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

In the Matter of

U.S. DEPARTMENT OF LABOR, OFFICE OF APPRENTICESHIP TRAINING, EMPLOYER AND LABOR SERVICES,

Prosecuting Party,

v.

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS,

Respondent,

and

CALIFORNIA APPRENTICESHIP COUNCIL,

Respondent.

Case Nos. 2002-CCP-1, 2003-CCP-1

BRIEF OF AMICI CURIAE IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

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Pursuant to 29 C.F.R. §18.12, the California Apprenticeship Coordinators Association and the State Building and Construction Trades Council (collectively, "the JATC amici") respectfully submit this Brief of Amici Curiae in support of the motion for summary judgment filed by respondent California Department of Industrial Relations ("CDIR"), in this action to review the decision of the United States Department of Labor ("DOL"), Office of Apprenticeship Training, Employer and Labor Services ("OATELS"), to derecognize both CDIR and a related entity, the California Apprenticeship Council ("CAC"), as its agents for registration of local apprenticeship programs for federal purposes—i.e., as a State Apprenticeship Agency/Council ("SAC") under 29 C.F.R., title 29.

As noted previously in these proceedings, the California Apprenticeship Coordinators Association represents the interests of more than 43,000 registered apprentices in the State of California and the State Building and Construction Trades Council represents the interests of more than 375,000 unionized construction workers in the State of California, including journeymen and apprentices. Thus, both entities have a significant interest in maintaining the quality apprenticeship system California has developed during more than six decades of State governance.

I. SUMMARY OF ARGUMENT

In this derecognition proceeding, OATELS contends that the "needs test" found in California Labor Code section 3075 "violates" the National Apprenticeship Act (29 U.S.C. §50 et seq. [hereafter "the Fitzgerald Act"]), and the applicable federal regulations (29 C.F.R., §29.1 et seq.), allegedly because it limits rather than promotes apprenticeship opportunities in the construction trades in California. OATELS further contends, however, that *even if* the "needs test" is *entirely consistent with* the Fitzgerald Act and its implementing regulations, derecognition is warranted simply because CDIR failed to obtain "prior approval" from OATELS before Labor Code section 3075 was amended by the California Legislature in 1999, with the passage of Assembly Bill 921 ("AB 921"), to more clearly and specifically define the "needs test." (See Stats. 1999, ch. 903, §7, codifying Cal. Lab. Code, §3075, subds. (a), (b), (c).)

As the JATC Amici will discuss, however, the instant dispute really has nothing to do with the legality of the "needs test" in Labor Code section 3075, or with the California SAC's failure to obtain "prior approval" from OATELS before that statute was amended in 1999. Rather, at the heart of this derecognition proceeding is a clash of values—i.e., a fundamental philosophical disagreement between the California SAC, which elevates *quality over quantity* when it comes to the approval of apprenticeship training programs, and OATELS, which appears to be bent on increasing the *quantity* of apprenticeship training slots, no matter how poor the *quality* of those apprenticeship "opportunities" may be.

In this brief the JATC Amici will explain that, contrary to the assertions of OATELS and its amici, the "needs test" currently found in Labor Code section 3075 has been a feature of California law since the 1930s, when Congress and the California Legislature first undertook to create a voluntary federal-state partnership to promote and regulate apprenticeship training programs. That is, on its face and as applied, California Labor Code section 3075 has *for over 65 years* conditioned approval of apprenticeship programs on a finding of local "need" for the program, ever since the Shelley-Maloney Apprentice Labor Standards Act of 1939 ("Shelley-Maloney Act") was first enacted as the law of California. (Stats. 1939, ch. 220, §2, p. 1473.)[1] Moreover, the relevant provision of the Shelley-Maloney Act was based on the model state apprenticeship law promoted by OATELS's predecessor, the federal Bureau of Apprenticeship Training ("BAT").

That this derecognition effort is targeted at a 65-year-old "needs test"—which had been in effect for almost 40 years when BAT first recognized CDIR and CAC as a SAC in 1978, and which has remained on the books as the law of California throughout the 25-year period in which California has served under that grant of authority to register local apprenticeship programs for federal purposes—make clear that it is OATELS, *not* CDIR and CAC, that has lost sight of the purposes of the Fitzgerald Act and its implementing regulations. Indeed, it

[1] The full text of the Shelley-Maloney Act, Stats. 1939, ch. 220, pp. 1472-1476, adding Chapter 4 of the California Labor Code, sections 3070-3089, is attached hereto as Exhibit A.

appears that OATELS has pressed this prosecution merely to placate non-union contractors who have a philosophical aversion to dealing with unions and don't want to have to hire qualified apprentices from programs sponsored by JATCs, even when the JATCs are ready, willing, and able to dispatch those apprentices. But such "philosophical" considerations cannot be permitted to serve as a substitute for legal grounds for withdrawing recognition from the California SAC. (Cf. *Associated Builders and Contractors, Inc. v. San Francisco Airport Commission* (1999) 21 Cal.4th 352, 380-381.)

Of course, OATELS has focused its investigation and complaint against the California SAC on the 1999 amendments to Labor Code section 3075. (Stats. 1999, ch. 903, §7.) But those amendments merely fleshed out the definition of "training needs" that dates back to the original 1939 statute. As the JATC Amici will demonstrate, OATELS's claim that the "needs test" in the current version of Labor Code section 3075 "limits" apprenticeship opportunities in California by preventing approval of so-called "unilateral" or non-union apprenticeship programs, is based on nothing more than rank speculation, and hypothetical doomsday scenarios which have not materialized in the five years since AB 921 was enacted. In that regard, there is *no showing in this case that any unilateral program has been denied approval based on the "needs test" for more than a decade.*

The JATC Amici will also discuss how vitally important the California "needs test" is to the mission of "safeguarding the welfare of apprentices"—a purpose which is, or should be, shared by state and federal regulators alike. (29 U.S.C. §50 [the Secretary of Labor is directed to "promote the furtherance of labor standards necessary to safeguard the welfare of apprentices ... [and] to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship"]; and cf. Cal. Lab. Code §3073 [the Chief of CDIR's Division of Apprenticeship Standard ("DAS") shall, inter alia, "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment"].) Indeed, far from "limiting" apprenticeship opportunities in

California, the "needs test" has well served California apprentices, the state's construction industry, and the general public *for more than six decades* by ensuring that apprentices in the building and construction trades obtain necessary skills through high-quality training, under safe working conditions and clearly-stated standards, with opportunities for "reasonably continuous employment" (Cal. Lab. Code, §3077-3078, Cal. Code Regs., tit. 8, §212; 29 C.F.R. §29.5(b)), and that registered apprentices are not simply *exploited* by unscrupulous contractors as a cheap source of labor (see Stats. 1999, ch. 903, §1 [statement of legislative intent in AB 921 regarding 1999 amendments to Lab. Code 3075]). Thus, on the merits, OATELS is simply wrong when it contends that by maintaining a statutory "needs test" for approval of new or expanded apprenticeship programs, California should be derecognized for failing to "fulfill or operate in conformity with the requirements of 29 C.F.R., title 29."

In reality, correcting any restrictiveness on the part of CDIR and CAC in approving apprenticeship programs—whether joint or unilateral—will not serve any legitimate federal interest. If OATELS believes California's standards for approving apprenticeship programs are too high, or that there is a shortage of apprenticeship programs to meet the needs of contractors on federally funded construction projects, its remedy is one of which it has already availed itself: that is, OATELS is free to register apprenticeship programs that meet the lower standards set by the Fitzgerald Act—but *only* for "federal purposes." It is undisputed that neither the Secretary nor OATELS has the authority, under the Fitzgerald Act or otherwise, to *dictate* to CDIR the standards under which California apprenticeship programs may be approved for "state purposes," or to define the role of the California community college system in training apprentices, or to regulate the practices of state and local governments with respect to public financing of public works, or to control the hiring of apprentices for state public works projects. When these core principles of federalism are considered, it becomes clear that what OATELS is really trying to accomplish in these derecognition proceedings is to bludgeon or embarrass California into modifying its standards and procedures for approving apprenticeship programs for

"state purposes" even though—or perhaps because—it knows its has no legal authority to force it to do so. To that extent, as CDIR has argued, OATELS is plainly acting inappropriately and in excess of its jurisdiction.

Finally, the JATC Amici will discuss the likely ramifications for California apprenticeship programs if OATELS is successful in its quest to derecognize the California SAC as its agent for registration of apprenticeship programs for federal purposes. In that regard, the JATC Amici have reason to believe that California's apprenticeship system will be thrown into chaos, and that both new and existing programs—JATCs and unilateral programs alike—will be burdened with duplicative bureaucratic requirements which will waste the programs' scarce resources, yet do nothing to expand opportunities for apprentices in California. In addition, OATELS's cursory approach to the "approval" of apprenticeship programs for federal purposes will necessarily *lower* the quality of apprenticeship training in California and produce a glut of apprentices who will be unable to timely complete the hours of work experience required for certification as a journey-level worker.

