

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.)

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

CALIFORNIA DEPARTMENT)
OF INDUSTRIAL RELATIONS,)

Respondent,)

and)

CALIFORNIA APPRENTICESHIP COUNCIL,)

Respondent.)
_____)

PARTIES' STIPULATION OF RESOLUTION OF MOTION TO COMPEL

Counsel for Prosecuting Party Office of Apprenticeship Training, Employer and Labor Services ("OATELS") and for Respondent California Department of Industrial Relations ("CDIR") met in San Francisco from September 22-26, 2003, and amicably resolved all the issues raised in OATELS' June 16, 2003 motion to compel. Counsel for Respondent California Apprenticeship Council ("CAC") also participated in some of these discussions, and has asked the administrative law judge to accept as CAC's own the status report that incorporates this stipulation. See letter from Julian O. Standen, Esq., CAC's counsel to Judge John M. Vittone (Sept. 25, 2003). OATELS and CDIR resolved the motion to compel issues in the following manner:

I. Identification of the Documents CDIR Produced on May 1, 2003

OATELS' motion to compel sought identification, by document category, page numbers, and discovery response numbers, of the 15,000 pages of documents that CDIR produced on May

1. CDIR stipulates that the following table correctly and completely provides that information.

OATELS accepts this table as sufficient identification of the documents in question.

<u>Document Category</u>	<u>Bates-Stamped Pages</u>	<u>Discovery Response</u>
CAC Minutes, 1989-2002	1000-4912	CDIR I-2, 4, RPD-2, 4, 25-26, 28, 30; ¹ CAC I-2, 4-5, 15, 18.
CAC Members' Folders, Jan., 1995- Oct., 2002 (in reverse chronological order)	4913-8512, 9290-9843	CDIR I-2, 4, RPD-2, 4, 25-26, 28, 30; CAC I-2, 4-5, 15, 18.
CDIR Update & Bulletin, Jan.-Feb., 1995	8499-8512	relevant to, but not the basis of, CDIR I-5-6, RPD 5-6, 32
CDIR Biennial Reports, 1988-2001	8513-8618, 8716-9034	relevant to, but not the basis of, CDIR I-5-6, RPD 5-6, 32
DAS Annual Reports, 1996, 2001	8619-8715	relevant to, but not the basis of, CDIR I-5-6, RPD 5-6, 32
CDIR's Discovery Responses in the <u>WECA</u> Case	9035-9289	CDIR I-4, RPD 4, 27
Materials on Need Requirement	9035-9086A	CDIR I-4, RPD 4, 27

¹ "I" designates "Interrogatory" and "RPD" refers to "Request for Production of Documents." The prefixes "CDIR" and "CAC" identify who responded to the OATELS discovery request in question, e.g., "CDIR I-2" means "CDIR's response to OATELS' Interrogatory 2" whereas "CAC I-2" signifies "CAC's response to OATELS' Interrogatory 2."

1993 Jesswein Letter & CDIR & other memos	9087-9109	CDIR I-4, RPD 4, 27
Lists of WECA Apprentices	9110-9151	CDIR I-4, RPD 4, 27
Transmittal letters	9152-55	CDIR I-4, RPD 4, 27
Approved program files, including DAS § 212.2 Log	9156-9289 9177-82	CDIR I-4, RPD 4, 27 CDIR I-4, RPD 4, 27
<u>PHCC</u> Litigation Files	9844-11444, 14216- 14859, 15042-15712	CDIR I-20, RPD 20, 26
<u>ACTA</u> Litigation Files	11445-13063, 13664- 14215	CDIR I-20, RPD 20, 26
<u>IRCC</u> Litigation Files	13064-13663 (including <u>PHCC</u> documents), 14860- 15041	CDIR I-20, RPD 20, 26

II. Identification of CDIR's Pending Responses to OATELS' First Set of Discovery Requests

OATELS' reply brief supporting the motion to compel identified 37 pending discovery requests to which CDIR had responded that it would later produce responsive materials or make them available for copying. OATELS' reply brief asked that CDIR identify the discovery requests, if any, for which it had already produced responsive materials and say when it would produce the remaining responsive materials. OATELS and CDIR stipulate that CDIR identified the discovery requests to which it had already responded, and produced records responsive to the vast majority of the remaining requests during the week of September 22-26. The parties stipulate further

A. that CDIR is continuing to make available the remaining program files responsive to Interrogatories 4 and 18;

B. that CDIR intends to supplement its response to Interrogatory 5 by October 11, 2003;

C. that CDIR has agreed to investigate whether a rule-making file exists for a predecessor of the notice-and-comment rule responsive to Interrogatory 17.

D. that OATELS clarified that Requests for Production 1-24 and 32 were intended to seek documents which CDIR actually consulted in preparing its responses.

Subject to the production of items A-C in the near future, OATELS is satisfied that CDIR has sufficiently identified and produced all available materials responsive to the discovery requests in question.

