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8 WESTERN ELECTRICAL
9 CONTRACTORS ASSOCIATION, INC.

10 BEFORE THE
11 UNITED STATES DEPARTMENT OF LABOR

12 *In the Matters of:*

13 U.S. DEPARTMENT OF LABOR,
14 OFFICE OF APPRENTICESHIP
15 TRAINING, EMPLOYER AND LABOR
16 SERVICES,

17 Prosecuting Party,

18 v.

19 CALIFORNIA DEPARTMENT OF
20 INDUSTRIAL RELATIONS

21 Respondent

22 and

23 CALIFORNIA APPRENTICESHIP
24 COUNCIL

25 Respondent

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

**WESTERN ELECTRICAL
CONTRACTORS ASSOCIATION,
INC.'S *AMICUS CURIAE* BRIEF IN
SUPPORT OF OATELS**

Chief Administrative Law Judge
The Honorable John M. Wittone

US DEPT OF LABOR
ADMIN LAW JUDGES
2004 SEP 21 P 1:47

26 **INTRODUCTION**

27 On or about August 25, 2004, the Western Electrical Contractors Association, Inc.
28 (“WECA”) requested leave to participate in the above-entitled action by filing a brief as *amicus curiae* pursuant to 29 C.F.R. section 18.12. WECA hereby submits the instant brief in support of OATELS’ position that California Labor Code section 3075(b) violates 29 C.F.R. section 29.1 by limiting, rather than promoting, apprenticeship opportunities.

As stated in its *amicus* request, WECA is a statewide non-profit trade organization which represents hundreds of merit shop (*i.e.* non-union) electrical contractors and thousands of their

1 workers throughout the State of California. (See Declaration of L. Terry Seabury, filed herewith,
2 (hereafter "Seabury Decl.") at ¶ 2). WECA also sponsors three unilateral (*i.e.* non-union)
3 apprenticeship programs: a commercial electrician program, a residential electrician program and
4 a sound and communication system installer program. (Seabury Decl. at ¶ 2).

5 In connection with its commercial electrician and sound and communication system
6 installer apprenticeship programs, WECA has experienced first hand the detrimental impact
7 Labor Code section 3075 has had on apprenticeship opportunities in the State of California. As
8 explained in greater detail below, WECA has been involved in litigation pertaining to the
9 application of Section 3075 to its programs since 2001. Thus far, the California Apprenticeship
10 Council ("CAC") has used section 3075 as the basis for retroactively revoking the Division of
11 Apprenticeship Standards' ("DAS") prior approval of WECA's statewide commercial electrician
12 apprenticeship standards and is currently considering whether or not to approve WECA's re-
13 submission of its statewide commercial electrician standards and new statewide standards for its
14 sound and communication systems installer program under Labor Code section 3075(b). Not
15 surprisingly, as a result of litigation involving both programs, WECA has been unable to sustain
16 or increase the number of apprentices enrolled in its commercial electrician program and it has
17 been unable to enroll new apprentices in its sound and communication system installer program,
18 despite a significant demand for such apprentices by merit shop contractors.

19 BACKGROUND

20 Regulation of Apprenticeship Training

21 Apprenticeship training is regulated at both the federal and state levels. At the federal
22 level, the Fitzgerald Act, enacted by Congress in 1937, empowers the United States Secretary of
23 Labor to promote standards necessary to safeguard the welfare of apprentices. (29 U.S.C. § 50).
24 The Fitzgerald Act is implemented through a detailed set of regulations found at Title 29, Code
25 of Federal Regulations, sections 29.1- 29.13. Among other things, these regulations provide for
26 the registration, cancellation and de-registration of apprenticeship training programs by the
27 Department of Labor, Bureau of Apprenticeship Training (BAT). (29 C.F.R. § 29 et seq.).

28 The federal regulations also allow BAT to delegate approval power to states which have

1 enacted apprenticeship laws in compliance with federal standards. (29 C.F.R. § 29.12). Thus,
2 apprenticeship programs may be approved either by BAT or an authorized State Apprenticeship
3 Council (SAC). California has been certified by BAT as a SAC state since 1978. (*California*
4 *DLSE v. Dillingham Construction* (1997) 519 U.S. 316, 320 [117 S.Ct. 832]).

