

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on June 6, 2012
Sacramento, California

PRESENT:

Art R. Carter, Chairperson
Ed Lowry, Member
Michael Wimberly, Executive Officer
Martin Fassler, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Kari Johnson, Industrial Relations Counsel III
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary
Peggy Knox, Senior Legal Typist

MINUTES OF May 23, 2012:

(Approval of minutes recording actions of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the May 23, 2012 Board Meeting. Chairperson Carter seconded. The Board voted to approve the draft minutes of the May 23, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

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

1. STATISTICS

(Review and discuss most current Board statistics)

ACTION: No report.

2. 2012 RULEMAKING MATTERS

(Discuss potential Board rulemaking changes)

ACTION: Counsel Johnson discussed the current rulemaking package consisting of changes to Board regulations 354, 373, 376.1, 386 and 371.2. Member Lowry moved that the Board accept the proposed language in the package for submission to the Office of Administrative Law. Chairperson Carter seconded. The Board voted to accept the language as presented for submission to the Office of Administrative Law.

3. FUTURE BOARD MEETING DATES

(Set future meeting dates)

ACTION: The Board approved meeting dates for the upcoming quarter, which are July 18, August 1, 15 and 29, September 5 and 17, 2012.

NEW BUSINESS:

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

1. ADVISORY COMMITTEE MEETINGS

(Discuss planning and preparation for meeting)

ACTION: The Advisory Committee met on June 1 and made final suggestions for changes to the regulatory package. Those changes were incorporated into the package as presented to the Board. Chairperson Carter thanked the staff for making preparations for the Advisory Committee meeting.

2. 2012/2013 BUDGET

(Review and discuss budget issues for the fiscal year)

ACTION: Executive Officer Wimberly is working with Board staff, the budget unit and DOSH to prepare supporting documentation for the 2013 Federal (23) Grant request package.

OLD BUSINESS:

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

1. 2011/2012 BUDGET

(Review and discuss budget issues for the fiscal year.)

ACTION: No report.

LEGISLATION:

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

ACTION: Chairperson Carter summarized legislative issues.

CHAIRPERSON'S REPORT:

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

ACTION: Chairperson Carter will attend the Cal OSHA Advisory Committee meeting on June 7 in Oakland.

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: Executive Officer Wimberly reported on the status of the phone system replacement in West Covina.

STAFF REPORTS:

(Reports from the Presiding ALJs 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.

PUBLIC COMMENT:

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

A. TEICHERT & SON INC. DBA TEICHERT AGGREGATES, 10-R5D1-2790

CALIFORNIA HIGHWAY PATROL, 09-R2D1-3762

ACTION: Counsel Johnson recused herself from discussion of this matter.

OVERHILL FARMS, 11-R6D2-1134 AND 1135

SHIMMICK CONSTRUCTION CO. INC., 09-R2D3-0399

ACTION: Member Lowry moved that the Board approve these Decisions of Administrative Law Judges. Chairperson Carter seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

