

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on August 20, 2014
Sacramento, California

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Martin Fassler, Presiding Administrative Law Judge
Kari Johnson, Executive Officer
Jeff Mojcher, Chief Counsel
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Lee Berlin, Executive Secretary
Maria Rios, Legal Secretary
Marti Fisher, California Chamber of Commerce

MINUTES OF AUGUST 6, 2014 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the August 6, 2014 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the August 6, 2014 Board meeting as amended.

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 in July. The report also contains statistics from the Legal Unit, such as the number of Petitions for Reconsideration and writs filed and concluded. In response to a question, Chief Counsel Mojcher explained that writs are not “concluded” on the report until the Board has received a Notice of Entry of Judgment from the court. As several hearings were concluded recently, he will ask the staff to review the report to make sure the report is up to date.

HEARING CALENDAR REPORT:

(Review and discuss statistical information)

ACTION: The Hearing Calendar report details the number and location of hearings scheduled and held. According to the report, the Board originally scheduled 125 hearings in July but held eight because most were settled and several were continued. While the report showed three multi-day

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hearings in July, PALJ Martin Fassler stated that the report may not accurately reflect the actual number of multiple-day hearings, which could begin in one month and conclude in another, or continued into a future month.

NEW BUSINESS:

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

OLD BUSINESS:

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

SCHEDULING STAKEHOLDER MEETING:

ACTION: The Board decided to schedule a stakeholder meeting to explain a new Pilot Project for Mandatory Pre-Hearing Settlement Conferences (MPHC) and solicit feedback from the stakeholders. The meeting will be held at 10 a.m. on Thursday, September 18.

LEGISLATION:

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

ACTION: The Board discussed AB 1634. According to guest Marti Fisher, not all of the amendments are in print yet, but are expected within a few days.

CHAIRPERSON'S REPORT:

ACTION: Chair Carter reported on the ALJ training session held this week in West Covina. The training was aimed at assisting the judges in conducting a pilot project expected to start in November. The project calls for Mandatory Pre-Hearing Settlement Conferences, in which each side must identify issues, witnesses, documentary evidence and contentions. Cases that are not settled at or before this process will go to hearing before a different judge.

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)

OASIS PROJECT:

ACTION: OASIS Business Lead Neil Robinson and PALJ Ursula Clemons are in Orange County today viewing the Superior Court's digital document and calendaring system. Our vendor, EO Johnson and ALJ Robinson are currently working on completing the next step of the OASIS project, the Feasibility Study Report (FSR), which will be finalized shortly after Labor Day.

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: Guest Marti Fisher asked if the Mandatory Pre-Hearing Settlement Conference will be held before or after the telephonic pre-hearing conference in the appeals process. EO Johnson explained that it would be held after the telephone conference, as many cases settle at that time and then there would be no need for an in-person settlement conference.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

WEBCOR CONSTRUCTION L.P., 14-R1D1-0527

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:

CAL PAC SHEET METAL INC, 13-R3D1-0547

ACTION: Member Lowry moved that the Board issue an order extending time on this Petition for Reconsideration. Member Freyman seconded. The Board voted to extend time on this Petition for Reconsideration.

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

A.B.S. MANUFACURERS, INC., 14-R6D7-9075

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.

ORDER AFTER REMAND:

BODEGA LATINA CORP. DBA EL SUPER, 12-R4D1-3500

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.

ORDERS DISMISSING APPEAL:

CARTER'S METAL FABRICATORS INC., 14-R6D2-0543 THROUGH 0545
HERBTHYME FARMS, INC., 12-R3D6-3009 THROUGH 3011
WEST COAST & SONS DEMOLITION, 14-R4D3-0136

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal from Administrative Law Judges.

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

ORDER DENYING LEAVE TO FILE LATE APPEAL:

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.)

B & B ROOF PREPARATION, INC., 12-R3D6-2946
BELLINGHAM MARINE INDUSTRIES, 12-R2D2-3144 THROUGH 3146
CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186
DOUBLE S. FASHION, INC., 14-R6D5-1751 AND 1752
HARRIS CONSTRUCTION, 03-R2D5-3914
HHS CONSTRUCTION, 12-R3D2-0492-0497
KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375
MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR, 08-R2D1-3093
THROUGH 3098
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
McCARTHY BUILDING CO., INC., 12-R1D4-3458
MORROW MEADOWS CORP., 09-R3D3-2295

NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791

ACTION: The Board discussed this matter.

NEWSTAR FRESH FOODS, LLC., 12-R6D3-3183 THROUGH 3186
O.C. JONES AND SONS, INC. 13-R2D2-0310
REPUBLIC FURNITURE MFG., INC., 14-R6D2-9083
ROEBBELEN CONTRACTING, INC., 12-R2D2-3248
ROSENDIN ELECTRIC, INC., 12-R2D1-3028
SIERRA FOREST PRODUCTS, 09-R2D5-3979
SONIC DRIVE-IN, 12-R2D5-2734

STAFFCHEX, 10-R4D3-2456 THROUGH 2458

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

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

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

TREASURE ISLAND MEDIA, INC., 10-R6D1-1093 THROUGH 1095
VICTORY SCREEN PRINTING 12-R3D1-3673 & 3674
WC STAFFING INC., DBA WEST COAST STAFFING, 13-R6D2-3522 AND 3523

FEDEX GROUND

ACTION: This item was inadvertently left off the posted agenda for the August 20, 2014 meeting. The Board discussed this matter but took no action.