5 In California, apprenticeship training is governed by the Shelley-Maloney Apprenticeship
6 Labor Standards Act of 1939 (Shelley-Maloney Act), which is codified at California Labor Code
7 section 3070 et seq. The Shelley-Maloney Act established the California Apprenticeship Council
8 (CAC) as California's SAC for federal purposes. (Lab. Code § 3070). Of the CAC's 17
9 members, 14 are appointed by the Governor of the State of California for four year terms. The
10 remaining three members are ex officio members representing the Chancellor of the California
11 Community Colleges, the Superintendent of Public Instruction and the Director of the
12 Department of Industrial Relations. (Lab. Code § 3070). A majority of the current CAC
13 members were appointed by California's former Democratic and pro-union Governor, Gray
14 Davis.

15 Among other things, the CAC's duties are to promulgate regulations relating to
16 apprenticeship (Labor Code § 3071); these regulations are found at California Code of
17 Regulations, title 8, sections 200 et seq.. Pursuant to the Fitzgerald Act, the Secretary of Labor
18 has promulgated apprenticeship program standards (29 C.F.R. § 29.5); California has adopted its
19 own apprenticeship standards that are supposed to be "substantively similar" to the federal
20 standards. (*Dillingham, supra*, 519 U.S. at p. 320). The CAC uses its own standards whether
21 approving an apprenticeship program for federal or state purposes. (*Id.* at p. 321).

22 Pursuant to the Shelley-Maloney Act, apprenticeship training is administered by the
23 Division of Apprenticeship Standards (DAS) which is under the auspices of the Department of
24 Industrial Relations (DIR). (Lab. Code § 3073). The Director of DIR serves as the
25 Administrator of Apprenticeship. DAS is headed by a Chief, who is appointed by the Governor,
26 and whose duties include the approval of applications for programs to train apprentices. The
27 Chief DAS serves as the secretary to the CAC and the CAC's duties include hearing appeals
28 from decisions of the Chief DAS. (Lab. Code §§ 3073, 3082).

1 To register a program with either the BAT or a SAC, a program sponsor may designate an
2 apprenticeship committee to administer the program. An apprenticeship program in California
3 may be sponsored by an individual employer, an individual labor union, a group of employers, a
4 group of labor organizations, or by a joint management-labor venture, *i.e.* a joint apprenticeship
5 committee. (Lab. Code § 3075).

6 Although neither federal nor state approval is required for a sponsor to operate a training
7 program, such approval enables the program to receive financial subsidies and allows the
8 program to pay its apprentices less than the prevailing journeyman wage on public works
9 projects. (29 C.F.R. § 29.2(k); Lab. Code § 1777.5). In addition, an apprentice who completes
10 an approved training program obtains a certificate of completion naming him or her a skilled
11 journeyman in the chosen trade, which increases the apprentice's marketability, as well as the
12 marketability of his/her employer contractor. (*Southern California Chapter of ABC v. CAC*
13 (1992) 4 Cal.4th 422, 429 [14 Cal.Rptr.2d 491], citing 8 C.C.R. § 224).

14 Pursuant to the federal Fitzgerald Act, regardless of who administers an apprenticeship
15 program, it must conform to the applicable regulatory standards and any modification or change
16 to a registered program first must be submitted to the appropriate agency for approval. (29
17 C.F.R. § 29.3(g)). CAC possesses the primary approval authority in California. Pursuant to
18 CAC regulations, "apprenticeship programs shall be established by written standards approved
19 by the Chief DAS." (Cal. Code Regs., tit. 8., § 212). The information that must be contained in
20 a program's apprenticeship standards is set forth in detail in the California Code of Regulations,
21 title 8, section 212 and the procedures for obtaining approval of an apprenticeship program are
22 set forth in the California Code of Regulations, title 8, section 212.2.