ADVANCED UNIFORM DUST CONTROL & LINEN, LLC, 12-R2D4-0705

ALADDIN ENTERTAINMENT GROUP [CITED AS PHARAOH'S LOST KINGDOM],
10-R3D3-1330 THROUGH 1332

ALAMEDA COUNTY GENERAL SERVICES AGENCY, 11-R1D4-3165 THROUGH 3169

AMERICAN TIRE DISTRIBUTORS, 12-R2D5-0363

APEX PAINTING, INC., 10-R1D4-3808

ATLANTIC EXPRESS OF CALIFORNIA INC., DBA ATLANTIC EX, 11-R3D5-1937

ATLAS SHEET METAL, 11-R3D6-3181 AND 3182

AUTO ZONE, 12-R3D6-0092 AND 0093

AVP & H, A CALIFORNIA CORPORATION, 12-R2D4-0746

AYALA CORPORATION, 11-R2D5-2737

BELL PLASTAICS, 10-R1D4-3501 AND 3502

B & E VENTURES LLC., 11-R1D4-0696

BIMBO BAKERIES USA, INC., 10-R6D1-2340 THROUGH 2344

BLUE DOT CAFÉ AND COFFEE BAR, 11-R1D4-0523

BLH CONSTRUCTION COMPANY, 11-R2D2-0578 AND 0579

CA TREE & LANDSCAPE, 11-R2D5-3141 THROUGH 3143

CBS OUTDOOR, INC., 11-R1D1-0133

CHASE CONTRACTORS, INC., DBA QUALITY AIR SERVICES, 10-R1D4-3175

CIRCLE G RANCH, 10-R2D1-2220 THROUGH 2222

CITY COLLEGE OF SAN FRANCISCO, 11-R1D1-1290 AND 1291

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CITY OF BENICIA, 12-R2D2-0206
CITY OF OAKLAND FIRE DEPARTMENT, 10-R1D4-1385
CITY OF PALM DESERT, 12-R3D3-1030
CITY OF WATSONVILLE, 10-R1D2-3611 AND 3612
CONCORD IRON WORKS, INC., 11-R2D2-1104
CONOCO PHILLIPS COMPANY, 11-R6D4-1245 AND 1246 & 11-R6D4-1247 AND 1248
CON-WAY FREIGHT, 11-R1D2-0727
CSK, AUTO, INC. DBA O'REILLY AUTO PARTS, 11-R1D4-1441 AND 1442
CUPERTINO ELECTRIC, 10-R1D3-1660 THROUGH 1662
CYPRESS SCHOOL DISTRICT, 11-R3D1-1879
D'ARRIGO BROS. CO. OF CALIFORNIA, INC., 10-R6D7-1410
RUTH G. DIAZ DBA PALO ALTO FARM LABOR SERVICE, 11-R6D7-1720
DMS WINDOW CLEANING & METAL CARE SERVICES INC., 11-R4D1-0423
THROUGH 0425
DOCTOR R, LLC DBA GROSVENOR SUITES, 11-R1D1-3020
ELEVATOR DYNAMICS, 11-R4D1-2039
ENNIS PAINT INC., 12-R2D5-0569
FAMILY PATHS, INC., 10-R1D4-4006 AND 4007
FINNMAX LLC, 11-R4D1-2974 *
FRESNO PROTEIN PROCESSORS, INC., 10-R2D5-1056 AND 1057
FRYER FLOORING CO INC., 10-R2D5-1488 THROUGH 1490
G4S SECURE SOLUTIONS (USA) INC., DBA G4S WACKENHUT, 11-R4D2-0749
AND 0750 *
THE G.B. GROUP, INC., 12-R154-0975
GC HARVESTING, INC., 11-R1D2-3132
GHULAN/HASHIM MOJADDIDI DBA DEPOT AUTO WRECKERS, 11-R6D7-0722
AND 0723
GLOBAL TV INC., 11-R3D1-2032
ALI HEIDARI, DDS DBA SERENTIY DENTAL GROUP, 11-R1D2-2087 AND 2088
JFC CONSTRUCTION, INC., 11-R2D2-0698 THROUGH 0700 *
JIM'S SUPPLY CO., INC., 10-R2D5-3138
JOSH GENERAL ENGINEERING, INC., 11-R4D3-2801 AND 2802
KACHALLOWEEN SALES INC., DBA SPIRIT HALLOWEEN, 09-R2D5-3881
KAISER FOUNDATION HOSPITALS, 11-R1D1-3077
AMARJIT S KANDOLA & BIRKAM S KANDOLA DBA KANAOLA B, 11-R2D4-2221
AND 2222
KEMPER SPORTS MANAGEMENT, INC. [CITED AS CHINO HILLS LAND WEST
LLC/DBA VELLANO COUNTRY CLUB], 12-R3D3-0208 AND 0209
KIRBY CONSTRUCTION, INC., 11-R2D2-0576 AND 0577
LEWIS C. NELSON AND SONS, INC., 11-R2D4-2559
LUCKY 7 SUPERMARKET, 11-R1D2-2021
LUCKY BRAND DUNGAREES STORES, INC., DBA LUCKY BRAND, 11-R3D5-1938
AND 1939
MACY'S, 11-R3D6-2831
MARIANI ORCHARDS INC., 10-R1D2-3577 AND 3578
MARK TWAIN CONVALESCENT HOSPITAL, 12-R2D4-0745

