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8 Attorneys for Charging Party

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9 BEFORE THE
 10 ADMINISTRATOR OF APPRENTICESHIP OF THE
 11 STATE OF CALIFORNIA

12 ALAMEDA COUNTY JOINT)
 13 APPRENTICESHIP AND TRAINING)
 14 COMMITTEE FOR THE ELECTRICAL)
 15 (INSIDE/WIREMEN) TRADE, on behalf of)
 16 itself and all other similarly situated Joint)
 17 Apprenticeship and Training Committees in the)
 18 State of California for the Electrical Trade,)

No.
)
)
) COMPLAINT AGAINST
) APPRENTICESHIP PROGRAM

16 Charging Party,

17 vs.

18 WESTERN ELECTRICAL CONTRACTORS)
 19 ASSOCIATION, INC. ELECTRICAL)
 20 APPRENTICESHIP AND TRAINING)
 21 COMMITTEE,)

22 Respondent.

23 Pursuant to California Code of Regulations Title 8, § 201, the ALAMEDA COUNTY
 24 JOINT APPRENTICESHIP AND TRAINING COMMITTEE FOR THE ELECTRICAL (INSIDE
 25 WIREMEN) TRADE, on behalf of itself and all other similarly situated Joint Apprenticeship and
 26 Training Committees in the State of California for the Electrical Trade (hereinafter "JATC")
 27 hereby complains against the WESTERN ELECTRICAL CONTRACTORS ASSOCIATION
 28 (hereinafter "WECA") for violation of state law and its own apprenticeship standards, based on the

12/7/02

1 following:

2 STATEMENT OF COMPLAINT

3 1. Charging Party Alameda County Joint Apprenticeship and Training Committee for
4 the Electrical (Inside Wiremen) Trade, is a Joint Apprenticeship and Training Committee duly
5 approved and operated pursuant to California Labor Code Sections 3070, et seq. Its address is
6 3033 Alvarado Street, San Leandro, California 94577-5707.

7 2. Respondent Western Electrical Contractors Association, Inc. Apprenticeship and
8 Training Committee, is a Unilateral Apprenticeship Committee. Respondent's address is 9719
9 Lincoln Village Drive, Suite 303, Sacramento, California 95827.

10 3. Based upon information and belief, Charging Party believes and hereby alleges that
11 WECA was approved by the California Apprenticeship Council in or around January 1990 to
12 function as an Apprenticeship Program in Amador, Colusa, Sacramento, Sutter, Yolo, Yuba, and
13 that portion of Alpine, El Dorado, Nevada, Placer and Sierra Counties which is West of the Main
14 Watershed through these counties located in the State of California.

15 4. On or about December 3, 1997, Acting Chief of the Division of Apprenticeship
16 Standards, Rita Tsuda, approved a set of new apprenticeship standards for the WECA program
17 which purported to allow the WECA Program to operate as an apprenticeship program in all the
18 counties in the State of California. The new standards will hereinafter be referred to as the "1997
19 Standards." Attached hereto labeled Exhibit A and incorporated herein by reference as though set
20 forth at length is a true and correct copy of the December 3, 1997 approval of the Revised
21 Standards by Rita Tsuda, Acting Chief of the Division of Apprenticeship Standards.

22 5. Prior to Tsuda's approval of the "1997 Standards" the WECA Apprenticeship
23 Program was an approved program with authority to operate in only certain identified counties, as
24 set forth above, but was not authorized to operate in the counties covered by the "1997 Standards."

25 6. Prior to and subsequent to Tsuda's approval of the "1997 Standards," WECA's
26 Apprenticeship Program has operated outside of the counties for which it was initially approved, in
27 violation of its own standards and in excess of the authority granted by DAS in the initial approval
28 prior to the approval of the "1997 Standards."

1 7. Nothing in the ~~pre-1997~~ approved apprenticeship standards authorized the WECA
 2 program to recruit, indenture or instruct apprentices outside the geographic areas stated in the pre-
 3 1997 approved standards and nothing authorized the WECA Program to recruit, indenture or
 4 instruct apprentices in the counties covered by the 1997 approved standards.

5 8. Labor Code Section 3075 provides that programs may be approved by the Chief of
 6 the DAS in "the state or in a city or trade area" only when the apprenticeship training needs
 7 justifies its establishment.