23 History of Labor Code Section 3075(b)

24 Historically, union programs have dominated apprenticeship training in this state and
25 have fought against the development of non-union programs in an effort to defend a jealously
26 guarded monopoly on apprenticeship training. However, because a majority of the building and
27 construction trades in California are non-union, non-union building contractors saw a need to
28 develop their own apprenticeship programs in various building trades. Beginning in the early

1 1990's, these contractors formed unilateral apprenticeship training committees to sponsor non-
2 union apprenticeship programs and sought state approval to operate in limited geographic areas.
3 As the need for apprenticeship training on a broader basis grew, these apprenticeship programs,
4 including those sponsored by WECA, the Plumbing Heating and Cooling Contractors ("PHCC")
5 and the Independent Roofing Contractors of California ("IRCC"), sought and obtained approval
6 by DAS to operate on a statewide basis.

7 At the time that DAS first approved WECA's statewide expansion in 1997, Labor Code
8 section 3075 provided that apprenticeship programs "may be approved by the chief in any trade
9 in the state or in a city or trade area, whenever the apprentice training needs justifies the
10 establishment." (See Declaration of Carrie Bushman in Support of WECA's *Amicus Curiae*
11 Brief in Support of OATELS (hereafter "Bushman Decl."), filed herewith, at ¶ 2).

12 In February, 1999, Assembly Bill 921 was introduced and sought to amend Labor Code
13 section 3075 as follows:

14 It is the public policy of this state to favor the training of apprentices in jointly
15 sponsored programs. Where an approved jointly sponsored program exists for the
16 trade and geographic area, and has the capacity to meet the apprenticeship training
needs, the chief shall not approve a new unilateral program unless special
circumstances justify the establishment of the program.

17 (Bushman Decl. at ¶ 3 and Ex. 1 thereto).

18 As the text of AB 921 reveals, the bill was a shameless attempt by organized labor to curtail the
19 development and expansion of unilateral apprenticeship programs. Not surprisingly, AB 921
20 was strongly supported by organized labor and opposed by merit shop contractors and
21 apprenticeship programs. (Bushman Decl. at ¶ 3 and Exs. 2 and 3 thereto). As enacted effective
22 January, 2002, AB 921 amended Labor Code section 3075 in pertinent part as follows:

23 (a) An apprenticeship program may be administered by a joint
24 apprenticeship committee, unilateral management or labor apprenticeship
25 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. . .

26 (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:

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

28 (2) Existing apprenticeship programs approved under this chapter that

1 serve the same craft or trade and geographic area do not have the capacity, or
2 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 (3) Existing apprenticeship programs approved under this chapter that
4 serve the same trade and geographic area have been identified by the California
Apprenticeship Council as deficient in meeting their obligations under this
chapter.

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

7
8 Although the blatant reference to promoting jointly sponsored programs over unilateral programs
9 was omitted from the final text of the statute, the impact of Labor Code section 3075(b) on
10 unilateral apprenticeship programs such as WECA's is the same: it is virtually impossible for any
11 unilateral program to develop or expand into any geographic area in which a jointly sponsored
12 program already exists.

13 ARGUMENT

14 **IT HAS BEEN WECA'S EXPERIENCE THAT LABOR CODE SECTION** 15 **3075(b) SEVERELY LIMITS APPRENTICESHIP OPPORTUNITIES IN** 16 **THE STATE OF CALIFORNIA**

17 WECA's Commercial Electrician Program

18 In 1992, WECA's commercial electrician apprenticeship program was approved by DAS
19 to operate in 11 counties including and surrounding Sacramento County. (Bushman Dec. at ¶ 4
and Ex. 4 thereto at pg. 4, ¶ 5). At that time, 8 C.C.R. section 212.2, which was promulgated by
20 CAC to enforce Labor Code § 3075, read as follows:

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

25 (Bushman Decl. at ¶ 4 and Ex. 4 thereto at pg. 6, ¶ 14).

26 Pursuant to DAS's policy at the time, WECA's revised statewide standards were not served on
27 existing program sponsors pursuant to 8 C.C.R. section 212.2 because DAS interpreted that
28 regulation as applying only to submissions by new programs, not existing programs merely

1 seeking to expand. (Bushman Decl. at ¶ 4 and Ex. 4 thereto at pg. 6, ¶ 16). In the late 1990's, the
2 Chief of DAS thus approved WECA's statewide expansion, along with the statewide expansions
3 of the PHCC and IRCC programs, without following the notice and comment procedure set forth
4 in 8 C.C.R. section 212.2. (Bushman Decl. at ¶ 4 and Ex. 4 thereto at pg. 6, ¶ 15; see also
5 *Independent Roofing Contractors of California Unilateral Apprenticeship Committee v.*
6 *California Apprenticeship Council* (2004) 114 Cal.App.4th 1330, 1335 [9 Cal.Rptr.3d 477]).
7 WECA's statewide expansion was approved as such on December 3, 1997. (Bushman Decl. at ¶
8 4 and Ex. 4 thereto at pg. 5, ¶ 12).

