MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on April 6, 2017
Sacramento, California

PRESENT:
Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Executive Officer
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Andia Farzaneh, Graduate Student Assistant
Howard Chernin, Administrative Law Judge
Chris Merrill, Administrative Law Judge
Members of the OSHAB Sacramento Staff
Manuel Melgoza, Attorney, Robert D. Peterson Law Corporation

MINUTES OF March 16, 2017 MEETING:
(Approve or amend minutes of previous Board meeting)
ACTION: Member Lowry moved that the Board approve the draft minutes of the March 16, 2017 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the March 16, 2017 Board meeting as amended. 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.)
ACTION: Chair Carter reported that the training held in March was well received by attendees. Many changes have taken place in regulations and Board operations since 2010. The 2017 training event brought new information and transparency to the community of employers, enforcement agents, attorneys, and interests groups. The judges and staff who organized and conducted the presentations were Ursula Clemons, Kevin Reedy, Howard Chernin, Neil Robinson, Chris Merrill, Lee Berlin, Amy Lara, Janis Jonas, Grace Johnson, Han Ha and Jeff Mojcher. Chair Carter presented Certificates of Appreciation to each staff member for contributing to the success of the training effort.
LEGISLATION:
(Review and discuss current legislation which may affect the Appeals Board)
ACTION: Counsel Gonzalez reported that AB 708 has been amended to remove the penalty for local agencies for failure to report.

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: Board Member Freyman shared worker safety information from the article ‘Is Your Brain Hardwired for Safety?’ published by Health and Safety Today that discussed employees who were evaluated in the areas of 1) rules, 2) awareness, 3) caution and 4) control. Those who score low are 4 times more likely to be injured on the job compared to those with high scores. 40% of serious injury and fatality incidents are related to employees who view rules as guidelines and use their own judgment. 30% occurred when the exposure level changed unexpectedly. This topic ties into the Board’s discussion of IEAD and hazard exposure.

EXECUTIVE OFFICER’S REPORT:
(Report regarding administrative matters)

OPERATIONS UPDATE:
ACTION: Executive Officer Han Ha reported that the next Federal OSHA meeting will be on April 25, 2017.
She also notified the Board that she will not attend the next Board meeting scheduled for April 20, 2017.

ACTION: Lee Berlin reported that a California Highway Patrol officer is scheduled to speak with the staff at the Sacramento office on April 19, 2017. He will present a film about violence in the workplace titled ‘Run, Hide, Fight’. Arrangements will be made to give the same instruction and film to the staff in the West Covina office.
STAFF REPORTS:
(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. REGULATIONS:
   a. California Code of Regulations:
      ACTION: Counsel Jackson reported the rulemaking package with
      the changes to California Code of Regulation, Title 8, Section
      372.9 has been completed and sent to the legal unit at the Office of
      the Director, for review.
   
      b. Independent Employee Action Defense (IEAD)
      ACTION: The memos regarding IEAD were held over and to be
      discussed at the next Board meeting.

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 comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: Manuel Melgoza, Attorney with the Robert D. Peterson Law Corporation, previously served as the Board’s Presiding Law Judge. Mr. Melgoza offered some observations being on the “other side” of the appeals process, and said there are some actions he sees differently, such
as the rule that allows the Division to amend citations. When that happens, he feels the Board favors the Division.

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.)

1124296 D S Cargo DBA Clock Freight, Inc.
ACTION: Reconsidered on Board's Own Motion
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0
1086663  Harris Rebar Northern California INC
   ACTION: Approved
   Moved: Ed Lowry Seconded: Judith Freyman
   Vote: 3-0

1083954  JD2 Incorporated
   ACTION: Approved
   Moved: Ed Lowry Seconded: Judith Freyman
   Vote: 3-0

1092600  RNR Construction INC
   ACTION: Approved
   Moved: Ed Lowry Seconded: Judith Freyman
   Vote: 3-0

317808970 Ventura Coastal LLC
   ACTION: Reconsidered on Board's Own Motion
   Moved: Ed Lowry Seconded: Judith Freyman
   Vote: 3-0

PETITIONS FOR RECONSIDERATION:
(The Division of Occupational Safety & Health and the Employer each has 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.)

