

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**EFRAIN GARCIA (ADJ10011064), VICTOR CASTANEDA (ADJ10004293), RUFINO CHAPARRO (ADJ10064294), (ADJ10074137), deceased, PABLO GONZALEZ (ADJ10011455), KAO HANG (ADJ10007961), ROSARIO LARA (ADJ10028684), SAM OUK (ADJ10004386), VICTOR PADILLA (ADJ10060159), GABINO PIZANO (ADJ10011454), FIDEL RAMIREZ (ADJ10006078), EDGAR TORRES (ADJ10004298), ESTEVAN VALDIVIA (ADJ10061293), *Applicants***

**vs.**

**COUNTY OF FRESNO, permissibly self-insured, administered by AIMS INSURANCE SERVICES, *Defendants***

**Adjudication Number: ADJ10011064 (MF)  
Fresno District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petitions for Reconsideration filed by applicants Efrain Garcia, Pablo Gonzalez, Victor Castaneda, Rosario Lara, Jeremiah Espino (deceased), Sam Ouk, Gabino Pizano, Edgar Torres, Fidel Ramirez, and Kao Hang. This is our Opinion and Decision After Reconsideration.

Applicants seek reconsideration of the March 28, 2019 Findings of Fact and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicants were employees of the County of Fresno while rendering services as inmate workers on April 17, 2015.

Applicants filed four petitions for reconsideration: (1) petition by Efrain Garcia; (2) petition by Pablo Gonzalez; (3) petition by Victor Castaneda, Rosario Lara, and Jeremiah Espinos (deceased); and (4) petition by Sam Ouk, Gabino Pizano, Edgar Torres, Fidel Ramirez, and Kao Hang. Each petition contends that applicants were not employees of the County of Fresno because they did not volunteer to work and did not receive compensation for their work when they were injured on April 17, 2015.

We received an answer from the County of Fresno. The County of Fresno contends that

the findings are supported by evidence and that the credibility findings of the WCJ should be given great weight because the WCJ had the opportunity to observe the witnesses' demeanor and weigh their testimony while on the stand.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petitions for Reconsideration, the Answer and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we affirm the March 28, 2017 Findings of Fact and Order.

## FACTS

It is undisputed that on April 17, 2015 there was an explosion at the gun range used by the Fresno County sheriff's department and that thirteen inmates were injured, one fatally, as a result of the explosion. It is also undisputed that the inmates were taken to the gun range on that date to work. The only testimony taken at trial was that of Efrain Garcia and Kao Hang. (Minutes of Hearing and Summary of Evidence (MOH/SOE) dated June 11, 2018 and August 16, 2018.) The parties stipulated that no further testimony will be taken at trial and submitted as evidence the deposition transcripts of Fidel Ramirez, Rosario Lara, Pablo Gonzalez, Edgar Torres, Rufino Chaparro, Victor Castaneda, Sam Ouk, Victor Padilla, Esteban Valdivia, Gabino Pizano, Grace Espino, Raul Urzua, Russel Duran, Sam Mann, and Margaret Sims.<sup>1</sup> (MOH/SOE dated December 5, 2018, p. 3:6-11.) Below is a summary of the relevant testimonial evidence.<sup>2</sup>

### Deposition Transcript of Lieutenant Duran

Russel Duran is a Lieutenant at the Fresno County Jail. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, p. 8:24.) He oversees the management/classification unit and the booking and records unit in the jail. (*Id.* at p. 10:13-16.) He testified on the rules and policies regarding how inmates are classified to be inmate workers. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 2, pp. 6:13-7:17.)

Lieutenant Duran testified that there are two ways that an inmate can become an inmate worker. One way is through the classification process, which is an intake process that determines

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<sup>1</sup> Rufino Chaparro, Victor Padilla, and Esteban Valdiva did not appear for their depositions. (Joint Exhibits 5, 8, 9, Deposition Transcripts of Mr. Chaparro, Mr. Padilla, and Mr. Valdiva.)

<sup>2</sup> While we have reviewed all of the testimonial evidence, for purposes of judicial efficiency, we only provide a summary of the testimony we deem relevant for our analysis here.

whether an inmate requires minimum, medium, or maximum security, protective custody or administrative segregation. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, pp. 11:14-5, 12:4-7, 59:14-60:13.) If at the classification process, it is determined that the inmate meets the eligibility criteria to become an inmate worker, the inmate is verbally asked whether he wants to become an inmate worker. (*Id.* at pp. 13:4-17, 14:6-10; Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 2, pp. 58:15-59:25.) Another way that an inmate can become an inmate worker is through an inmate request form. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, p. 15:11-13.) This is a general form that inmates can access inside the jail to request various things, including work. (*Id.* at p. 15:17-20.) According to Lieutenant Duran, all inmates are given an Inmate Orientation Handbook that details the procedures to become an inmate worker. (*Id.* at pp. 55:25-56:3, 59:14-60:13, 61:15-25, 62:4-8.)

There are two types of inmate workers: pod workers and facility workers. A pod worker is an inmate who works inside their housing pod. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, p. 58:3-4.) A facility worker is an inmate who works outside their housing pod. (*Id.* at p. 59:17-18.) All of the inmates in this matter were facility workers.

Once an inmate is designated a facility worker, he is assigned to the facility worker housing pod. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, p. 70:18-23.) Facility workers are given blue uniforms, which is different than the red uniforms that the general inmate population receives. (*Id.* at pp. 111:10-112:1; Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 2, p. 76:20-22) They are given boots as opposed to the sandals that the general inmate population receives. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, pp. 76:14-18, 91:20-23.) They receive two extra half hours of visitation per week. (*Id.* at p. 62:4-8.) These two extra half hours of visitation cannot be accumulated and are lost if not used by the end of the week. (*Id.* at p. 86:19-22.) Furthermore, these two extra half hours of visitation are given regardless of the amount of work each inmate does per week. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 2, pp. 51:17-20, 62:3-15, 75:22-76:3.) Inmates are entitled to the two extra half hours of visitation just for being classified as an inmate worker. (*Ibid.*) According to Lieutenant Duran, in addition to the extra visitations, the benefits of being a facility worker include receiving additional clothing such as a jacket and thermal clothing, being outside in fresh air, a regular sleep schedule, and less jail politics. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, pp. 76:14-81:11.) Facility workers do not receive reduced time or monetary compensation for working. (*Id.*

at p. 82:5-6, 82:16-18.)