In sum, OATELS has not even made out a prima facie case to support its decision to "derecognize" CDIR as a SAC. As CDIR has argued (Respondent CDIR's Motion for Summary Judgment ["Respondent's MSJ"] at pp. 16-23), and as further explained herein, the well established California "needs test" is entirely consistent with the Fitzgerald Act, its implementing regulations, and its core purpose of "safeguarding the welfare of apprentices."[2] Derecognition, on the other hand, will lower the quality of apprenticeship training in California and wreak havoc on a system that has been developed over the past 65 years into a thriving partnership of industry, labor, the education community, and a wide array

[2] The JATC Amici also wholeheartedly agree with, and will not repeat, CDIR's argument that the additional ground asserted by OATELS for derecognition—i.e., CDIR's failure to secure "prior approval" for the 1999 amendments to Labor Code section 3075—is utterly without merit. (See Respondent CDIR's Motion for Summary Judgment at pp. 4-16.) As CDIR explains, there is no such requirement either in the Fitzgerald Act or in the regulations implementing that statute, and there is no process in place to effectuate such a requirement.

of governmental actors. Accordingly, the CDIR's motion for summary judgment should be granted and OATELS's cross-motion should be denied.

II. FACTUAL AND LEGAL BACKGROUND

To understand the position of the JATC Amici in these proceedings to "derecognize" CDIR as the governmental entity with primary responsibility for approving and administering apprenticeship training programs in California for both state and federal purposes, it may be useful to step back from the politicized feud that gave rise to this prosecution, and to try to gain a fresh perspective on the mature, well-integrated, thriving system of apprenticeship training that has developed in California over the past 65 years under the stewardship of CDIR and the CAC, within the stable statutory framework that was erected by Congress and the California Legislature in the late 1930s. More recently, the foundational principles established by those statutes—including the original version of the "needs test" challenged in this proceeding—have been refined and elaborated in a comprehensive set of state and federal regulations, which have unquestionably buoyed CDIR in its efforts to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment." (Cal. Lab. Code, §3077.) Indeed, as we will demonstrate, there is really no doubt but that the apprenticeship system in California is one that OATELS should be celebrating as a true "success story" inspired by the Fitzgerald Act—not one that should be put out of business!

A. APPRENTICESHIP IN HISTORICAL PERSPECTIVE

As defined in a recent DAS publication, apprenticeship is an organized system of on-the-job training supplemented by related technical instruction, in which the apprentice "learns by doing, and earns while learning." (Cal. Div. of Apprenticeship Stds. (2004) *Apprenticeship Programs Information Guide* ["DAS 2004 *Apprenticeship Programs Information Guide*"] at p. 1.)[3] This sleek, modern definition does not, however, entirely capture the essence of apprenticeship,

[3] This publication can be found on the DAS website at http://www.dir.ca.gov/databases/das/descOfAppr.html.

which is rooted in ancient human history. That history demonstrates that the focus of apprenticeship has always been to protect the welfare of the apprentice, *not* the welfare of the employer.

Apprenticeship can be traced back to Babylon, more than four thousand years ago. Because apprenticeship was so important to early human society, apprenticeship was addressed in the Code of Hammurabi, which was among the earliest known written laws. According to the Code, an apprentice was to be treated as an adopted son: "If an artisan take a son for adoption and teach him his handicraft, one may not bring claim for him. If he does not teach him his handicraft, that adopted son may return to his father's house."

The apprenticeship system that emerged in medieval times is perhaps the best known system, and the one upon which the current California system is based. As early as 1386, England had a written Code governing the apprenticeship relationship. (1386 Lynn By-Laws, *Medieval English Urban History*.) The apprenticeship relationship of that era was described as follows:

> "Apprentices were bound by indentures to a master for a term of years, ... while they were initiated into the theory and practice and other mysteries associated with a particular occupation." Apprentices were part of the masters' family and provided with food, clothing, shelter and instruction by the master. In return they worked for him during the term of their apprenticeship. Within the Statute of Artificers from 1563 the basic framework was given: a minimum length of seven years, a minimum age of 24 to finish the apprenticeship, a master with three apprentices was compelled to keep a journeyman etc."

(Ilka & Katja, *The Role of Apprenticeship*, citations omitted.)

Historically, the apprenticeship relationship was governed by an "indenture" agreement. The articles of indenture typically required apprentices to serve their terms faithfully and obediently. Indentures commonly included clauses prohibiting specific behaviors, such as playing dice or fornication. Masters generally pledged themselves to raise, feed, lodge, educate, and train apprentices and then to provide "freedom dues" consisting of clothes, tools, or money once they completed the terms of their indentures. (Daniel Jacoby, *Apprenticeship in the United States*, University of Washington, Bothell.)

Because the apprentice agreed to work for the employer throughout his or her term of indenture for reduced wages, the employer agreed to provide quality training in the craft so that, at the end of that term, the apprentice would be qualified to attain "journeyman" status:

> "The word journeyman has been used since the Norman Conquest and is rooted in the French word "jour" which means day. Thus, journeyman came to mean qualified to work for a day's wages. During the time of the American Revolution, indentured servants were a major source of new workers in the colonies. However, with misuse and bad treatment of many indentured servants, the term indentured acquired negative connotations. Today's apprentices still sign an indenture, but today's indenture is a formal agreement that helps protect individuals entering the trades."

(*Apprenticeship Past and Present, History of Apprenticeship*, Milwaukee Technical College.) Indeed, as early as 1861, the California Supreme Court recognized the need to protect apprentices from abuses by their employers: "[I]t is impossible for us to see why that department may not protect and regulate labor and the relations of the different members of society so that one class may not injure a dependent class—the master the apprentice...." (*Ex parte Andrews* (1861) 18 Cal. 678, 683.)

The mutual obligations of apprentices and employers so artfully depicted by Charles Dickens—Pip's apprenticeship to Joe in *Great Expectations*, Oliver's "unhappy apprenticeship" in *Oliver Twist*, and young Scrooge's apprenticeship to "Old Fezziwig" in *A Christmas Carol*—are as relevant in 21st Century California as they were in 19th Century England. That is, apprenticeship committees bear a great responsibility for ensuring that apprentices indentured into their programs will be taught and supervised only by qualified journeymen, under safe working conditions, and will steadily progress in learning all aspects of their trade so as to become the next generation of journeymen. This is true *a fortiori* for apprentices who work in the construction industry—which has been recognized by DOL as having some of the most dangerous occupations in the United States. (See, e.g.,

U.S. Dept. of Labor, Bureau of Labor Statistics (Sept. 2003) *National Census of Fatal Occupational Injuries Summary, 2002.*)[4]

B. APPRENTICESHIP IN CALIFORNIA TODAY

Apprenticeship in California today is an industry-driven system of on-the-job training and related classroom instruction that is designed to produce qualified journeymen with marketable skills in a wide variety of trades and crafts. (See Cal. Div. of Apprenticeship Stds., 2001 Annual Legislative Report ["2001 DAS Report"] at p. 1.)[5] However, as we will discuss, when viewed in its larger context, California's apprenticeship system is in reality a thriving *partnership* among industry, labor, the education community, and a wide variety of government actors. (*Ibid.*)

1. Overview of California Apprenticeship Training

The industries and employers who voluntarily sponsor California apprenticeship programs find the current system of apprenticeship training to be efficient and cost effective because it eliminates the need for expensive recruitment programs; creates a diversified, flexible, and highly-motivated pool of employees with specific desired skills; and reduces costs associated with high labor turnover. (2001 DAS Report, at p. 1.) Employees develop high morale and company loyalty while participating in apprenticeship programs that offer upward mobility through career development, and adapt to include training of new skills in demand by industry. (*Ibid.*) Apprenticeship programs create opportunities not only for young Californians seeking a career path, but also for displaced and underemployed workers. (See Cal. Research Bureau (CRB No. 01-012, Nov. 2001) *California's Job Training, Employment, and Vocational Education Programs* at pp. 1-2, 28, 36-37, 42-43 ["2001 CRB Job Training Report"].)[6]

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[4] This report can be found on the website of the Bureau of Labor Statistics, at http://www.bls.gov/news.release/cfoi.nr0.htm.

[5] This and other annual reports can be found on the DAS website at: http://www.dir.ca.gov/DAS/DASAnnualReport2001/LegRep2001.pdf.

[6] This report can be found on the California Research Bureau's website at http://www.library.ca.gov/crb/01/14/01-014.pdf.

2. The Role of the Apprenticeship Program Sponsor

Single employers, employer associations, or jointly sponsored labor-management associations such as the JATCs may sponsor apprenticeship programs in California. (Cal. Lab. Code, §3075.) Program sponsors are responsible for developing apprenticeship program standards (Cal. Code Regs., tit. 8, §212.2), and for the overall administration and operation of the apprenticeship program. (*Id.*, §218). Program standards must contain procedures for fair and equal selection, employment, and training of apprentices. (Cal. Lab. Code, §3076.3; Cal. Code Regs., tit. 8, §215.) Program sponsors also evaluate worksite conditions, determine the availability of facilities, review equipment, identify skilled workers to serve as trainers, and schedule work processes through which the apprentice is rotated for training. (Cal. Code Regs., tit. 8, §218; and see Cal. Dept. of Ed. (2003) *A Snapshot of Apprenticeship in California* ["2003 CDE *Snapshot of Apprenticeship*"] at p. 1.)[7]

Program sponsors share the responsibility with local education agencies ("LEAs") to ensure that industry standards are integrated into both on-the-job training and related and supplemental instruction content. (2003 CDE *Snapshot of Apprenticeship* at p. 1.) Program sponsors and LEA representatives monitor and update this curriculum-workplace linkage, identify changes necessary to keep the program current, and provide information on growth and projections of training needs in the industry. (*Ibid.*)

Program sponsors select apprentices according to procedures set forth in the program standards. Each candidate enters into an apprentice agreement with the State-approved program, and becomes a "registered apprentice" upon submission of the agreement to and approval by DAS. (Cal. Code Regs., tit. 8, §206(a).) The program sponsor oversees an apprentice's on-the-job training and attendance at related classes, and periodically reviews the apprentice's progress before recommending advancement to the next pay level. (See Cal. Code Regs., tit. 8, §212.2(a).) The program sponsor also recommends to DAS that a

[7] The 2003 CDE *Snapshot of Apprenticeship* can be found on the CDE website at http://www.cde.ca.gov/ci/apprenticeship/snapshot.pdf.

