

OFFICE OF ADMINISTRATIVE LAW JUDGES
U.S. DEPARTMENT OF LABOR
WASHINGTON, D.C. 20001

In the Matter of

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| U.S. DEPARTMENT OF LABOR, OFFICE |) | |
| OF APPRENTICESHIP TRAINING, |) | |
| EMPLOYER AND LABOR SERVICES, |) | |
| |) | |
| Prosecuting Party, |) | |
| |) | |
| v. |) | Case Nos. 2002-CCP-1, |
| |) | 2003-CCP-1 |
| CALIFORNIA DEPARTMENT |) | |
| OF INDUSTRIAL RELATIONS, |) | |
| |) | |
| Respondent, |) | |
| |) | |
| and |) | |
| |) | |
| CALIFORNIA APPRENTICESHIP COUNCIL, |) | |
| |) | |
| Respondent. |) | |
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PARTIES' JOINT STIPULATION OF FACTS

Prosecuting Party Office of Apprenticeship Training, Employer and Labor Services ("OATELS") and Respondents California Department of Industrial Relations ("CDIR") and California Apprenticeship Council ("CAC") stipulate to the facts set out below. This stipulation does not preclude any party from stating additional facts.

1. Apprenticeship has long been an area of government regulation and concern, and apprentices may be registered for state and/or federal purposes.¹ The federal

¹ Federal apprenticeship regulations define "Federal purposes" as including "any Federal contract, grant, agreement or arrangement dealing with apprenticeship; and any Federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship." 29 C.F.R. § 29.2(k).

apprenticeship statute is the National Apprenticeship Act of 1937 ("NAA"), 29 U.S.C. § 50, commonly known as "the Fitzgerald Act," and in California, where apprenticeship statutes were in effect before the NAA was enacted, the current law is the Shelley-Maloney Apprentice Labor Standards Act of 1939, California Labor Code §§ 3070-3099.5, Administrative File ("AF") 893-946. In California, a program may voluntarily seek state approval and registration for state and federal purposes. Apprentices in such approved programs, and in other approved programs throughout the United States, are referred to as "registered apprentices."

2. Apprenticeship combines supervised on-the-job training with related classroom instruction and benefits employees, employers, and the nation by producing skilled, knowledgeable workers who are qualified for jobs throughout a specific industry. See OATELS, Registered Apprenticeship: A Solution to the Skills Shortage (undated), front side, Supplemental Administrative File ("SAF") 695. The apprenticeship program sponsor pays most of the apprentice's training costs, see id., back side, SAF 696. Construction apprentices are commonly required to buy their own tools, manuals, and textbooks. Olivia Crosby, Apprenticeships: Career Training, Credentials—and a Paycheck in Your Pocket, Occupational Outlook Q. (Bureau of Labor Statistics, Dep't of Labor ("DOL"), Summer 2002 at 10, SAF 653. Apprenticeship generally lasts from one to six years, depending on the occupation. See OATELS, Registered Apprenticeship, Building a Skilled Workforce in the 21st Century (May 2003), "What is Registered Apprenticeship?" SAF 641.

3. Registered apprentices are generally paid substantially less than a skilled journey worker's wage at the start of their apprenticeship and receive wage raises at

regular intervals as their skills increase. See, e.g., OATELS, Registered Apprenticeship, High Wage, High Skill Career Opportunities in the 21st Century (Sept. 2000), "[T]he [W]ages to [B]uild [F]inancial [S]ecurity," SAF 694; Cal. Code Regs. tit. 8, § 208, AF 957-58. Registered apprentices who successfully complete their training become skilled certified journey-level workers, and receive a portable, nationally recognized certificate. Ibid.; OATELS, Registered Apprenticeship: A Solution to the Skills Shortage, back side, SAF 696. While any type of apprenticeship, whether registered or unregistered, may result in higher wages for apprentices depending on the demand for their particular craft or trade, OATELS estimates that the educational benefit of registered apprenticeship, with its nation-wide standards and nationally recognized, portable completion certificates, is worth \$40,000 to \$150,000 in increased lifetime earnings to the apprentice. See OATELS, Registered Apprenticeship: A Solution to the Skills Shortage, back side, SAF 696; Crosby, Apprenticeship, Occupational Outlook Q. at 9-10, SAF 652-53.

