5025)
29. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
30. BAY AREA RAPID TRANSIT DISTRICT, RG14715710 (10-R1D1-3056 THROUGH
3058) (DOSH)
31. LAND O'LAKES PURINA FEED, LLC, RG14715717 (08-R2D4-1843 AND 1844)
(DOSH)
32. BAY AREA RAPID TRANSIT DISTRICT, RG14715720 (10-R1D1-3056 THROUGH
3058) (3rd Party)
33. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-
R6D2-2238 ~ 2241)
34. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
35. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
36. BHC FREMONT HOSPITAL, INC., RG-14-731145 (13-R1D2-0204)

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)

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3. SHERWOOD MECHANICAL, INC., D065322, 37-2012-00101466
(08-R3D2-4690 ~ 4693)
4. ORANGE COUNTY FIRE AUTHORITY, G050220, 30-2013-00628178
(CONSOLIDATED)

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.)

3 PHASE LINE CONSTRUCTION INC., 13-R2D3-0545
AGRICULTURAL COMPUTERIZED TECHNOLOGY, INC., 14-R4D7-0147
ALL METAL SUPPLY INC., 14-R2D3-1613
ALL VALLEY AG, INC., 13-R4D3-3860 THROUGH 3863
ALPHA ARCHITECTURAL SIGNS & LIGHTING INC., 14-R2D3-1217 AND 1218
ANDREWS INTERNATIONAL, INC., 13-R3D1-3732 AND 3733
ANNING JOHNSON COMPANY INC., 14-R4D4-0377
AT&T, 13-R2D1-2789
DAN AVILA & SONS, 13-R2D4-1297 THROUGH 1300
DAN AVILA DBA DAN AVILA & SONS, 13-R2D4-1563 THROUGH 1565
DAN AVILA DBA DAN AVILA & SONS, 13-R2D4-1566
AYALA BORING, INC., 13-R5D2-3958 AND 3959
BARAJAS CONSTRUCTION & PAINTING, 13-R4D7-0535 AND 0536
BHI PLUMBING, HEATING AND AIR CONDITIONING DBA REDDI ROOTER,
14-R3D3-2065
BLACKWELL CONSTRUCTION, INC., 13-R4D3-3107
BODEGA LATINA CORP., DBA EL SUPER, 13-R4D3-2861 THROUGH 2863
BROKAW NURSERY, LLC, 14-R4D3-0428
BRONCO ROOFING, 13-R4D1-3417
JOSE GUADALUPE CARRANZA DBA CARRANZA FARM LABOR CO,
14-R2D4-0773 THROUGH 0775
JOSE LUIS CASTRO DBA GARMENT PROCESS DYE, 14-R6D5-0795 THROUGH 0799
CEC ECO SOLUTIONS, INC., 14-R4D7-1118
CENTRAL TRANSPORT, 13-R4D4-3793
CLEMENTE'S DYE INC., 14-R6D5-1305 THROUGH 1311
COAST IRON & STEEL CO., 14-R6D2-0901 THROUGH 0910
CONTINENTAL INSTALLATION, INC., 14-R4D3-1444 AND 1445
CONTRACT SERVICES GROUP, INC., 13-R3D1-1917
CORRECTIONAL ALTERNATIVES, 13-R3D2-3128
COYLE REPRODUCTIONS, INC., 13-R4D4-2923 AND 2924
DAESHIN, USA, 13-R3D1-2480 AND 2481
DBI BEVERAGE SACRAMENTO, 14-R1D5-0516
DUNBAR ARMORED INC., 13-R4D4-3588
ROSA C. ESQUIVEL DBA C.N.S. GARMENT DYE, 14-R6D5-0790 THROUGH 0794

