

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on July 10, 2013
Sacramento, California

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary

MINUTES OF JUNE 26, 2013 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the June 26, 2013 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the June 26, 2013 Board meeting.

ADMINISTRATIVE MATTERS:

(Information regarding the general administration of cases pending before the Appeals Board)

HEARING CALENDAR:

(Discuss/implement Board rulemaking changes)

ACTION: The Board first discussed the Board meeting calendar but made no changes to the currently scheduled meeting dates. The Board then reviewed the statistics for hearings held over the past quarter. Member Lowry requested a report that contrasts the current information with benchmarking statistics such as the same quarter last year.

NEW BUSINESS:

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

2013-2014 BUDGET:

(Discuss budget issues for upcoming fiscal year)

ACTION: No report

OLD BUSINESS:

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

ACTION: No report.

LEGISLATION:

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

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LEGISLATIVE STATUS UPDATE:

ACTION: Chair Carter reported that AB1165 is the main bill begin followed and there have been no changes to it since it was amended on June 13.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter reported that he is continuing to talk with Executive Office Kari Johnson and DIR accounting personnel regarding the budget, but no final decisions have been made.

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 and news from the Department and Appeals Board.)

ACTION: No report.

STAFF REPORTS:

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

REPORT ON NOTIFICATION OF NEW LITIGATION FILINGS:

ACTION: No report.

Any matter not completed at this meeting may be continued to subsequent meetings

PUBLIC COMMENT:

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

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

ALLIANCE STAFFING RESOURCES, INC., 12-R3D3-1323

ACTION: ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

GOLD RUN ENTERPRISES LLC, 10-R5D1-3511 THROUGH 3517

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion.

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The Board voted to approve this Decision of an Administrative Law Judge.

MICHAEL J. GORA DBA CHEETAH CONSTRUCTION SERVICES,
11-R4D2-2685 AND 2687

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

HYPOWER INC. DBA HYPOWER ELECTRICAL SERVICES, INC., 12-R3D3-1498

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

RICHARD LOMPA, 12-R1D4-1796

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PARK WEST LANDSCAPE MAINTENANCE, INC DBA PARK WEST
MANAGEMENT, 12-R3D2-2228

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 & 0097

ACTION: Member Lowry moved that the Board take the Employer's Petition for Reconsideration under submission. Member Freyman seconded. The Board voted to take the Employer's Petition for Reconsideration under submission.

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.)

A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592

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AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241
BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445
AND 3448
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
C & L BLUE INC., 11-R4D1-2942 AND 11-R4D1-2943 THROUGH 2945
CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
COMMUNITY RECONSTRUCTION SOLUTIONS, INC., 11-R1D1-1484
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
EZ MIX, INC., 08-R4D3-1898
FERMA CORPORATION, 12-R2D2-1669
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HARRIS CONSTRUCTION, 03-R2D5-3914
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
IRWIN INDUSTRIES, 08-R6D4-1454

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

JERRY'S TREE SERVICE, A PARTNERSHIP, 13-R1D5-9022
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC., 08-R2D1-0025 AND 0026
PERSONNEL PLUS, INC., 11-R3D5-1302

ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048

ACTION: The Board discussed this matter pending reconsideration.

JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710

SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025

SIERRA FOREST PRODUCTS, 09-R2D5-3979

SMUD, 08-R2D1-4887 THROUGH 4889

MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414
THROUGH 3418

STAFFCHEX, 10-R4D3-2456 THROUGH 2458

SUNRISE GROWERES FROZUN FOODS, 09-R4D3-2850

A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443

TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310

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.)

ORDERS DISMISSING APPEAL:

PACWEST CORP., 12-R3D3-3322

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Dismissing Appeal of an Administrative Law Judge

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. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
3. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)

ACTION: Chief Counsel Mojcher reported that there is a hearing scheduled on this matter July 29 in Oakland

4. SMUD, 34-2010-80000723 (08-R2D1-4887)

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5. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
6. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
7. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
8. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
9. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
10. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
ACTION: Chief Counsel Mojcher reported that there is a hearing scheduled on this matter July 29 in Oakland.
11. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
12. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
13. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
14. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
15. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
16. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
17. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
18. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
19. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
20. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
21. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
22. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
23. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
24. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332

(09-R4D5-0459 & 0460)

25. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881
(10-R5D1-3029)
26. HOME DEPOT USA, INC., BS141301 (10-3284)
27. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
28. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
29. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
30. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)
31. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
32. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
33. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)

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.)

AMERIGAS PROPANE, INC., 12-R2D1-0632 THROUGH 0636

ACTION: This matter was place on the agenda in error.