Certificate of Completion of Apprenticeship be awarded when the apprentice has satisfactorily completed the entire program of on-the-job training and related and supplemental instruction. (Cal. Code Regs., tit. 8, §224; and see 2003 CDE *Snapshot of Apprenticeship* at p. 2.) The certificate is recognized by industry as "a valid indicator that the holder has received high-quality, standardized, and consistent training and is prepared to work as a journeyman." (2003 CDE *Snapshot of Apprenticeship* at p. 2.)

3. **Related and Supplemental Instruction**

Individual apprenticeship programs span a period of one to six years, with most being 4-year programs. (SBCTC, *Building California Construction Careers: How Apprenticeship Programs Operate*, at p. 2.)[8] Because of the growing importance of technical information, academic skills, and the ability to make sound technical judgments, formal classroom instruction tied to on-the-job training is an integral part of every California apprenticeship program. (2003 CDE *Snapshot of Apprenticeship* at p. 1.)

Related and supplemental instruction is the joint responsibility of the LEAs and program sponsors. (Cal. Lab. Code, §3074; and see 2003 CDE *Snapshot of Apprenticeship*, at p. 1.) Regional occupational centers, community colleges, and adult schools, along with apprenticeship committees or other program sponsors, provide much of the required classroom-based supplemental instruction. (2003 CDE *Snapshot of Apprenticeship*, at p. 1.)

Funding for related and supplemental instruction is provided primarily by the apprenticeship program sponsors. (See Cal. Lab. Code, §3074; Cal. Code Regs., tit. 8, §235 et seq.) Since 1970, however, supplemental funding has been available for this purpose through California's annual Budget Act. (Ed. Code, §§8150 et seq.) For example, in the 2001-2002 Budget Act, this funding—which is administered by the CDE , and is commonly known as "Montoya Act" funding—amounted to approximately $15.5 million, and supported the education of 26,579 apprentices statewide. (See Cal. Dept. of Ed., *Mandated*

[8] This document can be found on SBCTC's website at http://www.buildingc3.com/ietm.asp?id=71.

Apprenticeship Related and Supplemental Instruction Programs, 2001-2002, at p. 5.)[9] Distributions to approved LEAs are provided throughout the fiscal year, based on pre-established funding limits and actual apprentice attendance in related and supplemental instruction courses. (Ed. Code, §§8150 & 8152, subd. (d).)

4. General Benefits of Apprenticeship

As the CDE has stated, "Apprenticeship's beneficial impact on California's educational system, workforce and overall economy is huge." (Cal. Dept. of Ed. (2004), *Apprenticeship* ["CDE *Apprenticeship*"] at p. 1.)[10] In particular, apprenticeship offers significant advantages to the apprentices themselves, such as:

- Training to meet the needs of new and emerging crafts and trades
- Curriculum and training tied to industry-supported standards
- Training to achieve certification as a journeyman
- Increased earning power; wages and benefits that can lead to financial independence
- Motivation and resources for continuing education

(See 2003 CDE *Snapshot of Apprenticeship* at p. 2.) These benefits are especially important to the many adolescents and young adults in California who do not go to four-year colleges.

Apprenticeship programs also offer great benefits to both LEAs and the statewide educational system in California, such as:

- Purposeful links with employer and labor representatives
- Updated curriculum developed by involved and motivated advisory committee members
- Alternatives to student retention, motivation, and career pathway dilemmas
- Real linkages to curriculum integration
- Non-traditional career opportunities for women and other minorities.

(2003 CDE *Snapshot of Apprenticeship* at p. 2.)

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[9] This report to the Department of Finance can be found on the CDE website at http://www.cde.ca.gov/ci/apprenticeship/report.html.

[10] This document can be found on the CDE website at http://www.cde.ca.gov/ci/apprenticeship/.

C. REGULATORY OVERSIGHT OF APPRENTICESHIP IN CALIFORNIA

Since the founding of the American republic, the States have regulated training programs for individuals seeking to enter skilled crafts, in order to prevent their exploitation by employers. (*Associated Builders and Contractors of Southern California, Inc. v. Nunn* (9th Cir. 2004) 356 F.3d 979, 982 ["*ABC v. Nunn*"], citing *W.J. Rorabaugh, The Craft Apprentice: From Franklin to the Machine Age in America* (1986).) California has regulated apprenticeships since at least 1858, when the Legislature enacted a statute that, inter alia, required masters to offer apprentices a basic education. (Stats. 1858, ch. 182, pp. 134-37, codified as Civ. Code, former §§264-274.) However, most of the laws governing apprenticeship training and employment in California were enacted in the late 1930s and thereafter.

1. Statutory Framework for the Regulation of Apprenticeship in California.

In 1937, Congress enacted the National Apprenticeship Act, commonly known as the "Fitzgerald Act," 29 U.S.C. §50 et seq., to encourage the development of modern apprenticeship programs to be administered by the U.S. Department of Labor. The Fitzgerald Act, on its face, describes a *cooperative* state-federal partnership to "safeguard the welfare of apprentices," as follows:

> The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with section 17 of title 20....

(29 U.S.C. §50.) As is obvious from the face of the Fitzgerald Act, Congress intended that the Secretary would have only limited authority in the area of apprenticeship regulation, and that he or she would be required to "cooperate" with the States labor agencies, which had begun to police apprenticeship programs and practices long before the Fitzgerald Act was enacted. (See *ABC v.*

Nunn, supra, 356 F.3d at p. 382.) Since February 13, 1978, the federal government has recognized CDIR program approvals as approvals for federal purposes as well. (See 29 C.F.R. §29.12(a); and see Parties' Joint Stipulation of Facts ["Joint Stipulation"] at p. 6, ¶14.)

Of course, California was in the business of regulating apprenticeship long before the federal government came on the scene—arguably as early as 1858, when the Legislature enacted a statute that, among other things, required masters to offer apprentices a basic education. (See *ABC v. Nunn, supra*, 356 F.3d at p. 382, citing Stats. 1858, ch. 182, pp. 134-37.) However, in response to the Fitzgerald Act, the California Legislature passed the Shelley-Maloney Apprentice Labor Standards Act of 1939 ("Shelley-Maloney Act"), which created the statutory framework that governs apprenticeship in California to this day. (Stats. 1939, ch. 220; *codified as amended at* Lab. Code, §3070 et seq.) The version of Labor Code section 3075 originally codified by the Shelley-Maloney Act in 1939 contained the "needs test" at issue in this case, as follows:

> Local or State joint apprenticeship committees may be selected by the employer and employee organizations, in any trade in the State or in a city or trade area, whenever the apprentice training needs of such trade justifies such establishment. Such joint apprenticeship committees shall be composed of an equal number of employer and employee representatives.

(Stats. 1939, ch. 220, §2; see Exh. A, attached hereto.) California also adopted its own apprenticeship regulations (Cal. Code Regs., tit. 8, §200 et seq.), which are "substantively similar" to the federal standards. (*California Div. Of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.* (1997) 519 U.S. 316, 320-321 ["*Dillingham Construction*"].)

In 1999, the California Legislature amended Labor Code section 3075 to more clearly and specifically define the "needs test," which had by then been a core element of California apprenticeship law for 60 years. In relevant part, as amended in 1999, Labor Code section 3075 provides:

> (a) An apprenticeship program may be administered by a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer. Programs may be approved by

the chief in any trade in the state or in a city or trade area, *whenever the apprentice training needs justify the establishment*....

(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.

(c) Notwithstanding subdivision (b), the California Apprenticeship Council may approve a new apprenticeship program if *special circumstances*, as established by regulation, justify the establishment of the program.

When the California Legislature adopted the new provisions of Labor Code section 3075 in 1999, it clearly articulated its purpose, as follows:

> The Legislature finds and declares that apprenticeship programs are a vital part of the educational system in California. It is the purpose and goal of this legislation to strengthen the regulation of apprenticeship programs in California, to ensure that all apprenticeship programs approved under Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code *meet the high standards necessary to prepare apprentices for the workplaces of the future and to prevent the exploitation of apprentices by employers or apprenticeship programs*....

(Stats. 1999, ch. 903, §1 ["preamble to AB 921"], italics added.)

The overarching purpose of California's regulatory scheme for apprenticeship is to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their

opportunities for profitable employment...." (Cal. Lab. Code, §3073.) To fulfill these goals, California offers a variety of incentives to encourage apprenticeship programs to seek State approval, which can be obtained if the programs comply with specified State standards. (Cal. Code Regs., tit. 8, §212.) Among the incentives offered to State-approved programs are direct financial subsidies for the training they provide. (Cal. Lab. Code, §§3074, 3074.7; Ed. Code, §§8150, 8152.) In addition, an apprentice who completes a State-approved training program obtains a "Certificate of Completion of Apprenticeship" naming him or her a skilled journeyman in the chosen trade, thereby increasing his or her marketability. (Cal. Code Regs., tit. 8, §224.)

