

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on October 9, 2024
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Kerry Lewis, Presiding Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Jeffrey Mojcher, Chief Counsel
Aaron Jackson, Staff Counsel
Elizabeth Clarke, Staff Counsel
Karen Halbo, Staff Counsel
Vincent Mersich, Staff Counsel
Scott Pease, Operations Manager
Maria Rios, Legal Analyst
Christine Vandermer, Senior Legal Typist
Anne Marie Plascencia, Senior Legal Typist
Dan Lucido, Chief Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Rocio Reyes, Assistant Chief Counsel, DOSH
Dinora Perez, Staff Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
Keith Mackenzie, Staff Counsel, DOSH
Lauren Ocadiz, Staff Counsel, DOSH
Ramesses Surban, Staff Counsel, DOSH
Sesilya Saraydarian, Staff Counsel, DOSH
Tuyet Tran, Staff Counsel, DOSH
William Kroutil
David Wiseman, Staff Counsel, Cal Fire

Notice of remote attendance:

As required by Government Code Section 11123.5, subdivision (d), notice is hereby given that Board member Marvin P. Kropke will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j)(2), and Board member Judith Freyman will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j)(1).

Request for remote attendance:

No Report.

Minutes of September 18, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the September 18, 2024 meeting.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

New Business:

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

Old Business:

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

1. Discuss the planning and preparation for the forthcoming Round Table meeting.

Action: Patricia Hapgood reported that the Board is in the final planning stages for the Round Table Discussion. Currently the Board has received approximately 40 attendee reservations. A review meeting with the hotel will take place this week.

Legislation:

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

Action: Elizabeth Clarke provided comment regarding AB 1976. This Bill has been signed by Governor Newsom.

Chairperson's Report:

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

Action: Ed Lowry acknowledged the recent passing of Bill Camp and shared some words in remembrance of Mr. Camp.

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: No report.

Staff Reports:

(Reports from the Supervising ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

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1. Discuss and may take action on proposals for new regulations or proposals for modifications to, or repeal of, existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: Karen Halbo shared that there are no new proposals for rulemaking and that she is currently reviewing informal stakeholder comments received with regard to the current rulemaking proposal.

2. Litigation update.

Action: Legal Unit staff reported that the Board prevailed in the matter of General Dynamics NASSCO, 37-2023-00024521 (1300984) which was heard on September 24, 2024 in San Diego County Superior Court.

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: Rocio Reyes introduced Dinora Perez. Dinora recently joined the Division as Staff Counsel.

Dan Lucido informed the Board that there were a couple of other Bills which were recently signed by the Governor and which may be of interest to the Board. One such Bill is SB1350 which modified the domestic service exception to narrow its scope within the Labor Code.

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.)

There are no Decisions.

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.)

1690885 Waterproofing and Roofing Solutions, Inc.

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Action: The Board voted to issue a Denial of Petition for Reconsideration.
This was moved by Ed Lowry.
It was seconded by Marvin Kropke.
The vote was 3-0.

1238985 Grimmway Enterprises, Inc.

Action: The Board voted to issue an Order Taking the Petition for Reconsideration Under Submission.
This was moved by Ed Lowry.
It was seconded by Marvin Kropke.
The vote was 3-0.

Orders Dismissing Appeal:

1701088 Busy Bee Painting, Inc.
Action: The Board discussed this matter.

1590732 Emilio Lopez
Action: The Board discussed this matter.

1638438 Inter-Con Security Systems, Inc.
Action: The Board discussed this matter.

1635965 Los Angeles Fire Department
Action: The Board discussed this matter.

1727561 Maruhachi Ceramics of America, Inc.
Action: The Board discussed this matter.

1718867 Olson Capital, LLC
Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

1723722 A & E Construction Services
Action: The Board voted to issue an order of remand.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