ASPLUNDH CONST DBA ASPLUNDH ELECTRICAL CONST, 13-R4D7-1608
ASPLUNDH CONST DBA ASPLUNDH ELECTRICAL CONST, 13-R4D7-1609
CITY OF FRESNO – CONSTRUCTION MANAGEMENT DEPT., 11-R2D5-0307
AND 0308

CITY OF SAN DIEGO – COMMUNITY PARKS 1 DIVISION, 13-R3D2-0948
BRAD CURTICE DBA NOR CAL AUTOMOTIVE, 12-R6D7-3536 THROUGH 2538
DASH DREAM PLANT, INC., 13-R2D4-1513

DAVID PAINT & TILE, INC., 12-R4D3-2626 THROUGH 2628

DAVIS DEVELOPMENT COMPANY, INC., 12-R3D6-1837 THROUGH 1839

DIAMOND FOODS, INC., 13-R2D4-0092 *

DRIFTWOOD DAIRY, INC., DBA DRIFTWOOD DAIRY, 12-R6D2-3164

RAY FADICH DBA SUPERIOR CONCRETE CONTRACTORS,
12-R6D2-0758 THROUGH 0760

FIRST TRANSIT, 12-R3D6-3008

FRANZA ENTERPRISES, INC., 13-R2D1-0084

GORDON LABORATORY, 12-R3D5-3006 AND 3007

G S BROTHERS, INC., 12-R4D1-2375 AND 2376

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HARBOR VIEW FARMS, LLC., 12-R4D3-2962 THROUGH 2964
HARRINGTON INDUSTRIAL PLASTICS, INC., 12-R3D6-3163
KLUNE INDUSTRIES, INC., 13-R4D3-0797
JOSE ANOTONIO LOPEZ DBA JETT HARVEST, INC., 12-R3D2-2466
LOVIN OVEN LLC DBA BLOOMFIELD BAKERS, 12-R3D6-2661
MAGNOLIA BIRD FARM, 12-R3D1-3039 *
MING INTERNATIONAL DBA CARPET SOLUTIONS, INC., 12-R3D5-3005 *
NED L. WEBSTER CONCRETE CONSTRUCTION, 12-R4D1-2669
NESTLE USA, 13-R6D2-1481 AND 1482
NORMAN, FOX AND COMPANY, 12-R3D6-2078
PACIFIC CRANE MAINTENANCE CO., 13-R6D2-1483
PALMER TANK & CONSTRUCTION, INC., 12-R2D5-1109
PULIDO FARMS, 12-R4D6-2797
QUALITY AG, INC., 13-R4D3-0586 AND 0587
RAC ACCEPTANCE, 12-R2D2-3602
REXCO MET DBA REXCO, 12-R6D2-2008 THROUGH 2012 *
DONALD LEE ROY RHINE DBA DANDY DONS HANDYMAN, 11-R3D3-3035
AND 3036
RIZO-LOPEZ FOODS INC., 12-R6D1-2241 AND 2242
RIZO-LOPEZ FOODS INC., 12-R6D1-2243 AND 2244
SANTA BARBARA CENTER FOR THE PERFORMING ARTS INC., 12-R4D3-3326
AND 3327
SATICOY GOLF CORPORATION, 12-R4D3-3045
SAV-ON PLATING INCORPORATED, 13-R4D4-0621
SEARS HOLDING CO., DBA KMART INC., DBA BIG K, 12-R2D2-3638
AND 3639
SEAVIEW REHABILITATION & WELLNESS CENTER, L.P., 12-R2D1-3419
SENBA USA, INC., 13-R1D4-1552 AND 1553
S.H.E. MANAGES PROPERTIES, INC., 13-R3D2-0409 AND 0410
SVC MANUFACTURING DBA PEPSICO BEVERAGES COMPANY,
13-R1D4-0822 AND 0823
SYGMA NETWORK, 12-R4D3-2969 *
TALTECH CONSTRUCTION, INC., 12-R4D3-2966 THROUGH 2968
TORO ENTERPRISES, INC., 12-R4D3-3762 AND 3763
UNIVAR USA INC DBA UNIVAR INC., 13-R2D5-0869 AND 0870
VANCE CO. DBA I D GROUP, 12-R4D1-2670
VICTOR VALLEY COMMUNITY COLLEGE, 12-R3D3-2190
WEBCOR CONSTRUCTION, LP DBA WECOR BUILDERS, 12-R1D4-3092 *
WESTERN YARN DYEING, INC., 12-R6D2-2681 THROUGH 2688
WILMINGTON WOODWORKS, INC., 12-R6D2-1675

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended

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PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session adjourned at 11:25 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 11:26 a.m.