2. Administrative Approval of Apprenticeship Programs

Pursuant to the Shelley-Maloney Act, apprenticeship training is administered by DAS, which is under the auspices of CDIR. (Cal. Lab. Code, §§56, 3073.) The Chief of DAS administers the apprenticeship laws, acts as secretary of the CAC, and is empowered to investigate and approve or disapprove written standards for apprenticeship programs. (Cal. Lab. Code, §§3073, 3075, 3090; Cal. Code Regs., tit. 8, §§212, 212.1.)

The CAC oversees the administration of State-approved apprenticeship programs by DAS. (Cal. Lab. Code, §§3070–3098; Cal. Code Regs., tit. 8, §§200–212.4.) The CAC consists of six members representing employers, six members representing employees or unions, and two members representing the general public, all appointed by the Governor. (Cal. Lab. Code, §3070.) There are also three ex officio members on the CAC—the Director of Industrial Relations (hereafter, "the Director"), the Superintendent of Public Instruction, and the Chancellor of the California Community Colleges. (*Ibid.*) The CAC meets at least quarterly and issues rules and regulations which establish "apprenticeship standards," i.e., minimum wages, maximum hours, and working conditions for apprenticeship agreements, equal opportunity and affirmative action requirements for apprenticeship programs, and criteria for selection procedures for apprentices. (Cal. Lab. Code, §3071.)

The process by which an apprenticeship program becomes "registered" for state and federal purposes begins when a program sponsor submits written program standards to the Chief of DAS for approval. (Cal. Code Regs., tit. 8, §212.) A detailed list of subjects and specifications that must be addressed in a program's standards in order for the program to be approved is set forth in California Code of Regulations, title 8, section 212. California apprenticeship programs are not restricted to a local area of coverage; they may initially choose to provide for regional or statewide coverage in their standards (*id.*, §218), and most programs do so (see 2001 DAS Report, Exh. 5, Table 3).

Under the applicable regulations, two types of apprenticeship programs are eligible for state approval and registration: Joint apprenticeship programs are collaborative ventures between unions and employers; and unilateral programs are run by employers without union involvement. (Cal. Lab. Code, §3075; Cal. Code Regs., tit. 8, §§205(g), 206(a)-(b).) As of 2001, there were approximately 28 State-approved unilateral programs, enrolling approximately 5,400 apprentices. Joint apprenticeship programs train a larger proportion of California's registered apprentices. As of 2001, there were 195 active State-approved joint apprenticeship programs in the building and construction trades, enrolling approximately 43,500 apprentices. (2001 DAS Report, Exhs. 5, 6; and see *ABC v. Nunn, supra*, 356 F.3d at p. 383.) By March 2003, there were 210 joint and 37 unilateral apprenticeship programs registered in the construction trades, with approximately 42,800 apprentices enrolled in the joint programs, and 4,700 apprentices enrolled in unilateral programs. (See Joint Stipulation at p. 4, ¶7.)

Labor Code section 3075 has conditioned approval of apprenticeship programs on a finding of local need for the program since 1939 when the Shelley-Maloney Act was originally enacted. Thus, before approving a new apprenticeship program or a geographical expansion of an existing program, the Chief of DAS must give notice of the proposed standards to the sponsor of each existing program in the same occupation and in the relevant labor market area. (*Independent Roofing Contractors of California v. California Apprenticeship Council* (2004) 114 Cal.App.4th 1330, 1336-1337 [hereafter, "*IRCC v. CAC*"];

Cal. Code Regs., tit. 8, §212.2(g), (h).) Existing apprenticeship programs have the right to comment on an approval by DAS of a proposed program, to have their comments considered by the Chief of DAS, and to receive a copy of the Chief's decision on the proposed program. (*IRCC v. CAC*, *supra*, 114 Cal.App.4th at p. 1334-1335; Cal. Code Regs., tit. 8, §212.2(g), (h), (i).) Contrary to the arguments of OATELS's amici, however, existing programs do not have a "veto power" over proposals for new or expanded apprenticeship programs. (See *ibid.*)

The Chief's initial decision to approve or disapprove the proposed program standards is subject to review by the CAC in an appeal procedure authorized by California Code of Regulations, title 8, section 212.2(k)–(m). (*IRCC v. CAC*, *supra*, 114 Cal.App.4th at p. 1334-1335.) The CAC has the final authority to approve or disapprove apprenticeship programs. (Cal. Lab. Code, §§3071, 3078(j); Cal. Code Regs., tit. 8, §§212.2(k)–(m); see also *IRCC v. CAC*, *supra*, 114 Cal.App.4th at p. 1334-1335, 1337-1338.) The CAC's determination is subject to judicial review pursuant to California Code of Civil Procedure section 1094.5.

3. Additional Regulations Governing California Apprenticeship Programs

Recent legislation strengthens the regulation of apprenticeship programs in California by providing for DAS audits of State-approved programs to ensure they meet the high standards necessary for preparing apprentices for the workplaces of the future, and to prevent the exploitation of apprentices by employers or program sponsors. (Cal. Lab. Code, §3073.1, 3073.2; Cal. Code Regs., tit. 8, §212.3(d)-(h); and see Stats. 1999, ch. 903, §1 [statement of legislative intent in AB 921].) DAS is also required to verify apprentice registration and status, and enforces requirements of Labor Code section 1777.5 governing the employment of apprentices on all public works projects. (Cal. Lab. Code, §1777.7; Cal. Code Regs., tit. 8, §§231, 232.) DAS monitors these projects by investigating complaints filed with the division. (Cal. Code Regs., tit. 8, §231(a), (b).) When an investigation reveals a violation of the law, DAS may assess a civil penalty or debarment for up to three years, depending upon the seriousness or recurrence of the violation. (*Id.*, subd. (e).)

The DAS investigations unit also handles complaints or appeals filed by apprentices regarding their program sponsors. The CAC has the final authority to rule on complaints that an apprenticeship program is in violation of its standards or an apprenticeship agreement. (Cal. Lab. Code, §§3081-3083; Cal. Code Regs., tit. 8, §§201–203; see also *IRCC v. CAC, supra*, 114 Cal.App.4th at pp. 1334,1336.) To the JATC amici's knowledge, there is no corresponding mechanism established by OATELS for handling complaints by apprentices against the California apprenticeship programs recently approved by OATELS for federal purposes.

D. EMPLOYMENT OF APPRENTICES ON "PUBLIC WORKS" PROJECTS IN CALIFORNIA

Since 1939, with the enactment of the Shelley-Maloney Act, it has been the public policy of the State of California to foster and promote apprenticeship by requiring the employment of apprentices on public works jobs constructed with the use of public funds. (See, e.g., *Southern Cal. Chapter of Assoc. Builders and Contractors, Inc. v. Cal. Apprenticeship Council* (1992) 4 Cal.4th 422, 428-29, 432-434 [*"Southern California ABC v. CAC"*].) In that regard, Labor Code section 1777.5, subdivision (d), requires that:

> "When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section..."

Contractors and subcontractors on public works projects are required to employ apprentices in a ratio of no less than one hour of apprentice work for every five hours of work performed by a journeyman. (Cal. Lab. Code, §1777.5, subd. (g); Cal. Code Regs., tit. 8, §230.1(a).)[11] Public works contractors must request apprentices through any State-approved JATC or unilateral program in the geographical area in which the work is being performed. (Cal. Code Regs., tit. 8,

[11] In limited circumstances—e.g., where necessary to maintain a fair balance between apprenticeship training and employment opportunities for journeymen in the labor market area, or where the assignment of an apprentice to perform work on a public works project would jeopardize his or her life, or the life, safety, or property of fellow employees or the public at large—contractors may secure an exemption from this requirement. (See Cal. Lab. Code, §1777.5, subd. (k).)

§230.1(a).) If an apprenticeship program does not or cannot provide apprentices, the employer must request apprentices from other approved programs until it is satisfied it cannot get apprentices in the relevant trade or craft. (*Ibid.*)

Apprentices employed on public works must at all times work with or under the direct supervision of a qualified journeyman, and the on-the-job training must be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training. (Cal. Code Regs., tit. 8, §230.1(c); see also *id.*, §210 [requirement that apprentices work under competent journeymen so that they obtain the diversified on-the-job training provided for in the apprenticeship standards].)

E. THE INSTANT DERECOGNITION PROCEEDINGS

In January 2001, OATELS first advised CDIR that "needs test" in Labor Code section 3075 appeared to be contrary to federal requirements, and asked CDIR to justify it.[12] In May 2002, after 15 months of "consultation" and unsuccessful attempts at informal resolution of the matter, OATELS began these derecognition proceedings—the first ever against *any* SAC—against CDIR. (Joint Stipulation at p. 9, ¶20.) In April 2003, OATELS began a separate derecognition proceedings against the CAC. The two derecognition proceedings were subsequently consolidated.

OATELS suggests that its decision to derecognize the California SAC is based in large part on a claim that only four new or expanded unilateral programs have been approved by CDIR "in the almost five years since the needs test became effective" with the amendment of Labor Code section 3075 in 1999. (See Joint Stipulation at pp. 8-9, ¶18 & fn. 5.) However, OATELS offers no statistics or other evidence to place those approvals in their proper context—i.e., to explain whether that rate and truncated "pattern" of approvals of unilateral programs compares favorably or unfavorably with approvals of JATC-sponsored programs

[12] OATELS contends that it notified CDIR in January 2001 about problems with the "needs test" after investigating "complaints" it had received from "many California non-union construction contractors." (OATELS's Motion for Summary Decision ["OATELS's MSD"] at page 6.) Curiously, however, all of the complaints identified in OATELS's brief are dated *after* OATELS began its "consultation" with CDIR. (See *ibid.*)

during the same period, or with approvals of either type of program prior to the passage of AB 921 in 1999. Tellingly, OATELS has also failed to present any evidence that *any* program—whether sponsored by a JATC or by a unilateral apprenticeship committee—has been denied approval of standards proposed for a new or expanded program *based on the "needs test"* at any time in the past five years or, for that matter, in the past decade.

