

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on May 8, 2024**  
**Sacramento, California**  
**West Covina, California**  
**Zoom Platform**

**Present:**

Ed Lowry, Public Member, Chair  
Marvin Kropke, Labor Member  
Patricia Hapgood, Acting Executive Officer  
Kerry Lewis, Presiding Administrative Law Judge  
Sam Lucas, Presiding Administrative Law Judge  
Jeff Mojcher, Chief Counsel  
Aaron Jackson, Staff Counsel  
Karen Halbo, Staff Counsel  
Scott Pease, Staff Services Manager  
Janis Jonas, Executive Secretary  
Christopher Jessup, Administrative Law Judge  
Leticia Tanner, Administrative Law Judge  
Marlene Harris, Office Technician, OSHAB  
Javier Castro, Staff Counsel, DOSH  
Jordon Davis, Staff Counsel, DOSH  
Lisa Brokaw, Staff Counsel, DOSH  
Rachel Brill, Staff Counsel, DOSH  
Lauren Ocadiz, Staff Counsel, DOSH  
Denise Cardoso, Assistant Chief Counsel, DOSH  
Bruce Wick, Risk Management Director, Housing Contractors of California  
Dave Wiseman, Staff Counsel, Cal Fire  
Karin Umfrey, Staff Counsel, WorkSafe  
William Kroutil, Safety Manager, Communications & Power Industries

Excused Absence: Judith Freyman

Chair Lowry authorized Acting Executive Officer Patricia Hapgood to act as a Deputy Appeals Board member in Judith Freyman's absence under Labor Code Section 149.

**Request remote attendance:** Member Marvin Kropke made a motion asking to be permitted to attend the May 22, 2024, and the June 5, 2024, Board meetings remotely to accommodate a physical condition. He requested this consideration in accordance with Government Code section 11123.2, subdivision (j)(2)(A).

This motion was seconded by Ed Lowry.

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

**Minutes of April 24, 2024, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the April 24, 2024, Board meeting.  
Moved by Marvin Kropke.  
Seconded by Ed Lowry.  
The vote was 2-0.

**New Business:**

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

Action: There was no new business.

**Old Business:**

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

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.
3. Discussion of precedential index.  
Action: There is no additional report.
4. Discuss process for purging of files in OASIS.  
Action: Scott Pease updated the Board on progress in creating a protocol for purging files in OASIS.
5. 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: Scott Pease reported his findings from research done on a random selection of case files spanning from when the Board held in-person hearings to the present-day remote hearings. The end results showed that the difference in the number of days of a hearing, the number of witnesses, citations, and exhibits did not change significantly between hearings held in person prior to establishing remote hearings. The length of the remote hearings has increased slightly.

Presiding Judge Lewis mentioned that the parties now can present expert witnesses located outside of California who

give extensive testimony which takes more time but does not increase the number of witnesses.

Member Kropke suggested that the efficiency of remote hearings and added information and the accessibility of witnesses might explain the extended time of remote hearings.

**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 on a meeting held with Katie Hagen, Director of DIR. The topic of the meeting was budget and hiring issues within the department. Also, Mr. Lowry met with the new OSHA Area Director in California, Derek Engard.

**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: Acting Executive Officer Patricia Hapgood introduced the Board's new Administrative Law Judge, Leticia Tanner, who will work out of the Sacramento office. Ms. Hapgood also announced that Ka Leung has been hired as a new Administrative Law Judge for the West Covina office and will begin June 3, 2024.

**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: Karin Halbo reported on ongoing meetings involving reviewing current regulations and evaluating possible changes.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 8, 2024

2. Litigation update:

Action: Jeff Mojcher stated he had no report on current litigation. The Board continues to wait for the Appellate Court decision on the RND Contractors, Inc. matter.

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 reminded the Board when discussing cases to be mindful of distinguishing companies with the same or similar names. In particular, he mentioned the Board waiting for the Appellate Court's decision in the RND Contractor, Inc. case. Mr. Wick is aware of another company that goes by RND, and the two companies have been confused with each other regarding this matter.

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.)*

314864661 Los Angeles Engineering 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.)*

1564732 Calvary Chapel of San Jose

Action: The Board voted to deny petition for reconsideration and to issue an Order Extending Time. Moved by Marvin Kropke. Seconded by Ed Lowry. The vote was 2-0.

**Orders Dismissing Appeal:**

- |         |   |
|---------|---|
| 1576609 | Ameri-Staff, Inc.<br>Action: The Board discussed this matter.                     |
| 1588984 | Martin Resorts, Inc.<br>Action: The Board discussed this matter.                  |
| 1522408 | Setton Pistachio of Terra Bella, Inc.<br>Action: The Board discussed this matter. |
| 1636915 | Star Auto Body, LLC<br>Action: The Board discussed this matter.                   |

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

- |         |  |
|---------|--|
| 1699451 | Railway Jonata LLC<br>Action: The Board discussed this matter. |
|---------|--|

**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<br><i>Whether the cited employer was in violation of lockout/tagout requirements.</i>   |
| 1473644 | Amazon.com Services, LLC<br><i>Whether the employer's training program was in compliance with the applicable safety order.</i>   |
| 1398352 | Anheuser-Busch, LLC<br><i>Whether the evidence supports the holding that employer violated lockout/tagout requirements.</i>  |
| 1568252 | Arana Residential and Commercial Painting, Inc.<br><i>Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.</i> |