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OILWIZE, 12-R2D5-0270

PACIFIC COAST CONTAINER, INC., DBA PCC LOGISTICS, 10-R1D4-3809 *

PACIFIC STEEL CASTING COMPANY, 11-R1D4-2838

PACPIZZA, LLC DBA PIZZA HUT, 11-R1D4-0651 *

P R CONSTRUCTION, INC., 11-R4D1-2574

R & D STEEL, INC., 11-R4D3-3315

RIVER RANCH FRESH FOODS, LLC, 10-R1D2-3316 THROUGH 3318

ROADWAY ENGINEERING WORKS, INC., 11-R6D1-0589

RUBEN CAMACHO CONSTRUCTION CO., 11-R4D1-1121 THROUGH 1124

R. YOUNG ENTERPRISE, INC., 11-R3D6-3155 AND 3156

SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-0655

SANTA CLARA COUNTY VECTOR CONTROL DISTRICT, 12-R1D2-0769

STOCKTON RECYCLING, INC., 11-R2D4-2359

SUNRISE FARM LABOR, INC., 11-R2D5-2462

SUTTER HOME WINERY INC., 10-R1D5-0395 AND 0396

TZIMBAL CONSTRUCTION, 10-R1D2-3315

VALLEY CREST COMPANIES, 11-R4D1-2683 AND 2684

VALLEY PRIDE, INC., 11-R1D2-1835

WASHINGTON DYEING AND FINISHING, INC., 11-R6D2-1791 AND 1792

WEGIS RANCH, 11-R4D3-3243 THROUGH 3245

W.O.R.M. AG INC., 11-R2D4-2377

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

SAN FRANCISCO FIRE DEPARTMENT, 11-R1D1-3128 THROUGH 3131

ACTION: Member Lowry moved that the Board vote to reconsider this Order of an Administrative Law Judge on its own motion. Chairperson Carter seconded. The Board voted to reconsider this Order of an Administrative Law Judge on its own motion.

ORDERS DISMISSING APPEAL:

1. EAGLE ROOFING, INC., 10-R1D4-0941 THROUGH 0945
2. GOD BLESS TIRE SHOP INC., 11-R6D7-0972 AND 0973
3. MEDINA HALAL FOODS, INC., 11-R1D4-2817 AND 2818

ACTION: Member Lowry moved that the Board vote to approve these Orders dismissing Appeal. Chairperson Carter seconded. The Board voted to approve these Orders Dismissing Appeal

PETITIONS FOR RECONSIDERATION:

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(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

MAC PLASTERING, INC., 11-R3D2-0547 THROUGH 0550

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

SIERRA FOREST PRODUCTS, 09-R2D5-3979

ACTION: Member Lowry moved that the Board vote to grant this Petition for Reconsideration. Chairperson Carter seconded. The Board voted to grant this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFTS):

WILLIAMS JANITORIAL, 12-R2D5-9047

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

MATTERS PENDING RECONSIDERATION:

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

A-CO TEMPORARY POWER, 10-R4D1-3110 AND 11-R4D1-9206

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

ALLIED SALES & DISTRIBUTION, INC., 11-R6D2-0480

AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138

AC TRANSIT, 08-R1D4-0135

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

AGWOOD MILL & LUMBER, INC., 08-R1D5-1068

VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY DBA ANTONSEN CONSTRUCTION, 06-R2D3-1272

ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655

BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221

BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963

BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH 2241

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BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CA RASMUSSEN, INC., 08-R4D5-219 AND 220
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
CENTRAL VALLEY ENGINEERING & ASPHALT, INC. 08-R2D1 5001 AND 5002
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
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
DELTA TRANSPORTATION, INC., 08-R2D1-4999
DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431

DESIGN BUILDERS, INC., 08-R4D4-1901

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

DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896
DUKE PACIFIC, INC., 08-R3D3-574
EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
EZ MIX, INC., 08-R4D3-1898
FDO INC. DBA GRAND AMERICAN DOORS, 10-R6D2-1215 THROUGH 1219
FORTUNA IRON WORKS 06-R2D3-4222
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HOLLINGER CONSTRUCTION INC., 11-R4D1-0891
HOME DEPOT, 10-R3D6-3284
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
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
LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
MARINE TERMINALS, 08-R6D2-1920
McPHERSON ENTERPRISES, INC., 10-R2D5-0995
MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494
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
POUK & STEINLE, INC., 09-R3D3-0491

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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
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHERWOOD MECHANICAL, INC., 08-R3D2-4690 THROUGH 4693
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 FROZ SUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION,
05-R2D4-2650 AND 2651
A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459 AND 0460

THAYER CONSTRUCTION, INC., 09-R3D3-4206 THROUGH 4208

ACTION: Member Lowry moved that the Board approve this draft Decision After Reconsideration, as amended, for signature. Chairperson Carter seconded. The Board voted to accept this draft Decision After Reconsideration, as amended, for signature.

VIC ROSS'S MASONRY, INC., 11-R3D2-0708 AND 0709

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

PENDING LITIGATION

SUPERIOR COURT:

1. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)

ACTION: Chief Counsel Mojcher provided a status update on this matter.

2. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)

3. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)

ACTION: Chief Counsel Mojcher provided a status update on this matter.

4. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)

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5. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430 (09- 9280/9281)
6. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-R5D1-3611)
7. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
8. SMUD, 34-2010-80000723 (08-R2D1-4887)
9. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
10. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
11. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
12. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010 (08-R2D1-3273)
13. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
14. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
15. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
16. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
17. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)

COURT OF APPEAL

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)

PERSONNEL: *(Issues regarding staff)*

ACTION: Executive Officer Wimberly discussed personnel matters.

The Closed Session adjourned at 12:11 pm. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. With no further business, the meeting was adjourned at 12:12 p.m.