In August 2003, without waiting for an administrative or court ruling in these derecognition proceedings, OATELS began to "concurrently" register local apprenticeship programs in California for federal purposes only. (Joint Stipulation at p. 9, ¶19.) Over the following year, OATELS registered 17 new or expanded unilateral apprenticeship programs and 2 new or expanded joint programs. (*Ibid.*) CDIR had previously declined to approve the standards proposed for an expansion of one of those union programs—sponsored by the Southern California Carpentry JATC—because the proposed program did not have sufficient training hours to turn out qualified journeymen in crafts. (See Declaration of Sandra Rae Benson ["Benson Decl."] at ¶ 7. Records produced by OATELS in response to a federal Freedom of Information Act request indicate that OATELS is performing only the most cursory review of the standards submitted by the California programs it has registered for federal purposes since August 2003. (See Benson Decl. at ¶¶ 2-6; and Exhibits 3, 4 to same.) OATELS also has recently informed CDIR that it will insist that apprentices enrolled in any program it has registered for federal purpose be allowed to work at the reduced apprentice prevailing wage rate on all public works projects, including those of State and local municipalities, that are funded in any amount, however small, with federal funding. (Benson Decl. at ¶ 8-9; and Exhibits 5, 6 to same.)

III. ARGUMENT

OATELS asserts two grounds for derecognition of CDIR and CAC as its agents to register local apprenticeship programs for federal purposes—i.e., as a SAC within the meaning of 29 C.F.R., title 29. (See Joint Stipulation at pp. 9-10, ¶21.) First, OATELS contends that the "needs test" found in California Labor Code section 3075 "violates" the Fitzgerald Act (29 U.S.C. §50 et seq.), and the

applicable federal regulations (29 C.F.R., §29.1 et seq.), ostensibly because it limits rather than promotes apprenticeship opportunities in the construction trades in California. Second, OATELS contends that even if the "needs test" is *entirely consistent with* the Fitzgerald Act and its implementing regulations, derecognition is warranted simply because CDIR failed to obtain "prior approval" from OATELS before Labor Code section 3075 was amended by the California Legislature in 1999, with the passage of AB 921, to more clearly and specifically define the "needs test." (See Stats. 1999, ch. 903, §7, codifying Cal. Lab. Code, §3075, subds. (a), (b), (c).)

CDIR has ably briefed these issues. However, the JATC Amici believe there are additional arguments that will assist the ALJ in deciding the merits of the parties' cross-motions for summary judgment.

A. THE LABOR CODE SECTION 3075 "NEEDS TEST" HAS BEEN A FEATURE OF CALIFORNIA LAW SINCE 1939, AND WAS BASED ON A MODEL STATUTE DEVELOPED BY DOL ITSELF.

Both OATELS and its amici appear to be laboring under the misapprehension that the so-called "needs test" challenged in this proceeding first appeared in the California Labor Code in 1976, or in 1999 with the passage of AB 921. This is simply untrue. In fact, California has conditioned approval of apprenticeship programs on a finding of local "need" for the program for over 65 years, ever since the Shelley-Maloney Act was adopted as the law of this State. (Stats. 1939, ch. 220, §2, p. 1473.) As we have noted, the 1939 version of Labor Code section 3075 originally codified in the Shelley-Maloney Act contained language establishing a "needs" requirement which closely tracks that found in Labor Code section 3075(a) today, as follows:

> Local or State joint apprenticeship committees may be selected by the employer and employee organizations, in any trade in the State or in a city or trade area, *whenever the apprentice training needs of such trade justifies [sic] such establishment*. Such joint apprenticeship committees shall be composed of an equal number of employer and employee representatives.

(Stats. 1939, ch. 220, §2.) Moreover, Labor Code section 3075 contained the identical language in 1978, when BAT first "recognized" CDIR as a SAC, i.e., as

the federal registration agent for California apprenticeship programs. (See Joint Stipulation at pp. 6-7, ¶¶13-14.)

Significantly, as CDIR points out (Respondent's MSJ at p. 21), this "training needs" language was *not* a creation of the California Legislature in the first place. Rather, the original version of Labor Code section 3075 was based on (and even perpetuated the ungrammatical phrasing of) a "Model State Law" developed and proposed by DOL's Federal Committee on Apprenticeship back in 1939, which provided:

> A local joint apprenticeship Committee shall be appointed, in any trade or group of trades in a city or trade area, by the Apprenticeship Council, *whenever the apprenticeship training needs justifies [sic] such establishment.*

(See G. Abbott, The Child and the State, at p. 250.)

In light of this history, it strains credulity to suggest, as OATELS does, that California's "needs test" is, all of a sudden, inconsistent with the Fitzgerald Act and its implementing regulations. On the contrary, the genesis of Labor Code section 3075, coupled with the legislative history recounted by CDIR (Respondent's MSJ at pp. 20-21), amply support a conclusion that the California "needs test" is entirely consistent with the Fitzgerald Act and its implementing regulations.. and that it is DOL's position on this now-politicized issue that has suddenly changed—not California's.

Of course, OATELS's investigation and complaint against California ostensibly arose because of the recent amendments to Labor Code section 3075, which were enacted as part of AB 921 in 1999. (Stats. 1999, ch. 903, §7.) In relevant part, Labor Code Section 3075, as amended in 1999, provides that:

> (a) Programs may be approved by the chief in any trade in the state or in a city or trade area, *whenever the apprentice training needs justify the establishment....*
>
> (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.

(c) Notwithstanding subdivision (b), the California Apprenticeship Council may approve a new apprenticeship program if special circumstances, as established by regulation, justify the establishment of the program.

The focus of OATELS's wrath, and that of its amici, is subdivision (b) of Labor Code section 3075, in which the California Legislature attempted to clarify and more specifically define the otherwise well-established statutory "needs test" in the aftermath of a series of ERISA preemption decisions that initially cast doubt on, but eventually upheld the California scheme for regulating apprenticeship programs in all respects material to the decision in this case. (See *Dillingham Construction, supra,* 519 U.S. at pp. 838-842.)[13] In particular, Labor Code section 3075(b) provides that apprenticeship training needs will be found to justify the establishment of a new program under any one of three conditions: (1) where there is no existing program in the same craft or trade in the same

[13] All of the cases cited in ABC-National's amicus brief, at pages 5-6 and 10-11, pre-date the decision of the United States Supreme Court in *Dillingham Construction, supra,* 519 U.S. 316, and apply a sweeping form of ERISA preemption analysis to various state laws governing apprenticeship training programs that was thoroughly discredited in *Dillingham Construction.* (See 519 U.S. at pp. 838-842 & fn. 12 [interpreting 29 U.S.C. §1144(d), regarding preemption of state laws that "relate to" employee benefit plans" as *not* requiring preemption of apprentice hiring and pay provisions of California's prevailing wage law].) Similarly, the case law cited in the joint brief of several local Southern California chapters of ABC, at pages 6-7, either pre-date *Dillingham Construction* or fail to appreciate how profoundly that Supreme Court decision re-shaped the law of ERISA preemption as it pertains to apprenticeship training programs. Thus, *all of the legal authority cited by the ABC amici* is of questionable precedential value. ERISA preemption is not, in any event, at issue in these derecognition proceedings.

geographic area; (2) where existing programs lack capacity, or fail or refuse to dispatch qualified apprentices; or (3) where the CAC has determined that existing programs are deficient.

OATELS and its amici suggest that subdivision (b) somehow rendered Labor Code section 3075 more "restrictive" in 1999 than it had been before it was amended. But they offer no analysis or explanation to support this claim, and none readily appears from the face of the statute. Indeed, with no more than the usual sorts of minor drafting flaws that plague most new legislative enactments, subdivision (b) clearly describes the three most likely sets of circumstances in which CDIR and/or CAC may reasonably conclude that "apprentice training needs justify the establishment" of a new apprenticeship program.

OATELS and its amici utterly fail to offer any principled argument as to why they find the language of subdivision (b) so much more offensive than the language of Labor Code section 3075 before it was amended, much less why the 1999 amendments to the statute suddenly caused it to be out of "conformity" with the Fitzgerald Act and 29 C.F.R., title 29. They do not, for example, suggest that there were other factors the Legislature should have, but did not, include as being sufficient to support a finding of "need" for a new apprenticeship program. Rather, OATELS and their amici object to the statutory "needs test" itself—a test which has been in Labor Code section 3075 throughout the 65-year period in which California has regulated apprenticeship, as well as the 25-year period in which CDIR and CAC have operated with DOL's blessing as its agents for registration of apprenticeship programs for federal purposes. OATELS and its amici also completely overlook subdivision (c), which creates an exception to the needs test, for "special circumstances" warranting approval of a new apprenticeship program in the absence of a showing of "need."[14]

[14] Proposed regulations to define "special circumstances" are currently pending before CAC. (http://www.dir.ca.gov/das/DasRegulations/CACRegsNeed212_5230d.html.)

