

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on September 23, 2021**  
**Sacramento, California**  
**West Covina, California**

**Present:**

Ed Lowry, Chair, Public Member  
Judith Freyman, Management Member  
Marvin Kropke, Labor Member  
Patricia Hapgood, Acting Executive Officer  
Jeff Mojcher, Chief Counsel  
Kevin Reedy, Presiding Administrative Law Judge  
Sam Lucas, Presiding Administrative Law Judge  
Aaron Jackson, Industrial Relations Counsel  
Elizabeth Clarke, Attorney  
Lee Berlin, Staff Services Manager  
Janis Jonas, Executive Secretary  
Christopher Jessup, Administrative Law Judge  
Kerry Lewis, Administrative Law Judge  
Dale Raymond, Administrative Law Judge  
Dan Lucido, Chief Counsel, DOSH  
Kevin Bland, Attorney, Ogletree Deakins  
James McMullen, Attorney  
David Ross, Construction Analyst, Caltrans  
Andrew Miller, CHST, County of Monterey  
Robert Edington, Chief Legal Officer, BCCI Construction, LLC  
Matty Kernen, Director of Safety, BCCI  
Alfred Ibanez, Ibanez National Safety  
Brian K. Miller, CHST  
Gerry McEwen, Safety Consultant, GMGS  
Rory Hayes  
M Aranda Jr.

**Minutes of August 26, 2021 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the August 26, 2021 and the September 9, 2021 Board meetings.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
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. Consideration of regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376.

Action: The Board led a discussion regarding the regulatory amendments to the Board regulation 376. Public comments were accepted at this time.

**Legislation:**

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

Action: Elizabeth Clarke reported on current legislation. Governor Newsom signed into law AB361.

**Chairperson's Report:**

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

Action: Chair Lowry reported on being part of the panel interviewing candidates for the open Attorney III position at the Board.

**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: Patricia Hapgood, Acting Executive Officer, reported on the status of staff recruitment and interview schedule.

**Staff Reports:**

*(Reports from the presiding 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 existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

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2. Discuss the creation of, and availability of, OSHAB documents created in additional languages.

Action: Lee Berlin reported on the status of posting OSHAB documents translated in other languages on the website. Documents will be remediated by a vendor and posted on website.

3. Discuss status of Video Hearings.

Action: Judge Avelar created an instruction page and link for the website to assist people in learning about video hearings.

4. Discuss recent appeals filed that are related to the current COVID-19 pandemic.

Action: Judge Lucas updated the Board on cases regarding COVID.

5. Litigation update:

Action: Chief Counsel Jeff Mojcher reported on current court cases.

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: The Board heard public comments. Dan Lucido shared the status on hiring attorneys for DOSH.

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.)*

1298318 United Airlines

Action: Board reviewed and discussed this decision.

**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.)*

None

**Petitions For Reconsideration (Second Review):**

1341947 Acme Anything  
Action: The Board voted to issue Denial for this petition.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

**Orders Dismissing Appeal:**

1287507 CECO Concrete Construction LLC  
Action: The Board reviewed and discussed this order.

1466139 El Rancho Unified School District North Park  
Action: The Board reviewed and discussed this order.

**Order Denying Leave To File Late Appeal:**

None

**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 so as 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.*

1272378 Andrew Harrison Barnes  
*Whether Mr. Barnes was/is an employer.*

1279492 Arriaga USA, LLC  
*Whether the cited employer's rights were adequately protected at the video hearing.*

1141604 Boy Racer Inc. DBA Burning Angel  
(Employer's Petition)  
*Whether adult film performers are employees or independent contractors.*

1141604 Boy Racer Inc. DBA Burning Angel  
(Dosh's Petition)  
*Whether adult film performers are employees or independent contractors.*

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- 1246527 Cemex  
*Whether the settlement in this matter was procured by fraud.*  
Action: The Board issued an Order requesting the parties to submit a status update.
- 1135350 Hill Crane Service Inc.  
*Whether Employer violated the safety orders as alleged.*  
Action: The Board voted to issue the DAR.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0
- 1290766 Millenium Reinforcing  
*Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.*
- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients  
*Whether the Employer committed the alleged violations.*
- 1199064 SA Recycling  
*Whether employer established that, the alleged violation was abated at the time of inspection.*  
Action: The Board voted to issue the DAR.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0
- 1155042 Signal Energy LLC  
*Whether Employer appropriately oversaw the actions of the subcontractors.*
- 1306170 Siu's Products and Distributor, Inc.  
*Whether Employer complied with lockout/tagout requirements.*  
Action: The Board discussed this matter.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals  
*Whether Employer violated section 3212(a)(2)(A) as alleged.*
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services  
*Whether the Employer committed the alleged violations.*
- 1152851 Vincent Tuomey  
*Whether the Board ordered to issue a new decision was consistent with the superior court's ruling on a writ of mandate.*

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1461476 Walmart, Inc.  
Whether Walmart was an employer citable for the alleged violation.

