

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on April 16, 2014
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
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Executive Secretary
Judy Whitall-Lee, Staff Services Manager

MINUTES OF APRIL 2, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the April 2, 2014 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the April 2, 2014 Board meeting.

ADMINISTRATIVE MATTERS:

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

APPEALS VOLUME REPORT:

(Appeals volume statistics for prior month and year to date)

ACTION: The Board reviewed the number of appeals docketed and disposed for the first quarter.

HEARING CALENDAR REPORT:

(Review and discuss statistical information)

ACTION: Staff Services Manager Judy Whitall-Lee presented the hearing calendar statistics, which includes the number of hearings scheduled each month, the number held and where they are held throughout the state.

NEW BUSINESS:

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

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:

ACTION: No report.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: Member Lowry said he will be speaking at a breakout session of the Sacramento Builder's Exchange Safety Expo on April 17. Member Freyman said she will be talking informally with members of the California Chamber of Commerce Employers Advisory Group on Friday, April 18.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OASIS PROJECT:

ACTION: No report.

STAFF REPORTS:

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

ACTION: No report.

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 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:

IRWIN INDUSTRIES, 12-R4D3-3276 AND 3277

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.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

April 16, 2014

Page 3

OC TURF AND PUTTING GREENS, 13-R3D2-1751

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:

BAY CITIES PAVING & GRADING, INC., 12-R2D1-1665

ACTION: The Board agreed to discuss this matter at the next meeting.

VISTA CONSTRUCTION, 14-R6D7-9015

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

BARNARD IMPREGILO HEALY JV, 14-R5D1-9013

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

ROCKET FARMS HERBS, INC., 13-R3D2-3549 THROUGH 3551

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

WEST VALLEY CONSTRUCTION, 12-R2D5-3526

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

ORDERS DISMISSING APPEAL:

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

GARFIELD BEACH CVS LLC., 14-R3D1-1085

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

April 16, 2014

Page 4

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

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.)

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
JAMES BALDWIN DBA LYON'S MUFFLER & BRAKE, 14-R6D5-9019
BELLINGHAM MARINE INDUSTRIES, 2012-R2D2-3144 THROUGH 3146
BRAD STONER PAINTING, INC., 13-R3D2-9200
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186

CHEVRON PRODUCTS COMPANY, 13-R6D4-3506 AND 3507
CHEVRON PRODUCTS CO., 13-R6D4-0905
CHEVRON PRODUCTS COMPANY, R6D4-2715 AND 2716
CHEVRON PRODUCTS COMPANY, 13-R6D4-1353 THROUGH 1355
CHEVRON U.S.A., 13-R6D4-1536
CHEVRON USA, 13-R6D4-2566
CHEVRON U.S.A., INC, 13-R6D4-1537 THROUGH 1544

ACTION: Member Lowry moved that the Board approve these Orders accepting Stipulation and Settlement agreements of the parties in these matters. Member Freyman seconded. The Board voted to approve these Orders accepting Stipulation and Settlement agreements of the parties.

CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
COFFMAN SPECIALTIES, INC., 10-R3D3-3532

COMMERCIAL METAL FORMING, 09-R3D1-1592

ACTION: The Board discussed this matter.

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
DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455
FERMA CORPORATION, 12-R2D2-1669

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

April 16, 2014

Page 5

GMAC ELECTRIC, INC., 13-R6D5-9138
HARRIS CONSTRUCTION, 03-R2D5-3914
HHS CONSTRUCTION, 12-R3D2-0492-0497
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
LABOR READY, 13-R3D2-0164
LA VALENCIA HOTEL, 2013-R3D2-9199
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR,
08-R2D1-3093 THROUGH 3098
MARCO RUFO DBA MARCO RUFO, 13-R6D5-9217
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
MCCARTHY BUILDING CO., INC., 12-R1D4-3458
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
MORROW MEADOWS CORP., 09-R3D3-2295
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186
O.C. JONES AND SONS, INC. 13-R2D2-0310
ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
JIM PARKER, 2014-R4D1-9009
PERSONNEL PLUS, INC., 11-R3D5-1302
ROEBBELEN CONTRACTING, INC., 12-R2D2-3248
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
SIERRA FOREST PRODUCTS, 09-R2D5-3979
SONIC DRIVE-IN, 12-R2D5-2734
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
STARBUCKS DBA STARBUCK'S COFFEE #5867, 12-R3D2-3675 THROUGH 3678
TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310
TRADEMARK CONSTRUCTION CO., INC., 12-R4D1-0096 AND 0097
TREASURE ISLAND MEDIA, INC., 2010-R6D1-1093 THROUGH 1095
VICTORY SCREEN PRINTING 12-R3D1-3673 & 3674

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.)