There are different crews within the facility worker classification: the range crew, the graffiti abatement crew, the downtown crew, and the utility worker crew. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 2, p. 47:9-17.) There are typically two or three inmates assigned to the range crew. (*Id.* at p. 53:13-15.) The majority of the facility workers are assigned to the utility crew. (*Id.* at p. 47:14-15.) Of the thirteen inmates involved in the explosion, two or three were assigned to the range crew and the rest were from the utility crew. (*Id.* at p. 53:7-10.)

On April 17, 2015, the date of the explosion, a range officer requested more inmate workers and facility workers were asked to volunteer to work at the range. (*Id.* at pp. 63:20-64:13, 67:1-2.) Lieutenant Duran testified that if an inmate did not volunteer to work, he was not forced to work. (*Id.* at pp. 68:16-23, 71:16-22, 72:4-8.) However, after repeated refusals to volunteer to work, an inmate may lose his inmate worker status. (*Id.* at pp. 77:20-79:4, 84:23-25, 88:2-19, 89:16-90:24.)

#### Deposition Transcript of Correctional Officer Daniel Moreno

In April 2015, Officer Daniel Moreno was a security officer at the Fresno County Jail. (Joint Exhibit 12, Deposition Transcript of Officer Moreno, p. 9:6.) He worked at the security station that overlooked the inmates. (*Id.* at pp. 16:12-14, 21:18-20.) He oversaw the movement of the jail floor. (*Id.* at p. 9:8-12.) He was not a floor officer. (*Id.* at pp. 16:12-14, 24:18-19, 43:19-23.)

On the date of the explosion, Officer Gomez, an officer from the Classification/Population Management unit, informed him that the range needed ten additional inmate workers. (*Id.* at pp. 14:21-23, 15:10-18.) By that time, the range crew had already left for work. (Joint Exhibit 12, Deposition Transcript of Officer Moreno, p. 14:18-19.) Officer Moreno got on the intercom and called for ten additional workers to line up at the door. (*Id.* at p. 8:24-25, 23:17-22, 39:24-39:2.) In response, 10-15 inmates lined up at the door. (*Id.* at p. 24:7-13.) The floor officers then took over in selecting 10 inmates to work. (*Id.* at pp. 24:14-17, 34:6-17.)

Hypothetically, if no one had lined up at the door after the request for 10 additional inmates to work, Officer Moreno would inform Officer Gomez that no inmates responded to the call for work. (Joint Exhibit 12, Deposition Transcript of Officer Moreno, pp. 44:15-45:20.) Inmates would not be forced to work but there would be repercussions if an inmate continually refuses to work. (*Ibid.*) Typically, if an inmate did not want to work on a particular day, due to sickness or

any other reason, he would communicate that to the floor officer and he would not be forced to work. (*Id.* at pp. 24:20-25:16, 36:13-37:13.) If an inmate refuses to volunteer to work repeatedly, the floor officer would contact the Classification/Population Management unit to get involved and possibly re-classify the inmate. (*Id.* at p. 40:18-41:4.)

#### Deposition Transcript of Sam Ouk

Sam Ouk was an inmate at the Fresno County Jail in April 2015. He was originally assigned to the red unit, which is the general population unit of inmates. (Joint Exhibit 7, Deposition Transcript of Mr. Ouk, p. 65:3-7.) After about a month later, he was told to roll up and move to the blue unit, which is the facility workers' unit. (*Ibid.*) He was issued a blue jumpsuit and boots. (*Id.* at pp. 65:19-66:15.) He was not told that he would receive extra visitation rights in the blue unit but he understood he had extra visitation rights. (*Id.* at pp. 65:15-17, 74:9-15.) The difference between the red unit and the blue unit is that in the blue unit he had a job outside the jail. (*Id.* at p. 68:7-17.) He was assigned to the landscaping crew. (*Id.* at p. 68:11.) He also testified that the blue unit was less crowded and there were less fights. (*Id.* at pp. 66:23-67:3.)

In his time in the blue unit, he had heard of inmates refusing to work. (Joint Exhibit 7, Deposition Transcript of Mr. Ouk, p. 72:17-19.) He testified that nothing happened to these inmates and that there was always another inmate to fill their place. (*Id.* at pp. 72:20-73:3.)

On the date of the explosion, a correctional officer called eight inmates by name, including Mr. Ouk, and told them to line up for work. (Joint Exhibit 7, Deposition Transcript of Mr. Ouk, p. 27:6-8.) Mr. Ouk was then told by the correctional officer to pick three more guys to work. (*Id.* at p. 80:6-9.) He testified that there was an older inmate who wanted to work but Mr. Ouk told him not to go and instead picked his bunk mate, Jeremiah Espino, to work. (*Id.* at pp. 78:24-79:7.) Originally, Mr. Espino did not want to work but Mr. Ouk convinced him to go. (*Id.* at pp. 78:14-21, 81:1-5.) Mr. Espino died from injuries he sustained at the explosion.

#### Trial Testimony of Efrain Garcia

Efrain Garcia was an inmate in April 2015. Like Mr. Ouk, he was originally placed in the red unit and was then transferred to the blue unit without a choice. (MOH/SOE dated June 11, 2018, p. 5:17-18.) He testified that once in the blue unit, he was put to work against his will. (*Id.* at p. 5:22-24; MOH/SOE dated August 16, 2018, pp. 19:25, 21:4-5, 21:24-25.) On April 17, 2015, he was sent to the gun range and told to pick up lead and spent shell casings from the ground. (MOH/SOE dated August 16, 2018, pp. 20:20-22, 21:25.) He denied he received any benefit for

working, although he did receive pizza for lunch, which is not a food offered in the jail. (MOH/SOE dated July 11, 2018, p. 5:9-11.) He did not receive extra visitation rights or money or an early release. (*Id.* at p. 5:12-13; MOH/SOE dated August 16, 2018, p. 22:2-4.) He was not told he would receive benefits for working. (MOH/SOE dated August 16, 2018, p. 22:2-4.) He never received an Inmate Orientation Handbook. (*Id.* at p. 22:7-12.) He never signed any document saying he was volunteering to work as an inmate. (*Id.* at p. 22:6.)

