

U.S. Department of Labor

Office of the Solicitor  
Washington, D.C. 20210

*Vittone*



September 9, 2002

BY FACSIMILE TRANSMISSION

The Honorable John M. Vittone  
Chief Administrative Law Judge  
United States Department of Labor  
Office of Administrative Law Judges  
800 K Street, N.W.  
Suite 400  
Washington, D.C. 20001-8002

02 SEP 12 A 7:54

U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE  
LAW JUDGES

Re: United States Department of Labor, Office of Apprenticeship Training, Employer and Labor Services ("OATELS") v. California Department of Industrial Relations ("CDIR"), Case No. 2002-CCP-1

Dear Judge Vittone:

I enclose an original and two copies of Complainant OATELS' Response to the California Apprenticeship Coordinators Association's ("CACA") Request for Leave to Participate in the above case. I have served a copy of this response on counsel for CACA and Respondent CDIR, as indicated in the certificate of service attached to the end of the response.

Thank you for your attention to this matter.

Sincerely,

CHARLES D. RAYMOND  
Associate Solicitor for  
Employment and Training  
Legal Services

By:

*Scott Glabman*  
STEPHEN R. JONES  
SCOTT GLABMAN  
Attorneys

Enclosures

cc: Sandra Rae Benson, Esq.  
John M. Rea, Esq.

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

02 SEP 12 A7:54

U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE  
LAW JUDGES

In the Matter of

U.S. DEPARTMENT OF LABOR, OFFICE  
OF APPRENTICESHIP TRAINING,  
EMPLOYER AND LABOR SERVICES ("OATELS"),

Complainant,

v.

CALIFORNIA DEPARTMENT OF  
INDUSTRIAL RELATIONS ("CDIR"),

Respondent.

Case No. 2002-CCP-1

OATELS' RESPONSE TO CALIFORNIA APPRENTICESHIP COORDINATORS  
ASSOCIATION'S ("CACA") REQUEST FOR LEAVE TO PARTICIPATE

The OATELS submits the following response to CACA's request for leave to participate "as an amicus curiae with the right to receive copies of all documents, correspondence and notices that are sent to the parties to this action." While OATELS does not object to CACA's request for leave to participate as amicus curiae under 29 C.F.R. §18.12, it opposes CACA's request that it receive "copies of all documents, correspondence and notices that are sent to the parties in this action."

In particular, CACA has alleged that the letters OATELS sent to program sponsors, notifying them that a derecognition proceeding has been initiated, entitles CACA to receive copies of all relevant correspondence generated by OATELS and that OATELS is obligated to keep CACA informed of the proceeding. To the contrary, the letters in question simply provided the notice to program sponsors required under 29

C.F.R. §29.13(c)(3) and indicated, in general terms, that the sponsors would have an opportunity to participate. Thus, those letters did not confer status as a party on CACA, which is not, itself, a program sponsor, and most certainly did not obligate OATELS to provide CACA with documents or updates.

In any event, CACA's concerns about the continued registration of existing programs are unfounded. The OATELS regulations, at 29 C.F.R. §29.13(d) set a simple and expeditious process for ensuring the continued registration, for Federal purposes, of apprenticeship programs in California. Under §29.13(d), OATELS will automatically grant registration to any CDIR-registered program that applies to OATELS within 30 days of notice that the CDIR has been derecognized, contingent on an OATELS finding that the program complies with 29 C.F.R. Parts 29 and 30. The regulations require OATELS to make that finding within 30 days of application for OATELS registration.

Indeed, the burden of moving from CDIR to OATELS administration should be minimal, because any existing program that satisfied the CDIR's requirements should also satisfy OATELS. This case is not about whether existing apprenticeship programs are properly registered; rather, it concerns whether additional programs ought to have a fair chance to obtain registration. Therefore, CACA's unsupported allegations of negative impact should be rejected.

Under the applicable regulations, CACA is not entitled to receive copies of the documents it seeks. Section §18.12 provides for participation by amicus curiae through the filing of a brief. The regulation further provides that an amicus "shall not participate in any way in the conduct of the hearing, including the presentation of evidence and the

examinations of witnesses." Thus, there is no authority in the regulations to support a claim by an amicus for any involvement beyond the filing of a brief.

Permission for a non-party to submit a brief, as amicus curiae, is a matter of judicial grace. National Organization of Women v. Scheidler, 223 F.3d 615, 616 (7th Cir. 2000). The historically accepted role of amicus curiae has been to assist the court by providing information, not to burden a proceeding by requiring information. U.S. v. Michigan, 940 F.2d 143, 163-164 (6th Cir. 1991); U.S. v. City of Columbus, 2000 WL 1745293 \*1 (S.D. Ohio, November 20, 2000). Moreover, there has been a bright-line distinction between amicus curiae and "parties" to a case or controversy, with the parties controlling the litigation and raising issues and the amicus responding to those issues. Siam Food Products Public Co., v. U.S., 24 F.Supp.2d 276, 280 (C.I.T. 1998), citing Michigan at 165.

There are nearly a thousand registered apprenticeship programs in California. All could claim the same interests and basis for participation as CACA. In addition to these registered programs, there are an undetermined number of entities that object to the current operation of the apprenticeship program in California. Any or all of them might also seek, with equal justification, to participate as amicus curiae. Further, OATELS expects to file a substantial administrative record in this proceeding. That record, together with possible responses to discovery requests and other pleadings and briefs, will constitute a large volume of documents.

Thus, a requirement to provide "copies of all documents, correspondence and notices" to CACA, and presumably to any other parties who seek amicus status, would impose excessive administrative burdens on OATELS. Significant time would be

consumed simply for the production of additional sets of documents. Since, as established above, the role of an amicus curiae is simply to file a brief that provides the court with information that it may not otherwise have, the burden of complying with CACA's demand outweighs any foreseeable benefit to this proceeding. While there may be some argument that CACA, as an association of many potentially interested entities, should be given some preferred status, nothing in §18.10(b) contemplates a determination of "party" status in this way.

As a separate matter, OATELS has no objection to the suggestion by the Chief Administrative Law Judge that, if feasible, all documents filed in this proceeding be posted on-line, and thus be made available in that manner to all who may have an interest in reviewing them.

CACA states that if its request for modified amicus status is denied, it will seek leave to move to intervene. OATELS will respond to such motion when and if it is filed.


CONCLUSION

For these reasons, while CACA's request to participate amicus curiae may be granted, its request to receive copies of all documents and pleadings must be denied.

Respectfully submitted,

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UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
WASHINGTON, D.C. 20001-8002

In the Matter of

U.S. DEPARTMENT OF LABOR, OFFICE )  
OF APPRENTICESHIP TRAINING, )  
EMPLOYER AND LABOR SERVICES ("OATELS"), )

Complainant, )

v. )

Case No. 2002-CCP-1

CALIFORNIA DEPARTMENT OF )  
INDUSTRIAL RELATIONS ("CDIR"), )


Respondent. )

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of Complainant OATELS' Response to California Apprenticeship Coordinators Association's ("CACA's") Request for Leave to Participate in the above case this 9<sup>th</sup> day of September, 2002 to the following by first-class mail:

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