

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on December 5, 2012, 2012
Sacramento, California**

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Kari Johnson, Acting Executive Officer
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 NOVEMBER 28, 2012 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the November 28, 2012 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the November 28, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

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

1. 2012 RULEMAKING MATTERS

(Discuss/implement Board rulemaking changes)

ACTION: The Board will discuss this matter at the next meeting on December 19, 2012

NEW BUSINESS:

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

1. 2012/2013 BUDGET:

(Review and discuss budget issues for the 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)

ACTION: No report.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter met with representatives of the Department of Industrial Relations regarding outreach efforts and upcoming trends and issues that may affect 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 and news from the Department and Appeals Board.)

ACTION: Acting Executive Officer Johnson reported that the staff will receive communication training on December 7. The program may also be offered to the West Covina staff.

STAFF REPORTS:

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

ACTION: Chief Counsel Mojcher reported on the process of responding to continuance requests.

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:

BERNARDS/BARTON MALOW, A JOINT VENTURE, 11-R6D2-2421 THROUGH 2423

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.

SOLAR SERVICE CENTER, INC., 12-R3D3-0924

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.

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SOUTHLAND/TUTOR PERINI, JV, 11-R5D1-1858 THROUGH 1860

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.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

ABLE BUILDING MAINTENANCE, 11-R2D2-2989

APEX PAINTING INC., 12-R2D1-0809

ARB, INC., 12-R1D3-1343 *

MARK & LORIE BENNETT DBA BENNETT ENTERPRISES, 12-R2D1-0879

BIG VALLEY LABOR LLC., 12-R6D7-1884

JAMES D CARLSEN DBA CARLSEN AND COMPANY, 11-R1D5-3209 AND 3210

CENTRAL STRIPING SERVICE INC., 11-R2D1-2959

RICHARD COBERLY, 12-R6D7-1100 THROUGH 1102

CONSTRUCTION CONTRACTOR CORP., 12-R4D1-0818

CUSTOM BUILT CONSTRUCTION, 12-R4D2-1130 & 12-R4D2-1232 THROUGH 1235

ECOLOGY CENTER, 12-R1D4-2348

EVERGREEN DISTRIBUTORS, INC., 10-R3D2-3102 AND 3103

FOSTER POULTRY FARMS, DBA FOSTER FARMS, 11-R2D5-0846

GOLDEN SPECIALTY FOODS, LLC., 11-R6D2-2866 THROUGH 2876 *

NEIL, ARNOLD & MARK HOFFART DBA QUAD H RANCHES, INC., 12-R2D1-0568

HOME DEPOT, 11-R3D5-2673

HUY FONG FOODS, INC., 12-R4D2-0965

INTERNATIONAL CARGO EQUIPMENT INC., 12-R3D5-0957

ITT CORPORATION, 11-R1D5-2700 AND 12-R1D5-3240 AND 3241

RICHARD LAU DBA BAMBOO GARDEN RESTAURANT, 12-R6D7-1789

MONTEABARO MASONRY, INC., 12-R4D3-0756 AND 0757

NATIONAL RETAIL TRANSPORTATION, 11-R6D2-3047 AND 3048

PERFECTEX PLUS, LLC, 12-R6D2-1958 THROUGH 1967

PHILP ENTERPRISES, INC., DBA ALL WEATHER HEATING & COOLING,
12-R1D5-0694 *

PRECISION WATERJET AND LASER, 12-R3D1-1451

QUINN ENGINEERING, 11-R1D1-2086

RONSAN, INC., 12-R6D7-1517 THROUGH 1519

SHASTA CONSTRUCTORS, INC., 11-R2D2-3173

SNOWDEN ENTERPRISES, INC., 12-R6D3-0471

SPD GRASS VALLEY INC DBA SPD MARKET, 12-R2D1-0878 *

STATER BROTHERS (STORE #98), 12-R6D2-0796

STEVEN EARL WILLIAMS DBA WEST COAST CONSTRUCTION, 11-R3D6-1700 *

SURE FIT ROOFING & INSULATION, 12-R6D7-1660

SYMANTEC CORPORATION, 11-R1D3-2193

TILTON PACIFIC CONSTRUCTION, INC., 11-R1D3-1408 THROUGH 1409

TUTOR-SALIBA CORPORATION, 11-R5D1-1208 THROUGH 1210 *

TUTOR-SALIBA CORPORATION, 12-R5D1-2556

VICTOR VALLEJO DBA VICTOR VALLEJO AND SONS PAINTING,
12-R2D1-0856 AND 0857
VINCENT ENTERPRISES, INC. DBA ROSS PLASTERING, 12-R1D1-1662 *
WESTLAND INDUSTRIES, INC., 11-R3D6-1701 THROUGH 1705 *
JEANNE XU, 12-R3D6-1031 THROUGH 1033

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

ORDER AFTER REMAND:

CITY OF FOSTER CITY, 09-R1D3-4195

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

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

HEADSTART NURSERY, INC., 12-R3D3-3304 AND 3305

ACTION: Member Lowry moved that the Board approve this Order Granting Leave to File Late Appeal from an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Granting Leave to File Late Appeal from an Administrative Law Judge.

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.

ACTION: No report.

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
ALLIED SALES & DISTRIBUTION, INC., 11-R6D2-0480
AC TRANSIT, 08-R1D4-0135
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

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CALIFORNIA ERECTORS, INC., 10-R1D2-2772 THROUGH 2775
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
CENTRAL VALLEY ENGINEERING & ASPHALT, INC., 08-R2D1 5001 AND 5002
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
DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431
DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896
EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
EZ MIX, INC., 08-R4D3-1898
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HOME DEPOT, 10-R3D6-3284
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
IRWIN INDUSTRIES, 08-R6D4-1454
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
MARINE TERMINALS, 08-R6D2-1920
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
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
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196

SDUSD – PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297

ACTION: Chief Counsel Mojcher discussed this matter.

SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025
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 FROZSUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
VAN EVERY CONSTRUCTION, INC., 11-R1D4-0936 AND 0937

LEGISLATION:

ACTION: No report.

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. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
2. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
3. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
4. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
5. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-
R5D1-3611)
6. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
7. SMUD, 34-2010-80000723 (08-R2D1-4887)
8. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
9. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
10. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-
0188~0191)
11. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010
(08-R2D1-3273)
12. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459
THROUGH 2461)

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13. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
14. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
ACTION: Chief Counsel Mojcher reported that a hearing on this matter is set for early 2013.
15. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
16. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
17. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
18. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
19. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
20. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
21. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219
AND 0220)
22. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
23. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-
R2D4-2650 AND 2651)

PERSONNEL: *(Issues regarding staff)*

ACTION: The Board discussed personnel matters.

The Closed Session adjourned at 11:47 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 11:48 p.m.