#### Trial Testimony of Kao Hang

Kao Hung started in the red unit and was moved to the blue unit against his will. (MOH/SOE dated August 16, 2018, p. 25:11-12.) He does not remember filling out a request for employment. (*Id.* at p. 25:10.) He told the officer who was moving him that he did not want to go to the blue unit. (*Id.* at p. 25:3, 21-22.) No one told him that he would receive extra visitation rights in the blue unit, although he learned about that benefit from other inmates. (*Id.* at pp. 23:14-15, 25:3.) He did not take advantage of the extra visitation rights. (*Id.* at p. 23:15.) He acknowledged that he received an inmate handbook when he was booked in jail. (*Id.* at p. 24:22-24.)

On the morning of the explosion, it was announced over a loudspeaker that a crew would be going to the gun range. (MOH/SOE dated August 16, 2018, p. 23:16-19.) The crew was called and identified by their bunk numbers. (*Ibid.*) Once called, the inmate lined up at the door. (*Ibid.*) One older inmate opted to stay and was allowed to do so. (*Ibid.*) Once gathered at the door, they were taken to the gun range and handed over to other officers who told them they would be picking up spent lead from the berm. (*Id.* at p. 23:20-25.) They were provided with shovels and fed pizza and soda, a food not provided in the jail. (*Ibid.*)

He testified that a guard can make your life hard if you refuse to do what he tells you to do. (MOH/SOE dated August 16, 2018, p. 26:2-3.) He testified that he saw other inmates say “no” and the guards made it hard on them. (*Id.* at p. 26:8-9.) A particular inmate who said “no” was later seen covered in bruises. (*Ibid.*)

#### Deposition Transcript of Fidel Ramirez Garcia

Fidel Ramirez Garcia started in the red unit. (Joint Exhibit 1, Deposition Transcript of Mr. Ramirez, p. 33:14-20.) One day, he asked an officer about the blue unit inmates, and one month later, he was transferred to the blue unit even though he did not request to be transferred. (*Id.* at pp. 24:12-35:13, 68:2-5.) He was told that the blue inmates get better food but that was not true.

(*Id.* at pp. 33:18-20, 35:21-24.) He was not told he would receive extra visitation time as a result of being in the blue unit, but it did not make a difference to him because he did not have any visitors. (*Id.* at pp. 33:21-23, 34:3-11.) He does not remember being asked if he wanted to work during the booking and classification intake process when he entered the jail. (*Id.* at p. 39:16-19.) He did not receive an inmate handbook when he entered the jail. (*Id.* at p. 47:8-18.) He testified that the difference between the blue unit and the red unit is that there are no fights in the blue unit so it is more restful. (*Id.* at p.p. 41:4-8, 57:22-24.)

On the date of the explosion, an officer called inmates to work at the range via a speaker. (Joint Exhibit 1, Deposition Transcript of Mr. Ramirez, p. 43:2-6.) The inmates were called by their bed numbers. (*Ibid.*) Once called, you had to line up at the door to be transported to the work site. (*Id.* at p. 43:10-13.) He testified that he knew that there was one older gentleman who was called to work but did not go. (*Id.* at pp. 43:20-23, 52:13-23.) He also testified that when called to work, you had to go or the officers would punish you. (*Id.* at p. 44:16-18.)

#### Deposition Transcript of Rosario Lara

Rosario Lara testified that the classification and booking process at the jail consisted of being called to a window and answering questions about race, gender, gang membership, and religion. (Joint Exhibit 2, Deposition Transcript of Mr. Lara, p. 30:16-25, 49:15-22.) After answering those questions, he was given clothes and assigned to a pod. (*Id.* at p. 34:19-22.) He was not given any written jail rules but he was aware of and had used inmate request forms. (*Id.* at pp. 35:3-9, 38:20-39:10.)

He was moved from the red unit to the blue unit against his will. (Joint Exhibit 2, Deposition Transcript of Mr. Lara, pp. 41:19-42:17, 46:10-13, 46:21-47:25.) There was not much benefit being in the blue unit, except that the blue unit was less crowded, he got to go outside the jail to work, and got longer visitation time, although most of the time, he used the same amount of visitation time as he did in the red unit. (*Id.* at pp. 48:20-50:15.)

On the date of the explosion, his bunk number was called and he had to get up and line up to work. (*Id.* at pp. 54:23-55:24.) He told an officer that he did not feel well and did not want to work but was told that he had to go. (*Ibid.*) He testified that there were a handful of inmates who got called to work and did not want to go but everybody went. (*Id.* at p. 58:6-11.) Once at the range, he was told to excavate bullet shells. (*Id.* at pp. 62:9-63:4.) He testified that, “[a]s long as you’re in the custody of the jail, you’re being controlled.” (*Id.* at p. 62:22-23.)

### Deposition Transcript of Pablo Gonzalez

Pablo Gonzalez was first assigned to a red unit cell with gang members, where he almost got beaten up. (Joint Exhibit 3, Deposition Transcript of Mr. Gonzalez, pp. 34:25-36:2, 36:9-38:2.) He asked a guard to transfer him to a different cell and he was transferred to a second red unit cell. (*Id.* at p. 38:4-42:12.) Two weeks later, he was transferred to the blue unit and was given blue overalls and boots. (*Id.* at pp. 49:23-50:6, 60:13-17.) He did not want to be transferred to the blue unit and talked to another inmate about it who told him that the guards decide and there is nothing to be done. (*Id.* at pp. 58:1-59:1, 63:10-22.) Based on this information, he did not tell the guards that he did not want to be transferred to the blue unit. (*Ibid.*, p. 61:16-18) He was not asked prior to the transfer whether he wanted to work. (*Id.* at p. 64:10-15.)

He testified that he never received an inmate handbook while in jail and never saw anyone with an inmate handbook. (Joint Exhibit 3, Deposition Transcript of Mr. Gonzalez, pp. 48:10-14, 95:24-96:8.) He also testified that the only time he saw request forms was in the second red unit assignment. (*Id.* at pp. 64:16-65:16.)