B. THERE IS NO FACTUAL BASIS FOR OATELS'S CLAIM THAT THE "NEEDS TEST" IN LABOR CODE SECTION 3075 LIMITS APPRENTICESHIP OPPORTUNITIES.

Setting aside for the moment DOL's failure to object to any version of the "needs test" in Labor Code section 3075 for more than 60 years after it was first established as the law of California, and for more than 20 years after the BAT apparently found the "needs test" to be consistent with the Fitzgerald Act and its implementing regulations when it anointed CDIR and CAC as its agents to register California apprenticeship programs for federal purposes, OATELS's *bona fides* in initiating this prosecution may be called into doubt for a more fundamental reason: OATELS has not presented *any* relevant evidence to support its claim that the "needs test" in Labor Code section 3075 has actually "limited" apprenticeship opportunities in California in any way—whether by preventing approval of unilateral apprenticeship programs, or otherwise. Indeed, this claim is based on nothing more than rank speculation laced with hyperbolic adverbs,[15] and hypothetical doomsday scenarios, none of which have materialized in the five years since AB 921 was enacted. More specifically, there is *no showing* in this case that any program—joint or unilateral—has been denied approval *based on the "needs test"* for more than a decade. Thus, OATELS has not even made out a prima facie case for derecognition on grounds that the needs test "limits rather than promotes" apprenticeship opportunities.

In its amicus brief, the Western Electrical Contractors Association ("WECA") suggests that *its* experience as a unilateral apprenticeship program supports OATELS's claim that Labor Code section 3075 "severely limits"

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[15] For example, OATELS repeatedly asserts—without evidentiary support—that the needs test "severely" restricts registration of new apprenticeship programs, "generally" bars approval of new or expanded programs, "severely" restricts a prospective apprentice's career options, and "sharply" or "drastically restricts" the number of contractors who qualify to pay the lower apprenticeship wage on federal public works projects. (See OATELS MSD at pp. 26-32.) OATELS also uses a lot of dramatic verbs, apparently hoping that bold language—about how the needs test "discourag[es]" the formation or "block[s]" the approval of, and "economically strangles" unilateral programs, or "forces" non-union contractors to become unionized, and has "virtually shut down" state registration of new and expanded unilateral apprenticeship programs in California—will substitute for actual proof of its case for derecognition. (*Ibid.*)

apprenticeship opportunities in California, but its argument on this point is misleading. WECA's proposal to expand its commercial electrician apprenticeship program was initially approved by the Chief of DAS in 1997. However, as WECA admits (WECA amicus brief at pp. 6-7), that approval was reversed in April 2003 because the Chief of DAS failed to comply with the "notice and comment" requirements in California Code of Regulations, title 8, section 212.2, just as she had in another case that was recently decided by the California Court of Appeal in a published decision. (*See IRCC v. CAC, supra*, 114 Cal.App.4th at p. 1330.) In other words, the reversal in the WECA case had *nothing whatsoever* to do with the "needs test." Although WECA doesn't like the "notice and comment" regulations either, those provisions are simply *not* at issue in the instant prosecution. At bottom, WECA's amicus brief demonstrates only that WECA would prefer that the federal government take over the *entire* role of the CAC in all aspects of apprenticeship governance.

OATELS suggests, however, that just having Labor Code section 3075 on the books has the effect of discriminating against non-union programs. Again, OATELS offers no statistics or other admissible evidence to substantiate this claim and, indeed, none exists.[16] In point of fact, the CAC will not approve *any* California apprenticeship program—whether union or non-union—unless the proposal meets the *quality* standards established by the California Labor Code and the California Code of Regulations. For example, the last set of apprenticeship program standards disapproved by CDIR were those proposed in 2004 by the Southern California Carpentry JATC in an effort to expand its *union-sponsored* program to include plasterers and drywall finishers. (See Benson Decl. at ¶ 7.) This request was denied by CAC because the proposed *union* program did not have sufficient training hours to turn out qualified journeymen in either craft. At

[16] OATELS cites, but does not explain the significance of a large volume of "complaints" about the 1999 amendments to Labor Code section 3075 it claims to have received from non-union construction contractors—albeit complaints that all appear to *post*-date OATELS's January 2001 notice to CDIR of impending derecognition proceedings against the California SAC. (See OATELS MSD at p. 6.) The hearsay opinions of the non-union contractors contained in these "complaints" are hardly competent evidence to support a claim of inconsistency of the "needs test" with the Fitzgerald Act and its implementing regulations.

most, OATELS asserts a nebulous "perception" of discrimination, without backing up that claim with admissible evidence. As a matter of fundamental fairness, OATELS should be required to prove its case with more than mere speculation.

Interestingly, OATELS later approved the proposed Carpenters program, despite the training deficiencies reflected in the program standards. This undisputed fact strongly suggests that OATELS is not doing any quality investigation or quality control of the programs they are approving. It is simply approving any program application for any employer or group of employers that wants its own program, on a pro forma basis. It is exceedingly difficult to see how OATELS's "quantity over quality" philosophy regarding program approvals "promotes apprenticeship opportunities," much less how it can be reconciled with the Secretary's duty under the Fitzgerald Act to "promote the furtherance of labor standards necessary to safeguard the welfare of apprentices." (29 U.S.C. §50.)

One final bit of "proof" OATELS and its amici offer in support of their claim that Labor Code section 3075 "limits" apprenticeship opportunities, is a suggestion that, in a few instances, Labor Code section 3075 has caused or exacerbated a shortage of apprentices in certain trades—e.g., among electricians and communications workers. (Joint Stipulation at pp. 8-9, ¶18 & fn. 5.) With their single-minded focus on the perceived unlawfulness of the California SAC's conduct in adopting and/or implementing the statutory "needs test," however, OATELS and its amici completely overlook the obvious remedy for any "shortage" of apprentices that may result from the inability or refusal of existing programs to dispatch their apprentices to any particular jobsite or employer—one that is built right into the "needs test" itself. That is, if existing programs are unwilling or unable to dispatch sufficient numbers of qualified apprentices to work on non-union jobs, the "needs test" will be satisfied and, assuming they are willing to invest sufficient resources and able to meet the standards of *quality* upon which CDIR and CAC insist, non-union contractors and unilateral programs should have no problem obtaining approval for new or expanded programs to boost the supply of apprentices as necessary.

C. THE "NEEDS TEST" ENSURES THAT APPRENTICES CAN OBTAIN NECESSARY SKILLS IN A TIMELY FASHION THROUGH "REASONABLY CONTINUOUS EMPLOYMENT," UNDER CLEAR STANDARDS AND IN SAFE WORKING CONDITIONS, AND WILL NOT BE EXPLOITED AS A CHEAP SOURCE OF LABOR.

OATELS and its amici completely fail to appreciate how vitally important the California "needs test" is to the mission of "safeguarding the welfare of apprentices"—a purpose which is, or should be, shared by state and federal regulators alike. (See 29 U.S.C. §50; and cf. Cal. Lab. Code §3073.) Far from "limiting" apprenticeship opportunities in California, the "needs test" in Labor Code section 3075 has well served California apprentices, the state's construction industry, and the general public for more than 65 years by ensuring that apprentices in the building and construction trades obtain necessary skills through high-quality training, under safe working conditions and clearly-stated standards, with opportunities for "reasonably continuous employment" (Cal. Lab. Code, §3077-3078, Cal. Code Regs., tit. 8, §212; 29 C.F.R. §29.5(b)), and that they are not *exploited* by unscrupulous contractors as a cheap source of labor (see Stats. 1999, ch. 903, §1). Thus, on the merits, OATELS is simply wrong when it contends that by maintaining a statutory "needs test" for approval of new or expanded apprenticeship programs, California should be derecognized for failing to "fulfill or operate in conformity with the requirements of 29 C.F.R., title 29."

Specifically, the "needs test" in Labor Code section 3075 is important to avoid over-capacity of apprentices in particular crafts and trades for which there will not be available jobs when the apprentices graduate. Over-capacity also leads to unemployment and under-employment of apprentices during the apprenticeship period, so that many apprentices can't get sufficient work hours, or "reasonably continuous employment," in their later periods of apprenticeship, and end up dropping out of the programs because they can't support their families. The California SAC thus has a legitimate interest in restricting the expansion or development of new apprenticeship program to trades and geographic areas in which the training needs justify the approval; otherwise the promise of

opportunity extended by the programs will become a cruel hoax for the apprentices.

When an apprentice makes the decision to commit three, four or five years of his or her life to acquiring the skills necessary to obtain journeyperson status in a craft, and to work for reduced wages during the period of apprenticeship, the State—which certifies the program, registers the apprentice, and issues the journeyperson certificate—is at least impliedly representing that employment opportunities in that craft will be available upon the apprentice's graduation. When there is an unregulated proliferation of apprenticeship programs in the same craft or trade and in the same geographic area, there will be more apprentices in training than there are jobs available.

The CAC has the obligation to ensure that apprentices are provided with the opportunity for "reasonably continuous employment." (Cal. Code Regs., tit. 8, §212 (14).) Approval of new apprenticeship programs serving the same geographical areas and occupations would only exacerbate unemployment and under-employment problems, and limit the ability of the existing apprentices to gain employment, and remain employed, and thus advance through their apprenticeship. Apprentices abandoning the apprenticeship curriculum because of an "over-capacity" of apprentices in relation to the needs of the industry also results in *less qualified* journeymen rather than more, an anomaly that defeats the very purpose of the California apprenticeship scheme.

