

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on December 18, 2013
Sacramento, California**

PRESENT:

Art Carter, Chairperson
Ed Lowry, Member
Judith Freyman, Member
Ursula Clemons, Presiding Administrative Law Judge
Martin Fassler, Presiding Administrative Law Judge
Kari Johnson, Executive Officer
Jeff Mojcher, Chief Counsel
Autumn Gonzalez, Industrial Relations Counsel
Lee Berlin, Executive Secretary

MINUTES OF DECEMBER 4, 2013 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the December 4, 2013 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the December 4, 2013 Board meeting.

ADMINISTRATIVE MATTERS:

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

BOARD STATISTICS:

(Appeal volume statistics for previous month and calendar year to day)

ACTION: The Board is on track to docket and dispose of approximately the same number of appeals for 2013 as in 2012. However, the disposition time has improved during 2013.

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:

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

ACTION: Chair Carter reported that he had participated in several discussions with the DIR Director, the chief of DOSH and others regarding the issue of abatement during the appeals process. Executive Officer Johnson, who has also participated in the general discussions, reported that the Board's Expedited Proceedings rule may be influencing employers to abate more quickly.

BOARD MEMBERS' REPORTS:

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

ACTION: Member Lowry reported that he attended a Christmas party at the Robert D. Peterson Law Corporation in Rocklin. Member Freyman reported that she is working with members of the Labor Occupational Health Program and the California Industrial Hygiene Council to facilitate outreach to small businesses to aid them in preparing IPPs.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OASIS PROJECT:

ACTION: Executive Officer Johnson reported that the Board has received responses to its RFO for a vendor to complete the preparation for the proposed new docketing, calendaring and reporting software. The vendor will also be charged with recommending three different solutions to meet the needs of the Board. The contract is expected to be awarded before the end of the year.

WEST COVINA PHONE SYSTEM AND LEASE:

ACTION: Presiding ALJ Ursula Clemons reported from West Covina that the cabling in the office is complete and the T-1 line is expected to be installed within a few days. The target date for the new phone system install and training is January 6.

Executive Officer Johnson said that the new lease for the West Covina office has been signed and dates are being considered for the remodel that will connect the two separate suites that currently house the Southern California staff.

STAFF REPORTS:

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

ACTION: Chief Counsel Mojcher reported that the Board has received a writ filed in Kings County by CAL-PIA.

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:

WATERHILL, LTD., 12-R3D6-2941 THROUGH 2945

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:

BIRRIERIAS TLAQUEPAQUE, INC., 13-R6D5-0147 THROUGH 0149

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.

CHARLES DIXON DBA DIXON SCIENTIFIC, 13-R3D2-9155

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.

THE COCA COLA COMPANY, 11-R2D5-2461

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):

IRWIN INDUSTRIES, 13-R6D4-9063

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

December 18, 2013

Page 4

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

TAD VAN NGUYEN, 13-R1D1-9163

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

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.)

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

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

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

BAY AREA RAPID TRANSIT DISTRICT, 12-R1D1-3056 THROUGH 3058 (DOSH)

ACTION: The Board discussed this matter

BAY AREA RAPID TRANSIT DISTRICT, 12-R1D1-3056 THROUGH 3058

(THIRD PARTY - SEIU)

ACTION: The Board discussed this matter

BODEGA LATINA CORP., DBA EL SUPER, 12-R2D2-3500

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

THROUGH 2241

BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563

CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 & 3186

CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282

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

DISH NETWORK CAL. SVC. CORP., 12-R4D3-0455

FERMA CORPORATION, 12-R2D2-1669

GMAC ELECTRIC, INC., 13-R6D5-9138

HARRIS CONSTRUCTION, 03-R2D5-3914

IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272

KANA PIPELINE, INC., 13-R3D3-9108

KELLY GLOBAL LOGISTICS, INC., 12-R3D5-0014

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

December 18, 2013

Page 5

K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375

LABOR READY, 13-R3D2-0164

LA CITY BUILDING AND SAFETY, 13-R4D1-9110

ACTION: Member Lowry moved that the Board remand this matter to an Administrative Law Judge.

LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844

LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714

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

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

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

ONESTOP INTERNET, INC., 11-R4D2-2636 AND 2637

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

PERSONNEL PLUS, INC., 11-R3D5-1302

ROEBBELEN CONTRACTING, INC., 12-R2D2-3248

ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048

JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710

SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025

SIERRA FOREST PRODUCTS, 09-R2D5-3979

MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414
THROUGH 3418

SONIC DRIVE-IN, 12-R2D5-2734

STAFFCHEX, 10-R4D3-2456 THROUGH 2458

STARBUCKS DBA STARBUCK'S COFFEE #5867, 12-R3D2-3675 THROUGH 3678

SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850

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

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.)

ORDERS DISMISSING APPEAL:

ASSOCIATE MANAGEMENT RESOURCES, 13-R3D1-0498

ORANGE COUNTY SERVICES DBA GAMAR PROPERTIES, INC., 12-R6D2-3234
THROUGH 3236
REAL TIME STAFFING, 13-R4D3-1765

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

ORDERS GRANTING LEAVE TO FILE LATE APPEAL

1. McCLANAHAN TIRE, LLC., 13-R3D3-3505

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 Administrative Law Judge.

LEGISLATION:

ACTION: No report

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. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
3. SMUD, 34-2010-80000723 (08-R2D1-4887)
4. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
5. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
6. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
7. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

December 18, 2013

Page 7

8. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
9. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
10. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
11. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
12. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
13. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
14. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
15. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219
AND 0220)
16. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
17. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258
(05-R2D4-2650 AND 2651)
18. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
19. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
20. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
21. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
22. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
23. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-
R4D5-0459 & 0460)
24. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881
(10-R5D1-3029)
ACTION: The Board discussed this matter.
25. HOME DEPOT USA, INC., BS141301 (10-3284)
26. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
27. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)

28. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)
29. BIG LOTS STORES, INC., 37-2013-00045936 (11-R3D2-1929 ~ 1931)
30. GUARDSMARK, LLC, 30-2013-00651094 (12-R3D1-0056)
31. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00652023 (12-0439)
32. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00651875 (12-0440)
33. AC TRANSIT, RG13687314 (08-R1D4-0135)
34. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
35. BAY AREA RAPID TRANSIT DISTRICT, RG13689346 (09-R2D2-1219 & 1221)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514 (2008-R1D2-1191-1193)

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.)

911 RESTORATION ENTERPRISES OF IRVINE, DBA 911 RESTORATION OF
ORANGE COUNTY, 13-R3D1-0940
A1 EVENT RENTALS, 13-R4D3-1764
A & A EMPLOYER SERVICES, 13-R3D1-1241
ALL STAR SEED COMPANY DBA EIGHT STAR COMMODITIES, 13-R3D2-2978
AND 2979
AMERICAN CUSTOM FURNITURES, 13-R6D2-1678 AND 1680
ANCIEN WINES INC., 11-R1D5-2398 AND 2399
ASTRO DISPLAY COMPANY, 13-R6D2-0180 THROUGH 0187
BEAUTY & HEALTH INTERNATIONAL, INC., 13-R3D1-0886 AND 0887
BEYER SUPREME SOUTH SAN DIEGO, LLC, 12-R6D5-3557 AND 3558
BRIGHT WAY BUILDING MAINTENANCE, 13-R4D1-0467 THROUGH 0470 *
BUILD GROUP, 13-R1D1-2866
CA. DEPT. STATE HOSPITALS ATASCADERO STATE HOSPITAL, 12-R6D2-3512
AND 3513
CAL AG RESOURCES INC., 13-R2D5-0095 THROUGH 0097
PIETRO CERCONI DBA PETE AND MARIA'S ITALIAN BISTRO, 13-R6D7-2573
CITY OF BEVERLY HILLS, 13-R4D1-0794