There was no difference between the red unit and the blue unit. (Joint Exhibit 3, Deposition Transcript of Mr. Gonzalez, pp. 49:14-16, 54:22-25, 57:15-21, 90:15-21.) He was not told that he would receive extra visitation time. (*Ibid.*)

On the date of the accident, his bed number was called and he lined up to go work at the range. (Joint Exhibit 3, Deposition Transcript of Mr. Gonzalez, p. 68:12-17.) He does not remember anyone saying that they did not want to go work. (*Id.* at pp. 67:18-68:1.) He was fed pizza and soda at the range. (*Id.* at p. 85:11-21.) He did not want to work at the range but he felt he had no option. (*Id.* at p. 88:7-24.)

### Deposition Transcript of Victor Castaneda

Victor Castaneda suffers from anxiety, depression, and memory loss, in addition to the burn injuries as a result of the April 17, 2015 accident. (Joint Exhibit 6, Deposition of Mr. Castaneda, pp. 20:23-21:2, 24:17-25:14, 33:13-34:13.) He testified that he was transferred from the red unit to the blue unit because he wanted to work. (*Id.* at p. 9:14-20.) A few days after he was transferred, he was told he had a right to one visitation. (*Id.* at p. 9:23-24.) He was not told about any compensation when he was transferred to the blue unit. (*Id.* at pp. 9:25-10:2.) On the day of the accident, guards woke him up to go to work. (*Id.* at pp. 6:23-25, 7:6-12.) He did not



want to go to work that day but he was told he had to go to work because he was in the blue unit. (*Id.* at pp. 6:3-8, 7:4-12.)

#### Deposition Transcript of Carmen Espino

Carmen Espino is the estranged wife of Jeremiah Espino, the inmate who died from injuries sustained at the explosion. (Joint Exhibit 11, Deposition of Ms. Carmen Espino, pp. 16:15, 19:3-8.) She testified that she learned from her daughters that Mr. Espino was put to work even though he did not want to because of his health problems—bad knee, diabetes, and high blood pressure. (*Id.* at pp. 22:1-10, 26:16-18, 28:14-15, 28:19-22, 29:4-9.)

#### Deposition Transcripts of Grace Espino and Christina Espino

Grace and Christina Espino are the daughters of Mr. Espino. Ms. Grace testified that Mr. Espino told her during her visits with him in jail that he did not want to work because he had health issues and was in pain but they made him work anyway. (Joint Exhibit 16, Deposition of Ms. Grace Espino, pp. 44:16-22, 45:12-15, 56:5-12, 56:25-57:2, 58:19-23, 65:9-11.) Ms. Christina confirmed that Mr. Espino was sick while in jail. (Joint Exhibit 22, Deposition of Ms. Christina Espino, pp. 31:6-7, 38:4-5, 39:25-40:1, 42:4-5, 51:25-52:3, 53:23.)

#### Deposition Transcript of Gabino Pizano

Gabino Pizano was an inmate at the jail. Upon arrival at the jail, he went through the booking and classification processes and was assigned to the red unit while awaiting sentencing. (Joint Exhibit 15, Deposition Transcript of Gabino Pizano, pp. 17:16-24:21.) He was given a rules book at the time of the booking process that described how an inmate could become an inmate worker. (*Id.* at p. 48:24-49:15.) He was also aware of request forms that he had to fill out to obtain anything, from medical treatment to a visitation. (*Id.* at p. 37:19-38:3, 76:25-77:5.)

Shortly after he was sentenced, he was moved to the blue unit and assigned to the landscaping crew. (Joint Exhibit 15, Deposition Transcript of Mr. Pizano, pp. 14:16-19, 24:11-25:17.) He was not asked whether he wanted to work but was ordered to move to the blue unit. (*Id.* at pp. 20:19-21:1, 68:24-70:8, 76:1-7.) He was given a blue jumpsuit, boots, shirts, and socks, and he learned from other inmates that he had an extra 30 minutes of visitation rights. (*Id.* at pp. 25:14-26:22, 85:19-86:11.) The officers in the jail did not tell him about the extra visitation rights. (*Id.* at p. 29:11-24.) In addition to the additional visitation rights, the inmates in the blue unit were sometimes offered extra food. (*Id.* at pp. 26:24-27:2.) Mr. Pizano liked the ability to work outside the jail because he was able to smell fresh air, see the sun, and feel somewhat free. (*Id.* at p. 50:5-

6.)

The day of the explosion was the first day Mr. Pizano worked in the blue unit as part of the landscaping crew. (Joint Exhibit 15, Deposition Transcript of Mr. Pizano, p. 30:7-10.) He remembers inmates were called to work via the loudspeaker. (*Id.* at p. 42:18-21.) There were two inmates who did not want to go to work. (*Id.* at pp. 14:8-13, 42:18-44:16.) One was allowed to stay because of his age and one was made to work despite his protestation. (*Ibid.*, 71:25-72:19) Mr. Pizano did not know he could object to working and did not know he could request to be sent back to the red unit. (*Id.* at pp. 43:1-7, 74:17-77:5.) On the day of the explosion, he was at the range digging out slugs from the berm. (*Id.* at p. 51:2.)

#### Deposition Transcript of Brandi Kwiatkowski

Ms. Kwiatkowski is from Risico Claims Management, the entity that administered workers' compensation claims for the County of Fresno. (Joint Exhibit 10, Deposition Transcript of Ms. Kwiatkowski, pp. 5:10-6:4.) She testified that in determining that all the inmates from the explosion were covered under workers' compensation insurance, her company made the following determinations: (1) the inmates did not work as a condition of their incarceration, (2) the inmates volunteered for work, (3) the inmates did not receive monetary compensation for their work, (4) the inmates did not receive time credits for their work, (5) the inmates received extra visitation as a benefit for their work, (6) the inmates did not receive back their freedom in exchange for their work, (6) the inmates' work was subject to the control of the County, and (7) the inmates were providing a service to the County. (*Id.* at pp. 18:18-23, 23:7-8, 25:25-16:1, 27:1-2, 27:17-19, 28:20-21, 29:11-13, 30:6-7, 30:15-19.) These determinations were made based on information provided by the County. The company did not make an independent investigation for these determination. (*Id.* at pp. 24:8-25:13, 26:5-10, 26:18-24, 27:14-15, 27:23-28:9.)

