

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING AND CLOSED SESSION
Held on December 3, 2015
Sacramento, California**

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Interim Executive Officer
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Neil Robinson, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Jeremy Smith, State Building and Construction Trades Council

MINUTES OF NOVEMBER 19, 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the November 19, 2015 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the November 19, 2015 Board meeting as amended.

NEW BUSINESS:

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

ACTION: No Action

OLD BUSINESS:

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

ACTION: No report.

LEGISLATION:

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

ACTION: No report.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter has a December meeting scheduled with David Shiraishi of the Federal OSHA program.

BOARD MEMBERS' REPORTS:

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

ACTION: Member Lowry reported that he will not attend a stakeholder holiday gathering early in December as earlier stated. Member Freyman is also planning to attend a stakeholder event. Member Freyman has been in contact with the Appointment Secretary and her reappointment process is moving forward.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: Interim Executive Officer Ha reported that the Regulatory/General Pilot Program will be reported on next meeting giving it a chance to run through December. Interim Executive Officer Ha is planning to work through the third week of January before leaving for her planned leave.

STAFF REPORTS:

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

REGULATORY/GENERAL PILOT PROJECT:

ACTION: Chair Carter requested that PALJ Robinson prepare a report on this topic for next meeting.

OASIS PROJECT:

ACTION: OASIS Business lead Robinson reported that the OASIS project is on track and considerable progress has been made on the appeals initiation process and calendaring, as well as with the legal and adjudication elements. Chair Carter said that the Board wants to give stakeholders as much time as possible to give feedback on our new system, so they should have an opportunity to attend an informational meeting as soon as possible before the system is up and running. He also suggested that Board members be included in training sessions for OASIS.

RULEMAKING:

ACTION: Counsel Gonzalez stated that the larger of our two rules packages is still at Agency awaiting approval.

LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported that the hearing for Key Energy Hearing is next week and the Fed Ex hearing has been taken off

calendar. He further reported that petitioner TL Pavlich Construction has requested dismissal by the court following a settlement.

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 discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

WILSON CONSTRUCTION COMPANY, 13-R4D3-1597 THROUGH 1599

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:

BURTECH PIPELINE, INC., 13-R3D2-0830 AND 0831

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

EMPLOYER SOLUTIONS STAFFING GROUP, 12-R3D6-3207 (ER)

ACTION: The Board took no action on this matter. The case is already under reconsideration.

FASTEMPS, INC., 12-R3D6-3208 (ER)

ACTION: The Board took no action on this matter. The case is already under reconsideration.

STONEWARE ENTERPRISES, INC., 13-R3D1-3514

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

ORDERS DISMISSING APPEAL:

MATTERS INVOLVING LATE APPEALS:

(These are matters such as orders dismissing appeal, orders granting leave to file late appeal and orders denying leave to file late appeal)

ORDER DENYING LATE APPEAL

GARDNER TRUCKING INC., 15-R1D2-9184

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

MARIA C/MISAE L MEDINA DBA FLASH TIRE SERVICE, 15-R6D5-9183

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

ORDER GRANTING LATE APPEAL

HOME DEPOT, U.S.A., INC DBA HOME DEPOT #6683, 15-R3D3-4718 THROUGH 4180

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.)

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ACTION METAL RECYCLING, INC., R2D2-1125 THROUGH 1126
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364
ECHO ALPHA INC. ET AL, 14-R3D1-0802 THROUGH 0804
EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133
EMPLOYER SOLUTIONS STAFFING GROUP II, LLC, 12-R3D6-3207
FASTEMPS INC., 12-R3D6-3208
HERMAN WEISSKER, INC., 13-R3D1-3279
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822

McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406

ACTION: The Board discussed this matter

McCARTHY BUILDING CO., INC., 12-R1D4-3458

ACTION: The Board discussed this matter

MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854

SIERRA FOREST PRODUCTS, 09-R2D5-3979

SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 11-R3D1-2562 through
2570

UNITED PARCEL SERVICE, 14-R2D1-1779

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.

