



2002-CCP-1

JUN 24 2002

HAND DELIVERED

Hon. John M. Vittone  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
Suite 400  
800 K Street, NW  
Washington, D.C. 20001

DEPT. OF LABOR  
OFFICE OF ADMINISTRATIVE  
LAW JUDGES  
JUN 24 02

Re: California Request for Hearing in Response to Initiation of Derecognition Proceedings

Dear Judge Vittone:

On May 10, 2002, the U.S. Department of Labor's Office of Apprenticeship Training, Employer and Labor Services (OATELS) initiated derecognition proceedings, under 29 CFR §29.13(b), against the California Department of Industrial Relations (CDIR). The CDIR, the State apprenticeship agency or council (SAC), currently has authority to register apprenticeship programs, for Federal purposes, in California. Derecognition would remove that authority. A copy of the notification to the CDIR is enclosed.

By letter dated June 7, 2002, and received June 13, 2002 (copy enclosed), the CDIR requested a hearing as provided in 29 CFR §29.13(c)(3). Therefore, the Secretary has asked me to request that the Office of Administrative Law Judges (OALJ) designate an Administrative Law Judge (ALJ) as soon as possible to conduct the requested hearing.

The general question presented is whether the CDIR has failed to fulfill or operate in conformity with the requirements of 29 CFR Part 29. In particular, the issues are: 1) whether California Labor Code (CLC) §3075(b) limits, rather than promotes, apprenticeship opportunities, contrary to 29 CFR §29.1; and 2) whether the CDIR has failed to comply with 29 CFR §29.12(a), as interpreted by Bureau of Apprenticeship and Training Circular 88-5 (copy enclosed), by virtue of the enactment of CLC §3075(b) without prior approval from OATELS.



A Proud Member of America's Workforce Network

I request that the presiding Administrative Law Judge set a prehearing conference as soon as possible to discuss such issues as discovery, scheduling and location of the hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Emily Stover DeRocco". The signature is fluid and cursive, with the first name "Emily" being the most prominent.

Emily Stover DeRocco  
Assistant Secretary for  
Employment and Training

Enclosures: (3)

cc: Anthony Swoope  
Stephen J. Smith



MAY 10 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Stephen Smith  
Director  
California Department of Industrial Relations  
10<sup>th</sup> Floor  
455 Golden Gate Avenue  
San Francisco, California 94102

Re: Initiation of Derecognition Proceedings

Dear Mr. Smith:

This is to notify you, as well as the State sponsors, that the Office of Apprenticeship Training, Employer and Labor Services (OATELS) is hereby instituting derecognition proceedings against the State Apprenticeship Agency for the State of California (the California Department of Industrial Relations or CDIR), under 29 C.F.R. §29.13. Under the National Apprenticeship Act (NAA), OATELS oversees the national registered apprenticeship system in order to protect the welfare of apprentices and to promote apprenticeship opportunities.

OATELS has determined that reasonable cause exists to believe that the CDIR has failed to fulfill or operate in conformity with the requirements of 29 C.F.R. Part 29. In particular, the California Labor Code (CLC) §3075(b) provides for CDIR approval of new apprenticeship programs in the building and construction trades only where apprentice-training needs so justify for the craft or trade and geographic area specified in an application for program registration.

Under CLC §3075(b), the requisite need can be demonstrated only where either (1) there is no existing program approved for the craft or trade and geographic area in question; (2) there is an approved program but that program does not have the capacity or neglects or refuses to supply employers at a public works site with apprentices; or (3) there is an approved program but it has been identified by the State as deficient in meeting its obligations. In addition, CLC §3075(c) provides that the CDIR can approve a new apprenticeship program where special circumstances, as established by regulation, so justify.

In response to OATELS' repeated expressions of concern that CLC §3075(b) unacceptably limits apprenticeship opportunities, the CDIR has maintained that the "need requirement" is necessary to protect apprentices from transient or exploitative programs. While OATELS shares CDIR's concern that only genuine programs achieve registration, we maintain that the State can achieve that goal through measures that do not have CLC §3075(b)'s detrimental impact on apprenticeship opportunities.



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OATELS has determined that the CDIR's justification for CLC §3075(b) is insufficient, because the statutory requirements which discriminate against new programs are not necessary to achieve the ostensible purpose (assurance that only bona fide programs are approved). Rather, the above-cited terms of CLC §3075(b)(1)-(3) clearly subordinate the interests of would-be apprentices to the interests of existing apprenticeship programs.

