

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session

Held on March 20, 2024

Sacramento, California

West Covina, California

Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Jeff Mojcher, Chief Counsel
Patricia Hapgood, Acting Executive Officer
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Karen Halbo, Staff Attorney
Scott Pease, Staff Services Manager
Janis Jonas, Executive Secretary
Marlene Harris, Office Technician, OSHAB
Karin Umfrey, Attorney, WorkSafe
Dan Lucido, Chief Counsel, DOSH
Dave Wiseman, Staff Counsel, Cal Fire
Bruce Wick, Risk Management Director, Housing Contractors of California
Samuel Rose, Attorney, Conn Maciel Carey LLP
Fred Walter, Attorney, Conn Maciel Carey LLP
Kevin Bland, Attorney, Ogletree Deakins
Catherine Baldi, Employer, Arana Residential and Commercial Painting, Inc.
Luciane Yeh, Staff Attorney, DOSH
Rachel Brill, Staff Attorney, DOSH
Tuyet Tran, Staff Attorney, DOSH
Katherine O'Neal Duran, Member of the public

Note: Acting Executive Officer Patricia Hapgood appointed as Board Member to create a Board quorum present at today's meeting pursuant to Labor Code Section 149.

Motion: Chair Ed Lowry moved to approve Board Member Marvin Kropke attending today's meeting and the April 10, 2024, meeting remotely due to disability.
Seconded by Patricia Hapgood
Vote: 2-0

Board Member Judith Freyman is attending today's meeting remotely.

Minutes of March 6, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the March 6, 2024,
Board meeting.
Moved: Marvin Kropke
Seconded: Ed Lowry
The vote was 2-0

New Business:

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

1. Discuss scheduling future Round Table Discussions.
Action: Discussion was held about holding a Stakeholders Round
Table at a future date.
2. Discuss rescheduling a future Board meeting to be held at the West Covina
Appeal Board's office.
Action: The Board discussed the possibility of scheduling a Board
meeting to be held at the West Covina office later in the
year, possibly in the summer.

Old Business:

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

1. Discussion of precedential index.
Action: No report.
2. Discuss process for purging of files in OASIS.
Action: Scott Pease updated the Board on progress in creating
protocol for purging files in OASIS.
3. Discussion regarding ideas to improve the efficiency and effectiveness of the
Board's prehearing and hearing practices and procedures, including the Board's
appeals initiation and prehearing conference processes.
Action: Kevin Bland noticed a positive change in video settlement
conferences with ALJs. He complimented the Board on their
efforts to improve the process.

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 Lowry reported he will miss the April 10, 2024, meeting and Board Member Judith Freyman will be appointed temporary chair.

Chair Lowry noted that the Cal/OSHA Reporter has a new reporter on staff.

Board Members Reports:

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

Action: Board Member Judith Freyman mentioned Allstates Refractory Contractors, LLC, v. Su, et. al. which is the subject of a Petition for Writ of Certiorari to the U.S. Supreme Court. The National Association of Home Builders (NAHB) filed an Amicus brief regarding whether Fed/OSHA's power is a violation of the nondelegation doctrine. Member Freyman expressed concern as OSHAB receives most of its funding from Fed/OSHA. Bruce Wick noted that Employers fund \$210,000,000 of the Fed/OSHA budget, while the federal funding is only 30%.

Board Member Marvin Kropke updated information on AB5, a bill that became effective January 1, 2020, modifying CA rules for gig workers and firms hiring them, essentially establishing a three-prong test to decide who is an employee.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Acting Executive Officer Patricia Hapgood reminded everyone if they are required to file Form 700, the form is due April 1, 2024.

Ms. Hapgood also reported that the members of the OSHSAB staff met with Journal Technology Inc. (JTI) and have begun work on updating the OASIS program.

Ms. Hapgood updated the status of the hiring process for new staff.

Staff Reports:

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

1. Discuss whether there are any proposals for new regulations or proposals for modifications to current regulations. In addition, discuss whether any concerns exist regarding regulations.

Action: No report.

2. Litigation update:

Action: No report.

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 comments will be entertained during discussion of each agenda item of the open meeting.)

Action: Bruce Wick spoke to raise a topic to be discussed in an informal round table event. He expressed his concern about the SC Anderson, Inc. Board Decision, and said it incentivizes general contractors' superintendents to stay in the trailer to avoid creating liability for the general contractor who is trying to do the right thing and address hazards to make the workplace safer. Mr. Wick referred to the McCullar v. SMC Contracting, Inc. holding and said SC Anderson didn't hide behind the title of controlling manager.

