

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on December 19, 2012, 2012
Sacramento, California

PRESENT:

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

MINUTES OF DECEMBER 5, 2012 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the December 5, 2012 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the December 5, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

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

1. 2012 RULEMAKING MATTERS

(Discuss/implement Board rulemaking changes)

ACTION: The Board discussed the proposed rulemaking package.

NEW BUSINESS:

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

1. 2012/2013 BUDGET:

(Review and discuss budget issues for the fiscal year)

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 is seeking candidates for the position of Executive Officer.

BOARD MEMBERS' REPORTS:

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

ACTION: Ed Lowry reported that he had attended a stakeholder holiday gathering on behalf of the Board.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters and news from the Department and Appeals Board.)

ACTION: Acting Executive Officer Johnson reported that the ORACLE project is still in a testing phase and that installation of the West Covina telephones had been stalled due to a subcontractor problem. Now several agencies are working together to remove the roadblock. She also discussed staff training initiatives for the Access program and ALJ yearly training, and explained staff ideas for saving paper.

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 Teichert & Son has filed a writ.

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:

CUSTOMER DRYWALL, INC., 11-R1D4-0729 AND 0730

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.

FOSTER DAIRY FARMS, 10-R2D1-1981

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.

JACOV HERSCU DBA JACK'S GENERAL CONTRACTING, 11-R1D4-1725
THROUGH 1729

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.

ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0364

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

WEST CONTRA COSTA SCHOOL DISTRICT, 11-R2D2-1194

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.

DECISION AFTER REMAND:

SIERRA FOREST PRODUCTS, 09-R2D5-3979

ACTION: Member Lowry moved that the Board approve this Decision After Remand of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision After Remand of an Administrative Law Judge.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

ADVENTURES BOAT RENTALS, 12-R3D1-0437
ALAR STAFFING, 12-R3D1-0946
ALPHA CERAMIC SUPPLIES, INC DBA ALPHA FIRED ARTS,
12-R2D1-1191
ALL SEASONS ROOFING & WATERPROOFING INC. DBA ALL SEASONS ROOFING
& SOLAR, 12-R1D2-1410 AND 1411
ARA'S PASTRY, 11-R6D2-2948 THROUGH 2954
BED BATH & BEYOND, 12-R4D3-1089
BERGELECTRIC CORPORATION, 12-R4D3-0755
BEST CONTRACTING SERVICES, INC., 12-R3D5-0643
CALIFORNIA CLEANERS, 09-R4D1-4220 AND 4221
CBC FRAMING, INC., 12-R6D7-2172 THROUGH 2174 *
CEDRO CONSTRUCTION, 12-R3D5-0276 THROUGH 0278
CHARLES AHLEM RANCH, 12-R2D4-0360 THROUGH 0362
CITY OF SANTA ROSA/UTILITIES DEPARTMENT, 12-R1D5-1928
CON-QUEST CONTRACTORS, INC., 11-R5D1-3161
CONTROL AIR CONDITIONING CORP., 11-R4D3-1996 THROUGH 1998
COUNTY OF ALAMEDA SOCIAL SERVICES AGENCY, 11-R1D4-3064

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

December 19, 2012

Page 4

CUSTOM HOME INDUSTRIES, INC., 11-R1D5-2920
DEARDORFF-JACKSON CO., DBA DEARDORFF FAMILY FARMS,
12-R4D3-1227 AND 1228
DEMAND DRIVEN DISPLAYS, 11-R3D6-2365 THROUGH 2366
EARTHBOUND FARM, 11-R1D2-2955
ENTERPRISE HOLDINGS, 11-R4D1-3229
EXECUTIVE TOOL INC., 11-R6D2-3319 THROUGH 3324
FBD CONSTRUCTION, INC., 12-R6D7-1476
FIRST TRANSIT, 12-R3D6-1237 *
FORREST SILVA CRUSHING, 12-R2D4-0299 *
IGT, LLC DBA EIGEN, 12-R2D1-1414
INTERPAC TECHNOLOGIES, INC., 08-R2D1-4199 AND 4200 *
JACOB CLOTHING COMPANY, INC., 12-R4D2-1086 THROUGH 1088
KLEIN FOODS, INC., DBA RODNEY STRONG WINERY, 12-R1D5-0565 AND 0567 *
M.A. GARCIA AGRILABOR INC., 12-R2D1-0978
McCARTHY CONSTRUCTION, INC., 12-R3D2-0319
MCH ELECTRIC, INC., 11-R1D4-3205 THROUGH 3206 *
MR. GOODYEAR, INC., 12-R3D6-1215 AND 1216
PEKING NOODLE CO INC., 11-R6D2-2980 THROUGH 2985
PG& E CORPORATION DBA PACIFIC GAS & ELECTRIC CO.,
12-R4D3-0513
PHP INSURANCE SERVICES, INC., 12-R1D2-1621
PREMIER MUSHROOMS LLP, 11-R2D3-3140
DR. IMAD H. RASOOL, 12-R4D3-1095 THROUGH 1098
RICE FIELD CORPORATION, 12-R3D6-0787
RICHWAY INTERNATIONAL CORP., 12-R4D2-1129
ROWLAND UNIFIED SCHOOL DISTRICT, 12-R3D6-1176
SAFARI WEST, LLC., 12-R1D5-1899
SARBONNE DEVELOPMENT LLC., 11-R4D1-3303 AND 3304 *
SAVE MART SUPERMARKETS, 11-R2D2-3030 THROUGH 3033
SOLARIS PAPER, INC., 12-R3D6-0870
STAFFING SYSTEMS INC., 12-R3D5-0898
STARBUCKS CORP DBA STARBUCKS COFFEE, 12-R3D5-0368
SUNCREST APARTMENTS, 12-R2D4-0352
SUPERIOR READY MIX CONCRETE, LP, 12-R5D2-0586
THE HOME DEPOT ATLANTA SSC DBA THE HOME DEPOT #8987,
12-R3D3-2764 THROUGH 2766
T L PAVLICH CONSTRUCTION, INC., 11-R3D6-1313 AND 1314
TOWNSEND & SCHMIDT MASONRY, 11-R2D1-2924 AND 2925
VANGUARD FABRICATIONS CORPORATION, 12-R3D3-0990
VCS, INC., 11-R1D5-2921 AND 2922 *
VENTURA COUNTY FIRE DEPARTMENT, 12-R4D3-2195
W.A. HYNES AND COMPANY, INC., 12-R1D5-1005 AND 1006
WARSTEIN LIMITED, 12-R4D1-1127
WHOLE FOODS MARKET, INC – ROSEVILLE, 12-R2D1-1413
YANNETY LANDSCAPE CO., INC., 12-R4D1-1179