4. OATELS is the office in DOL that administers the NAA and its implementing regulations, 29 C.F.R. Part 29. Under the NAA and these regulations, either the federal government, through OATELS, or the state apprenticeship councils ("SACs") that OATELS recognizes as its agents, register local apprenticeship programs for federal purposes. See NAA, § 1, 29 U.S.C. § 50; 29 C.F.R. Part 29.

5. CDIR, through its Division of Apprenticeship Standards, is the California state agency that registers local apprenticeship programs for state and federal purposes in California. See Cal. Lab. Code, § 3073, AF 899.

6. CAC is the California state body that reviews CDIR's apprenticeship registration decisions and adopts state apprenticeship regulations. See Cal. Lab. Code, § 3071, AF 895; Cal. Code Regs. tit. 8, § 212.2(k)-(m), AF 969.

7. In 2003, CDIR's records listed more than 69,000 registered apprentices in over 1,400 approved programs in California. CDIR's Supplemental Response to Interrogatory No. 5 of OATELS' First Set of Interrogatories and Request for Production of Documents (Oct. 7, 2003), SAF 450; CDIR's Answers to OATELS' First Set of Interrogatories (Mar. 18, 2003), Attachment to Response to Interrogatory No. 5, SAF 568. Nearly 70%, or 47,593, of these apprentices were being trained as construction workers. See CDIR's Supplemental Response to Interrogatory No. 5, SAF 450. Of these registered California construction apprentices, 42,813 were enrolled in approved joint programs, 4,726 were in approved unilateral programs, and 54 were in plant (single-employer) and school-to-career apprenticeship programs ("STC/A" in CDIR's records), which CDIR treats as a separate category. See ibid; CDIR's Answers to OATELS' First Set of Interrogatories, Attachment to Response to Interrogatory No. 5, SAF 568; CDIR, 1998-99 Biennial Report at 24, SAF 709. As of March 18, 2003, the registered apprenticeship programs in the California construction trades consisted of 210 joint, 37 unilateral, and 29 plant and school-to-career programs. CDIR's Answers to OATELS' First Set of Interrogatories, Attachment to Response to Interrogatory No. 5, SAF 568.

8. OATELS and the recognized SACs do not provide apprenticeship training, but set and apply the standards for registering apprenticeship programs. Registration of an apprenticeship program for federal purposes is not mandatory but permits employers to pay apprentices lower wages on--and thus make lower bids for--federal public works

projects under the Davis-Bacon Act. See Davis-Bacon Act, 40 U.S.C. §§ 276a-276a-7, and its implementing regulations at 29 C.F.R. § 5.5(a)(4).

9. OATELS exclusively registers apprenticeship programs in 23 states; the recognized SACs register programs in the other 27 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, but OATELS is also registering programs in 24 of the 27 recognized SAC states and territories, including California. See OATELS, A Brighter Tomorrow: Apprenticeship for the 21st Century (July 2003) at 8, 12, SAF 605, 608. To gain OATELS' recognition, a SAC state's apprenticeship requirements must conform to the requirements of the NAA and its implementing regulations. See 29 C.F.R. § 29.12(a)-(b), AF 852-53. Thus, in registering apprenticeship programs, a recognized SAC applies one set of apprenticeship standards, the state standards, for state and federal purposes.

10. To determine whether recognized SAC states are still in conformity with federal requirements, OATELS reviews the changes that the recognized SAC states make to their apprenticeship requirements after recognition. See Bureau of Apprenticeship and Training ("BAT") Circulars 95-02 (Nov. 17, 1994), AF 869, 873; 88-12 (July 27, 1988), AF 880; 88-9 (Mar. 30, 1988); 88-5 (Dec. 15, 1987), AF 858.

11. OATELS and individual SACs sometimes disagree about whether the SAC's proposed changes conform to federal requirements. See letter from Scott Glabman, Esq., OATELS attorney to Fred D. Lonsdale, Esq., CDIR attorney, with enclosures on OATELS' pending disputes with the Washington, Oregon and Florida SACs and on a rejected nonconforming North Carolina law (Dec. 12, 2003), SAF 65-66, 229-445. OATELS attempts to resolve such disputes informally through consultations with the

SAC. See, e.g., BAT Circular 62-88, AF 885. It can take several months or years to resolve these disputes. See letter from Attorney Glabman to Attorney Lonsdale and cited enclosures, SAF 65-66, 229-445.

12. In the past fifteen years, OATELS has approved proposed changes from Arizona, New York, New Mexico, and Florida, and rejected proposed revisions from Washington, Oregon, and North Carolina. See letter from OATELS Attorney Glabman to CDIR Attorney Lonsdale and enclosures (Dec. 12, 2003), SAF 65, 67-369; Prosecuting Party's Supplemental Responses to Respondent's First Set of Interrogatories (Feb. 20, 2003) at 2-3, SAF 571-72; OATELS' Responses to CDIR's First Set of Interrogatories (Jan. 22, 2003) at 6-7, SAF 580-81.

13. In 1976, the California legislature enacted section 3075 of the state labor code, which provided that

Local or state joint apprenticeship committees may be selected by the employer and the employee organizations, in any trade in the state or in a city or trade area, whenever the apprenticeship training needs of such trade justifies [sic] such establishment.

Cal. Lab. Code, § 3075, AF 1059.²

14. On February 13, 1978, OATELS' predecessor agency, BAT, recognized the California SAC as the federal registration agent for the state of California. See Letter from BAT Administrator Murphy to then-CDIR DAS Chief Wallace, AF 1030.

² Although section 3075 refers to the selection of "joint" apprenticeship committees, the California Attorney General's Office construed that language as permissive and concluded that it did not preclude the establishment of unilateral committees. See Letter from Asher Rubin, California Deputy Attorney General, to H. Edward White, then-Director, CDIR, at 2 (Apr. 23, 1973), AF 1068 (citing 14 Ops. Cal. Atty. Gen. 203).

15. In October 1999, California's Assembly Bill ("AB") 921 was signed into law. Among other things, AB 921 amended section 3075 of the state labor code to read as follows:

(b) For purposes of this section, the apprentice training needs in the building and construction trades shall be deemed to justify the approval of a new apprenticeship program only if any of the following conditions are met:

(1) There is no existing apprenticeship program approved under this chapter serving the same craft or trade and geographic area.

(2) Existing apprenticeship programs approved under this chapter that serve the same craft or trade and geographic area do not have the capacity, or neglect or refuse, to dispatch sufficient apprentices to qualified employers at a public works site who are willing to abide by the applicable apprenticeship standards.

(3) Existing apprenticeship programs approved under this chapter that serve the same trade and geographic area have been identified by the California Apprenticeship Council as deficient in meeting their obligations under this chapter.

Cal. Lab. Code § 3075(b).

16. Neither CDIR nor CAC requested or received OATELS' prior approval for section 3075(b) of the California Labor Code ("the needs test"). See Respondent CDIR's Response to Prosecuting Party's First Set of Requests for Admissions ("CDIR's Response to OATELS' Requests for Admissions") (Sept. 15, 2003) at 8, SAF 459; Prosecuting Party's First Set of Requests for Admissions from Respondent CAC ("OATELS' Requests for Admissions from CAC") (Aug. 14, 2003) at 3, SAF 482; CAC's Responses to OATELS' Second Set of Requests for Admissions (Sept. 15, 2003) at 3, Response to Request for Admission 5, SAF 478.³

³ Despite the title of CAC's responses, the document that CAC answered was actually OATELS' first (not second) set of requests for admissions. See OATELS' Requests for Admissions from CAC at 1, SAF 480.

17. CDIR/CAC distributed the public notice and a copy of the July 2000 proposed implementing regulations to OATELS some nine or ten months after the law was enacted. See Memo from Rita H. Tsuda, Regulation Coordinator, CAC, to Apprenticeship Program Sponsors and Other Interested Persons ("Notice of Proposed CAC Regulations") (July 7, 2000), SAF 744. In January 2001, OATELS acknowledged receipt of a copy of section 3075(b) of the California Labor Code, the statute establishing the needs test, and of a later version of the proposed implementing regulations, and the requested justification of the needs test. See letter from OATELS Administrator Swoope to then-CDIR DAS Chief Nunn (Jan. 23, 2001) at 1, AF 47.⁴

18. CDIR has identified four new or expanded unilateral programs in the construction trades that the agency approved in the almost five years since the needs test became effective. See CDIR's Response to OATELS' Requests for Admissions at 7-8 (citing Western Burglar and Fire Alarm Association, and Walton & Sons Masonry Inc.), SAF 458-59; Findings of Fact and Decision on the Application of the W. Elec. Contractors Ass'n Inc. ("WECA") to Expand the Geographic Area of Operation of its Apprenticeship Program for the Occupation of Electrician, Constr. DOT 824.261.010, DAS File No. 19602 at 4-5 (Jan. 16, 2004) ("WECA I"), SAF 713-14, appeal filed (CAC Feb. 13, 2004); Findings of Fact and Decision on the Application of WECA for Approval of Apprenticeship Standards in the Occupation of Sound & Communication Installer,

⁴ These proposed regulations, distributed for comment on February 9, 2001, were subsequently withdrawn, partly because of OATELS' objections. See CDIR's Answers to OATELS' First Set of Interrogatories at 14, SAF 553; letter from OATELS Administrator Swoope to then-CDIR DAS Chief Nunn (Mar. 1, 2001) at 1, AF 19.

DOT 829.281 022, DAS File No. 105047 (Jan. 16, 2004) ("WECA II"), SAF 715, appeal filed (CAC Feb. 13, 2004).⁵

19. Since August 2003, when it began concurrently registering local apprenticeship programs in California for federal purposes, OATELS has registered 17 new or expanded unilateral construction programs and two new or expanded joint programs.

20. In consultations from January 2001 to April 2002, OATELS attempted to persuade CDIR to seek repeal of the needs test. See AF, Tab 2. On May 10, 2002, after these consultations failed, OATELS began derecognition proceedings against CDIR, the first time OATELS has ever invoked its authority to derecognize a SAC. See AF 6-8. On April 8, 2003, in accordance with the parties' agreement and the Administrative Law Judge's ("ALJ") instructions, OATELS also started derecognition proceedings against CAC.

21. OATELS' determination that each respondent should be derecognized is based on the same two grounds:

⁵ One of these four unilateral construction programs, Western Burglar and Fire Alarm Association (occupation: protective signal installer), was approved, and the approval affirmed by CAC, because, among other reasons, no existing program in the state served the same craft or trade. See CDIR's Response to OATELS' Requests for Admissions at 7-8, SAF 458-59; Northern California Sound & Communication JATC v. Div. of Apprenticeship Standards, DAS File No. 10837 (CAC, July 24, 2003) (finding that the need criteria of section 3075(b) did not apply because there was no existing program serving the same craft or trade), SAF 743. The DAS file for another approved unilateral construction program, Walton & Sons Masonry, Inc., DAS File No. 05022 (approved Feb. 13, 2003), does not reveal whether or how Walton complied with section 3075(b), or whether any existing programs commented on Walton's proposed standards, as permitted by Cal. Code Regs. tit. 8, § 212.2(g). See SAF 720-38. The other two unilateral construction programs, both unilateral WECA programs, one an expanded program for electricians, the other a new program for sound and communication installers, were both approved recently on the basis of a DAS finding of an electrician shortage in California. See WECA I, DAS File No. 19602, slip op. at 4-5, SAF 713-14; WECA II, DAS File No. 105047, slip op. at 3-4, SAF 717-18. Both WECA approvals have been appealed to CAC, and thus are not final decisions, see Cal. Code Regs. tit. 8, § 212.2(k).

(1) that the needs test violates the NAA and its implementing regulations by limiting, rather than promoting, apprenticeship opportunities in the construction trades; and

(2) that CDIR and CAC violated the NAA's implementing regulations by not obtaining OATELS' prior approval for the needs test.

See Letter from Emily Stover DeRocco, Assistant Secretary for Employment and Training, DOL, to John M. Vittone, DOL's Chief ALJ at 1 (June 24, 2002), AF 1; Letter from Assistant Secretary DeRocco to Chief ALJ Vittone at 1 (May 12, 2003).

22. OATELS does not contend that CDIR or CAC has discriminated against non-union apprenticeship programs or treated such programs differently, but OATELS reserves the right to argue that the needs test does so.

Respectfully submitted,

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