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FLATIRON WEST, INC., 14-R4D3-0505 AND 0506
FOUNDATION PILE INC., 13-R4D4-3486
GRIFFIN FAMILY CARE HOME, INCORPORATED DBA GFCH BERKELEY HOUSE,
14-R6D1-1274
GRAPHIC ENTERPRISES INC., 14-R1D5-1245 THROUGH 1247
GREEN VALLEY CORPORATION DBA BARRY SWENSON BUILDER,
14-R1D3-0073 THROUGH 0078
LEHIGH HANSON, INC. DBA HANSON AGGREGATES, 14-R4D3-1051 AND 1052 &
14-R4D3-1796
HARVEST TIME PRODUCE, 13-R3D2-1310 AND 1312
HERAEUS PRECIOUS METALS NORTH AMERICA LLC., 14-R4D4-0041
DOUGLAS HUFNAGEL, D.D.S., 14-R2D1-1512
INTERNATIONAL WOOD INDUSTRIES, INC., 14-R2D4-0331 THROUGH 0333
J & J ACOUSTICS, INC., 13-R1D1-2852
JOYA FOOD ENTERPRISES INC., DBA VALLARTA SUPERMARKETS #26,
14-R4D3-0673 AND 0674
JEFF TRACY INC. DBA LAND FORMS CONSTRUCTION INC.,
14-R4D4-0429
JEFF TUGWELL ROOFING COMPANY, 13-R2D3-2189
KRESKY SIGNS, INC., 14-R1D5-0679 AND 0680
LA COUNTY FIRE DEPARTMENT, 14-R3D5-1292
MIKE OWEN FABRICATION, 13-R6D2-3154 THROUGH 3157
MILLWORKS BY DESIGN, 13-R4D3-3054
MONACO PAINTING, INC., 13-R3D1-3678
JAIME MONTEON DBA UNITED KITCHEN DOORS, 13-R4D4-3683 AND 3684
OAK FURNITURE WEST LLC, 14-R6D2-1376 THROUGH 1378
PACIFIC STEEL CASTING CO., 13-R6D1-3381 THROUGH 3386
PARK WEST LANDSCAPE, INC., 14-R4D4-0137
PAUL BANCROFT ROOFING, INC., 13-R4D3-1662
PREMIER FLOOR CARE, INC., 14-R1D1-0403
PUENTE HILLS IMPORTS DBA PUENTE HILLS TOYOTA, 13-R4D4-3930
QUAIL H FARMS LLC., 14-R2D4-0686
RELIABLE CONTAINER CORP., 10-R3D6-3592 THROUGH 3594
RESTORATION HARDWARE, INC., 14-R2D2-1912 AND 1913
ROEDERER ESTATE, INC., 13-R2D3-3824
SAN FRANCISCO GENERAL HOSPITAL & TRAINING CENTER, 14-R1D1-0325
SANTA ANA UNIFIED SCHOOL DISTRICT, 13-R3D1-3350
SELECT STAFFING, 13-R4D1-2701
SHASTA GREEN INC., 13-R2D3-2677 AND 2678
SHULTZ STEEL COMPANY, 11-R4D2-2861 THROUGH 2863
SMILE BRANDS, INC DBA BRIGHT NOW DENTAL, 14-R2D4-0685
SOUTHWESTERN COLLEGE, 13-R3D2-3877
STONE BLUE, INC., 14-R3D5-1711 THROUGH 1714
SURFACING SOLUTIONS INCORPORATED, 13-R3D2-3317
TRAFFIX DEVICES, INC., 14-R3D3-2047 THROUGH 2049
TRU GREEN LANDCARE, 13-R4D1-1849

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UNITED PARCEL SERVICE, 14-R2D2-0244

URBAN PIONEER PROPERTY MANAGEMENT, INC., 14-R1D1-0404 THROUGH 0410

WEST COAST PACKING, INC., 13-R6D7-2828 AND 2829

WONDERFUL POOLS & SPAS, 13-R4D1-3882

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.

DOUBLE S FASHION, INC., 14-R6D5-1751 AND 1752

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

PERSONNEL:

(Issues regarding staff)

ACTION: The Board discussed personnel matters.

The Closed Session was adjourned at 12:44 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 12:45 p.m.