Dan Lucido updated the Board on the progress of Legends and the training and work being done to improve the operation of the program.

Kevin Bland asked questions regarding the Lean Six Sigma Process Improvement Course and Project he was asked to partake in as a stakeholder. Marlene Harris, as the lead on this project, answered his questions.

Kevin Bland and Fred Walter asked questions and made suggestions regarding filing appeals. They asked about the ability to finish an intent to appeal electronically even though it was started by telephone.

Mr. Bland and Mr. Walter both expressed the desire to verify what was filed electronically by being able to print a document after the filing showing what information had been entered.

Ms. Harris explained that these items were being looked at as upgrades to the system and suggested ways to obtain the information entered when filing electronically.

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.)

1355061 Republic Electric West, Inc.
Action: The Board discussed this matter.

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have 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.)

1415736 Los Angeles County Probation Dept.
Action: The Board voted to issue an Order Extending Time.
Moved: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0

1625466 Jensen Meat Company
Action: The Board voted to deny the petition and let the final order stand.
Moved: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0

Orders Dismissing Appeal:

1667080 B2 Automotive
Action: The Board discussed this matter.

1593924 Crowder Construction, Inc.
Action: The Board discussed this matter.

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1513018 Heritage Manor Healthcare, LLC
Action: The Board discussed this matter.

1652716 Pacifica Senior Living LLC
Action: The Board discussed this matter.

Orders Denying Leave To File Late Appeal:

1624658 Burrtec Waste Group, Inc.
Action: The Board voted, in regards to Citation 2, to remand and reinstate the appeal.
Moved: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0

1684649 HASA, Inc.
Action: The Board voted to amend the Order to state that the denial of HASA, Inc.'s motion is issued without prejudice.
Moved: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0

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.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

1431672 A. Teichert & Son, LLC
Whether the cited employer was in violation of lockout/tagout requirements.

1473644 Amazon.com Services, LLC
Whether the employer's training program was in compliance with the applicable safety order.

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- 1113026 Angelus Block Co., Inc.
Whether Employer violated lock out/tag out requirements as alleged.
- 1398352 Anheuser-Busch, LLC
Whether the evidence supports the holding that employer violated lockout/tagout requirements.
- 1568252 Arana Residential and Commercial Painting, Inc.
Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.
- 1466722 Bragg Investment Company, Inc.
Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.
- 1420923 Drill Tech Drilling & Shoring, Inc.
*Whether the Employer failed to enforce its IIPP as required.
Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.*
- 1497263 Hamilton Iron Works, Inc.
section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) should be reduced.
- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 1465119 Sun Belt Rentals
Whether certain information accepted into evidence was inadmissible hearsay, and whether the evidence supports a finding that Employer violated sections 3203 and 3328, as alleged.
- 1475491 Sutter Bay Medical Foundation
Whether the employer failed to comply with COVID protections as alleged.
- 1609228 The Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.

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- 1488312 The Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 1486257 The Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations.

Matters 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. Ashley Furniture Industries, 34-2017-800002750 (1016514)
2. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
3. Davis Development Company, 34-2020-80003373 (1226084)
4. Hill Crane Service Inc., 34-2021-80003744 (1135350)
5. USA Waste of California, Inc., 34-2022-80003841 (1384029)
6. American Fumigation Services, LLC, 22STCP04305 (1506586)
7. General Dynamics NASSCO, 37-2023-00024521 (1300984)
8. S.C. Anderson, Inc., 24WM000039 (1405107)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Granite Construction Company, 34-2021-80003634 (1235643)
3. MWL Solutions, C097353, 34-2020-80003549 (1436014)
4. BMC West LLC, 34-2020-80003459 (1399613)

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5. Hampton Tedder Electric, 34-2020-80003549 (1233597)
6. RND Contractors, Inc., CIVSB2119442 (1436785)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
Action: No report.
2. Categorizing the Board's DARs and Denials on the DIR website.
Action: No report.
3. Superior Court cases that also involve or relate to appeals pending before the Board.
Lyft, Inc., 30-2023-01368387-CU-MC-CXC (1594664)
Uber Technologies, Inc., 30-2023-01330884-CU-JR-CXC (1594663)

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.)