**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. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)
3. R N R Construction, Inc., 34-2017-80002632 (1092600)
4. Ashley Furniture Industries, 34-2017-800002750 (1016514)
5. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
6. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
7. Process Cooling International, 34-2019-80003220 (1232555)
8. Prestige Painting, 37-2019-00066143 (1367265)
9. Davis Development Company, 34-2020-80003373 (1226084)
10. MWL Solutions, 34-2020-80003549 (1436014)
11. Hampton Tedder Electric, 34-2020-80003562 (1233597)
12. BMW West, LLC, 34-2021-80003574 (1399613)
13. Southern California Edison, 34-2021-80003580 (1320327)
14. APTCO, LLC, BCV-21-100421 (1332715)
15. Ventura Coastal, (317808970)
16. L&S Framing, Inc., SCV-0046603 (1173183)
17. Granite Construction, 34-2021-80003634 (1235643)
18. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
19. Golden State FC, LLC dba Amazon Fulfillment, STK-CV-UWM-2021-0004380 (1310525)

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20. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729 (1384029)
21. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
22. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
23. RND Contractors, Inc., CIV SB 2119442 (1436785)
24. Sunview Vineyards of California, Inc. RG21111733 (1153101)

**Appellate Court:**

1. Lion Farms, LLC, MCV075788 (1070258)
2. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
3. United Parcel Service, B308218, 18STCP03195 (1158285)

**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. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.  
Action: Cases with citations related to COVID-19 were discussed.

**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.)*

|         |   |
|---------|---|
| 1525027 | A & L Dairy, L.P.                       |
| 1428541 | Agriland Farming Company, Inc.          |
| 1436564 | Allied Universal Security Services, LLC |
| 1467853 | Ameri-Kleen, Inc.                       |
| 1427297 | Ba Lax LLC                              |
| 1486122 | Bodega Latina Corporation, A Delaware   |
| 1424398 | Brightview Landscapes Services LLC      |
| 1517675 | C & D Contractors, Inc.                 |
| 1452500 | Cannon Constructors North, Inc.         |

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| 1518520 | Centurion Industries, Inc.                         |
| 1509111 | Coastal Tree Experts, Inc.                         |
| 1407490 | Deploy HR, Inc.                                    |
| 1452503 | Diablo Plumbing Incorporated                       |
| 1442368 | Diamond Road Maintenance, Inc.                     |
| 1502615 | Facility Solution Group, Inc.                      |
| 1473938 | Fidelity Roofing Co.                               |
| 1485892 | Fong Kee Tofu Co, Inc.                             |
| 1523877 | Goldbrecht, LLC                                    |
| 1458401 | Hannibal Industries, Inc.                          |
| 1527077 | Harbert Roofing, Inc.                              |
| 1483039 | HD Supply Construction Supply, Limited Partnership |
| 1450580 | Hi-Point Construction, Inc.                        |
| 1300777 | Industrial Container Services - Ca North, LLC      |
| 1528184 | International Line Builders, Inc.                  |
| 1223009 | J & S Property Management & Maintenance, Inc.      |
| 1498337 | JHN, Inc.  |
| 1489201 | John Blakenship Plumbing                           |
| 1479549 | Kaiser Foundation Hospitals                        |
| 1467438 | Kandola Farms                                      |
| 1321487 | Kenai Drilling Limited                             |
| 1330778 | L'oreal Usa S/D, Inc.                              |
| 1522265 | Larry Williams Custom Painting                     |
| 1468861 | Manal, Inc.  |
| 1475909 | Maximus Development, Inc.                          |
| 1376659 | Millie And Severson Inc                            |
| 1482153 | Monarca Labor, Inc.                                |
| 1342539 | Olam West Coast, Inc.                              |
| 1341890 | Outfront Media LLC                                 |
| 1474981 | Outsource Utility Contractor Corp.                 |
| 1521457 | Pacheco & Fagundes Dairy                           |
| 1283878 | Pro Painting Services, Inc.                        |
| 1410274 | QG Printing II LLC                                 |
| 1285229 | QG Printing II, LLC                                |
| 1482839 | R B R Meat Company, Inc.                           |
| 1492020 | Real Time Staffing Services, LLC                   |
| 1482840 | Rite-Way Meat Packers, Inc.                        |
| 1482838 | Rose & Shore, Inc.                                 |
| 1501045 | San Bernardino County Pre-School Services Dept.    |
| 1472724 | Santa Rosa Police Department                       |



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| 1434652 | Sequoia Union High School District |
| 1489053 | Sinanian Development               |
| 1305851 | Stuart Dean Co Inc.                |
| 1518309 | Sundt Construction, Inc.           |
| 1486329 | Sutter Health                      |
| 1295258 | The Save Mart Companies, Inc.      |
| 1400233 | Tom Corea Construction, Inc.       |
| 1457575 | Trojan Battery Company, LLC        |
| 1444618 | United Production Framing          |
| 1304093 | Utility Tree Service               |
| 1515232 | Wm. Bolthouse Farms, Inc.          |
| 1313024 | WP West Builders California, LP    |

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

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session was adjourned at 11:03 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 meeting was adjourned at 11:04 a.m.