8 9. WECA has never made a showing to DAS, as required by Labor Code Section
 9 3075, that the apprenticeship training needs in the geographic areas covered by the "1997
 10 Standards" justifies the establishment of an additional program.

11 10. Acting Chief Tsuda did not require WECA to submit evidence to demonstrate that
 12 the apprenticeship training needs in the geographic areas covered by the "1997 Standards" justified
 13 the establishment of the WECA Program in those areas as required by Labor Code Section 3075.

14 11. The actions complained of herein by Acting Chief Tsuda were therefore taken in
 15 direct contravention of California Labor Code Section 3075. Therefore, her actions in approving
 16 the "1997 Standards" were in excess of her authority and jurisdiction and, as a result, were null and
 17 void.

18 12. California Code of Regulations Title 8, § 212.2(f) provides:

19 "Upon receipt of the proposed standards of a program, the Chief shall serve
 20 a copy of the proposed standards and any supplement thereto on the sponsor
 21 of each existing program in the apprenticeable occupation in the labor
 22 market area of the program, as defined by Section 215. Each such existing
 23 program may submit comments on the proposed program within thirty days
 24 after receipt of the completed standards. The Chief may, in his or her
 25 discretion, consult with such existing program concerning the proposed
 26 program."

27 Charging Party and those similarly situated are an existing programs in the apprenticeable
 28 occupation in the labor market areas of the WECA Program within the meaning of 8 CCR §
 212.2(f).

 13. At no time did Acting Chief Tsuda serve a copy of the proposed "1997 Standards"
 as required by 8 CCR § 212.2(f) on the Charging Party or those similarly situated programs and,

1 thus, they were therefore denied the right and opportunity to comment on the proposed "1997
2 Standards" allowing the WECA Program to expand its operations into geographical areas covered
3 by the "1997 Standards."

4 14. California Code of Regulations Title 8, § 212.2(h) provides:

5 "The Chief's decision whether to approve a program shall be issued within
6 ninety days after the receipt of the completed application for approval. The
7 decision shall be served on the sponsor and on each party which submitted
8 comments on the proposed program. The decision shall be in writing and
9 shall set forth the relevant findings of fact, a discussion of any issues raised
10 by any comments or at any hearing and the reasons for the decision."

11 At no time did Acting Chief Tsuda ever issue or serve a written decision as required by 8 CCR §
12 212.2(h) concerning her approval of the 1997 WECA Standards.

13 15. As a result of Acting Chief Tsuda's failure to comply with 8 CCR § 212.2,
14 Charging Party and those similarly situated programs were denied due process of law and Tsuda's
15 actions were taken in excess of her authority and jurisdiction. Therefore, her approval of the
16 WECA 1997 Standards was null and void.

17 16. Because WECA's and Acting Chief Tsuda's actions in arranging for the approval of
18 the "1997 Standards" allowing expansion of the WECA Program into other geographic areas of the
19 state were taken in a surreptitious manner and in violation of Labor Code Section 3075 and 8 CCR
20 § 212.2, Charging Party was unaware of the complained of actions. In or about October 2001,
21 Charging Party JATC learned of an electrical trade apprentice who had been indentured in the
22 WECA program in the County of Alameda. In or about October 2001, Victor Uno, Training
23 Director of the Alameda County Joint Apprenticeship and Training Committee for the Electrical
24 (Inside Wiremen) Trade contacted the Division of Apprenticeship Standards ("DAS") complaining
25 that the WECA program was apparently recruiting and indenturing apprentices outside of its
26 approved area of operation. DAS investigated Mr. Uno's complaint and agreed that it appeared to
27 have merit. However, at some point during the DAS investigation, DAS found there was a
28 statewide approval of the WECA program. On November 2, 2001, Mr. Uno sent a letter to DAS
requesting copies of WECA Standards and Revisions pursuant to the California Public Records
Act. The DAS responded to this request on November 19, 2001. The information was received in

1 the JATC office on November 20, 2001. At that point, the JATC first became aware of the "1997
 2 Standards." Attached hereto labeled Exhibit B and incorporated herein by reference as though set
 3 forth at length is a true and correct copy of the November 2, 2001 letter from Victor Uno to Henry
 4 Nunn of the Division of Apprenticeship Standards.