Finally, unlike the federal government, California actually invests significant public resources to support and oversee the operations of State-approved apprenticeship programs. Regional occupational centers, community colleges, and adult schools provide much of the required classroom-based supplemental instruction. (2003 *CDE Snapshot of Apprenticeship*, at p. 1.) California also supplements the funding provided by program sponsors for related and supplemental instruction with public money—the so-called "Montoya funds"—which is appropriated in its annual Budget Act and administered by CDE. (Ed. Code, §§8150 et seq.) It would be a waste of these scarce public funds if they were to be diluted to the point that they could no longer support

quality apprenticeship training solely because they are spread among many, unneeded programs.

D. TO THE EXTENT OATELS IS USING THIS PROSECUTION TO FORCE CALIFORNIA TO LOWER ITS STANDARDS FOR APPROVING APPRENTICESHIP PROGRAMS FOR "STATE PURPOSES," OATELS IS ACTING IN EXCESS OF ITS AUTHORITY.

Upon careful consideration of the parties' cross-motions for summary judgment, it soon becomes clear that this prosecution is really not about the "needs test" at all. As discussed herein and in CDIR's moving papers, the legal grounds asserted to justify derecognition are so thin as to be frivolous, and OATELS has utterly failed to support them with admissible evidence in any event. Thus, the temptation to look for extralegal explanations for this prosecution is irresistible.

One possibility is that this entire proceeding is simply OATELS' attempt to placate special interest groups, i.e., non-union contractors such as those represented in the ABC amici organizations, who have a philosophical aversion to dealing with Unions and don't want to have to hire well-qualified apprentices from programs sponsored by JATCs. If so, the ALJ should promptly grant CDIR's motion for summary judgment and put an end to this ill-advised prosecution. Such "philosophical" considerations cannot be permitted to serve as a substitute for legal grounds for withdrawing recognition from the California SAC. (Cf. *Associated Builders and Contractors, Inc. v. San Francisco Airport Commission, supra,* 21 Cal.4th at pp. 380-381 [philosophical objections of "merit-shop contractor" did not provide legal basis for invalidating use of project stabilization agreement in connection with project to expand and renovate San Francisco International Airport].)

Even assuming that OATELS is pursuing this prosecution in good faith to carry out the Secretary's responsibilities under the Fitzgerald Act, it should be rebuffed in this effort, both as a matter of law and in faithfulness to the principles of federalism underpinning the federal and State apprenticeship statutes. The heart of OATELS's case appears to be that California is too stingy in approving

apprenticeship training programs and that the preference for "quality over quantity" embodied in the Labor Code section 3075 "needs test" somehow does violence to legitimate federal interests. However, correcting any restrictiveness on the part of CDIR and CAC in this regard—whether for the benefit of unilateral programs or joint programs or both—is simply not a matter of federal concern. If OATELS believes California's standards for approving apprenticeship programs are too high, or that there is a shortage of apprenticeship programs to meet the needs of contractors on federally funded construction projects, its remedy is one of which it has already availed itself. That is, OATELS is free to register any apprenticeship programs that meets the *lower* standards set by the Fitzgerald Act—but *only* for "federal purposes."

If, on the other hand, OATELS is using these derecognition proceedings to bludgeon California into modifying its standards and procedures for approving apprenticeship programs for "state purposes," OATELS is plainly acting inappropriately and in excess of its jurisdiction. It is undisputed that OATELS has no authority, under the Fitzgerald Act or otherwise, to dictate to California the standards under which apprenticeship programs may be approved for "state purposes," or the role of the California community college system in apprentice training, or the practices of state and local governments with respect to public financing for public works projects, or the practices of contractors on State public work with respect to the employment of apprentices. Nor does OATELS make any claim that any of the apprenticeship training programs approved by CDIR and CAC fail to meet federal standards for approval. Any effort by OATELS to intrude into these core functions of state and local government would not further any legitimate federal interest, but would most certainly do violence to the important principles of federalism underlying the Fitzgerald Act.

E. DERECOGNITION OF THE CALIFORNIA SAC WILL HAVE DIRE CONSEQUENCES FOR THE CALIFORNIA APPRENTICESHIP SYSTEM *AND* CALIFORNIA APPRENTICES.

Finally, the JATC Amici are deeply concerned about the ramifications for the California apprenticeship system—and, more importantly, for California *apprentices*—if OATELS should succeed in its quest to derecognize the

California SAC as its agent for registration of apprenticeship programs for federal purposes. In that regard, the JATC Amici believe that California's apprenticeship system will be thrown into chaos, and that both new and existing programs, JATCs and unilateral programs alike, will be burdened with duplicative bureaucratic requirements which will waste the programs' scarce resources—which would be far better directed toward apprentice training and efforts to improve the *quality*, rather than simply the *quantity* of the programs that provide such training—yet do nothing to expand opportunities for apprentices in California.

Moreover, although OATELS has not claimed that the existing State-approved programs fail to meet *federal* standards for approval, those programs will be forced to go through a new application process OATELS to re-establish their registration "for federal purposes" if the California SAC's authority is withdrawn. (See 29 C.F.R. §29.13(d).) There will likely be months of delay in completing that process for the two hundred-plus programs that will be required to re-register, even though those programs already unquestionably satisfy both state and federal quality standards.

Even more egregious will be the harms inflicted upon innocent apprentices who are already enrolled in programs that were approved long ago by the California SAC for both state and federal purposes. There will undoubtedly be confusion and dismay if existing programs are required, under compulsion of federal law (29 C.F.R. §29.13(f)), to notify their apprentices of the withdrawal of recognition for federal purposes, and that such withdrawal removes the apprentices from eligibility for any of the benefits of federal registration, at least until such time as the program requests and secures a new federal registration from OATELS. Again, this process could result in months of delay, during which the apprentices would have difficulty finding work on federally funded projects.[17]

[17] Such confusion has already been generated by OATELS's actions in beginning to approve apprenticeship programs for "federal purposes" in California. For instance, the general contractor on the construction project being undertaken at the John Wayne Airport in Orange County (financed by federal funds) refused to allow apprentices from an apprenticeship program that has maintained State

In addition, OATELS's cursory approach to the "approval" of apprenticeship programs for federal purposes—which at this point appears to be little more than a rubber-stamping of program standards, with some programs being approved on the very same day, within hours of submitting their applications—will necessarily *lower* the quality of apprenticeship training in California and is likely to produce a glut of apprentices who will be unable to timely complete the hours of work experience required for certification as a journey-level worker. Indeed, some of the programs they have already approved for federal purposes—e.g., IRCC and ACTA—have been under investigation by the CAC for months for violations of California's apprenticeship laws and are facing de-registration by the State. If apprenticeship programs with known deficiencies are permitted to supply apprentices for federal projects, and for some mixed-funding projects as well, it will not be long before the quality of California's apprenticeship system, which has been recognized nationally for decades as the premiere apprenticeship system in the country, is destroyed.

IV. CONCLUSION

For all the foregoing reasons, CDIR's motion for summary judgment should be granted, and OATELS's motion for summary judgment should be denied.

Dated: October 4, 2004

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approval for decades to work on the project because the program did not have OATELS's approval. (See Benson Decl., ¶ 10 & Exh. 7 [letter from Area Director of OATELS in Seattle, dated May 10, 2004].)

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9018/359866

SERVICE SHEET

Case Name: DOL – OFFICE OF APPRENTICESHIP TRAINING v. CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

Case Numbers: 2002-CCP-1, 2003-CCP-1

Document Title: **BRIEF OF AMICI CURIAE IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 180 Grand Avenue, Suite 1400, Oakland, California 94612-3752. I hereby certify that a copy of the above-referenced document was sent to the following this 4th day of October 2004:

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I certify under penalty of perjury that the above is true and correct. Executed at Oakland, California, on October 4, 2004.

Karen Scott

SERVICE SHEET

CHAPTER 220.

Stats. 1937, p. 185, amended.

An act to repeal Chapter 4, comprising sections 3070 to 3091, inclusive, of Division III of the Labor Code and to add a new Chapter 4, comprising sections 3070 to 3089, inclusive, thereto, all relating to employer and apprentice.

In effect September 19, 1939.

[Approved by Governor May 22, 1939. Filed with Secretary of State May 22, 1939.]

The people of the State of California do enact as follows:

Stats. 1937, p. 262.

SECTION 1. Chapter 4, comprising sections 3070 to 3091, inclusive, of Division III of the Labor Code is hereby repealed.

New chapter.

SEC. 2. Chapter 4, comprising sections 3070 to 3088, inclusive, is hereby added to Division III of the Labor Code, to read as follows:

CHAPTER 4.

Apprenticeship. Council.

3070. The Governor shall appoint an Apprenticeship Council, composed of four representatives each from employer and employee organizations, respectively, geographically selected, and of one representative of the general public. The Director of Industrial Relations and the State official who is in charge of trade and industrial education under authority of the State Board of Education shall also be members of the Apprenticeship Council. The chairman shall be elected by vote of the Apprenticeship Council. The terms of office of the members of the Apprenticeship Council first appointed shall expire as designated by the Governor at the time of making the appointment: Two representatives each of employers, employees, and the public representative shall serve until January 15, 1941. Two representatives each of employers and employees shall serve until January 15, 1942. Thereafter each member shall serve for a term of two years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. Each member of the council shall receive his actual and necessary expenses incurred in attendance at the meetings of the Apprenticeship Council.