We have also reviewed the documentary evidence admitted at trial and highlight the following evidence:

#### Policies and Procedures for Inmate Classification

Lieutenant Duran testified as to the policies and procedures to classify an inmate as an inmate worker. The following is an excerpt from the policies and procedures for inmate classification regarding how an inmate can become a facility inmate worker or a "blue" inmate.

### VII. ELIGIBILITY FOR FACILITY INMATE WORKER

A. The general qualifications for becoming a facility inmate worker are

the following:

1. Inmate must be doing local time on ALL charges.
2. Inmate must NOT have any pending warrants or holds.
3. Inmate must qualify as a sentenced minimum-security inmate per classification procedure.

B. Inmates who are NOT qualified for facility inmate worker assignments are:

1. Inmates who have a prior history of escape.
2. Inmates who have a prior history of extensive violence.
3. Inmates housed in administrative segregation.
4. Inmates with extensive disciplinary records.
5. Inmates who have been in serious incidents involving a disturbance or a violation of jail rules or the law.
6. Any inmate not deemed suitable as a minimum-security inmate by Classification staff members.

C. If any inmate has recently been sentenced to local time, there is a wait of approximately two (2) weeks for the commitment paperwork to be received and processed by jail staff members. If after that time an inmate believes they have been overlooked for facility worker status and they meet the above listed qualifications, they should fill out and send an inmate request slip to the Watch I Classification staff.

D. Inmates who are eligible for facility inmate worker shall be transferred to the housing unit designated for inmate workers.

E. Inmates who become a facility inmate worker shall be eligible for two (2) additional thirty (30) minute visit per week, in addition to the regularly allowed two (2) thirty minute visits per week.

F. Removal of facility inmate workers shall comply with the same process as the removal of cell inmate workers (see Section VII, subsection L).

(Defendant Exhibit 17, Policies and Procedures for Inmate Classification, pp. 23-24, COF 000115-0023 to 00015-0024.)

#### Inmate Orientation Handbook

Lieutenant Duran testified that each inmate was given an Inmate Orientation Handbook at the booking and classification process, although some inmates testified that they did not receive this handbook. The following relevant excerpt from the handbook deals with an inmate's eligibility to become a facility worker.

#### INMATE WORKER (ELIGIBILITY FOR FACILITY WORKER)

- A. Inmates who are eligible to be facility inmate workers will be transferred when space is available.
- B. Inmates will be reviewed and screened automatically for facility inmate worker.
- C. The following qualifications are for general information purposes only. Any qualifications or restrictions may be changed or modified at any time:
  - 1. Inmates must be doing local time on all charges and must not have any pending warrants or holds.
  - 2. Inmates must qualify as a sentenced minimum-security inmate, per Population Management/Classification staff.
- D. The following inmates will NOT be qualified for facility inmate worker assignments:
  - 1. Inmates who have a history of escape.
  - 2. Inmates who have a history of extensive violence.
  - 3. Administrative segregation Inmates.
  - 4. Inmates with an extensive disciplinary record.
  - 5. Inmates who have been in serious incidents involving a disturbance, a violation of jail rules, or the law.
  - 6. Any inmate not deemed suitable as a minimum-security facility inmate, worker by Population Management/Classification staff members.
- E. Facility worker positions are limited. But if you meet the above listed qualifications, you can express interest by sending an Inmate Request Form to Population Management/Classification.
- F. Facility inmate workers are eligible for two extra half-hour visits each week.

(Defendant Exhibit 1, Inmate Orientation Handbook, pp. 14-15, COF 000001-0015 to 000001-0016.)

## **DISCUSSION**

Labor Code<sup>3</sup> section 3351 defines “employee” as every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes: . . . (e) a person incarcerated in a state penal or correctional institution while engaged in assigned work . . .” (§ 3351, subdiv. (e).) Section 3351 does not include county inmates in its definition of employee. (§ 3351.) Section 3352 excludes certain persons from the definition of employee but does not exclude county

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<sup>3</sup> All subsequent references are to the Labor Code unless otherwise indicated.

inmates. (§ 3352.) Section 3357 creates a presumption of employment unless the person is an independent contractor or is expressly excluded, neither of which the county inmates here are. (§ 3357.)

Penal Code section 4017 provides,

All persons confined in the county jail, industrial farm, road camp, or city jail under a final judgment of imprisonment rendered in a criminal action or proceeding and all persons confined in the county jail, industrial farm, road camp, or city jail as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence may be required by an order of the board of supervisors or city council to perform labor on the public works or ways in the county or city, respectively, and to engage in the prevention and suppression of forest, brush and grass fires upon lands within the county or city, respectively, or upon lands in adjacent counties where the suppression of fires would afford fire protection to lands within the county.

Whenever any such person so in custody shall suffer injuries or death while working in the prevention or suppression of forest, brush or grass fires he shall be considered to be an employee of the county or city, respectively, for the purposes of compensation, under the provisions of the Labor Code regarding workmen's compensation and such work shall be performed under the direct supervision of a local, state or federal employee whose duties include fire prevention and suppression work. A regularly employed member of an organized fire department shall not be required to directly supervise more than 20 such persons so in custody.

As used in this section, "labor on the public works" includes clerical and menial labor in the county jail, industrial farm, camps maintained for the labor of such persons upon the ways in the county, or city jail. (Pen. Code, § 4017.)