9 Four years later, in December, 2001, a competing union apprenticeship program filed a
10 complaint with DAS against WECA which challenged DAS's approval of WECA's statewide
11 standards on the grounds that, *inter alia*, because DAS had not complied with 8 C.C.R. section
12 212.2, no showing of need had been made pursuant to Labor Code section 3075 and the approval
13 was thus invalid and in direct contravention of the statute. (Bushman Decl. at ¶ 5 and Ex. 5
14 thereto). In a decision dated April 22, 2003, the Acting Chief Deputy Director of the Department
15 of Industrial Relations/Administrator of Apprenticeship ruled in the union's favor, revoking
16 WECA's statewide standards and ordering it to confine its recruitment, indenturing and
17 enrollment of apprentices to the 11 county area originally set forth in its 1992 standards.
18 (Bushman Decl. at ¶ 4 and Ex. 4 thereto). WECA appealed the Administrator's decision to
19 CAC; on December 26, 2003, the CAC issued an Order upholding the Administrator's decision.
20 (Bushman Decl. at ¶ 6 and Ex. 6 thereto).

21 Following the filing of similar complaints by competing union programs which also
22 successfully challenged DAS's approval of the statewide expansions of the PHCC and IRCC
23 apprenticeship programs, CAC revised 8 C.C.R. section 212.2 effective February 16, 2002 to
24 unequivocally require existing programs wanting to expand their geographic areas of operation to
25 submit to the same approval process as brand new programs, including demonstrating need
26 pursuant to the newly revised and much more stringent standards set forth Labor Code section
27
28

1 3075(b).¹ (Bushman Decl. at ¶ 4 and Ex. 4 thereto at p. 9, ¶ 28). For all practical purposes, this
2 amendment impacted only unilateral programs because union programs are confined by local
3 jurisdictional restrictions from expanding as such.

4 On September 2, 2003, WECA submitted updated statewide standards for its commercial
5 electrician program to DAS for approval. (Seabury Decl. at ¶ 3). Pursuant to the Administrator's
6 decision, DAS was required to send the standards out to existing programs for comment pursuant
7 to Labor Code section 3075 and 8 C.C.R. section 212.2 as they existed at the time of DAS's
8 original approval of WECA's statewide standards. (Bushman Decl. at ¶ 4 and Ex. 4 thereto at
9 pp. 17-18). Because DAS delayed in instituting this procedure, WECA was forced to seek and
10 obtain a court order directing DAS to do so. (Bushman Decl. at ¶ 7). Despite the directive that
11 comments be made pursuant to the prior version of Labor Code section 3075, several existing
12 union programs challenged WECA's expansion on the grounds that there was no need for the
13 program pursuant to Labor Code section 3075(b) as revised in 2002. (Bushman Decl. at ¶ 8).

14 On January 16, 2004, then-Chief of DAS, Henry Nunn, issued a decision approving
15 WECA's statewide expansion finding, *inter alia*, that there is a need for the program on a
16 statewide basis under either version of Labor Code section 3075 based on statistics published by
17 California's Employment Development Department ("EDD") which predict a huge increase in
18 demand for journeyman electricians over the next 6 years. (Bushman Decl. at ¶ 9 and Ex. 7
19 thereto). Chief Nunn also found that recent graduation rates among the existing electrician
20 apprenticeship programs in California are not sufficient to meet projected demand. (Bushman
21 Decl. at ¶ 9 and Ex. 7 thereto).

22 A state-wide coalition of union electrician apprenticeship programs appealed Chief
23 Nunn's decision to the CAC in February, 2004 and have attempted to inundate the CAC with
24

25 ¹Specifically, 8 C.C.R. section 212.2 was revised to read: "A revision to change the
26 program's . . . geographic area of operation is subject to the same application and approval
27 process set out in (a)-(j) of this section for approval of a program, including providing notice of
28 the proposed revision and an opportunity for comment to existing programs in the same
apprenticeable occupation in the labor market area."