1047912  A. Teichert & Son, Inc., DBA Teichert Rock Products
   ACTION: Granted
   Moved: Ed Lowry Seconded: Judith Freyman
   Vote: 3-0

1158477  Cesar Juan Leon DBA CJL Construction
   ACTION: Denied
   Moved: Ed Lowry Seconded: Judith Freyman
   Vote: 3-0

1151700  Emad Hanna Ayyoub
   ACTION: Denied
   Moved: Ed Lowry Seconded: Judith Freyman
   Vote: 3-0

317202901 Pinnacle Telecommunications, Inc.
   ACTION: Granted
   Moved: Ed Lowry Seconded: Judith Freyman
   Vote: 3-0
DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

1094782 Ada Printing And Trading
ACTION: Approved
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

1088283 Bauman Landscape And Construction, Inc.
ACTION: Approved
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

1186330 Felipe Arellano
ACTION: Order to vacate original Order to Dismiss. Calendar for hearing to determine jurisdiction.
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

312746571 Samuel Cortez Jr., dba S & S Pallets
(Previously Incorrectly Titled As “Snf Pallets”)
ACTION: Approved
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

ORDERS DISMISSING APPEAL:

1048310 AEG Management Oakland, LLC
1164553 J. M. H. Construction, Inc.
1055987 Ridgeline Framing Corporation
1114797 WJ Lent Contracting Services, Inc.
ACTION: Approved all Orders Dismissing Appeal.
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1156018 Aerotek INC.
ACTION: Reconsidered on Board's Own Motion
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0
ACTION: Approved Order Denying Late Appeal for 1151367, 1136828 and 1148895
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

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.)

Atkinson Construction, LP, 14-R3D1-4111

Attic Perfect, Llc Dba Attic Perfect, 1159631
  ACTION: Approved Order of Remand
  Moved: Ed Lowry Seconded: Judith Freyman
  Vote: 3-0

Beyond Staffing Solutions, Inc., 1141614
Boar’s Head Provisions Co., Inc., 1169513

Bosman Dairy, 1114103
  ACTION: Approved Order of Remand
  Moved: Ed Lowry Seconded: Judith Freyman
  Vote: 3-0

Bullet Construction, 1173664
  ACTION: Approved Order Denying Petition for Reconsideration
  Moved: Ed Lowry Seconded: Judith Freyman
  Vote: 3-

Calstrip Steel Corporation, 12-R3D6-1998 & 1999
Cybernet Entertainment, LLC, 14-R6D1-0364
Davey Tree Surgery Co., 1173232

Erik A. Pelletier And Mark L. Pelletier, 1165966
  ACTION: Approved Order of Remand
  Moved: Ed Lowry Seconded: Judith Freyman
  Vote: 3-0
Exxonmobil Refining & Supply Company, 1042440

First Priority Design & Construction, 16-R3D5-9073
ACTION: Approved Order of Remand
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

Hayward Baker, Inc., 1160219

ACTION: Board discussed this case.

Home Depot USA Inc, 1011071

JD Miller Construction, Inc. Dba M & M Framing, 16-R4D4-9058
ACTION: Approved Order of Remand
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

Mark C. Jacobs Dba The Law Office Of Mark Jacobs, 16-R2D1-9111
ACTION: Approved Order of Remand
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

McLane/Suneast, Inc., 1167771
ACTION: Approved Order of Remand
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

Mercury Metals, 1079591
PCC Rollment Inc, 1076936

Plate Line Framers, Inc., 16-R1D3-9110
ACTION: Approved Order of Remand
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

Saeed Ghiassi, 2016-R3D5-9115
ACTION: Approved Order of Remand
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

Shimmick Construction Co., Inc/Obayashi Corp., 11-R3D1-2562
Through 2570
Shimmick Nicholson Construction, A Joint Venture, 1021893
Smurfit Kappa North America, 1134003
United Parcel Service, 13-R3D2-2664 And 2665

URS West, Inc., 1140304
ACTION: Approved Order of Remand
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0

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. Underground Construction, 34-2012-80001124 (09-3518)
2. C.A. Rasmussen, Inc., 34-2012-80001241-CU-WM-GDS (08-R4D5 0219 AND 0220)
3. Shimmick Construction Co., Inc., 34-2012-80001248 (09-R2D3-0399)
4. CA Dept Of Forestry, 34-2012-80001263 (10-R2D1-0728)
5. Preston Pipelines, Inc., 34-2012-80001277 (09-R6D7-3345)
7. A. Teichert & Son, dba Teichert Construction, 34-2012 80001332 (09-R4D5-0459 & 0460)
9. DSS Company dba Knife River Construction, 34-2013 80001575 (12-R5D1-337)

12. Shimmick-Obayashi, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)

13. Tad Van Nguyen, CPF-14-513482 (13-R1D1-9163)

14. Brunton Enterprises Db a Plas-Tal MFG CO., 34-2014 80001817 (09-R6D2-2238 ~ 2241)

15. West Valley Construction, Inc., 34-2014-80001832 (12-R2D5-3526)

16. Davis Development Co., 34-2014-80001892 (10-R3D1-3360 Through 3362)

17. HHS Construction, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)

18. Maria De Los Angeles Colunga db a Merced Farm Labor, 15CV-00945 (08-R2D1-3093 ~ 3098)

19. Stanislaus Food Products Co., 34-2015-80002087 (13-R2D4-0572 -0574)


23. National Distribution Centers, LP, 12-R6D2-0391

24. Tri State Staffing, 12-R6D2-0378


26. ABM Facility Services, Inc. dba ABM Building Value, 30-2016 00831661, 12-R3D6-3496 ~ 3498

27. MCM Construction, Inc., 34-2016-80002312 (13-R1D2-3851 ~3854)

28. Solarcity Corp., 14-R3D2-3707, 34-2016-80002345

29. Burtech Pipeline, Inc., 13-R3D2-0830 and 0831, 37-2016 00013806

30. Avalon Bay Communities, Inc., 30-2016-00872036 (2015-R3D2-0751)
31. Gateway Pacific Contractors, 120200902
32. W.A. Rasic Company, Inc., 13-R4D1-1422, 34-2016-80002454 (314863978)
33. Old Castle Precast, Inc. (34-2017-80002522) 1025083
34. Dynaelectric Company Dba Wasatch Electric, 1083985
35. Key Energy Service, LLC 12004280

APPELLATE COURT:
1. XL Construction, C074514, 34-2009-80000300 (08-R1D2-1191 Through 1193)
2. AC Transit, A142799, RG13-687314 (08-R1D4-0135)
4. Raam Construction, RG16810863 (2015-R1D4-0155)
5. Blue Diamond Growers, 34-2012-80001308 (10-R2D1-1280/1281)

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.)

1184113 10th Avenue Oakland LLC
1078336 20th Century Air, Inc.
1182377 3H Custom Farming, Inc.
1160898 A B C Roofing, Inc.
1179221 Airport Terminal Services Inc
1169620 All Cartage Transportation, Inc.
1040492 All Star Glass
1167869 Alloy Die Casting Company
1173240 Alrob Building Services
1158125 Alta Interiors DF Inc.
1145418 American Furniture Warehouse Corporation
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<td>River Island Fresh Cold Storage, Inc., A wholly owned subsidiary of King Fresh</td>
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<td>1163184</td>
<td>Robert’s Lumber Sales, Inc.</td>
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ACTION: Approved all Orders of Administrative Law Judges
Moved: Ed Lowry Seconded: Judith Freyman
Vote: 3-0
PERSONNEL:
(Issues regarding staff)

ACTION: No Report

The Closed Session was adjourned at 11:49am 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 12:04pm.