1730363 Abel Automatics, LLC
Action: The Board discussed this matter.

1730603 Brad Nyman
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.

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| 1431672 | A. Teichert & Son, LLC
<i>Whether the cited employer was in violation of lockout/tagout requirements.</i> |
| 1473644 | Amazon.com Services, LLC
<i>Whether the employer's training program was in compliance with the applicable safety order.</i> |
| 1568252 | Arana Residential and Commercial Painting, Inc.
<i>Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.</i>
Action: The Board voted to issue the Decision After Reconsideration.
This was moved by Judith Freyman.
It was seconded by Marvin Kropke.
The vote was 3-0. |
| 1399613 | BMC West, LLC
<i>Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.</i> |
| 1466722 | Bragg Investment Company, Inc.
<i>Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.</i> |
| 1420923 | Drill Tech Drilling & Shoring, Inc.
<i>Whether the Employer failed to enforce its IIPP as required.</i>
<i>Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.</i> |
| 1499137 | Employbridge Holding Company
<i>Whether Employer violated IIPP requirements as alleged.</i> |

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- 1609228 Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.
- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1488312 Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 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.
- 1486257 Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1523238 Orange County Fire Authority
Whether the ALJ's order barring Employer from arguing various affirmative defenses was an abuse of discretion.
- 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.
- 1475491 Sutter Bay Medical Foundation
Whether the employer failed to comply with COVID protections as alleged.
- 1486176 Tutor Perini Corporation and O&G Industries, Inc.
Whether Employer committed a serious accident-related violation of section 3328, subdivision (a).

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- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations.
- 1498595 Western Oilfields Supply Company
Did the ALJ err by affirming a citation alleging that Employer did not guard a machine at its point of operation? And did the ALJ err by allowing an amendment to the citation so the Division could assert an alternate theory?
Action: The Board voted to issue the Decision After Reconsideration as amended.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

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)
Action: The Board discussed this matter.
6. S.C. Anderson, Inc., 24WM000039 (1405107)
7. Angelus Block Co., Inc., CIVSB2417796 (1113026)
8. Hamilton Iron Works, Inc., 24WM000100 (1497263)

Appellate Court:

There are no cases currently filed with the Appellate Court.

Other Items:

There are no Other Items.

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.)

1672431	A Teichert & Sons, Inc.
1685234	AAA Mountain West Group
1734917	Accutek Packaging Equipment
1638425	Alameda County Medical Center D.P. SNF
1614417	Alhasany, Inc.
1631190	All Natural Stone, Inc.
1721223	ALLCali Products Inc.
1636935	Altamed Health Services Corporation
1685624	American Arbor Care
1736860	Anning Johnson Co.
1458045	APL Logistics Ware house Management Services, Inc.
1715803	Archer Building Company, Inc.
1715806	Aries Builders, Inc.
1751491	Arriaga USA LLC
1686941	Attica Green Solution Inc.
1680827	Bapa's Anaheim Inc.
1751988	BBK Industries, Inc.
1681354	Be King, Inc.
1708427	Best Plastering Inc.
1730331	Blazona Concrete Construction, Inc.
1675033	BLH Construction Company
1738718	Brianne Chapman
1731722	Brothers Dye House, Inc.
1691660	Brown Construction, Inc.
1614933	CA Motor Vehicles
1746927	CA Motor Vehicles
1677520	Caledonian Building Services, Inc.
1688352	California Die Casting
1629229	California State University Los Angeles
1482491	Cedars-Sinai Medical Center
1374498	Chameleon Beverage Company, Inc.
1557133	City of Lemoore