Moreover, we understand that CLC §3075(b) has discouraged several California employer groups, such as the Plumbing, Heating, Cooling Contractors (PHCC) and the Western Electrical Contractors Association (WECA), Apprenticeship Training Committees, from applying for registration. The PHCC and the WECA maintain that it would be futile to apply for approval of new programs because the "need" criteria could never be met. Those employers further state that increased apprenticeship program capacity is desperately needed to meet the State's severe shortage of building trades journeymen.

The NAA is focused on meeting the needs of workers, not on furthering particular apprenticeship programs. In contrast, CLC §3075(b), even as ameliorated by CLC §3075(c), imposes processes that prevent or inexcusably delay efforts to advance apprenticeship. Therefore, OATELS has concluded that the overall impact of the "need requirement" is to improperly restrict, rather than promote, apprenticeship opportunities for workers, contrary to the letter and spirit of the NAA.

To remedy the identified nonconformity, the State of California needs to repeal CLC §3075(b).<sup>1</sup> Pending legislative action, we would be prepared to suspend the derecognition proceedings were the State to (1) issue and implement a regulation (including emergency regulatory action taking immediate effect, if necessary due to procedural requirements for conventional rulemaking), under CLC §3075(c), which provides that the OATELS finding of nonconformity constitutes a "special circumstance," under CLC §3075(c), that supersedes CLC §3075(b) for the purpose of registering new apprenticeship programs in the building and construction trades; and (2) process applications for registration without regard for the "need requirement" of CLC §3075(b). The promulgation of the regulation would need to be accompanied by a formal opinion from the California Attorney General's Office stating that the interim regulatory remedy was valid under California law.

OATELS proposes to withdraw recognition for Federal purposes unless corrective action is taken, or a hearing request mailed, within 30 days of the receipt of this notice.

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<sup>1</sup> This legislative remedy would, presumably, include the repeal of CLC §3075(c), as that provision functions solely in relation to CLC §3075(b).

OATELS remains ready to work with you to resolve this situation. We have enclosed sample text for the necessary legislative and regulatory remedies to facilitate corrective action. Please contact me if I can be of further assistance.

Sincerely,



ANTHONY SWOOPE

Administrator

Office of Apprenticeship Training, Employer and Labor Services

Enclosure

cc: California apprenticeship program sponsors  
Gray Davis, Governor  
John Burton, President Pro Tem of the State Senate  
Richard Polanco, Majority Leader of the State Senate  
James L. Brulte, Senate Republican Leader  
Herb Wesson, Speaker of the Assembly  
Fred Keeley, Speaker Pro Tempore  
Kevin Shelley, Majority Leader of the Assembly  
Dave Cox, Assembly Republican Leader

Legislative Remedy

Section 3075 of the California Labor Code is hereby amended as follows:

1. Existing Paragraph (b) is repealed in its entirety; and
2. Existing Paragraph (c) is repealed in its entirety.

Interim Regulatory Remedy

Add a new section to read:

212.05 Apprenticeship Training Needs.

The U.S. Department of Labor finding that CLC §3075(b) does not conform to the requirements of 29 C.F.R. Part 29 constitutes a "special circumstance," as provided under CLC §3075(c), which supersedes CLC §3075(b) for the purpose of registering new apprenticeship programs in the building and construction trades. Therefore, CLC §3075(b) is administratively superseded pending repeal of CLC §3075(b).

NOTE: Authority cited: Section §3075(c), Labor Code.

Opinion from the California Attorney General's Office

The California Attorney General hereby finds that the promulgation of Regulation 212.05, California Code of Regulations, Title 8, Chapter 2, as an interim regulatory remedy pending legislative repeal of CLC §3075(b), is valid under California law.

DEPARTMENT OF INDUSTRIAL RELATIONS  
Office of the Director  
455 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, CA 94102  
Tel: (415) 703-5050 Fax: (415) 703-5059/8

MAILING ADDRESS:  
P. O. Box 420603  
San Francisco, CA 94142-0603



June 7, 2002

VIA FAX and CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Anthony Swoop  
Administrator  
Office of Apprenticeship Training, Employer and Labor Services  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Logged on: 6/13/02  
Due Date: 6/23/02  
Control # 321187

Re: Derecognition Proceedings

Dear Mr. Swoop:

This is in response to your letter of May 10, 2002 received by this office on May 14, 2002. Pursuant to 29 CFR 29.13(c)(3), the California Department of Industrial Relations and the California Apprenticeship Council (DIR/CAC) request a hearing to contest derecognition of DIR/CAC. We request that this hearing be held in San Francisco for the convenience and access of DIR/CAC, the California apprenticeship program sponsors and the California apprenticeship community.