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-8000820 (03-R1D1-5170)

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3. MASCON, INC., 34-2011-80000819 (08-R2D1-4278 AND 4279)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
5. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
6. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
7. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
8. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
9. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
10. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
11. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
12. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
13. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
14. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
15. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
16. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
17. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
18. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
19. HOME DEPOT USA, INC., BS141301 (10-3284)
20. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
21. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
22. AC TRANSIT, RG13687314 (08-R1D4-0135)
ACTION: The Board discussed this matter.
23. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575

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(12-R5D1-337)

24. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)
25. CA PRISON INDUSTRY AUTHORITY, 13 C 0327 (08-R2D5-3426 ~ 3429)
26. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
27. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
28. SHIMMICK-OBAYASHI, 34-2014-80001750 (2008-R3D3-5023 THROUGH 5025)
29. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
30. BAY AREA RAPID TRANSIT DISTRICT, RG14715710 (10-R1D1-3056 THROUGH 3058) (DOSH)
ACTION: The Board discussed this matter
31. LAND O'LAKES PURINA FEED, LLC, RG14715717 (08-R2D4-1843 AND 1844) (DOSH)
32. BAY AREA RAPID TRANSIT DISTRICT, RG14715720 (10-R1D1-3056 THROUGH 3058) (3rd Party)
ACTION: The Board discussed this matter
33. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)
34. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
RG-14-731145 (13-R1D2-0204)
35. IRWIN INDUSTRIES, BS14-9634 (12-R4D3-3276 & 3277)
36. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303 THROUGH 1310)
37. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360 THROUGH 3362)

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)
4. ORANGE COUNTY FIRE AUTHORITY, G050220, 30-2013-00628178 (CONSOLIDATED)

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.)

ADAMS VEGETABLE OILS, INC., 13-R2D1-2154 THROUGH 2156
AGS CORPORATION DBA SMITH AND COMPANY, 14-R6D2-0009 THROUGH 0017
AMERICAN COMMUNITY HOME BUILDERS, INC., 13-R4D1-3087
AMR STAFFING, 14-R3D5-1872
AT&T, 13-R2D1-2970
BAL INC., DBA SERVPRO OF WESTWOOD/W BEVERLY HILLS, 13-R4D1-2522 AND 2523
BARRERA & ASSOCIATES CONSTRUCTION, INC., 14-R1D4-2077 THROUGH 2081
BASILE INC., 14-R3D2-0036
MARCO T. BETETA DBA MEXICALI AUTO REPAIR, 13-R6D5-2177 AND 2178
BODEGA LATINA CORP DBA EL SUPER, 12-R4D1-3500
BUTTONWILLOW GINNING COMPANY, 13-R4D7-3935 THROUGH 3937
CALFABCO INC., DBA MR. WASHERMAN, 14-R4D4-0281 THROUGH 0283
CALHOME INC. DBA T-MOTORSPORTS, 14-R4D4-0146
CALIFORNIA STATE POLYTECHNIC UNIVERSITY POMONA, 14-R4D4-0295 THROUGH 0297
CARMONA'S COLLISION REPAIR, INC., 13-R6D5-2643 THROUGH 2645
CA SPECIALTY CONTRACTING SERVICES, INC., 13-R4D1-3578 AND 3579
CORN MAIDEN FOODS, INC., 13-R3D5-3320 THROUGH 3322
CORONADO COASTAL DEVELOPMENT, INC., 13-R6D5-2669 AND 2670
CSI ELECTRICAL CONTRATORS, INC., 13-R4D7-2799
DENNIS ALLEN ASSOCIATES DBA ALLEN ASSOCIATES CONST., 14-R4D3-1398
D.W. HIBBERT ELECTRIC CO., 13-R3D2-3034 THROUGH 3035
ELADIN GONZALEZ FLORES DBA FLORES FARMS, 14-R4D7-0221
FRESNO UNIVERSITY PRESBYTERIAN CHURCH, 14-R2D5-1248
GARZA, INC., 14-R4D7-0320 AND 0321
GENERAL MILLS, INC., 14-R2D4-1235
GLOBAL NETWORKS INFRASTRUCTURE SOLUTIONS, INC., 13-R6D5-3499
GONSALVES & SANTUCCI, INC DBA CONCO, 14-R1D1-0635 AND 0636
GOODWILL OF SILICON VALLEY, 13-R6D1-1673