W.A. RASIC CONSTRUCTION, INC., 13-R3D1-2952

ABM FACILITY SERVICES, INC., DBA ABM BUILDING VALUE, 12-R3D6-3496
THROUGH 3498

ACTION: The Board discussed this matter

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. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
3. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
4. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
5. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
6. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
7. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
8. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
9. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
10. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
11. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
12. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
13. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
14. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
15. PRESTON PIPELINES, INC., 34-2013-80001381 (11-2530)
16. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
17. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
18. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
19. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
20. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)

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21. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817
(09-R6D2-2238 ~ 2241)
22. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
23. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
24. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303
THROUGH 1310)
25. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360
THROUGH 3362)
26. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)
27. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)
28. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL
(14-R3D2-1935 & 1936)
29. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
30. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 ~ 3098)
31. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
32. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
33. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204
(12-R3D1-0781)
34. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
35. NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
36. TRI STATE STAFFING, 12-R6D2-0378
37. CHEVRON U.S.A., N15-2013 (13-R6D3-0655 THROUGH 0662)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH
1193)

2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456
(11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953,
34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

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.)

99 CENTS ONLY STORES, 15-R2D3-3346
PAUL B ACCINELLI, 15-R2D4-2897 AND 2898
ANHEUSER-BUSCH LLC, 14-R2D2-1134 AND 1135
AREA DEVELOPMENT, INC, 15-R1D1-3418
AREVALO LANDSCAPING SERVICES, 15-R1D2-2785
ART OF THE CRAFT, 15-R2D3-3693 AND 3694
JOHN RILEY ASHMORE DBA ASHMORE MASONRY, 15-R2D3-3717
ASSOCIATED READY MIXED CONCRETE INC., 15-R4D3-1594 AND 1595
ATILANO INC. DBA WEST COAST CONCRETE INC., 15-R3D3-3529
AWARE PRODUCT, 15-R4D3-1803 THROUGH 1805
AZTEC CONSTRUCTION & RESTORATION, 15-R2D3-3695
BAR ALE INC, 15-R2D1-2011 THROUGH 2013
BELL PRIVATE SECURITY, 15-R4D1-1464
BEN CASTRO MASONRY, INC., 15-R4D4-0119
BERKELEY ROOF SERVICES, INC., 15-R1D4-1558 THROUGH 1560
BLUE ARC ELECTRIC, INC., 15-R1D2-1426 AND 1427
BOYLES-SNYDER CO, INC., 14-R4D1-3260 THROUGH 3262
BRAND FARMS, LLC, 15-R6D2-2195 THROUGH 2197
BRAZIL QUALITY ROOFING INC., 15-R2D3-3839
CAL COLOR GROWERS, LLC, 15-R6D1-2747 THROUGH 2749
CAL COLOR GROWERS, LLC, 15-R6D1-2753
CAL COLOR GROWERS, LLC, 15-R6D1-2754
CAL COLOR GROWERS, LLC, 15-R6D1-2890
CASCADE COMFORT SERVICE INC, 15-R2D3-3690
CINQUINI FARMS, 15-R2D3-3196 AND 3197
CITY OF LOS ANGELES DEPARTMENT OF WATER & POWER, 15-R4D3-2419
CW ELECTRIC, INC DBA CW ELECTRIC, 15-R2D3-3769
DEVICENZI METAL PRODUCTS INC., 15-R6D1-2280 THROUGH 2283
DRAGON STEEL INC., 15-R4D3-1796
DUENKEL ELECTRIC INC., DBA D-ELECTRIC, 15-R1D2-1980
DYCO METAL SPECIALTIES INC., 15-R6D2-2546 AND 2547 & 2880
EAGLE MOULDING COMPANY #1, 15-R6D1-3812 THROUGH 3817