California's grounds for appeal are that DIR/CAC has operated in full compliance with 29 CFR 29 while maintaining the high standards of apprenticeship necessary to safeguard the welfare of apprentices in California. California's Legislature has determined that apprenticeship programs can only be approved when training needs justify the establishment of a program. Your office apparently feels that it is appropriate to approve programs where there is no training need, or where there is some justification for the program other than training. We believe that derecognition of DIR/CAC would violate the federal-state cooperation intended by the Fitzgerald Act and would diminish the high standards California has set for the purpose of safeguarding the welfare of apprentices in California.

Please provide us with all documents related to or evaluated in regard to OATELS determination that reasonable cause exists to derecognize DIR/CAC. Your May 10 letter references a reliance on factual representations of PHCC and WECA, that employer groups have been discouraged from applying for registration, that caused you to conclude that the statute has led to "inexcusable delay" in approving programs. Earlier letters from you and the Assistant Secretary reference extensive and varied concerns from outside parties, both inside and outside the apprenticeship community, on a variety of issues besides the statutory section cited in your letter initiating proceedings, Calif. L.C. 3075. We need to know whether those issues remain a basis for the proposed derecognition, or whether OATELS has been satisfied with California's responses as to those other issues.

TO: Mr. Anthony Swoop, Administrator

June 7, 2002

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Our request for documents includes both those communications on which OATELS will rely in this administrative proceeding, those cited in your letters, as well as those encouraging derecognition or sanctions for general policy reasons. We make this request pursuant to 29 CFR 29.9, 29 CFR 18.1 et seq. and the Freedom of Information Act, 5 U.S.C. 552 et. seq. We request a reasonable time to evaluate any documents prior to a hearing date being set to determine whether additional discovery is necessary for a complete response to the issues which OATELS will present at the hearing.

Please send a copy of this letter to whomever will assign the Administrative Law Judge for the Secretary, and ask him or her to copy future correspondence to my counsel, as well as counsel for apprenticeship program sponsors who have indicated an interest in participation, at the addresses on the attached list.

We are confident that a full record will lead to the conclusion that California should continue to serve as the approval agency for federal as well as state purposes, and that California should continue its cooperative relationship with the Secretary of Labor for the advancement of the welfare of California's apprentices.

Very truly yours,



Stephen J. Smith

Director

California Department of Industrial Relations

cc: California apprenticeship program sponsors  
Gray Davis, Governor  
John Burton, President Pro Tem of the State Senate  
Richard Polanco, Majority Leader of the State Senate  
James L. Brulte, Senate Republican Leader  
Herb Wesson, Jr., Speaker of the Assembly  
Fred Keeley, Speaker Pro Tem of the State Assembly  
Kevin Shelley, Majority Leader of the State Assembly  
Dave Cox, Assembly Republican Leader



COUNSEL

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Department of Industrial Relations, Legal Unit

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Scott Kronland, Esq., Altshuler, Berzon, Nussbaum, Rubin & Demain

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CACA, 180 Grand Avenue, Ste. 1400, Oakland, CA 94612

John Davis, Esq., Davis, Cowell & Bowe, LLP

Counsel for California State Pipe Trades Joint Apprenticeship Committee, et al.

100 Van Ness Street, 20<sup>th</sup> Floor, San Francisco, CA 94102

December 15, 1987

U.S. DEPARTMENT OF LABOR  EMPLOYMENT AND TRAINING ADMINISTRATION  Bureau of Apprenticeship and Training Washington, D.C. 20210 Symbols: TDT:NAK	<u>Distribution:</u> A-539 All Techs. Hdqtrs. A-544 All Field Techs. A-547 SD+RD/SAC; Lab. Comm.	<u>SUBJECT:</u> <u>CODE:</u> 700  State Apprenticeship Councils Unilateral Modification of Policies and/or Procedures  <u>ACTION:</u> Due Date:
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PURPOSE: To clarify for apprenticeship technical staff the BAT position regarding State Apprenticeship Councils unilaterally adopting apprenticeship policies and procedures.

BACKGROUND: Title 29 CFR Part 29.12 provides for the U.S. Secretary of Labor to recognize State Apprenticeship Agencies or Councils (SACs) for Federal purposes upon submission and approval of specified materials.

POLICY: Any modification to SAC policies or procedures regarding the recognized State apprenticeship program that results in changes in the materials submitted to, and approved by, the Secretary when granting recognition for Federal purposes must be approved by BAT. State Apprenticeship Councils/Agencies are expressly prohibited from unilaterally adopting policies and operating procedures which depart from, or impose requirements in addition to, those which meet the requirements of Title 29 CFR Part 29. Approval of augmented policies and operating procedures is subject to BAT's discretion.