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1712227	Clark Bros Inc.
1476187	Coastline-Deck Coatings, Inc.
1758847	Coral Construction Company
1559454	CP Manufacturing, Inc.
1593924	Crowder Construction, Inc.
1751914	CS Signs LLC
1730028	CVC Equipment LLC
1676904	Danrose, C.D.F.
1751492	David Gongora, An Individual
1645483	Del Rio Stone, Inc.
1727840	Desert Palms Tree Service, Inc.
1654881	Don R. Weiler
1754057	Driscoll's, Inc.
1611271	E.B. Bradley Co.
1697928	Echelon Inc.
1735260	Elevator Controls Corporation
1520576	Employbridge, LLC
1723029	Esparza Enterprises, Inc.
1607479	Express Services, Inc.
1700336	Ford E.C. Inc.
1625346	FunnelCloudSales
1706790	Gabriel Blanco Sanchez, An Individual
1748957	Genaro A. Pisapia Bisogna, An Individual
1575330	GGG Demolition, Inc.
1712613	Golden State Seafood, Inc.
1700669	Grow West, Inc.
1717445	Gruma Corporation
1658722	GTA Constructor, Inc.
1606336	H2L Ground Delivery, Inc.
1685028	Hannam Chain USA Inc
1726347	HD Distribution, Inc.
1513018	Heritage Manor Healthcare, LLC
1676021	I Color Printing & Mailing Inc.
1716301	Intermountain Management LLC
1581861	JK Management, Inc.
1737717	JMA Concrete, Inc.
1702885	Kings FLC, Inc.
1642321	Klink Citrus Association
1596779	L & M Roof Removal, Inc.
1645900	Lincoln Unified School District - Lincoln High
1759335	Lockwood Enterprises
1576874	Los Angeles Housing Department (LAHD)
1746318	Los Angeles Unified School District
1741160	M.R.S. Foods Incorporated
1381646	Madera Framing, Inc.
1716523	Madriaga Construction Service, Inc

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1527525	Marleon, Inc.
1625463	Marthedal Enterprises, Inc.
1688357	Mediacom Communications Corporation
1621781	Merical, LLC
1557782	Mizkan America Inc.
1625347	Morbro Logistics
1687910	Mountain Cascade, Inc.
1737749	MTZ Creative Concrete Inc.
1596278	Netflix Productions, LLC
1718347	Northwest General Engineering LLC
1691659	Pacific Bell Telephone Company
1576103	Paramount Roll & Forming, Inc.
1714959	Placentia Medical LLC
1713315	Porter & Sons Painting & Construction Inc
1653660	Precision Refrigeraton and Air Conditioning LLC
1720060	Pyramid Investment, LLC
1671964	QLM, Inc.
1629609	Ralphs Grocery Company
1723399	Regents of The University of California, Los Angeles
1541294	Rick Young
1413157	RND Contractors, Inc.
1713785	Rubik Built Inc
1609800	Saia Motor Freight Line, LLC
1711297	San Bernardino County Regional Parks
1756177	Sancon Property Services
1742896	Santa Monica Seafood Company
1532841	Seal Methods, Inc.
1714299	Shannon Masonry Construction, Inc.
1726441	Sierra Pacific Industries, Inc.
1727191	Sierra Pacific Industries, Inc.
1640806	Silverado Contractors, Inc.
1706204	Silverline Construction Inc.
1650709	SMD Logistics Inc
1737809	Specialty Welding and Turnarounds, LLC
1546890	Stantec Consulting Services Inc.
1752672	Statewide Traffic Safety and Signs Inc
1614839	Stephen H. Smith Farms, Inc.
1557313	STG Logistics, Inc.
1721103	Superior Stucco
1494160	Target Corporation
1520772	Taylor Farms Retail, Inc.
1514261	TBC - The Boring Company
1489457	Tesla, Inc.
1531789	Tesla, Inc.
1746614	The Carpenter Group
1678843	The Wash Inc

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1654633	Timmins Painting
1727352	Titan Senquest Management, Inc.
1617999	TKLY Corporation
1694121	Tom Watson Inc.
1732224	Topcon Positioning Systems, Inc.
1681922	Triunfo Water & Sanitation District
1681652	Tule Trash Company LLC
1579780	U.S. Borax, Inc.
1645837	United Natural Foods, Inc.
1612957	United Rock Products Corp.
1719964	United States Pipe and Foundry Company, LLC
1683523	Vivid Construction
1724856	Walmart Inc.
1741752	Walmart Inc.
1626049	Walnut Creek Ford, Inc.
1724642	Westco Roofing Company, Inc.
1586489	Whelan Security of California, Inc.

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:00 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 11:01 a.m.