1543655	A M Cabinets Inc.
1683214	AAA Network Solutions, Inc.
1650540	American Vision Windows, Inc.
1530309	Aztec Polishing, Inc.
1683197	B&D Upholstery, Inc.
1698506	Bertolotti Disposal, Inc.
1669185	BHM Construction Inc.
1690880	BLF Inc.
1679243	Blue Sky Xpress Carwash, Inc.
1683415	Bogard Construction, Inc.
1683228	Brandt Packing Co
1686944	Busters Express Car Wash
1639543	C. Overaa & Co
1489870	City of Los Angeles Department of Building
1651306	Climax Foods Inc.
1651311	Climax Foods Inc.

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1656612	Contractors Wardrobe, Inc.
1651773	Cypress Coast Fence
1583684	Dale A. Elevatorski
1675899	Dan R. Costa, Incorporated
1681896	Dccca1, Inc.
1636983	Diana's Mexican Food Products, Inc.
1649309	E.M. Tharp, Inc.
1704932	Earth Strata Geotechnical Services
1711617	Earthwise Packaging, Inc.
1692245	EDCO Disposal Corporation
1694345	Ensaymada Project LLC
1534822	EPlastering, Inc.
1652288	Ernie Ball, Inc.
1507904	Fairfield-Suisun Unified School District
1552413	Fairway Staffing Services
1557459	FedEx Ground Package System, Inc.
1691442	Finishline Express, LLC
1557298	Fog City Roofing, LLC
1694397	Fredrico Torres, an Individual
1638004	Golden State Bridge, Inc.
1694727	Hare Construction, Inc.
1685370	Hathaway Dinwiddie Construction Company
1670787	Hi-Tech Developing Inc.
1690096	Holt Repair & Manufacturing, Inc.
1700530	House Foods America Corporation
1679449	J&S Restoration Painting, LLC
1678741	Javier Hernandez
1653664	Jayesh Patel
1590389	Jensen Landscape Services, LLC
1623834	Joseph Christman's West Coast Tree, LLC
1616876	KCS West, Inc.
1579265	Kern Labor Contracting, Inc.
1578628	Kevin Woody Landscape Maintenance, Inc.
1647870	Kiewit Infrastructure West Co.
1686877	Larry Winston Construction
1613997	Les Schwab Tire Centers of Central California, LLC
1683849	Liberty Stone Fabricators Inc.
1595757	Los Angeles County Fire Department; Station 106
1578012	Los Angeles Department of Water and Power

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1689863	Lotus Hotels Pittsburg, Inc.
1654524	MCK Enterprises, Inc.
1689893	Mckuin Pipeline Inc.
1699326	Michels Corporation
1683223	Midstate Sheetmetal, Inc.
1535112	Mission Linen Supply
1518306	Mitsubishi Electric
1704488	Mohini LLC
1679426	Mr. Build Home Improvement Company
1624859	Nexus Plastics California, Inc.
1683346	NorthStar Energy Management, LLC
1514832	Nuline Technologies, LLC
1480875	OWB Packers, LLC
1696607	Oxnard Steel and Ornamental Tool Supply, Inc.
1688349	Pacific Tech Communications, Inc.
1699878	Pajarosa Floral
1594667	Paloma Packing, Inc.
1621278	Power Pole Service Inc.
1638534	Precision Refrigeraton and Air Conditioning LLC
1653576	Priorityworkforce, Inc.
1643214	Pro8ein's Newman Processing Facility LLC
1713452	R. L. Mays Construction Company Inc.
1575177	Richard Hancock, Inc.
1651337	Ross Roofing & Construction Inc.
1681936	Saticoy Lemon Association
1589478	Shamrock Foods Company
1654346	Solorzano Services Inc.
1610788	Southern California Edison Company
1687911	Southland Sod Farms Operations, Inc.
1652118	T&L Trading, Inc.
1600343	T. Hasegawa USA, Inc.
1694733	Tip Top Roofing, Inc.
1704042	Tradition One Inc.
1664115	Tri Star Auto Collision
1543383	True Value Company, LLC
1512613	U.S. Borax, Inc.
1656898	VCA Animal Care Clinic
1637234	Vertical Access, Inc.
1512614	Victoria Ventura Healthcare, LLC

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1686229	Walmart Supercenter
1695216	Wash Depot Holdings, Inc.
1474569	Waterproofing Associates, Inc.
1508422	Wayfinder Family Services
1693981	Westlake Hardware, Inc.

Action: The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

Chair Ed Lowry will be absent for the April 10, 2024, Board meeting and designated Judith Freyman to act as Chair for this meeting.

The Closed Session adjourned at 11:20 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 Board meeting was adjourned at 11:22 a.m.