

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on April 10, 2024
Sacramento, California
West Covina, California
Zoom Platform

Present:

Judith Freyman, Management Member, Acting Chair
Marvin Kropke, Labor Member
Jeff Mojcher, Chief Counsel
Patricia Hapgood, Acting Executive Officer
Kerry Lewis, Presiding Administrative Law Judge
Vincent Mersich, Staff Counsel
Elizabeth Clarke, Staff Counsel
Karen Halbo, Staff Counsel
Scott Pease, Staff Services Manager
Janis Jonas, Executive Secretary
Christopher Jessup, Administrative Law Judge
Marlene Harris, Office Technician, OSHAB
Dave Wiseman, Staff Counsel, Cal Fire
Kathryn Woods, Staff Counsel, DOSH
Deborah Bialosky, Staff Counsel, DOSH
Sesilya Saraydarian, Staff Attorney, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Monica Netherly, Member of American Professionals
Lisa Brokaw, Staff Counsel, DOSH
William Kroutil, Safety manager, Communications & Power Industries

Excused Absent: Ed Lowry, Public Member, Chair

Request remote attendance: Member Marvin Kropke made a motion asking to be permitted to attend the April 24, 2024, Board meeting remotely to accommodate a physical condition I have that cannot otherwise be reasonably accommodated. I am asking for this under Government Code section 11123.3, subdivision (j)(2).

This motion was seconded by Judith Freyman.

The Board voted to approve the remote attendance request 2-0.

Minutes of March 20, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board voted to approve the minutes of the March 20, 2024, Board meeting.
 Moved by Marvin Kropke.
 Seconded by Judith Freyman.
 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: This topic is being held for the next meeting.
2. Discuss rescheduling a future Board meeting to be held at the West Covina Appeal Board's office.
Action: This topic is being held for the next meeting.

Old Business:

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

1. Discussion of precedential index.
Action: The approved cases have been remediated and added to the precedential list.
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: No report.

Legislation:

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

- Action: Elizabeth Clarke updated the Board regarding current legislation. AB3106 has been amended to apply only to school employees. This bill would require the California Safety and Health Standards Board to adopt a standard that ensures workers in California continue to receive their pay and benefits while excluded from the workplace due to testing positive for or displaying symptoms of COVID-19.

Chairperson's Report:

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

- Action: No report.

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.)

Action: Patrica Hapgood announced that Vincent Mersich, Staff Counsel for the Appeals Board, has accepted a position with the CRLB.

The Appeals Board has hired a new Senior Legal Typist and is waiting for HR approval to hire three new Administrative Law Judges.

The Board is facing the possibility of having to switch contracts with ZOOM and be added to the DIR contract. More information on this issue will be made available as soon as possible.

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: Karen Halbo reported that she is gathering information and hopes to bring suggestions for regulation changes soon, so the Board can consider the changes and schedule a meeting for stakeholder input.

2. Litigation update:

Action: Jeff Mojcher updated the Board with information regarding court cases. The Third District Court of Appeals has denied the Board's and the Division's request for publication of the MWL Solutions, Inc. opinion. The Board is waiting for the Appellate Court decision on the RND Contractors, Inc. matter.

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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: Kathryn Woods congratulated Vincent. Ms. Woods also wanted to verify that the cases recently added to the Precedential list are now available on the Appeals Board website.

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.)

1349559 O.C. Jones & Sons, Inc.
Action: The Board discussed this matter.

1486176 Tutor Perini Corporation and O & G Industries, 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.)

1399613 BMC West, LLC
Action: The Board voted to take this matter under submission.
Moved by Marvin Kropke.
Seconded by Judith Freyman.
The vote was 2-0.

1415736 Los Angeles County Probation Dept.
Action: The Board voted to take this matter under submission.
Moved by Marvin Kropke.
Seconded by Judith Freyman.
The vote was 2-0.

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- 1671898 Ramen 7 LLC
Action: The Board voted to reinstate this appeal and remand the matter to hearing operations.
 Moved by Marvin Kropke.
 Seconded by Judith Freyman.
 The vote was 2-0.
- 1625466 Jensen Meat Company
Action: The Board voted to issue a denial for this matter.
 Moved by Marvin Kropke.
 Seconded by Judith Freyman.
 The vote was 2-0.

Orders Dismissing Appeal:

- 1640577 H&S Energy Products, LLC
Action: The Board discussed this matter.
- 1313245 K-Vac Environmental Services, Inc.
Action: The Board discussed this matter.
- 1462382 Overhill Farms, Inc.
Action: The Board discussed this matter.
- 1351361 Priority Workforce, Inc.
Action: The Board discussed this matter.

Orders Denying Leave To File Late Appeal:

- 1690285 Purple Line LLC
Action: The Board voted to grant Leave to File Late Appeal.
 Moved by Judith Freyman.
 Seconded by Marvin Kropke.
 The vote was 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

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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.
- 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.
- Action: They Board discussed this matter.
- 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.

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- 1371294 KPRS Construction Services, Inc.
Whether the employer violated section 1632 as alleged? Whether the ALJ's ruling that the Division did not meet its burden of proof regarding the employer's IIPP was correct.
- 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.
- 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)

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

Other Items:

1. Discussion about title 8, California Code of Regulations section 348, the Board's present regulation which adds five days to the time in which something must be done to account for mailing time.
2. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
Action: No report.
3. Categorizing the Board's DARs and Denials on the DIR website.
Action: No report.
4. 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.)