The statute authorizes a county to order prisoners and probationers to work. While the statute is clear that county inmates who work in fire suppression are considered employees for purposes of workers' compensation, the statute is silent as to the status of county inmates who are not working in fire suppression. The court in *Rowland v. County of Sonoma* (1990) 220 Cal.App.3d 331, 333-334 provides us with the following guidance:<sup>4</sup>

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<sup>4</sup> We would be remiss not to mention the landmark decision in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, which was recently codified in Labor Code section 2775, and provides a test to determine whether a

Labor Code section 3351 provides in relevant part: "'Employee' means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed . . . ." The statute includes persons incarcerated in state penal or correctional institutions while engaged in assigned work, but says nothing about the status of a county inmate. The trial court has the duty to decide in the first instance whether it has jurisdiction of the subject matter and the parties. This process will involve the determination of jurisdictional facts and of jurisdictional questions of law. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 302 [109 P.2d 942, 132 A.L.R. 715].) The trial court must determine whether a county inmate was an "employee" on a case-by-case basis using the general definition of employee. (See generally, *Parsons v. Workers' Comp. Appeals Bd.* (1981) 126 Cal.App.3d 629, 636, fn. 3 [179 Cal.Rptr. 88].) In making this decision the trial court should consider the following questions, inter alia: (1) Did the county require plaintiff to work as a condition of incarceration?; (2) Did plaintiff volunteer for the assignment?; and (3) What considerations were received, if any, for example, monetary compensation, work-time credits, freedom from incarceration, etc.? (See, e.g., *Morales v. Workers' Comp. Appeals Bd.* (1986) 186 Cal.App.3d 283, 288-289 [230 Cal.Rptr. 575]; *Parsons, supra*, at p. 638; *Pruitt v. Workers' Comp. App. Bd.* (1968) 261 Cal.App.2d 546, 550-551 [68 Cal.Rptr. 12].) (*Rowland v. County of Sonoma* (1990) 220 Cal.App.3d 331, 333-334.)

**A. Whether the inmate was required to work as a condition of incarceration and whether the inmate volunteered to work.**

In analyzing the first two elements set forth in *Rowland*, courts have "distinguished between compulsory work performed as an incident to penal servitude and voluntary work performed." (*Pruitt v. Workers' Comp. Appeals Bd.* (1968) 261 Cal.App.2d 546, 549 [33 Cal.Comp.Cases 225]; *State Comp. Ins. Fund v. Workmen's Comp. Appeals Bd. (Childs)* (1970) 8 Cal.App.3d 978 [35 Cal.Comp.Cases 295]; *Parsons v. Workers' Comp. Appeals Bd.* (1981) 126 Cal.App.3d 629 [46 Cal.Comp.Cases 1304]; *County of Kings v. Workers' Comp. Appeals Bd. (Garza)* (1986) 51 Cal.Comp.Cases 424 [1986 Cal.Wrk. Comp. LEXIS 3361] (writ denied); *Salazar v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 16 [1980 Cal. Wrk. Comp. LEXIS 3119] (writ denied).) If an inmate was performing compulsory work as an incident to penal servitude, he is not an employee and has no rights to workers' compensation benefits. (*Parsons* at p. 638.)

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worker is an employee or an independent contractor. We do not consider whether the factors in section 2775 are applicable here since the 2015 injury here preceded the September 2, 2020 effective date of section 2775.

In *Pruitt*, there was an agreement where county prisoners could be picked up by the city for work in the City Park or at the sewage plant. (*Id.* at p. 548.) The applicant in *Pruitt* was a county inmate who was injured while working for the city at the sewage plant. (*Ibid.*) The *Pruitt* court held,

We hold that when a county jail inmate is loaned out to a third party for work on a voluntary basis, whether that third party be a private corporation or a municipality, and when he is under the control of the latter with the right in said third party to direct the manner in which the service shall be performed, there is (1) a relationship of master and servant, (2) an implied contract of hire and therefore by statutory definition (in Lab. Code, § 3351) the inmate becomes an "employee" and as such entitled to workmen's compensation benefits when injured in the course and scope of his employment. That is true notwithstanding that monetary consideration passing to the prisoner be nil and the other consideration from the direct beneficiary of the services (here a carton of cigarettes) be of nominal value. This court has held that payment of monetary wages is not a sine qua non of employment under workmen's compensation law. (citation omitted.) (*Id.* at pp. 552-553.)

It is noted that in *Pruitt*, there was a county ordinance that allowed the county to require its prisoners to work as a consequence of incarceration. (*Id.* at p. 551.) In reaching its holding, the *Pruitt* court, however, analyzed the inmate's relationship with the city and not the county. (*Id.* at pp. 552-553.) Had there not been a third party entity where inmates were loaned out for work, such as the city was in that case, the county ordinance may have changed the outcome. (*Childs, supra*, 8 Cal.App.3d at 982 ["In *Pruitt*, because of the county ordinance, any labor performed on public projects for the county would not be voluntary. The inmate could not be an employee of that county. However, because of the fortuitous circumstance in that case that the prisoner was actually assigned to the city, it then became necessary to that court to determine the status of the applicant to the city."].)

In *Parsons, supra*, 126 Cal.App.3d at pp. 638-639, the court held that petitioner, a county inmate, was not an employee of the county because his work for the county was incidental to his incarceration as he was sentenced to probation with the condition that he serve 45 days at an industrial road camp. The court explained that "there was no consensual relationship between petitioner and the county insofar as his labor at the road camp; rather, petitioner's work was incidental to his incarceration and was not the result of any implied bargain or negotiation between

petitioner and county.” (*Id.* at p. 638.) The court further found that there was a county ordinance requiring county inmates to work and that this statutory compulsion to work further negated any employment relationship. (*Id.* at p. 639.)

In *Childs, supra*, 8 Cal.App.3d at pp. 981-983, the court held that a county inmate’s work was voluntary based on the absence of a county ordinance requiring him to work as an incident to his incarceration. An “inmate was at liberty to either accept the work or refuse it and was thus a volunteer; that having accepted the work in return for compensation he was entitled to the benefits enjoyed by employees under the Workmen’s Compensation Act, which act should be liberally construed to carry out its beneficent purposes. [citation omitted].” (*Id.* at p. 980.) The inmate in *Childs* provided unrefuted testimony that his work was voluntary. (*Id.* at p. 981.)

The courts in *Garza, supra*, 51 Cal.Comp.Cases 424 and *Salazar, supra*, 45 Cal.Comp.Cases 16 scrutinized the language of the relevant county ordinance and noted the permissive language of the ordinance. In *Garza*, the court held that the county ordinance that provided that county inmates “may” be required to work did not require a finding that a county inmate’s work was compulsory. (*Garza* at p. 425.) In other words, the court in *Garza* held that a county inmate could be working voluntarily even though there was an ordinance in place allowing the county to require work as an incidental consequence of incarceration.