1 purported evidence demonstrating that there is no need for WECA's program on a statewide
2 basis pursuant to Labor Code section 3075(b) because existing union programs claim to have the
3 capacity to expand and meet the present and future demand for all electrical apprentices in the
4 State of California. (Bushman Decl. at ¶ 10 and Ex. 8 thereto).

5 In response, and in addition to the evidence cited by Chief Nunn in his approval decision,
6 WECA has submitted evidence to the CAC in the form of declarations signed by merit shop
7 electrical contractors across the State who have attested to their ongoing and future need for
8 apprentices from non-union programs like WECA's. (Bushman Decl. at ¶ 11). WECA has also
9 challenged the "evidence" of capacity submitted by the union programs on various procedural
10 grounds. (Bushman Decl. at ¶ 12).

11 Although the CAC was scheduled to hear oral argument and decide whether to uphold or
12 overturn Chief Nunn's decision at its Quarterly Meeting in July, 2004, it moved at very last
13 minute to delay its consideration and determination of the matter until its next meeting scheduled
14 for October, 2004. (Bushman Decl. at ¶ 13). It is WECA's belief that the CAC took this action
15 to avoid denying WECA's program pursuant to Section 3075(b) until after the instant
16 derecognition proceedings had been concluded.

17 Predictably, Section 3075 and the ongoing challenges mounted by the union against
18 WECA thereunder have had a devastating impact on WECA's ability to offer and promote
19 apprenticeship training and employment opportunities throughout the State. Prior to the
20 Administrator's decision to revoke WECA's statewide approval, WECA had approximately 650
21 apprentices enrolled in its program across the State. (Seabury Decl. at ¶ 3). Following the
22 Administrator's decision, WECA's commercial electrician apprentice enrollment dropped to a
23 low of 314 apprentices. (Seabury Decl. at ¶ 3). Thus, not only has WECA been unable to
24 expand its program and enrollment due to Section 3075 and the CAC's enforcement thereof, it
25 has not even been able to sustain its previous enrollment levels. In connection with WECA's
26 commercial electrician program, it is simply undisputed that Labor Code section 3075(b) has
27 been used by competing union programs and the CAC to severely limit, rather than promote,
28 apprenticeship opportunities in this State.

1 **WECA'S Sound and Communications System Installer Program**

2 WECA's experience with Section 3075(b) has been similar with regards to its attempts to
3 obtain approval for and establish a new statewide program for sound and communication system
4 installers.

5 On April 11, 2003, WECA submitted to DAS proposed standards for a new statewide
6 program for the occupation of Sound and Communications System Installer. (Seabury Decl. at ¶
7 4). On July 22, 2003, DAS sent the proposed standards to existing program sponsors for review
8 and comment. (Bushman Decl. at ¶ 14). Pursuant to 8 C.C.R. section 212.2(b), comments had to
9 be submitted to DAS no later than August 26, 2003; however, no program which submitted
10 comments did so earlier than September 5, 2003. (Bushman Decl. at ¶ 14). Not surprisingly,
11 several of the programs which did submit comments, albeit untimely, objected to approval of
12 WECA's programs on need grounds pursuant to Labor Code section 3075(b). (Bushman Decl. at
13 ¶ 15). Despite the fact that no comments were received on a timely basis, then-Chief Nunn
14 addressed the concerns raised therein by competing programs in his January 16, 2004 decision
15 approving WECA's program. (Bushman Decl. at ¶ 16 and Ex. 9 thereto). Similar to his decision
16 regarding WECA's commercial electrician program, Chief Nunn found a need for the sound and
17 communication system installer program based on EDD statistics and past graduation rates.
18 (Bushman Decl. at ¶ 16 and Ex. 9 thereto).

19 Not surprisingly, the existing union programs also appealed Chief Nunn's approval of the
20 sound and communication system installer program to the CAC, again arguing that there is no
21 need for WECA's program pursuant to Section 3075(b) because they have the capacity to expand
22 to meet any future demand for apprentices in that occupation as well. (Bushman Decl. at ¶ 10
23 and Ex. 8 thereto).