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. SMUD, 34-2010-80000723 (08-R2D1-4887)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

April 16, 2014

Page 6

3. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-8000820 (03-R1D1-5170)
4. MASCON, INC., 34-2011-80000819 (08-R2D1-4278 AND 4279)
5. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
6. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
7. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
8. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
9. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
10. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
11. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
12. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
13. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
14. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
15. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
16. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
17. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
18. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
19. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
20. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
21. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
22. HOME DEPOT USA, INC., BS141301 (10-3284)

23. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
24. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
25. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
ACTION: The Board discussed this matter.
26. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)
27. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
28. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
29. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)
30. AC TRANSIT, RG13687314 (08-R1D4-0135)
ACTION: The Board discussed this matter.
31. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
32. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)
33. CA PRISON INDUSTRY AUTHORITY, 13 C 0327 (08-R2D5-3426 ~ 3429)
34. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
35. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749
(2008-R2D1-3414 THROUGH 3418)
36. SHIMMICK-OBAYASHI, 34-2014-80001750 (2008-R3D3-5023 THROUGH 5025)
37. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
38. BAY AREA RAPID TRANSIT DISTRICT, RG14715710 (10-R1D1-3056 THROUGH
3058) (DOSH)
39. LAND O'LAKES PURINA FEED, LLC, RG14715717 (08-R2D4-1843 AND 1844)
(DOSH)
40. BAY AREA RAPID TRANSIT DISTRICT, RG14715720 (10-R1D1-3056 THROUGH
3058) (3rd Party)
41. SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749, (08-R2D1-3414
THROUGH 3418)

APPELLATE COURT:

1. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, C075477, 34- 2011-80000640 (08-R2D1-0027 THROUGH 0030)
2. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)
3. SHERWOOD MECHANICAL, INC., D065322, 37-2012-00101466 (08-R3D2-4690 ~ 4693)

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.)

ABM FACILITY SERVICES, INC., 14-R2D1-0389
BAR 20 DAIRY, LLC., 12-R2D5-2153 THROUGH 2156
BAY BREAD, LLC DBA LA BOULANGE DE HAYES, 13-R1D1-1498
BLU MOUNTAIN AIR, INC., 14-R2D2-0718
BOREAL RIDGE CORPORATION DBA SODA SPRINGS SKI RESORT, 13-R2D1-2936 AND 2037
CABLECOM OF CALIFORNIA, INC., 13-R1D2-0492 THROUGH 0494
CALIFORNIA WOOD SHAVINGS, INC., 13-R2D4-3082
CAL PACIFIC EXPORT PACKERS, INC., 13-R6D2-2526 THROUGH 2529
CARPE PIZZA V, LLC DBA PAPA MURPHY'S PIZZA, 13-R2D4-3400
CITY OF RIPON, 14-R2D4-0023 AND 0024
COAST FROST PROTECTION, INC., 13-R4D3-0900 AND 0903
ECKERT COLD STORAGE COMPANY, 13-R2D4-3349
EL METAPANECO, 13-R3D5-2408 AND 2410
JIM GROVERMAN DBA PETALUMA PUMPKIN PATCH & A'MAZIN, 13-R6D7-3327
WILLIAM M. HAMILTON & SHERILYN THARP DBA THARP-HAMILTON WOODWORKING, 14-R1D4-0715 AND 0716
HERITAGE HOTEL GROUP, INC. DBA ECONOLODGE, 14-R2D1-0528
ISLAND PACIFIC SUPERMARKETS, INC., 14-R2D2-0022
JBA HOLDING COMPANY, INC., 13-R2D4-3348
JOHANSEN MASONRY, INC., 13-R2D1-2971 THROUGH 2973
JR CUSTOM HARVESTING CO., INC., 14-R1D2-0053 AND 0054
J.S. HACKLEY ARCHITECTURAL SIGNAGE INC., 14-R1D4-0861 THROUGH 0863
LARSON FAMILY WINERY, INC., 14-R1D5-0339
LINEAGE LOGISTICS, 13-R6D2-3634 THROUGH 3636
MARSHALL MACHINERY, INC., 13-R3D1-2331 *
MOUNTAIN FORGE INC., 13-R2D3-2383
OLIVET INTERNATIONAL, INC., 13-R3D3-3699 THROUGH 3705

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

April 16, 2014

Page 9

ONEWAY DEVELOPMENT & CONSTRUCTION CO., INC., 13-R3D2-1583 AND 1584 *
PACIFIC VIEW CONSTRUCTION, 13-R3D1-2330 *
PCH GARAGE, 13-R3D1-2194 AND 2195
S & A BUMPER FIXING, 13-R3D5-3805
SAN-MAR CONSTRUCTION CO. INC., 13-R4D1-1141
SEARS AUTO CENTER, 14-R2D1-0243
SEARS ROEBUCK & CO DBA SEARS #1598, 13-R4D4-1668
SSA PACIFIC INC., 12-R2D1-3777 AND 3778
STEVENS CREEK QUARRY INC DBA SCQ CONSTRUCTION, 14-R1D4-0805
STURGEON SERVICES INTERNATIONAL, INC., AKA STURGEON SERVICES
INTERNATIONAL AND AKA STURGEON & SONS, INC., AND STURGEON
& SONS GRADING AND PAVING, INC., 11-R2D5-0160 THROUGH 0162
SUN LIGHT & POWER, 13-R1D2-2311
TERMINAL FREEZERS, LLC, DBA LINEAGE LOGISTICS, 14-R1D2-0678
THE G-M DEVELOPMENT COMPANY NEVADA LIMITED PARTNERSHIP,
12-R1D4-3129 THROUGH 3131
THE LAWSON ROOFING CO. INC., 14-R1D1-0402
VALMONT INDUSTRIES DBA CALWEST GALVANIZING, 13-R3D5-3667
VERIZON, 13-R3D5-3951 AND 3952

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.

DNAM APPAREL INDUSTRIES, LLC., 10-R4D1-0969 THROUGH 0971

ACTION: The Board returned this matter to the ALJ for correction of a clerical error in the stipulation.

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 11:13 p.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 11:14 p.m.