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GRAHAM TREE SERVICE, INC., 14-R1D4-2155 AND 2156
GRIGOLLA & SONS CONSTRUCTION CO., INC., 14-R6D5-0463
GROSSI FARMS, 14-R4D4-0533 THROUGH 0535
HAYES WELDING INC., 14-R3D3-0414
H & B EQUIPMENT COMPANY, INC., 13-R4D7-1726 AND 1727
HE ZHANG DBA GARDEN GREENING SERVICES, 13-R4D1-1595
HIGH-LIGHT ELECTRIC INC., 14-R3D3-1421
H J H CONSTRUCTION, INC., 14-R3D3-0478 AND 0479
HYUNDAI OF ROSEVILLE, L.L.C. DBA HYUNDAI ROSEVILLE, 14-R2D1-0558
INFRARED DYNAMICS INC., 14-R6D2-1748 THROUGH 1750
JET DELIVERY INC., 14-R2D5-1689
JIS DESIGN INC., 13-R6D5-2499 THROUGH 3304
JT2, INC DBA TODD COMPANIES, 13-R2D5-2950
KEY ENERGY SERVICES INC., 13-R4D7-0904
LYDIG CONSTRUCTION, INC., 13-R3D3-2822
MANHEIM SOUTHERN CALIFORNIA DBA MANHEIM INVESTMENT, 14-R3D3-2159
MARS PETCARE US INC., 14-R3D3-2129 THROUGH 2132
MAZT, INC., 14-R6D7-0306
MB COATINGS, INC., 14-R6D5-0222
MICK OLIVEIRA FARMS, 14-R2D5-0588
VICENTE NARGANES, 14-R3D3-0374
NITE-LITE SIGNS, INC., 13-R4D3-2360
SELMA AMERICA OCHOA, 13-R3D3-2598
OCTOPUS RESTAURANT TUSTIN, INC. DBA GEN KOREAN BBQ AND YAKITORI
BAR, 14-R3D1-0034
PACIFIC MASONRY, 14-R2D5-1338 AND 1339
PACIFIC SOUTHWEST STRUCTURES, INC., 13-R3D3-3777
PACKAGING DYNAMICS CORP, DBA BAGCRAFTPAPERCON, 14-R4D4-0238
PARADISE MOTORSPORTS, 14-R6D5-0322 THROUGH 0324
PARAMOUNT METALS & SUPPLY COMPANY, 13-R4D1-0557 THROUGH 0559
PENNINE PLUMBING, INC., 13-R3D1-3598 AND 3599
P.F.L. CONTRACTING, INC., 13-R6D7-2806
PIONEER DIECASTERS, INC., 14-R6D2-1340 AND 1341
POWER GRADE INC., 14-R2D5-1576
POWERHOUSE GRADING, INC., 14-R2D5-1577
REBAR ENGINEERING, INC., 13-R4D1-3581
RELIANCE STEEL AND ALUMINUM CO. DBA BRALCO METALS, 14-R4D4-0350
R.M. HARRIS COMPANY, INC., 13-R1D4-3899 AND 3900
ROBERT DAVIES ENTERPRISES INC., DBA BOLAR CEILINGS, 14-R1D4-1978
AND 1979
R.M.T. CONTRACTING, INC., 14-R4D7-2152
WILLIAM ROEDER DBA HELPING HANDS OF SACRAMENTO, 14-R2D1-0768
SARGENT AEROSPACE AND DEFENSE, 14-R3D5-2054
SCHARFF CONSTRUCTION, 13-R4D1-3580
SKY BRAND SERVICES, 13-R4D6-0143 AND 0144
SNOW SUMMIT, INC., 14-R3D3-0376

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STARCO ENTERPRISES INC. DBA FOUR STAR CHEMICAL, 13-R6D4-3346
STOKER CONSTRUCTION, INC., 13-R6D5-2274 AND 2275
SUN CONSTRUCTION, 13-R4D4-0892 AND 0893
ROBERT THOMPSON & CHERYL THOMPSON, 14-R2D2-0170 THROUGH 0175
TRAFFIX DEVICES INC., 14-R3D3-2050 THROUGH 2053
TRUGREEN LANDCARE INC., DBA TRUGREEN LANDCARE, 13-R4D1-0520
AND 0521
TWR ENTERPRISES, INC., 13-R6D5-2372 AND 2373
TYCO SIMPLEX GRINNELL DBA SIMPLEX GRINNELL LP, 13-R2D5-2934 AND 2935
U.S. BANK, 13-R3D1-1748
V.G. RAMIREZ, INC., 14-R3D3-0237
WAL-MART STORES, INC., 14-R2D5-0700
WALT OXLEY ENTERPRISES, INC. DBA CIARRA CONSTRUCTION, 14-R6D7-1210
THROUGH 1212
WEST COAST STEEL & PROCESSING INC., 14-R4D4-0675 THROUGH 0677
WESTERN CONCRETE PUMPING, INC., 13-R3D5-0167 AND 0168

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.

PERSONNEL:

(Issues regarding staff)

ACTION: The Board discussed personnel matters.

The Closed Session was adjourned at 12:46 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 12:47 p.m.