In contrast, in *Salazar*, the court held that even though the county ordinance provided that county inmates “may” be required to work, a county inmate’s work is compulsory “because the ordinance gave the sheriff the decision-making power regarding work by county prisoners.” (*Salazar* at p. 17.)

In reviewing the relevant statutes and case law above, we are cognizant here of the disparate impact in determining the employee status between persons incarcerated in state prison and person incarcerated in county jail. State inmates are statutorily included in the definition of “employee” while county inmates are subjected to a compulsory test to determine their employee status. We are also cognizant of the difference between county inmates who work in fire suppression and county inmates who do not, the former being statutorily included in the definition of employee, while the latter being subjected to the aforementioned compulsory test. Lastly, we are aware that in more recent laws, employer control is a big factor in determining employment status (the more



employer control, the more likely employment status is found<sup>5</sup>), whereas here, the opposite effect results when applying the compulsory test, in that the more control the county exercises, the more likely the inmate's work is found to be compulsory of incarceration without the protections of an employment relationship. Given these considerations, we find that the case law with respect to county inmates is antiquated and could use a fresh look by the Legislature or courts. That said, we understand that we are bound by existing case law and are constrained in applying the compulsory test explained above.

In applying the compulsory test above using the *Rowland* factors, we conclude that applicants' work here were voluntary. Preliminarily, we note that the parties here have not offered into evidence, nor have we found, a county ordinance that addresses the employment status of county inmates. As such, following the court in *Pruitt, supra*, 261 Cal.App.2d at pp. 552-553, and *Parsons, supra*, 126 Cal.App.3d at pp. 638-639, above, we focus our analysis on the relationship between the inmates and the county.

It does not appear that the inmates here were required to work as an incident of incarceration. (See Joint Exhibit 10, Deposition Transcript of Ms. Kwiatkowski, p. 23:7-8.) For instance, there is no evidence suggesting that the inmates were sentenced to work as in *Parsons, supra*, 126 Cal.App.3d at 632, 638-639, where the inmate there was sentenced to probation with the condition that he also work certain hours at an industrial road camp. Furthermore, there is no ordinance requiring county inmates to work. Most, if not all, of the inmates started their time in prison in the red unit, where they were serving their time without having to work.

The County contends that the inmates here volunteered to work and Lieutenant Duran provided testimony that the inmates, after meeting the eligibility requirements for inmate workers, were asked during the classification process whether they wanted to work, or alternatively, submitted request forms asking to work. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, pp. 13:4-17, 14:6-10, 15:11-13; Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 2, pp. 58:15-59:25.) Lieutenant Duran further testified that inmates were free to decline work and stay in the red unit. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, p. 14:6-10; see Joint Exhibit 12, Deposition Transcript of Officer Moreno, pp. 44:15-45:20.)

On the contrary, almost all of the inmates testified that they did not want to work but were

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<sup>5</sup> See *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 and *S. G. Borello & Sons, Inc. v. Dept. of Ind. Relations* (1989) 48 Cal.3d 341 [54 Cal.Comp.Cases 80].

simply ordered to do so. (Joint Exhibit 7, Deposition Transcript of Mr. Ouk, p. 65:3-7; MOH/SOE dated June 11, 2018, p. 5:22-24; MOH/SOE dated August 16, 2018, pp. 19:25, 21:4-5, 21:24-25; MOH/SOE dated August 16, 2018, p. 25:3, 11-12, 21-22; Joint Exhibit 1, Deposition Transcript of Mr. Ramirez, pp. 24:12-35:13, 68:2-5; Joint Exhibit 2, Deposition Transcript of Mr. Lara, pp. 41:19-42:17, 46:10-13, 46:21-47:25; Joint Exhibit 3, Deposition Transcript of Mr. Gonzalez, pp. 58:1-59:1, 63:10-22; Joint Exhibit 11, Deposition of Ms. Carmen Espino, pp. 22:1-10, 26:16-18, 28:14-15, 28:19-22, 29:4-9; Joint Exhibit 16, Deposition of Ms. Grace Espino, pp. 44:16-22, 45:12-15, 56:5-12, 56:25-57:2, 58:19-23, 65:9-11; Joint Exhibit 15, Deposition Transcript of Mr. Pizano, pp. 20:19-21:1, 68:24-70:8, 76:1-7.) Some testified that they had no choice but to follow the orders of correctional officers for fear of retribution. (MOH/SOE dated August 16, 2018, p. 26:2-3, 8-9; Joint Exhibit 15, Deposition Transcript of Mr. Pizano, p. 43:1-9.)

We recognize that the relationship between a correctional officer and an inmate is unique and distinct from that of an ordinary employer and employee. Correctional officers have much more power over an inmate and inmates have less rights in prison. Once a person enters a prison and surrenders his freedom, he is bound by strict rules with respect to housing, personal belongings, visitation rights, and personal movement. We further recognize that sometimes policies and procedures do not translate into practice. The inmates' testimony suggest that they were not aware that they could refuse to work and request to be transferred to the red unit. The inmates' testimony also suggest that even if they were aware that they had a choice to refuse work, most felt compelled to comply out of fear.

The purpose of workers' compensation laws is to protect workers from the risks of employment and is remedial in nature. (*Lara v. Workers' Comp. Appeals Bd.* (2010) 182 Cal.App. 4th 393, 412 (dis. opn.) [75 Cal. Comp. Cases 91].) Section 3357 creates a presumption of employee status while section 3352 does not expressly exclude county inmates from the definition of employee. (§§ 3352, 3357.) Section 3202 mandate that workers' compensation laws are to be liberally construed in favor of awarding compensation. (§ 3202.)

We stress that the mandate of the liberal interpretation in favor of the workman to be given workmen's compensation provisions is a material factor in our decision. Liberality of interpretation is not only a mandate of the Legislature as the representative of the People, the People have also spoken directly in the workman's compensation constitutional provisions. (Cal. Const., art. XX, § 21.) This court has had occasion to trace those constitutional and legislative provisions in another context in *State Comp.*

*Ins. Fund v. Superior Court* (1965) 237 Cal.App.2d 416, at page 420 et seq. [46 Cal.Rptr. 891]. Our Supreme Court stated in *Reinert v. Industrial Acc. Com.* (1956) 46 Cal.2d 349, at page 354 [294 P.2d 713]: “[Any] reasonable doubt as to whether an act was contemplated by the employment, in view of this state's liberal policy of construction in favor of the employee, should be resolved in favor of the employee. (Citations.)” That statement, often repeated, has had its latest reiteration in *State Comp. Ins. Fund v. Workmen's Comp. Appeals Board* (1967) 67 Cal.2d 925, 928 [64 Cal.Rptr. 323, 434 P.2d 619]. As we have seen, it was also applied to effect a liberal definition of "employee" in *California Highway Com. v. Industrial Acc. Com., supra*, 200 Cal. 44.

(*Pruitt, supra*, 261 Cal.App.2d at p. 553.)

Our review of these statutes compels us to conclude that the inmate workers here were employees of the County. We acknowledge that the inmates here testified that they did not volunteer to work and, in fact, testified that they were forced to work. However, we must take a liberal approach to the definition of “voluntary” as applied in the context of a prison setting in accordance with the mandate of liberal interpretation of workers’ compensation laws. The alternative would deprive inmate workers from the protections of workers’ compensation laws, whose purpose is to protect workers from harm. We do not believe that the inmate status of a worker deprives him from this protection.

While we sympathize with the inmates’ arguments that they did not volunteer to work in prison for the reasons described above, we note that this is a unique position in light of the scale of the accident and the severity of the injuries sustained. In ordinary circumstances, an inmate would welcome a finding of employee status and an award of workers’ compensation benefits. In any event, we do not, and cannot, take into consideration a particular party’s desire and must base our decision on law and reason.

#### **B. Whether the inmate received consideration for his work.**

With respect to the third element set forth in *Rowland*, consideration for an inmate’s work need not be monetary but must be of some value to the inmate worker. (*Pruitt, supra*, 261 Cal.App.2d at pp. 552-553 [“That is true notwithstanding that monetary consideration passing to the prisoner be nil and the other consideration from the direct beneficiary of the services (here a carton of cigarettes) be of nominal value. This court has held that payment of monetary wages is not a *sine qua non* of employment under workmen's compensation law. (Citation.) Concededly,

the principal consideration passing to petitioner was his credit on sentence time served plus an interlude release from jail confinement. That which the inmate-servant received may not have been great from the viewpoint of some, but that which he gave in return was considerable.”]; *Parsons, supra*, 126 Cal.App.3d at p. 639 [ . . . petitioner received no consideration or legally cognizable benefit from his labor other than what he would have received had he served his time in jail, i.e., food and clothing. In our view, the privilege of working at the camp rather than being confined in the jail does not qualify as sufficient consideration to support an employment relationship. (Cf. *Pruitt v. Workmen's Comp. App. Bd., supra*, 261 Cal.App.2d at p. 553.) Petitioner received no work-time credit on his sentence as did the prisoner in *Pruitt*. He received no monetary compensation for his services, however minimal, as in *Childs.*”].)

Here, the County emphasizes the extra visitation time that inmates in the blue unit received as consideration for their work. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, p. 62:4-8.) There’s also argument that inmates in the blue unit received the benefit of being outside the jail, a regular sleep schedule, and less issues with gangs. (Joint Exhibit 18, Deposition Transcript of Lt. Duran, Vol. 1, pp. 76:14-81:11; Joint Exhibit 2, Deposition Transcript of Mr. Lara, pp. 48:20-50:15; Joint Exhibit 15, Deposition Transcript of Mr. Pizano, p. 50:5-6.) The question becomes whether extra visitation rights, which may not have been used by some inmates and which is lost if not used, plus the less tangible benefits of being outside the jail, having a regular sleep schedule, and less gang politics, is sufficient consideration to warrant an employee finding.

The law is clear that monetary consideration is not necessary for an employer-employee relationship. (*Pruitt, supra*, 261 Cal.App.2d at pp. 552-553.) The inmates contend that the extra visitation rights and the other less tangible benefits mentioned do not constitute a bargained-for-exchange. (Petition by Messrs. Ouk, Pizano, Torres, Ramirez, and Hang, pp. 12:7-13:14; Petition by Mr. Gonzalez, pp. 25:20-27:4; Petition by Mr. Garcia, p. 11:5-12:4; Petition by Messrs. Lara and Espino, pp. 26:12-27:18.) They further contend that sufficient compensation for a finding of employee status is limited to (a) an early release or reduced sentence, or (b) money compensation however small, neither of which occurred here. (Petition by Messrs. Lara and Espino, p. 26:3-11.)

We disagree. In *Pruitt, supra*, 261 Cal.App.2d at p. 554, the court held that the inmate was solely the employee of the city in which he was loaned out to from the county. Although the inmate received sentence credit from the county that incarcerated him, the consideration he

received from the city was a weekly carton of cigarettes. (*Id.* at pp. 552-553.) This nominal consideration was sufficient to uphold an employee status against the city. It did not matter whether the inmate was a smoker or made use of the cigarettes. The court in *Parsons, supra*, 126 Cal.App.3d at p. 639, held that the inmate received no consideration other than what he would have received had he served his time in jail, i.e., food and clothing. Here, unlike in *Parsons*, the inmates in the blue unit received extra visitation rights, something that inmates in the red unit did not receive. (See *Laeng v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 771 [person injured while applying for a job and submitting to a tryout consisting of an agility test was deemed an employee for purposes of workers' compensation benefits even though he was not yet hired and did not yet receive compensation].) Therefore, although the extra visitation rights may not have been of much value to some of the inmates, they are sufficient consideration and support our conclusion that the inmates here were employees of the County.

Accordingly, we affirm the March 28, 2019 Findings of Fact and Order.

For the foregoing reasons,

**IT IS ORDERED** that the Petitions for Reconsideration by Efrain Garcia, Pablo Gonzalez, Victor Castaneda, Rosario Lara, Jeremiah Espinos (deceased), Sam Ouk, Gabino Pizano, Edgar Torres, Fidel Ramirez, and Kao Hang of the March 28, 2019 Findings of Fact and Order is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**December 30, 2022**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED ON THE FOLLOWING PAGE AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**LSM/pc**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

**SERVICE LIST**

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