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

December 18, 2013

Page 9

COMPASS HEALTH, DBA CENTRAL COAST NURSING CENTER, 13-R4D3-2778
THROUGH 2780
CONCEPTUAL MANAGEMENT, INC., DBA TRITON CONSTRUCTION,
13-R4D1-1189 AND 1190
CONCORD IRON WORKS INC., 12-R1D3-2215 THROUGH 2217
COVE WEST FOUR SLIDE & STAMPING CORP., 13-R6D2-2173 THROUGH 2176
CRC SOLUTIONS, INC., 13-R6D7-2785 AND 2786
CRESTLINE MANUFACTURING CO., 13-R6D2-2512
DEMPSEY CONSTRUCTION, INC., 13-R3D2-3304
DLT GROWERS, INC., 13-R3D3-0788 AND 0791 *
DOWNEY REGIONAL MEDICAL CENTER, 13-R3D5-0792 *
EAGLE SYSTEMS INTERNATIONAL DBA SYNERGY COMPANIES,
13-R1D4-3044
RAUL ENCISO DBA SUPER GREEN LANDSCAPE, 13-R4D1-0793
FED EX, 13-R3D3-2954
JUAN PABLO MONTANO FIMBRAS DBA GP RECYCLING, 13-R6D2-0720
THROUGH 0723
GTO PACKING, INC., 13-R3D2-2807 AND 2808
BERT L. HOWE & ASSOCIATES, 13-R2D2-3363 AND 3364
IRONWILL TECHNOLOGIES, 13-R3D5-1051
JUHASZ, INC., 13-R6D2-3158 THROUGH 3160 *
JULIEN L. INC. DBA CLASSIC DESIGN, 13-R6D2-0724 THROUGH 0738
LA VERNE NURSERY, INC., 13-R4D3-1944 THROUGH 1946 *
LI YUAN FARMS, INC., 13-R6D5-0029 THROUGH 0032
MCBRIDE DOOR & HARDWARE, INC., 13-R3D2-1579 AND 1580
MIDWEST ROOFING CO., INC., 13-R3D6-0101 THROUGH 0103
MIKE ROVNER CONSTRUCTION, INC., 13-R4D1-0894
MODERN METHOD ROOFING & CONSTRUCTION, 13-R1D5-0824 AND 0825
MONTANA CONSTRUCTION INC., DBA PRESTIGE BUILDERS, 13-R3D1-2791
THROUGH 2793
NATIONAL STEEL AND SHIPBUILDING COMPANY, 13-R6D2-1248
NUNEZ AG, INC., 13-R4D7-1067
OM BUSINESS SERVICES, INC., DBA SHIVA'S, 13-R6D7-1905 THROUGH 1907
ORANGE COUNTY CONTAINER GROUP, 13-R4D4-0325 AND 0326
PACIFIC COAST PRODUCERS, 13-R2D1-1510
PARAMOUNT CITRUS, LLC., 13-R4D7-2245 AND 2246
PERFORMANCE TEAM, 13-R6D2-3137
PETERSEN-DEAN INC. DBA PETERSENDEAN, 12-R4D3-3759 AND 13-R4D3-0682
POLVERA DRYWALL, INC. DBA GREAT WESTERN DRYWALL, 13-R3D2-2300
ROOF KING ROOFING, INC., 13-R3D2-2237 AND 2238
ROSEBURROUGH TOOL INC., 13-R3D1-0783 THROUGH 0785
ROSENDEN ELECTRIC, INC., 13-R1D1-1610
SADDLEBACK MEMORIAL MEDICAL CENTER, 13-R3D1-1392
SANTA YNEZ VALLEY TREE CARE, 13-R4D3-2415
SF RECREATION & PARKS DEPARTMENT, 13-R1D1-1549

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

December 18, 2013

Page 10

SHEEDY DRAYAGE CO., 13-R1D1-0001 THROUGH 0003
SMR INC. DBA TUBE SOLUTIONS, 12-R3D1-3423 AND 12-R3D1-3811 THROUGH
3813, AND 13-R3D1-3508 THROUGH 3510 *
SOUTHERN CALIFORNIA EDISON, 11-R3D3-0888 THROUGH 0890
SUNSET ANIMAL HOSPITAL, 13-R2D2-2884
SUPER FREC U.S.A. INC., DBA FREC FOOD, 13-R6D2-2823 THROUGH 2827
THE GEO GROUP, INC., 13-R3D3-3144
TRULITE GLASS & ALUMINUM SOLUTIONS, LLC., 13-R4D4-0513
THROUGH 0516
TWR ENTERPRISES INC., 13-R4D3-0427 *
WILLMARK COMMUNITIES INC., 13-R3D2-1750
WOLFE ROOFING COMPANY, 12-R4D3-3509 *

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 adjourned at 12:25 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 12:26 p.m.