24 WECA has specifically challenged the procedural validity of said appeal, which was filed
25 in conjunction with the appeal of the commercial electrician program approval, on the grounds
26 that, pursuant to 8 C.C.R. section 212.2(k), only parties which properly filed pre-approval
27 comments with DAS are authorized to file an appeal to the CAC. (Bushman Decl. at ¶ 17). It is
28 WECA's position that the union's appeal is invalid as to the sound and communications system

1 installer program because it did not submit timely pre-approval comments and, thus, the CAC is
2 required to uphold the Chief's approval as if no appeal had been filed. Thus far, the CAC has
3 completely ignored WECA's argument, instead indicating that it will decline to decide the issue
4 and instead rule on the merits of the so-called appeal. (Bushman Decl. at ¶ 17). Like the
5 commercial electrician program, the CAC was scheduled to hear argument and decide whether to
6 uphold the approval of the sound and communication system installer program at its July, 2004
7 meeting but "tabled" that discussion until October, 2004. (Bushman Decl. at ¶ 13). WECA fully
8 anticipates that the CAC will overturn Chief Nunn's approval pursuant to Section 3075(b) at that
9 time as well.

10 Again, as a result of the union's efforts to defeat WECA's sound and communication
11 system installer program pursuant to Section 3075(b), WECA has been in limbo for over a year
12 and a half since it submitted its standards to DAS in April, 2003. (Seabury Decl. at ¶ 4). It has
13 been unable to obtain DAS authorization indenture sound and communication system installer
14 apprentices, despite a great demand to do so by existing and potential contractor members,
15 because DAS has thus far refused to acknowledge the validity of Chief Nunn's approval due to
16 the bogus appeal filed by the union. (Seabury Decl. at ¶ 4). Thus, innumerable apprenticeship
17 opportunities have been lost in the interim as Labor Code section 3075(b) has again been used to
18 limit and destroy, rather than promote, apprenticeship opportunities in this occupation as well.

19 CONCLUSION


20 It is only as a result of the above-referenced experiences that WECA is supportive of
21 OATELS efforts to de-register the CAC as California's SAC on the grounds that Labor Code
22 section 3075(b) is violative of 29 C.F.R. section 29.12 because, on its face and as interpreted by
23 the CAC, it absolutely limits apprenticeship opportunities in this State. Notably, the Department
24 of Labor has reviewed and found WECA's apprenticeship programs, including its commercial
25 electrician and sound and communication system installer programs, to be in compliance with all
26 federal requirements and has issued federal approval of WECA's programs. (Seabury Decl. at ¶
27 5). Unfortunately, this is of little utility to WECA because, thus far, the State does not appear
28 willing to recognize federally approved apprentices on State public works projects.

1 Therefore, for all the foregoing reasons, WECA respectfully requests that OATELS'
2 derecognition request be upheld.

3 Dated: September 20, 2004

Respectfully Submitted,

COOK BROWN, LLP

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5
6 By: 
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PROOF OF SERVICE

1
2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is Cook Brown, LLP, 555 Capitol Mall, Suite 425,
4 Sacramento, California 95814. On September 20, 2004, I served the within documents described
5 as: **WESTERN ELECTRICAL CONTRACTORS ASSOCIATION INC.'S AMICUS CURIAE**
6 **BRIEF IN SUPPORT OF OATELS**

7
8 X (BY OVERNIGHT MAIL) I caused such document(s) to be sent by overnight mail by using
9 Federal Express Mail addressed as set forth below. Under that practice it would be deposited
that same day in a Federal Express drop box for delivery the next business day.

10 John M. Vittone
11 Chief Administrative Judge
12 U.S. Department of Labor
800 K Street, NW., Suite 400-N
Washington, D.C. 20001-8002

13 X (BY U.S. MAIL) by placing the document(s) listed above in a sealed envelope with
14 postage thereon fully prepaid, in the United States mail at Sacramento, California
addressed as set forth below.

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28 I am readily familiar with the firm's practice of collection and processing correspondence for

1 mailing. Under that practice it would be deposited with U.S. postal service on that same day with
2 postage thereon fully prepaid.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct. Executed on September 20, 2004, at Sacramento, California.

5 
6 KRISTIN D. BIGLEY

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