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

COUNTY OF ALAMEDA SOCIAL SERVICES AGENCY, 11-R1D4-3064

ACTION: This matter was inadvertently approved by the Board along with the group of Orders shown above. Member Lowry moved that the Board rescind its approval of this Order of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to rescind its approval of this Order of an Administrative Law Judge. Member Lowry then moved that the Board reconsider this Order of an Administrative Law Judge on its own motion. Member Freyman seconded the motion. The Board voted to reconsider this Order of an Administrative Law Judge on its own motion.

ORDER DISMISSING APPEAL:

ASPEN LOGISTICS, 11-R6D4-3268

ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal from an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Order Dismissing Appeal from an Administrative Law Judge.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

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

ACTION: No report.

PETITIONS FOR RECONSIDERATION:

COUNTY OF ALAMEDA, GENERAL SERVICES AGENCY, 11-R1D4-3064

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

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

December 19, 2012

Page 6

PRESTON PIPELINES, INC., 11-R2D4-2530

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

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

LUIS & MIGUEL AGUIRRE DEBA AGUIRRE CUTTING SERVICE, 12-R6D5-2869
THROUGH 2872

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

PERSONNEL PLUS, INC., 11-R3D5-1302:

ACTION: Member Lowry moved that the Board rescind its previous acceptance of the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to rescind its previous acceptance of the Legal Unit's recommendation to deny this Petition for Reconsideration. Member Lowry moved to grant this Petition for Reconsideration. Member Freyman seconded the motion. The Board voted to grant this Petition for Reconsideration.

UNITED STATES COLD STORAGE OF CALIFORNIA, 11-R2D4-1342

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

AC TRANSIT, 08-R1D4-0135

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

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

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

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Minutes of the Public Meeting and Closed Session

December 19, 2012

Page 7

BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239
THROUGH 2241
BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445
AND 3448
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CALIFORNIA ERECTORS, INC., 10-R1D2-2772 THROUGH 2775
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
COMMUNITY RECONSTRUCTION SOLUTIONS, INC., 11-R1D1-1484
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
DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431
DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896
EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
EZ MIX, INC., 08-R4D3-1898
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HOME DEPOT, 10-R3D6-3284
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272
IRWIN INDUSTRIES, 08-R6D4-1454
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
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223
MARINE TERMINALS, 08-R6D2-1920
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
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
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SDUSD – PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
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 FROZSUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
VAN EVERY CONSTRUCTION, INC., 11-R1D4-0936 AND 0937

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. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
2. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
3. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
4. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430
(09- 9280/9281)
5. GRANITE CONSTRUCTION CO., INC., (DOSHA V OSHAB) 34-2010-800006047 (07-
R5D1-3611)
6. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
7. SMUD, 34-2010-80000723 (08-R2D1-4887)
8. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
9. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
10. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-
0188~0191)
11. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010
(08-R2D1-3273)
12. 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 19, 2012

Page 9

13. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
14. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
15. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039
(07-R2D3-0275)
16. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
17. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
18. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
19. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
20. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
21. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219
AND 0220)
22. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
23. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-
R2D4-2650 AND 2651)
24. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
25. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
26. PRESTON PIPELINES, INC., 34-8012-80001277 (09-R6D7-3345)
27. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
28. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)

PERSONNEL: *(Issues regarding staff)*

ACTION: Staff Services Analyst Theresa McKeever briefed the Board on personnel and staffing matters related to the budget.

The Closed Session adjourned at 1:52 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 1:55 p.m.