5 17. Charging Party is informed and believes and thereupon alleges that both before and
 6 after the "1997 Standards" were approved by Tsuda, the WECA represented to contractors and
 7 prospective apprentices that it was and is a lawfully authorized DAS approved apprenticeship
 8 program authorized to operate in the counties covered by the "1997 Standards." Since the approval
 9 of the "1997 Standards" were both procedurally and substantively defective, such representations
 10 were and are false.

11 **REQUEST FOR RELIEF**

12 Wherefore, the Charging Party JATC respectfully requests:

13 1. Issuance of findings and conclusions:

14 a. that WECA has operated its Apprenticeship Program in violation of its own
 15 standards and its pre-1997 authorization from DAS;

16 b. that WECA did not make the showing required by Labor Code Section 3075
 17 before obtaining approval of the "1997 Standards";

18 c. that Charging Party JATC and those similarly situated programs did not
 19 receive not of the proposed expansion of the WECA program nor an opportunity to comment on
 20 the program expansion, as required by law, and were thus denied due process of law; and

21 d. that the 1997 WECA Standards and all acts of the WECA taken outside of
 22 the counties where it was authorized to operate prior to the 1997 standards approval were and are
 23 null, void and of no effect whatsoever.

24 2. Issuance of an appropriate order directing WECA:

25 a. to confine its recruitment, indenture and instruction of apprentices to the
 26 counties wherein it was authorized to operate prior to the approval of the "1997 Standards";

27 b. to comply in all respects with the governing statutes, regulations and
 28 standards;

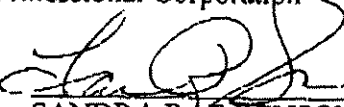
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c. to cease and ~~desist~~ recruitment, indenture and instruction in counties other than those approved in the original Standards; and

d. to transfer all apprentices indentured in counties pursuant to the "1997 Standards" to a lawfully approved apprenticeship program in the appropriate areas.

Dated: December 4, 2001

VAN BOURG, WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By 
SANDRA RAE BENSON
KRISTINA L. HILLMAN
Attorneys for Charging Party

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DECLARATION PURSUANT TO 8 CCR § 201(b)(5)

I, Sandra Rae Benson, declare:

1. I am one of the attorneys for the Charging Party herein.

2. To the best of my knowledge, information and belief, the contents of this Complaint are true and accurate. Based on said knowledge, information and belief, I allege that they are true.

3. I make this declaration under penalty of law as specified in 8 CCR § 201(b)(5).

Executed at Oakland, California on this 27th day of December, 2001.


SANDRA RAE BENSON

1/249234

State of California
CALIFORNIA APPRENTICESHIP COUNCIL
Department of Industrial Relations
Division of Apprenticeship Standards
P.O. Box 420603
San Francisco CA 94142
(415) 703-4920



APPELLANT

Alameda Co. Joint Apprenticeship & Training Comm. for
the Electrical (Inside Wireman) Trade

RESPONDENT

Western Electrical Contractors Assoc., Inc. Electrical
Apprenticeship & Training Comm.

REAL PARTY IN INTEREST

ORDER OF THE CALIFORNIA APPRENTICESHIP COUNCIL

CASE NO.

2003-18

The California Apprenticeship Council met on October 23, 2003 in Palm Springs, California.

During the meeting, the Council's Appeal Board presented its Proposed Decision in the above-captioned appeal. By Action of the Council, the Proposed Decision of the Appeal Board was adopted in its entirety without modification and is attached hereto as Exhibit I and incorporated as though expressly contained in this Order.

Dated: December 26, 2003

Attachment

cc: Julian Standen, Dep. Atty. Gen.

A handwritten signature in cursive script, reading "Henry P. Nunn III".

Henry P. Nunn III, Secretary
California Apprenticeship Council

PROOF OF SERVICE BY MAIL

(C.C.P. 1013a, 2015.5)

I am employed in the City of San Francisco, county of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is 455 Golden Gate Ave. 8th Flr., San Francisco, California 94102

On December 26, 2003, I served the within

ORDER OF THE CALIFORNIA APPRENTICESHIP COUNCIL
Case No. 2003-18

on all parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Francisco, California, addressed as follows:

Sandra Rae Benson
Weinberg, Roger & Rosenfeld
180 Grand Ave. #1400
Oakland, CA 94612

Ron Brown
Cook Brown, LLP
555 Capitol Mall #425
Sacramento, CA 95814

I declare under the penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on December 26, 2003.



Michael Baes

PROOF OF SERVICE