III. Identification of CDIR's and CAC's Responses to Interrogatory 4

OATELS' motion to compel asked that CDIR identify all program applications since 1995 that have been either formally rejected or pending for at least two years, and specify the location of these documents by Bates-stamped pages. The motion also requested that CDIR explain how to read the processed applications, and state the reasons for each rejection and each failure to resolve an application that has been pending for two or more years. Moreover, OATELS' motion asked CDIR and CAC to identify all CAC decisions on all appeals of DAS registration decisions since 1995 rejecting program applications, and to specify the precise pages where these decisions and CAC's discussions of them may be found.

The parties stipulate that this issue has been resolved. CDIR stipulates that the only program application in the building and construction trades that DAS has rejected since 1995 is the PHCC application denied in March 2003. OATELS and CDIR stipulate that CDIR produced its appeal file for the PHCC case, which is now pending before the CAC. CDIR stipulates that there are no current program applications that have been pending for at least two years. CDIR

stipulates that it has made available the program files from which it can be determined whether any past program applications were pending for at least two years.²

OATELS and CDIR also stipulate that, in lieu of the requested identification of CAC decisions and specification of page numbers thereof, CDIR has produced the appeal files containing the readily discernible CAC decisions, which cite the date of the CAC meetings at which the decisions were issued, summarized and discussed. CDIR stipulates further that the appeal files it produced contain all of the requested CAC decisions since 1995, and that CDIR will supplement its production when CAC issues new decisions during the course of this proceeding. OATELS is satisfied that CDIR's production of the CAC decisions through its appeal files meets the specificity, as well as the equal burden, requirement of the "business records" option (Federal Rule of Civil Procedure 33(d)) and therefore constitutes sufficient identification of the requested materials.

IV. Identification of CDIR's and CAC's Responses to Interrogatory 18

OATELS' motion to compel asked that CDIR identify all program applications in the building and construction trades since 1995, on which existing programs submitted comments, and specify the location of these documents by Bates-stamped pages. The motion also requested that CDIR state the disposition of each application and the basis therefor. Furthermore, OATELS' motion asked CDIR and CAC to identify all CAC decisions on all appeals of DAS registration decisions since 1995 on program applications in the building and construction trades since 1995, on which existing programs submitted comments. The motion also sought

² CDIR stipulates further that, in assembling documents concerning IRCC, CDIR determined that IRCC made a merger request that was arguably a geographic expansion application, and was arguably pending for at least two years. CDIR will produce these documents.

specification of the precise pages where these decisions and CAC's summaries of them may be found.

The parties stipulate that these issues have been resolved. CDIR stipulates that during the week of September 22-26, the agency produced many of its existing notice-and-comment (section 212.2(g)) files for the period in question, and that the agency will promptly produce its remaining files in the near future. CDIR acknowledges, however, that it may no longer have all of the responsive files. CDIR also stipulates that the program files it is making available for copying in response to Interrogatory 4 include documents responsive to Interrogatory 18, and that the decisions therein contain the requested information on the disposition of the applications and the basis therefor. CDIR stipulates further that its response to the requests for CAC decisions and summaries in Interrogatory 4 also applies to Interrogatory 18. OATELS is satisfied that CDIR's responses to Interrogatory 18 are sufficient for the same reasons OATELS found CDIR's similar responses to Interrogatory 4 sufficient.

V. Description of Materials CDIR Withheld as Privileged from Its Responses to OATELS' First Set of Discovery Requests

OATELS' motion to compel contended that CDIR had not described the nature of the materials CDIR withheld under the attorney-client and attorney work-products privileges with enough specificity, without revealing the privileged information, to enable OATELS to determine whether these privileges were properly asserted. CDIR asserted these privileges in response to Interrogatories 2-4, 11, and 22-24, and Requests for Production 1-32.

The parties stipulate that this issue has been resolved. CDIR stipulates that it initially understood the interrogatories in question and the first 24 production requests as requesting all information that could conceivably be used to support CDIR's responses. When OATELS explained that its requests encompassed only information that CDIR had actually used or

consulted in preparing its responses, CDIR stated that none of the material on which the state agency had actually relied was privileged. Accordingly, CDIR stipulates that there was no withheld privileged material that actually fell within the scope of the interrogatories and the first 24 production requests.

CDIR acknowledges that it did withhold some privileged information in response to Requests for Production 25-32. CDIR stipulates that this material consists of both litigation and non-litigation letters and memos between CDIR's legal unit and program agency requesting, or responding to requests for, legal advice on the need issue and other topics within the scope of Requests for Production 25-32, or, between the agency and the department head concerning litigation issues. Furthermore, CDIR also stipulates that some of the material withheld as privileged consists of internal legal memos developing positions and legal theories on these issues.

OATELS is satisfied with CDIR's stipulation that the state agency relied only on non-privileged materials to answer the interrogatories in question as well as the first 24 production requests. OATELS is also satisfied that CDIR's description of the materials it withheld as privileged in response to the other production requests meets the requirements for asserting the privileges in question.

Respectfully submitted,

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Dated: _____

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