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 8, 2024

- 1399613 BMC West, LLC  
*Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.*
- 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.*
- 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.*
- 1415736 Los Angeles County Probation Dept.  
*Whether the ALJ erred in reclassifying one citation from serious to general.*
- 1465354 Natural Alternatives International, Inc.  
*Whether the ALJ erred in dismissing the matter.*
- 1355061 Republic Electric West, Inc.  
*Whether fall protection requirements apply to the work. Whether the IEAD was established. Whether penalties were duplicative. Whether the Employer exercised reasonable diligence. Whether it was an error to reduce the classification of the violations and reduce the penalties.*
- 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.*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 8, 2024

- 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 (3<sup>RD</sup> PTY PFR)  
*Whether the motion for third party status was properly denied.*
- Action: The Board discussed this matter.
- 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. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
2. Davis Development Company, 34-2020-80003373 (1226084)
3. Hill Crane Service Inc., 34-2021-80003744 (1135350)
4. USA Waste of California, Inc., 34-2022-80003841 (1384029)
5. General Dynamics NASSCO, 37-2023-00024521 (1300984)
6. S.C. Anderson, Inc., 24WM000039 (1405107)

**Appellate Court:**

1. RND Contractors, Inc., CIVSB2119442 (1436785)

**Other Items:**

1. Discuss 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.

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.)*

1664829	48Forty Solutions, LLC
1691888	A Juarez Construction & Tree Service, Inc.
1696568	Accurate Firestop & Insulation Inc.
1571273	Action Property Management
1483579	Amazon
1711966	Amir Construction
1657924	Arbor MD Tree Care, Inc.
1695304	Aries Hospitality Services, Inc
1641607	Atria Senior Living, Inc.
1540507	Avid Bioservices, Inc.
1703388	Baldwin Auto Craft, Inc.
1624373	Bar-S Foods Co.
1636928	Bodycraft OC, LLC
1702740	California Department of Transportation
1665743	Centimark Corporation
1386561	Central Valley Ag Transport, Inc.
1691474	Cherry Blossom Farms, Inc.
1629691	Choura Events
1537100	Chromalloy San Diego
1194373	Cirque Du Soleil America Inc.
1619859	City of Costa Mesa



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 8, 2024

1700254	Clean Earth Specialty Waste Solution, Inc.
1600013	Coastal Tree Care, Inc.
1719651	Construction Framing Services Inc.
1612726	County of Kern, Fire Department
1657605	Devil Mountain Wholesale Nursery LLC
1687466	DLC Builders Inc.
1679550	Dutch Bros. Fairfield, Inc.
1720722	Emerald Textiles LLC
1628668	EPS, Inc.
1723960	First Point, Inc.
1638736	Franke Construction, Inc.
1696948	Gomez Supermarket Corporation
1649036	Greenbrier Holdings, LLC
1658494	Gu's Packaging Supplies Inc.
1550817	Gutierrez Tree Service, Inc.
1684246	Hari Om LLC
1615927	Haringa, Inc.
1654355	Jeffrey William Sheridan
1639642	JPECS, Inc.
1574806	Kehe Distributors
1689460	Kraft-Heinz Foods Company
1515885	Magnesite Specialties, Inc.
1622633	Marine Express, Inc.
1733240	Marshalls of Ca, LLC
1693191	MDC Innovations, Inc.
1593059	Mercury Plastics
1643589	Mercury Plastics, Inc.
1696396	Miabella Expert Tree Service, Inc.
1650333	Michael James Downum
1668074	Mike Owen Fabrication, Inc.
1667779	Modernica, Inc.
1602931	Nob Hill Foods Napa
1680591	O Hotel Management Inc.
1706004	Pacific Paper Tube Inc
1654002	Pacific States Industries, Inc.
1700654	Paddack Hulling & Shelling, Inc.
1605302	Paper Source Converting & Manufacturing, Inc.
1689578	Pete Jenson Pinnacle Construction Inc.
1716405	Peter Kane, an Individual
1631305	Placer County Information Technology

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 8, 2024

1713778	Process Cooling International, Inc.
1602829	Production Framing, Inc.
1677249	R & R Labor Inc.
1671943	R&S Soil Products, Inc.
1706505	R.I. Heritage Inn of Livermore, LLC
1527627	Resa Power, LLC
1706123	Reuland Electric Company
1706769	RI Liquidators
1703249	Robert Edward Benedetto
1660590	Royal Paper Box Co of California
1693399	San Juan Capistrano Equestrian Center LLC.
1525185	Scripps Health
1630902	Security Services Group, Inc.
1652414	See's Candies, Inc.
1706782	Siskiyou Forest Products
1676892	Stanly Ranch, Auberge Resorts Collection
1709106	State Center Community College District
1680157	Stephen L Pasquan
1485868	Sutter Health
1518278	Target Corporation
1694736	The Stonebrook Convalescent Center Inc.
1567383	Therma, LLC
1678724	Universal Welding & Construction Inc.
1719747	Valley Ag Enterprise, Inc.
1716315	Veer Hospitality Tulare LLC
1570702	VITCO Distributors, Inc.
1539784	Vivian Hwang
1721755	Walmart Distribution Center #6026
1676599	Warren Construction and Roofing
1675328	Wawona Frozen Foods
1694386	Zushingazo Inc.

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

**Personnel:**

*(Issues regarding staff)*

The Closed Session adjourned at 10:55 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 10:57 a.m.