

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on February 21, 2024
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Staff Attorney
Vincent Mersich, Staff Attorney
Karen Halbo, Staff Attorney
Janis Jonas, Executive Secretary
Chris Jessup, Administrative Law Judge
Marlene Harris, OSHAB Office Technician
Kevin Bland, Attorney, Ogletree Deakins
Catherine Baldi, Employer, Arana Residential and Commercial Painting, Inc.
Karin Umfrey, Attorney, WorkSafe
Kris Carmichael, Owner, Fritz Insurance
Denise Cardosa, Assistant Chief Counsel, DOSH
Dan Lucido, Chief Counsel, DOSH

Minutes of January 24, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the January 24, 2024,
Board meeting.
Moved: Judith Freyman
Seconded: Ed Lowry
The vote was 3-0

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.)

1. Discussion of precedential index.

Action: Jeff Mojcher informed the Board that 4 or 5 decisions are
being submitted for remediation in preparation for publication
on the Board's website.

2. Discuss process for purging of files in OASIS.

Action: No report.

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3. Discussion regarding prehearing conference practices and procedures, including identification of issues at prehearing conference.

Action: No report.

Legislation:

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

Action: Vincent Mersich updated the Board on Legislation highlighting AB 1976.

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: Judith Freyman shared information from a newspaper article regarding work safety and recommended two British Medical Journal articles, one on the Impacts of Covid on the 2024 Presidential Election and the other on US Workers during the pandemic.

Marvin Kropke apologized for the need to cancel the February 7, 2024, Board meeting due to the severe storms in Southern California. He is looking forward to rescheduling the Board meeting to be held in the West Covina office.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Presiding Judges Sam Lucas and Kerry Lewis updated the Board on the status of hiring two Administrative Law Judges. Janis Jonas reported on scheduling interviews for a Senior Legal Typist.

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.

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2. Litigation update:

Action: Jeff Mojcher updated the Board on current court cases. The Board prevailed on the Interline case. The decision issued on February 7, 2024, so the time for filing a Petition for Review with the California Supreme Court has not expired. There are two cases on appeal that challenge the Board's video hearing procedures. On February 23, 2024, Vincent Mersich will argue the MVL case in the 3rd District Court of Appeal, and on March 21, 2024, Aaron Jackson will argue the R.N.D. case in the 4th District Court of Appeal.

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: Public comments were received. A request was made for another round table, and the previous location used in Vacaville was praised. The Board was asked to engage stakeholders on possible changes before initiating any new rulemakings.

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.)

1415736 Los Angeles County Probation Department
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.)

1466722 Bragg Investment Company, Inc.
Action: The Board voted to take this matter under submission for reconsideration.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

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1686944 Busters Express Car Wash
Action: The Board voted to issue an Order of Remand and
 Reinstatement this appeal.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Vote: 3-0

1683182 Dinucci Corporation
Action: The Board voted to issue an Order of Remand and
 Reinstatement this appeal.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Vote: 3-0

Orders Dismissing Appeal:

There are no Orders Dismissing Appeal.

Orders Denying Leave To File Late Appeal:

1685699 Slam A Door LLC
Action: The Board voted to issue an Order of Remand and
 Reinstatement this appeal.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Vote: 3-0

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.

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- 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.
- 1568252 Arana Residential and Commercial Painting, Inc.
Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.
- 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.
- 1490008 Elite MD, Inc.
Whether the ALJ's denial of leave to file a late appeal was correct.
- Action: The Board voted to Remand this matter to Hearing Operations. The ALJ's analysis is both correct and affirmed.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 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.
- Action: The Board discussed this matter.
- 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.

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- 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)
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)

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. 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.)

1588826	ACS Staffing, Inc.
1573865	AHMC San Gabriel Valley Medical Center LP
1578124	Amazon.Com Services, LLC
1475167	Angelus Block Co., Inc.
1678744	Antonio Delacruz
1572161	Atlantic Solutions Group, Inc.

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1648621	Banister Ironworks, Inc.
1636743	BC Fashions, Inc.
1694391	Bella Collina San Clemente LLC
1679517	Bemus Landscape Inc.
1639287	Bob French Construction Inc
1545048	Cadinha Logistix LLC
1644519	California State University Fresno
1696654	Central California Conference of Seventh-Day
1489677	City of Clovis
1634920	City of Foster City
1643621	Cogir Management USA, Inc.
1626311	Del Amo Construction, Inc.
1693165	Dolgen California, LLC
1621629	DSM Masonry, Inc.
1501566	Express Services, Inc.
1277530	FedEx Ground Package System, Inc.
1617223	Fisherman's Pride Processor, Inc.
1682390	Foundation Pile, Inc.
1477427	General Dynamic Nassco
1557311	Gotworx Staffing Inc.
1611850	Grand Martco, Inc.
1707111	Hanson Drywall Inc.
1594870	Harbor Distributing, LLC
1679751	Haxton Masonry, Inc.
1676485	Ideal Cabinetry, Inc.
1633710	Industrial Field Services, Inc.
1620036	Jalisco's Apparel, Inc.
1684424	Jason Thomas Patrick
1626874	JPB Designs Inc
1670183	Kaju Bros., Inc.
1285640	Lehigh Southwest Cement Company

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1568349	Magnolia Foods
1659879	Maruhana U.S.A. Corporation
1639487	Marysville Joint Unified School District - Kynoch
1615511	Mauritson Farms, Inc.
1664112	Mehdi Mohammad Afrasiabi, An Individual
1622300	Michael C. Stead, Inc.
1694871	Nationwide Guard Services, Inc. At Gilbert USA
1490106	Nuline Technologies, LLC
1690283	Pacific States Petroleum Inc
1605259	Pacific Uniform Service, LLC
1639725	Patrick Warren Construction, Inc.
1630899	QG Printing II, LLC Dba: Quad
1698817	Rakar, Inc.
1682519	Rancho Bernardo Car Wash LLC
1627101	Robert P. Kimball
1683459	Ruppert, Inc.
1664556	S&D Carwash Management, LLC
1639282	SBIT Group LLC
1630512	See's Candies, Inc.
1630503	Silicon Valley Technical Staffing
1578374	South Bay Safety, Inc.
1507922	Stater Bros. Market #146
1507733	Stater Bros. Market Store #144
1367609	Structural Shotcrete Systems, Inc.
1679884	Sunrise Dryers, LLC
1624849	Tutor Perini Corporation and O & G Industries, Inc.
1615953	TWR Enterprises, Inc.
1603765	United Pumping Service, Inc.
1648185	Veolia Es Technical Solutions, LLC
1636719	Vision Construction, Inc.
1671780	VSS Countertops, Inc.

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1658208 Walmart Inc.
1599642 X Wash, Inc.
1545210 Zanker Road Resource Management LTD

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

Personnel:

(Issues regarding staff)

1. Lean Six Sigma Process Improvement Course and Project presented by Marlene Harris.

Action: Marlene Harris reported on the Lean Six Sigma Process Improvement Course and Project she is a part of.

The Closed Session adjourned at 11:47 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 11:50 a.m.