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EAST OCEAN SEAFOOD RESTAURANT, 15-R1D4-0456
ELSON ELECTRIC, INC., 14-R2D2-3491 AND 3492
FARACI HOUSE PAINTING, 15-R1D3-1009
FARMERS INTERNATIONAL, INC., 15-R2D3-3551 AND 3552
FINE QUALITY METAL FINISHING, INC, 15-R3D5-3811
FOOD SOURCE (DBA RALEY'S) WAREHOUSE CONCEPTS INC. DBA, FOOD
SOURCE, 15-R1D5-3160 AND 3161, AND 15-R1D5-4202
FRESH & EASY, LLC DBA FRESH & EASY CAMPUS PRODUCE, 15-R7D2-3404
AND 3405
GANAHL LUMBER, 15-R3D1-2570
GARNER & SONS ACOUSTICS, 15-R4D4-0540
GCCl, INC., 15-R1D5-0719
HAMPTON TEDDER ELECTRIC, 15-R3D5-0804
H D PAINT COMPANY, 15-R6D5-3477
HILMAR CHEESE COMPANY INC, 15-R2D4-2142 AND 2143
JAMES HOUSE DBA HOUSE CONSTRUCTION, 14-R4D1-3860
MARCOS INDALECIO DBA SEVEN GOLD SERVICE, 15-R1D4-0514 AND 0515
MARCOS INDALECIO DBA SEVEN GOLD HAULING, 15-R1D4-1431 AND 1432
INSULATED PRODUCTS CORP. DBA SIMPLE CONTAINER SOLUTIONS, INC.,
15-R4D1-0589 THROUGH 0591
JENSCO, INC., 15-R6D7-1004
KENYON PLASTERING OF STOCKTON INC., 15-R1D5-1112
KOME INTERNATIONAL CUISINE, INC., DBA KOME INTERNATIONAL CUISINE,
15-R4D4-1810
LASSEN COMMUNITY COLLEGE, 15-R2D3-3768
LESTER LUBE INC DBA FRESNO TRUCK WASH, 15-R6D5-3957 AND 3958
LOS ANGELES COUNTY/RANCHO LOS AMIGOS NATIONAL REHABILITATION
CENTER, 15-R3D5-0876
MANAGEMENT TRAINING CORPORATION DBA MTC, 15-R3D2-3433
MI TIERRA SUPER MERCADO, 15-R1D2-3829 AND 3830
MODERN DEVELOPMENT, 15-R3D1-2733
MOWERY THOMASON INC., 15-R3D5-3705
NABORS COMPLETION & PRODUCTION SERVICES CO., 14-R4D7-3852
NORTHWEST EXCAVATING, INC., 15-R4D1-0771 AND 0772
NU FLOW AMERICA INC., 15-R3D1-2802
OLIVET INTERNATIONAL INC., 15-R3D3-0108 THROUGH 0111
PABCO BUILDING PRODUCTS, LLC. DBA PABCO PAPER, 15-R4D1-0200
THROUGH 0204
PENGILLY MASONRY INC, 15-R2D4-2982
PLANT CONSTRUCTION COMPANY, LP, 15-R1D4-0716
RAO CONSTRUCTION COMPANY INC, 15-R2D3-3647 THROUGH 3649
REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC, 15-R3D1-2548
THROUGH 2550
RIGO'S PLASTER, 15-R4D4-2026 AND 15-R4D4-4203
RIO TINTO MINERALS DBA US BORAX, 15-R3D5-1331

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ROBINSON ENTERPRISES INC, 14-R2D1-4049
ROSS AND SONS REFRIGERATION AND CONSTRUCTION INC, 15-R7D1-2500
THROUGH 2504
SAE ENGINEERING INC., 15-R6D1-1627 THROUGH 1629
ROGELIO SALAZAR DBA SANTA FE AUTO REPAIR, 15-R6D5-3676
S.C. ANDERSON, INC., 15-R4D7-1812
SCHUFF STEEL, 15-R1D2-3514
SEUS FAMILY FARMS, INC., 15-R2D3-3427
SILVERADO CONTRACTORS, INC., 15-R1D3-2077 AND 2078
TIMOTHY ROY SIMMONS DBA CLEAR VIEW BUILDERS, 15-R6D5-3598
THROUGH 3600
SOUTHERN CALIFORNIA FITNESS SERVICE INC. DBA NOR CAL FITNESS
SERVICE, 15-R1D5-3338
STANLEY WINDOW CARE, 14-R3D1-3344
SVENHARDS SWEDISH BAKERY, INC., 15-R6D1-3579 THROUGH 3587
THE SUN VALLEY GROUP, 15-R2D3-2805 AND 2806
TRAN DESIGN INC DBA FOAM DESIGN CENTER, 15-R6D7-2678 THROUGH 2684
TR TRADING INC., DBA MASTERMIND, 15-R4D4-1971
TV CONSTRUCTION, 14-R1D3-2469
JOEL VASA, 15-R1D3-0991
VICTOR VERA DBA SUN CONSTRUCTION, 15-R4D1-2025
VOLT WORKFORCE SOLUTIONS, 15-R4D7-1054
WALGREENS OSHKOSH, INC., 14-R4D4-1629
WEST COAST FRAMING, 15-R1D2-3831
WESTGATE HARDWOODS INC., 15-R2D3-3260
XERXES CORP., 15-R3D1-3843 THROUGH 3845

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: No report.

The Closed Session was adjourned at 12:38 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 12:39 p.m.