1731718	Ability Counts Inc.
1546690	Acco Engineering Systems Inc.
1717284	Advanced Eyecare, an Optometric Corporation
1712232	Advanced Integrated Pest Management
1654642	Agrima Farm Labor, Inc.
1692134	Akal BuildTech Inc.
1700314	AmPam Parks Mechanical Inc.
1555403	Amware Pallet Services, LLC
1717130	Antonio Gomez Ruiz
1689337	Ascend Construction Inc.
1684677	Astonish, Inc.
1640847	B.W. Hotel LLC
1616592	Baker Commodities, Inc.
1473213	Borrmann Metal Center
1569343	Bruce Roofing, Inc.
1683548	Builder Boy Inc.
1620825	Buttonwillow Warehouse Company, Inc.
1671423	Caliagua, Inc.
1709899	California State University San Marcos
1640779	Capital Development Services, Inc.
1671986	Carpecarma LLC
1657677	Carvalho's Pool Service, Inc.
1681349	Ceja-Reyes, Inc.
1595609	Cherniss Tire World, Inc.
1568241	Citistaff Solutions, Inc.
1514415	City And County Of San Francisco
1710825	City of Roseville Environmental Utilities
1418460	Commercial Metals Company
1627890	Costco Wholesale Corporation
1383344	County of Los Angeles Department Of Parks
1378121	Culmin Staffing Group, Inc.
1529833	David Abreu Vineyard Management, Inc.
1592363	Eberhard
1625716	Employee Force Provider
1671442	Esa P Portfolio Operating Lessee LLC

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1674461	Esparza Enterprises, Inc.
1640776	Fernando Garcia Garibay, an Individual
1574311	Ferro Trucking, LLC
1703503	Flaherty Brothers Construction, Inc.
1608675	Foster Poultry Farms, LLC
1540519	Frontier-Kemper/Tutor Perini J.V.
1504266	Garfield Beach CVS, LLC
1569758	GCX, LLC
1678825	Glenn Nelson
1651673	Golden State Staffing Service Inc.
1601007	Google, LLC
1681505	Great Lakes Services, LLC
1695503	Harman-Wall Inc.
1434239	Hau Thang Nguyen
1675282	HHJ Construction, Inc.
1675468	Highgate Hotel L.P.
1623559	HPL Contract, Inc.
1704018	J&D Custom Embroidery, LLC
1674758	J. & R. Thompson, Inc.
1680278	J3C Group LLC
1695791	JD Miller Construction Inc.
1660660	Jose A. Castro, an Individual
1689007	Joseph J. Albanese, Inc.
1482128	JTI Electrical Instrumentation, Inc.
1700320	K & M Visser Dairy
1640808	Kenyon Plastering of Southern California, Inc.
1678457	KH Becket, LLC
1543235	LA County Internal Services Department
1621384	Larry Methvin Installations, Inc.
1614325	LAUSD Civic Center Operations
1674281	Line Electric Inc.
1676569	Los Altos Golf & Country Club
1722665	Maruti Corporation
1664348	May Trucking Company
1675018	Metal Tek Company
1631422	Metro Signs, Inc.
1637031	MF Classic Interior, Inc.
1690872	Milender White, Inc.
1702522	Mixed Nuts, Inc.
1660955	Monterey Peninsula Airport District

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1633092	MTZ Steel, Inc.
1715804	Naturescape Services, Inc.
1507611	New Green Day, LLC
1509328	Nick Satter, Inc.
1640928	Nor-Cal Maintenance, Inc.
1512418	Nugget Market, Inc.
1424492	O'brien Steel Erectors, Inc.
1662210	Oak Tree Ag Mgt., Inc.
1636775	Olympic Pallets, Inc.
1721133	Paligroup Management, LLC
1658243	Paramount Logistics Inc
1661832	Partnership Staffing Solutions Inc.
1673954	Paul J Croskrey
1455798	Pentagon Surfaces, Inc.
1551402	Phil Vonk & Company, Inc.
1692140	PLM Operations, LLC
1677879	Prime Ag Labor Source, Inc.
1668538	Renn Construction, Inc.
1692775	Reno Tahoe Glass LLC
1605616	Richard Tackett, an Individual
1647854	Roofs Roofs and Remodel, Inc.
1545783	San Francisco Municipal Transportation Agency
1698228	San Joaquin Regional Transit District
1662373	Santiago General Engineering
1620956	Sanwood Fine Carpentry & Construction, Inc.
1474657	Schmidt Industries, Inc.
1649439	Sierra Pacific Industries
1687788	Sightline Hospitality, LLC
1532894	Slade Industrial Landscape, Inc.
1703212	Smooth Wall Solution Inc.
1641669	SSI Surfaces
1663832	Stericycle, Inc.
1635531	Sunrise Senior Living Management Inc.
1657463	Sunrun Installation Services, Inc.
1699080	Swinerton Builders
1527031	Target Corporation
1616023	Team Industrial Services, Inc.
1702688	The Danco Group
1689014	The High-Way LLC
1699247	TLLR, LLC

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1587231	Total Productive Staffing, Inc.
1714283	Trinity Perfect Construction, Inc.
1707258	Truck Accessories Group, LLC
1692923	TVI, Inc.
1666080	Vander-Bend Manufacturing, Inc.
1470093	Vivint Solar Inc.
1697521	We Pack It All, LLC
1606006	Webcor Construction, LP
1681934	Weiss Painting & Construction
1574383	Western Mountain Transport Inc.
1682494	Willis Construction Company, Inc.
1688767	Woodmen of The World Life Insurance Society
1712236	Zavatto Brothers Construction

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:01 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 11:02 a.m.