Meetings. Powers and duties.

3071. The Apprenticeship Council shall meet at the call of the Director of Industrial Relations and shall aid him in formulating policies for the effective administration of this chapter. Thereafter the Apprenticeship Council shall meet quarterly at a designated date and special meetings may be held at the call of the chairman. The Apprenticeship Council shall establish standards for minimum wages, maximum hours, working conditions for apprentice agreements, hereinafter in this chapter referred to as labor standards, which in no case shall be lower than those prescribed by this chapter; shall issue such rules and regulations as may be necessary to carry out the intent and purpose of this chapter, shall foster, promote, and develop the welfare of the apprentice and industry, improve

the working conditions of apprentices, and advance their opportunities for profitable employment. The Apprenticeship Council shall make biennial reports through the Director of Industrial Relations of its activities and findings to the Legislature and to the public.

Administrator of apprenticeship.

3072. The Director of Industrial Relations is ex officio the Administrator of Apprenticeship and is authorized to appoint such assistants as shall be necessary to effectuate the purposes of this chapter.

Duties.

3073. The administrator, or his duly authorized representative shall administer the provisions of this chapter; act as secretary of the Apprenticeship Council; cooperate in the formation of joint apprenticeship committees and advise with them on problems affecting labor standards; supervise and recommend apprenticeship agreements as to these standards and perform such other duties associated therewith as the Apprenticeship Council may recommend.

State and local boards.

3074. The preparation of trade analyses and outlines of instruction, and the administration and supervision of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of State and local boards responsible for vocational education.

Joint apprenticeship committees.

3075. 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 apprentice training needs of such trade justifies such establishment. Such joint apprenticeship committees shall be composed of an equal number of employer and employee representatives.

Function of committee.

3076. The function of the joint apprenticeship committee shall be to work in an advisory capacity with employers and employees in matters regarding schedule of operations, application of wage rates, working conditions for apprentices, the number of apprentices which shall be employed in the trade under apprentice agreement under this chapter, in accordance with labor standards set up by the Apprenticeship Council; and to aid in the adjustment of apprenticeship disputes as they affect labor standards.

"Apprentice."

3077. The term "apprentice" as used in this chapter, means a person at least 16 years of age who has entered into a written agreement, in this chapter called an "apprentice agreement," with an employer or his agent, an association of employers, or an organization of employees, or a joint committee representing both, which apprentice agreement provides for not less than two thousand hours of reasonably continuous employment for such person and for his participation in an approved program of training through employment and through education in related and supplemental subjects.

Apprentice agreement: Contents.

3078. Every apprentice agreement entered into under this chapter shall contain:

(a) The names of the contracting parties.

(b) The date of birth of the apprentice.

(c) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(d) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than 144 hours per year. In no case shall the combined weekly hours of work and required related and supplemental instruction of the apprentice exceed the maximum number of hours of work prescribed by law for a person of the age and sex of the apprentice.

(e) A statement setting forth a schedule of the processes in the trade of industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process.

(f) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated.

(g) A statement providing for a period of probation of not more than five hundred hours of employment and instruction extending over not more than four months, during which time the apprentice agreement may be terminated by the local joint apprenticeship committee at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the administrator by mutual agreement of all parties thereto, or canceled by the administrator for good and sufficient reason.

(h) A provision that all controversies or differences concerning the apprentice agreement which can not be adjusted locally, or which are not covered by collective bargaining agreement, shall be submitted to the administrator for determination as provided for in section 3081.

(i) A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may with approval of the administrator transfer such contract to any other employer, if the apprentice consents and such other employer agrees to assume the obligation of said apprentice agreement.

(j) Such additional terms and conditions as may be prescribed or approved by the State Apprenticeship Council, not inconsistent with the provisions of this chapter.

(k) A clause providing that there shall be no liability on the part of the other contracting party for an injury sustained by an apprentice engaged in school work at a time when the employment of the apprentice has been temporarily or permanently terminated.

Approval and execution.

3079. Every apprentice agreement under this chapter shall be approved by the local joint apprenticeship committee, a copy of which shall be filed with the State Apprenticeship Council. Every apprentice agreement shall be signed by the employer, or his agent, or by an association of employers, or an organization of employees, or a joint committee representing both, as provided in section 3080, and by the apprentice, and if the apprentice is a minor, by the minor's parent or guardian. Where a minor enters into an apprentice agreement under this chapter for a period of training extending into his majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority.

Association of employers or organization of employees.

3080. For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the State Apprenticeship Council be signed by an association of employers or an organization of employees instead of by an individual employer. In such a case, the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for such apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in said agreement between the apprentice and employer association or employee organization during the period of each such employment. The apprentice agreement in such a case shall also expressly provide for the transfer of the apprentice, subject to the approval of the State Apprenticeship Council to such employer or employers who shall sign a written agreement with the apprentice, and if the apprentice is a minor, with his parent or guardian, as specified in section 3079, contracting to employ said apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the said agreement entered into between the apprentices and employer association or employee organization.

Violations of apprentice agreements: Investigations.

3081. Upon the complaint of any interested person or upon his own initiative, the administrator may investigate to determine if there has been a violation of the terms of an apprentice agreement, made under this chapter, and he may hold hearings, inquiries, and other proceedings necessary to such investigations and determinations. The parties to such agreement shall be given a fair and impartial hearing, after reasonable notice thereof. All such hearings, investigations and determinations shall be made under authority of reasonable rules and procedures prescribed by the Apprenticeship Council.

Same: Determinations and appeals.

3082. The determination of the administrator shall be filed with the Apprenticeship Council. If no appeal therefrom is filed with the Apprenticeship Council within ten days after date thereof, as herein provided, such determination shall become the order of the Apprenticeship Council. Any person aggrieved by any determination or action of the administrator may appeal therefrom to the Apprenticeship Council, who shall hold a hearing thereon after due notice to the interested parties.

Same: Decision of Apprenticeship Council.

3083. The decision of the Apprenticeship Council as to the facts shall be conclusive if supported by the evidence and all orders and decisions of the Apprenticeship Council shall be prima facie lawful and reasonable.

Same: Jurisdiction of courts.

3084. Any party to an apprentice agreement aggrieved by an order or decision of the Apprenticeship Council may maintain appropriate proceedings in the courts on questions of law. The decision of the Apprenticeship Council shall be conclusive if such proceeding is not filed within thirty days after the date of such order or decision.

Actions on agreements.

3085. No person shall institute any action for the enforcement of any apprentice agreement, or damages for the breach of any apprentice agreement, made under this chapter, unless he shall first have exhausted all administrative remedies provided by this chapter.

Collective agreements.

3086. Nothing in this chapter or in any apprentice agreement approved under this chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees setting up higher apprenticeship standards.

Railway Labor Act.

3087. This chapter does not apply to employers who, with their employees, are subject to the Railway Labor Act of Congress or any act amendatory thereof.

Constitutionality.

3088. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons and circumstances, shall not be affected thereby.

Short title.

3089. This chapter shall be known and may be cited as the Shelley-Maloney Apprentice Labor Standards Act of 1939.

CHAPTER 221.

Stats. 1935, p. 496, amended.

An act to add section 1648.6 to the Insurance Code, relating to granting of licenses to brokers.

In effect September 19, 1939.

[Approved by Governor May 22, 1939. Filed with Secretary of State May 22, 1939.]

The people of the State of California do enact as follows:

New section.

SECTION 1. Section 1648.6 is hereby added to the Insurance Code, to read as follows:

Limited broker's license.

1648.6. Salaried employees and officers, exclusive of directors, of admitted insurers may be granted a limited broker's license. The limited broker's license authorizes the transaction of insurance as a broker on risks not located in this State.

Such employees or officers shall not be licensed as brokers other than as provided in this section.

CHAPTER 222.

Stats. 1939, Ch. 60, amended.

An act to amend sections 14003, 14405, and 14603 of the Health and Safety Code, relating to Fire Protection Districts.

In effect September 19, 1939.

[Approved by Governor May 22, 1939. Filed with Secretary of State May 22, 1939.]

Note.—See Stats. 1939, Ch. 60.

CHAPTER 223.

An act to amend section 4013 of the Political Code, relating to officers of a county.

In effect September 19, 1939.

[Approved by Governor May 22, 1939. Filed with Secretary of State May 22, 1939.]

The people of the State of California do enact as follows:

Stats. 1921, p. 242.

SECTION 1. Section 4013 of the Political Code is hereby amended to read as follows:

County officers.

4013. The officers of a county are:

1. A district attorney;
2. A sheriff;
3. A county clerk;
4. An auditor;
5. A treasurer;
6. A recorder;
7. A license collector;
8. A tax collector, who shall be ex officio license collector;
9. An assessor;
10. A superintendent of schools;
11. A public administrator;
12. A coroner;
13. A surveyor;
14. Members of the board of supervisors;
15. A live stock inspector;
16. A fish and game warden;
17. A county librarian;
18. A county health officer;
19. Such other officers as may be provided by law.

CHAPTER 224.

Stats. 1909, p. 656, amended.

An act to amend sections 7, 9 and 10 of the State Contract Act, being Statutes of 1909, page 656, as amended, relating to State contracts.

In effect September 19, 1939.

[Approved by Governor May 22, 1939. Filed with Secretary of State May 23, 1939.]

The people of the State of California do enact as follows:

Stats. 1933, p. 2110.

SECTION 1. Section 7 of the act cited in the title hereof is hereby amended to read as follows: