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**BEFORE THE
ADMINISTRATOR OF APPRENTICESHIP OF THE
STATE OF CALIFORNIA**

ALAMEDA COUNTY JOINT) Appeal No. **DAS 02-0055**
APPRENTICESHIP AND TRAINING) [DAS Complaint No. 200121]
COMMITTEE FOR THE ELECTRICAL)
(INSIDE WIREMEN) TRADE, on behalf of)
itself and all other similarly situated Joint)
Apprenticeship and Training Committees in the) **DECISION**
State of California for the Electrical Trade,)
Charging Party,)
v.)
WESTERN ELECTRICAL CONTRACTORS)
ASSOCIATION, INC., ELECTRICAL)
APPRENTICESHIP AND TRAINING)
COMMITTEE,)
Respondents.)

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INTRODUCTION

Alameda County Joint Apprenticeship and Training Committee for the Electrical (Inside Wiremen) Trade ("Charging Party") filed a complaint on December 7, 2001, with the Division of Apprenticeship Standards ("DAS"). The complaint named as Respondent Western Electrical Contractors Association, Inc., Electrical Apprenticeship and Training Committee ("WECA" or "Respondent").¹

The thrust of the complaint is that DAS failed to comply with its regulations requiring that notice and an opportunity to comment be given the Charging Party prior to

¹ The parties in their stipulations of fact have also referred to WECA as "WECA UA" and as "WECA ATC." (See Finding of Fact Nos. 3, 12 and 15.)

1 DAS's December 3, 1997, approval of a geographic expansion sought by WECA, pursuant
2 to California Code of Regulations Title 8, section 212.2². Since notice was not given,
3 DAS's approval is void. In addition, Charging Party alleges that WECA operated outside its
4 approved geographic area prior to and after the contested December 3, 1997, expansion
5 approval.
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7 In response, WECA alleges that the regulation requiring notice only applied to new
8 programs, and not to programs that were simply amending their existing standards to include
9 an expanded geographic area. In addition, since DAS approved the revisions to the
10 geographic coverage of its standards, WECA should not now be penalized because it relied
11 on DAS's approval.
12

13 **PROCEDURAL BACKGROUND**

14 After a number of telephonic pre-hearing conferences the matter was first scheduled
15 for hearing for October 14, 15, and 16, 2002. The hearing was continued to December 3, 4,
16 and 5, 2002, by agreement of the parties because of a discovery dispute. The hearing was
17 held before the Hearing Officer on December 3, 4, and 5, 2002.
18

19 Each party submitted documentary evidence prior to the hearing. In addition, during
20 the hearing each party had the opportunity to present witnesses, to cross-examine witnesses,
21 to present additional documentary evidence, and to submit post-hearing written argument.
22 The matter was submitted on February 21, 2003.
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26 ² All future references are to Title 8 of the California Code of Regulations unless otherwise indicated.
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1 The parties were advised that Acting Director Chuck Cake³ recused himself from
2 consideration of this matter and that Acting Chief Deputy Director Suzanne Marria is to act
3 in his place. There were no objections.
4

5 FINDINGS OF FACT⁴

6 1. Charging Party is a Joint Apprenticeship and Training Committee training
7 apprentices in the electrical trades. Its address is 3033 Alvarado Street, San Leandro,
8 California 94577.
9

10 2. The California Apprenticeship Council ("CAC"), a state agency in the Division
11 of Apprenticeship Standards ("DAS"), is required by Labor Code section 3071 to, inter alia,
12 issue rules and regulations establishing standards for minimum wages, maximum hours and
13 working conditions for apprentice agreements in the State of California. These regulations are
14 codified at Title 8, California Code of Regulations section 200, et seq.
15

16 DAS, a division of the Department of Industrial Relations ("DIR"), is headed by a
17 Chief who is required by Labor Code section 3073 to, inter alia, administer California
18 apprenticeship law; foster, promote and develop the welfare of the apprentice and industry;
19 cooperate in the development of apprenticeship programs and advise them on problems
20 affecting apprenticeship. Decisions of the Chief of DAS approving or disapproving a
21 proposed apprenticeship program may be subject to appeal to the CAC. Cal. Code Regs., title
22

23
24 ³ The regulations use the terminology of "Administrator of Apprenticeship." Under Labor Code
25 section 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 purpose of this chapter.

26 ⁴ The parties' stipulations were presented on the first day of hearing and were entered as part of the
27 record as "HO-4." Findings of Fact No.'s 1-8, 12-15, 26-28, although renumbered from the original, are
taken in their unedited form entirely from "HO-4."
28

1 8, § 212.2(j).

2 3. Respondent, Western Electrical Contractors Association, Inc. Apprenticeship
3 and Training Committee (WECA UA) is a Unilateral Apprenticeship Committee training
4 apprentices in the electrical trades. Its address is 9719 Lincoln Village Drive, Suite 303,
5 Sacramento, California 95827.
6

7 4. During the 1990s, CAC approval of apprenticeship program has been the
8 subject of extensive litigation, particularly concerning whether such approval was preempted
9 by the Employee Retirement Income Security Act (ERISA).

10 5. On April 14, 1992, DAS approved the Apprenticeship Standards of the WECA
11 Electrical Apprenticeship Training Committee ("1992 Standards"). Article III of the
12 Standards, entitled "Jurisdiction" states: "There is hereby established the WECA
13 ELECTRICAL APPRENTICESHIP TRAINING COMMITTEE covering the following
14 counties of California: Amador, Colusa, Sacramento, Sutter, Yolo, Yuba, and that portion of
15 Alpine, El Dorado, Nevada, Placer and Sierra Counties which is West of the Main Watershed
16 through these counties."
17

18 6. As of April 14, 1992, section 212(b)(2) of the California Apprenticeship
19 Counsel Regulations, Title 8, California Code of Regulations section 212(b)(2), provided that
20 apprenticeship program standards were required to state "the party or parties to whom the
21 standards apply and the geographic area."
22

23 7. On July 14, 1993, then Chief of DAS, Gail Jesswein, issued an enforcement
24 policy Memorandum.
25

26 8. In 1995, Title 8, California Code of Regulations section 212(b)(2) was
27 amended to require apprenticeship program standards to state "the parties to whom the
28

1 standards apply and the program sponsor's labor market area, as defined by section 215
2 appendix (l), for purposes of meeting equal employment opportunity goals in apprenticeship
3 training." Section 215(l) defines "labor market area" as "(1) the geographical area from which
4 the program sponsor normally draws upon for its work force and for which statistics are
5 gathered; or (2) any other geographical boundary for which statistics are gathered, that can be
6 reasonably justified and agreed to by the Agency."

8 9. In the summer of 1995 WECA attempted to secure DAS's approval to expand
9 its geographic standards to Merced, Stanislaus and San Joaquin Counties and to Alameda
10 County in August 1996. Neither request resulted in DAS action or approval.

11 10. In the summer of 1997, Len Viramontes, a senior apprenticeship consultant
12 with DAS assigned to WECA, together with his supervisor and area manager, Mike Mortell,
13 attended a meeting with WECA representatives. WECA was represented by its director,
14 George Moton, and by the chairman of the Apprentice Training Committee, Norm Nutter.
15 The purpose of the meeting was to discuss WECA's proposed statewide expansion of its
16 geographic standards and DAS's requirements for approving that request. During this
17 meeting, DAS did not inform WECA that the section 212.2 notice and comment provisions
18 would be required for approval.

21 11. In August or September 1997, George Moton asked Len Viramontes if DAS
22 was going to require compliance with section 212.2 with respect to WECA's geographic
23 expansion request. Len Viramontes advised Mr. Moton that DAS's acting chief, Rita Tsuda,
24 stated that compliance with that section was not required.

26 12. On December 3, 1997, DAS approved the revised Unilateral Apprenticeship
27 Standards of WECA. Article III of the revised standards, entitled "Organization" was revised

1 to read, inter alia, "There is hereby established the above-named unilateral Western Electrical
2 Contractors Association, Inc. ("WECA") and Apprenticeship Training Committee ("ATC"),
3 operating in and covering the state of California . . ."

4 13. As of December 3, 1997, California Labor Code section 3075(b) provided:
5 "Programs may be approved by the Chief in any trade in the state or in a city or trade area,
6 whenever the apprentice training needs justifies the establishment."
7

8 14. As of December 3, 1997, Title 8, California Code of Regulations section 212.2,
9 which was promulgated to enforce Labor Code section 3075, read as follows:

10 f) Upon receipt of the proposed standards of a program, the Chief shall
11 serve a copy of the proposed standards and any supplement thereto on
12 the sponsor of each existing program may in the apprenticeable
13 occupation in the labor market area of the program, as defined by
14 section 215. Each such existing program may submit comments on the
15 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 . . .

16 (h) The Chief's decision whether to approve a program shall be issued
17 within ninety days after the receipt of the completed application for
18 approval. The decision shall be served on the sponsor and on each
19 party which submitted comments on the proposed program. The
20 decision shall be in writing and shall set forth the relevant findings of
fact, a discussion of any issues raised by any comments or at any
hearing and the reasons for the decision.

21 15. DAS did not follow the procedures set forth in Title 8, California Code of
22 Regulations section 212.2(f), (h) in connection with WECA ATC's geographic area expansion
23 in 1997.

24 16. At the time acting chief Rita Tsuda approved WECA's proposed expansion on
25 December 3, 1997, DAS had a practice of requiring that notice be sent pursuant to § 212.2
26 only when the requested approval involved new programs and not when the requested
27

1 approval related to revisions of existing standards. There was confusion within DAS as to
2 which form, Form 24 or 27, was appropriate to use for a revision as opposed to a new
3 program.

4
5 17. After acting chief Rita Tsuda approved WECA's proposed geographic
6 expansion on December 3, 1997, WECA entered into contracts with Local Education
7 Agencies (LEAs) and instructors within geographic areas outside of the areas stated in their
8 1992 geographic standards.

9
10 18. In late 1997 or early 1998, Len Viramontes had a telephone conversation with
11 someone who identified himself as a representative from the Alameda County Electrical
12 Union. Mr. Viramontes told the individual that WECA had been approved to expand into the
13 Alameda area. In addition, during the same time period, Mr. Viramontes spoke with Chuck
14 Cake, the business manager for IBEW Local 340, and spoke to him about WECA's
15 expansion.

16
17 19. Members of the California Apprenticeship Council (CAC) held private, non-
18 voting discussions during the period of 1997 and 1998, concerning the interpretation of
19 section 212.2 and whether the notice and comment provisions applied to expansions of
20 existing programs. There was no voting or public action on an interpretation of section 212.2
21 until action was undertaken to amend that section.

22
23 20. In September or October 2001, Mr. Uno received a telephone call conveying
24 information to Mr. Uno that WECA was possibly conducting training in Alameda County.

25
26 21. At the time of the September or October 2001 telephone call Mr. Uno believed
27 that WECA was operating mainly in Sacramento County and not in Alameda County.

28
29 22. In October 2001, Mr. Uno attended a statewide training meeting where training

1 directors from other counties, including San Diego, Ventura and Fresno expressed their
2 concerns that WECA was working in their areas.

3 23 In November and December 2001, Victor Uno was the Training Director of the
4 Alameda County Electrical JATC Program and authorized the filing of the subject complaint.

5 24. On or about November 2, 2001, Mr. Uno sent a letter to the Chief of DAS, Mr.
6 Henry Nunn, under the Public Records Act, requesting information concerning WECA's
7 approved areas of operation.

8 25. Mr. Uno first learned of the DAS's December 3, 1997, approval of WECA's
9 expanded geographic standards when he received DAS's response to his November 2, 2001,
10 Public Records Act request. Prior to that time, Mr. Uno was unaware of WECA's specific
11 advertising or recruitment efforts.

12 26. On December 7, 2001, Charging Party filed the underlying Complaint against
13 Apprenticeship Program with the DAS seeking to set aside the approval of the 1997
14 Standards.

15 27. Effective January 1, 2002, California Labor Code section 3075 (b) was
16 amended as follows:

17 (b) For purposes of this section, the apprentice training needs in the
18 building and construction trades shall be deemed to justify the approval
19 of a new apprenticeship program only if any of the following conditions
20 are met: (1) There is no existing apprenticeship program approved
21 under this chapter serving the same craft or trade and geographic area.
22 (2) Existing apprenticeship programs approved under this chapter that
23 serve the same craft or trade and geographic area do not have the
24 capacity, or neglect or refuse, to dispatch sufficient apprentices to
25 qualified employers at a public works site who are willing to abide by
26 the applicable apprenticeship standards. (3) Existing apprenticeship
27 programs approved under this chapter that serve the same trade and
28 geographic area have been identified by the California Apprenticeship

1 Council as deficient in meeting their obligations under this chapter. (c)
2 Notwithstanding subdivision (b), the California Apprenticeship Council
3 may approve a new apprenticeship program if special circumstances, as
4 established by regulation, justify the establishment of the program.

5 28. Effective February 16, 2002, Title 8, California Code of Regulations 212.2 was
6 revised to read:

7 A revision to change the program's occupation or to change the
8 program's geographic area of operation to include a different labor
9 market area is subject to the same application and approval process
10 set out in (a)-(j) of this section for approval of a program, including
11 providing notice of the proposed revision and an opportunity for
12 comment to existing programs in the same apprenticeable
13 occupation in the labor market area.

14 29. As of two weeks prior to December 3, 2002, WECA had 188 active, enrolled
15 apprentices recruited outside of the areas stated in their 1992 geographic standards.

16 30. DAS maintains data as to apprentices' residences as of the date of their
17 enrollment in apprentice training programs including WECA. The information maintained by
18 DAS is obtained originally from the training programs themselves. Based on the Data
19 maintained by DAS:

20 a. In 1998, 38% (48 out of 127) of WECA's apprentices had residences
21 outside of the areas stated in their 1992 geographic standards.

22 b. In 1999, 48% (82 out of 171) of WECA's apprentices had residences
23 outside of the areas stated in their 1992 geographic standards.

24 c. In 2000, 47% (115 out of 247) of WECA's apprentices had residences
25 outside of the areas stated in their 1992 geographic standards.

26 31. For the current class year of 2002-2003, WECA has contracts for 34 classes
27 with 21 instructors covering locations in the Counties of Butte, Lake, Fresno, Orange, and San
28

1 Diego, Santa Clara, Sonora, San Joaquin, Lassen, Alameda and Ventura.

2 32. For the class year of 2002-2003, WECA has contracts with 11 school sites
3 located in the Counties of Butte, Lake, Fresno, Orange, San Diego, Santa Clara, Sonora, San
4 located in the Counties of Joaquin, Lassen, Alameda and Ventura.

6 DISCUSSION

7 1. The Timeliness of Charging Party's Complaint.

8 a. The Complaint was timely filed with respect to the allegation of a section
9 212.2(f) violation.

10 WECA argues that since the Charging Party did not appeal DAS's decision to
11 approve the revision to its geographic standards within the 30-day limitation period in
12 section 212.2(j), it is barred from pursuing this complaint.⁵ A necessary predicate to the
13 application of the section 212.2(j) limitations period is proof that DAS followed its own
14 procedures under sections 212.2(h). Since there was no proof of that compliance, the time
15 limitation for appeal under subsection (j) did not begin to run.
16

17 WECA also argues the application of the time limitations set forth in section 201(a).
18 In pertinent part, section 201(a) provides for the filing of complaints within 30 days where
19 there is "cause to believe that a decision, order or action of an apprenticeship program sponsor
20 has been unfair or unreasonable...."⁶ The time limitation stated in section 212.2(j), however,
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23 ⁵ Section 212.2(j) provides: "The decision of the Chief approving or disapproving a proposed program
24 shall be final unless an appeal is filed with the California Apprenticeship Council within thirty days
25 following service of the decision. The appeal may be filed by the sponsor or by any union or existing
26 program which submitted comments under this section."

27 ⁶ Section 201(a) also lists 6 specific violations, not relevant here, that are subject to the time
28 limitations for filing a complaint with DAS. An exception to the 30-day filing limitation is for
violations of equal opportunity standards where there is a 180-day limitation under 201(a) (5).

1 specifically applies to an appeal of DAS's actions with respect to program approvals. The
2 appeal under section 212.2(j) is to the California Apprenticeship Council since it involves a
3 review of DAS's actions whereas an appeal arising under section 201(a) is to DAS and is
4 based on actions by an apprenticeship program sponsor.

5
6 In addition, Charging Party acted promptly after receiving information concerning
7 DAS's 1997 geographic expansion approval. The request for information from DAS
8 concerning WECA's approved geographic coverage was only made on November 2, 2001,
9 just 35 days prior to the filing of the subject complaint.

10
11 b. The Complaint with respect to allegations that WECA violated its 1992
12 geographic recruitment area is time barred.

13 The Charging Party alleged that WECA, both before and after the December 1997
14 expansion approval, recruited outside of the geographic area originally approved in its 1992
15 standards. (See Complaint at paragraphs 6, 7 and 17.) WECA contends that this allegation
16 is time barred.

17 A complaint is to be filed within 30 days "when there is cause to believe that a
18 decision, order or action of an apprenticeship program sponsor has been unfair or
19 unreasonable; or that there has been a violation of: ... [regulations and agreements]." section
20 201(a)

21
22 The testimony of Victor Uno, training Director of Alameda County Electrical JATC
23 Program, established that he became aware in October 2001 that WECA was probably
24 recruiting outside of its 1992 approved geographic area. That suspicion was discussed during
25 a statewide JATC training meeting that same month when other training directors confirmed
26

1 WECA's activities. Mr. Uno's November 2, 2001, letter to Mr. Henry Nunn confirms that
2 the Charging Party knew or had cause to know that WECA was conducting its training
3 operations in Alameda County.

4 In this regard, the testimony of Mr. Viramontes as to his telephone conversations in
5 1998 with someone from the Alameda County Electrical Union and conversations with
6 Chuck Cake, Business Manager of IBEW Local 340, do not establish that the Charging Party
7 knew about WECA's alleged recruiting efforts. There was no showing that the Charging
8 Party was aware of the telephone conversations or that any information regarding WECA's
9 alleged recruiting was communicated to Mr. Uno or some other representative of the
10 Charging Party at that time.

11 In addition, WECA argues that it had engaged in active and open recruiting after its
12 December 1997 approval and that the Charging Party had ample opportunity to become
13 aware of the geographic expansion. Mr. Uno testified that he was unaware of that recruiting
14 effort and presumptive knowledge of this recruiting activity will not be attributed to him in
15 light of that testimony.

16 Mr. Uno's awareness of WECA's activities as discussed above, however, was
17 sufficient to show that Mr. Uno had "cause to believe" under section 201(a) that a violation
18 of the 1992 geographic recruiting standards had potentially occurred.

19 There is no specific tolling provision in section 201(a), nor has the Charging Party
20 argued that some other tolling theory applies. Accordingly, the allegations that WECA
21 violated its 1992 geographic recruiting limitations are time barred.

22 //

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1 2. Notice to the Complaining Party and Opportunity to Comment was Required by
2 Regulation at the Time WECA's Geographic Expansion was Approved in December
3 1997.

4 It is undisputed that the Charging Party neither received notice from DAS of WECA's
5 request to expand its geographic coverage nor was it afforded the opportunity to comment on
6 that requested expansion.

7 The argument that notice under the regulation is required only when approval is sought
8 for a new plan and not when geographic expansion relates to a revision of an existing plan, is
9 not supported by the language of the regulation itself. Section 212.2(f) broadly speaks in
10 terms of "proposed standards of a program," or "proposed standards," or "proposed program"
11 when requiring that notice be given to "the sponsor of each existing program in the
12 apprenticeable occupation in the labor market area of the program, as defined by Section
13 215."

14 There is nothing in the regulation that suggests that the notice requirement is to be
15 read so narrowly that a proposed change to an existing program's previously approved
16 geographic standards would not be included within the meaning of proposed "standards,"
17 "program," or "standards of a program."
18

19 In this regard, the reasoning of the Sacramento Superior Court in Case No.
20 01CS01172 is persuasive.⁷ The Superior Court upheld CAC's rulings in *Ten Bay Area*
21 *Regional Roofing Joint Apprenticeship and Training Committee etc. et al. v. Independent*
22 *Roofing Contractors of California Unilateral Apprenticeship Committee (IRCC)*, Case No.
23 DAS 99-07 and *Fresno Area Plumbers, Pipe and Refrigerator Fitters JATC v. PHCC of the*
24

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27 ⁷ Since no authority was submitted to the contrary, the ruling is not treated as having a preclusive effect
28 in this matter.

1 Greater Sacramento Area etc. et al. (*PHCC*), Case No. 98-17, that notice was required under
2 section 212.2(f) since geographic expansion of existing programs were "new" programs.⁸

3 In upholding CAC's decisions, however, the Superior Court found it unnecessary to
4 artificially distinguish between so-called new programs and revisions to existing programs
5 with respect to notice requirements since the language of the regulation itself did not make
6 that distinction.
7

8 DAS's past practices in deciding how it would comply with regulation, or the degree
9 of confusion within DAS as to what form to use, does not change what the regulation
10 required. This is true even though DAS operated in good faith or based its decisions on
11 advice of counsel. DAS's past practices in applying regulation and determining if notice is
12 required under regulation does not control CAC's statutorily granted authority to regulate the
13 area of apprenticeship training programs.⁹
14

15 Similarly, the private views held by CAC's members as to the meaning of CAC's
16 regulations do not modify the regulation's plain language. There was no evidence presented
17 that the CAC as a public administrative body ever engaged in a quasi-judicial interpretation
18 of the notice provisions in section 212.2(f) prior to the *PHCC* and *IRCC* decisions. There
19 was no evidence that the CAC acted to amend the regulation in compliance with the
20 Administrative Procedure Act until section 212.2 was revised effective February 16, 2002.
21 There was no evidence that, other than private, non-public discussions, CAC ever publicly
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26 ⁸ WECA's request to include portions of the *PHCC* hearing transcripts regarding DAS's past practices
27 as part of this record is granted. The testimony is for the most part cumulative and does not change the
28 conclusions expressed herein.

⁹ See generally Labor Code §§ 3070 et seq.

1 voted on an interpretation of section 212.2 as requiring notice only to new programs and not
2 where revisions were proposed to existing programs.¹⁰

3 Consequently, at the time WECA obtained approval from DAS to expand its
4 geographic coverage on December 3, 1997, section 212.2(f) required that notice be given to
5 the Charging Party and that the Charging Party have an opportunity to comment on the
6 proposed program standards. DAS violated that requirement.

8
9 3. WECA Relied on DAS's Approval of its Geographic Expansion to its Detriment.

10 Even though equitable estoppel will not be invoked if the result will be to frustrate a
11 strong public policy, equitable estoppel has been applied to governmental agencies where the
12 harm to the party seeking the estoppel outweighs the potential harm to the public interest. *In*
13 *Re Monigold* (1988) 205 Cal.App. 3d 1224, 1228-1229. The court in *Manigold* held that the
14 elements of estoppel, in addition to government action, are: the governmental agency must
15 be apprised of the true facts; the governmental agency must have intended the party to rely
16 upon its conduct; the party must be ignorant of the true facts; and the party must rely on the
17 agency's conduct to its detriment. *Id.*

18
19 Here, the evidence supports the application of equitable estoppel. WECA relied on
20 DAS's approval. After DAS granted approval of the expanded geographic coverage in
21 December 1997, WECA enrolled apprentices in areas outside of its original standards
22 including the hiring of instructors and LEA's to accomplish training. In 1998, 38% (48 out
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26 ¹⁰ Such private action would not be entitled to deference in any event. *Tidewater Marine Western, Inc.*
27 *v. Bradshaw* (1994) 14 Cal.4th 557.

1 of 127) of WECA's apprentices had residences outside of WECA's original geographic
2 standards. ¹¹ In 1999, 48% (82 out of 171) of WECA's apprentices had residences outside of
3 WECA's original geographic standards. In 2000, 47% (115 out of 247) of WECA's
4 apprentices had residences outside of WECA's original geographic standards.
5

6 Currently, WECA has 188 actively enrolled apprentices recruited outside of its
7 original geographic standards.

8 In addition, since DAS is the administrative body having the delegated authority
9 initially to consider and to approve proposed programs and/or standards¹², its actions have
10 the understandable effect of inducing reliance. Here, WECA justifiably relied on DAS's
11 representations concerning the application of section 212.2 and its ultimate action in
12 approving the proposed geographic expansion.
13

14 Len Viramontes and Mike Mortell reviewed WECA's proposed geographic
15 standards. During a meeting with WECA representatives, the purpose of which was to
16 advise WECA of the steps necessary to secure approval of WECA's requested expansion,
17 Viramontes and Mortell did not mention compliance with section 212.2 as a necessary step
18 in the approval process. More importantly, Len Viramontes told George Moton that Rita
19 Tsuda, DAS's acting chief, specifically stated that compliance with section 212.2 was not
20 necessary and, in fact, approved the proposed geographic standard without requiring notice
21 or a comment period pursuant to section 212.2.
22
23

24 ¹¹ This is based on the "start date" listed on the referenced exhibits since that date represents the date of
25 apprentice enrollment. Exhibit's "BB" and "CC."

26 ¹² Labor Code § 3073.
27

1 WECA obtained DAS's approval after complying with DAS's directives. There is no
2 allegation or evidence that WECA failed to meet any regulatory requirement, or DAS
3 directive in its application for approval of its proposed expansion. Under section 212.2, the
4 approval process is initially a DAS function. Once WECA initiated the expansion process,
5 its only choice was to comply with DAS's directives. In that sense, DAS's misinterpretation
6 of regulation is not attributable to WECA and should not be used to negate what was
7 WECA's justifiable reliance on DAS's approval.
8

9
10 4. Remedies.

11 Equitable estoppel will not be invoked where to do so would frustrate a strong public
12 policy. *In Re Monigold, supra.* From a policy perspective, DAS's actions should not, by
13 default, defeat what is CAC's statutory rulemaking and interpretive function. Nor should the
14 public policy expressed in the notice and comment provisions of sections 212.2(f) and (h) be
15 defeated by the application of equitable estoppel.
16

17 The question then becomes can WECA be allowed to continue its training programs
18 as they are currently conducted without defeating the public policy considerations of notice
19 and comment and preserving CAC's regulatory function?
20

21 Both policies can be preserved, and WECA's justifiable reliance accommodated,
22 however, so long as the continuation of WECA's existing program standards is subject to
23 DAS reopening the approval process to provide notice and an opportunity to comment in
24 conformity with section 212.2. This would entail maintaining the status quo by allowing
25 WECA to continue its existing programs without creating new training programs where they
26 do not currently exist. This reopening process should also be conducted by DAS under
27

1 statute and regulation as they existed at the time approval was granted in December 1997.
2 This is so because Labor Code section 3075(b) was amended effective January 2002 and
3 section 212.2 was amended on February 16, 2002. No authority has been submitted that
4 justifies a retroactive application of the amended statute or regulation.
5

6 The remedies urged by the Charging Party are not appropriate. In light of the above
7 discussion, it would be unfair to WECA as well as to the apprentices enrolled in its programs
8 and those contractors utilizing WECA to simply discontinue the program by transferring
9 apprentices to other approved training programs. The potential disruption to WECA's
10 apprentice training, contractors and potential transferee training programs could well be
11 enormous and unworkable as well.
12

13 Maintaining WECA's operational status quo would not extend to permitting WECA
14 to create new training programs/locations that are not currently in existence or to engage in
15 new recruitment efforts extending to the enrollment of apprentices whose residences are
16 outside of the original approved (pre-December 1997) geographic standards except for those
17 applications that are already in process. It is appropriate, therefore, to order WECA to both
18 refrain from engaging in new apprentice recruitment outside of its pre-December 1997
19 geographic standards and to refrain from establishing new training programs/locations,
20 including the hiring of new instructors and contracting with new LEAs, in areas where
21 training programs/locations do not currently exist as of the date of this decision.¹³
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26 ¹³ WECA has identified the location of these school sites in Butte, Lake, Fresno, Orange, San Diego,
27 Santa Clara, Sonoma, San Joaquin, Lassen, Alameda and Ventura Counties.
28

1 The approval of WECA's geographic expansion, however, is ultimately reserved to the
2 CAC pursuant to section 212.2(j) in light of sections 212.2(f), and (h). Consequently, this
3 decision together with the entire record will be made available to the CAC.

4 **ORDER**

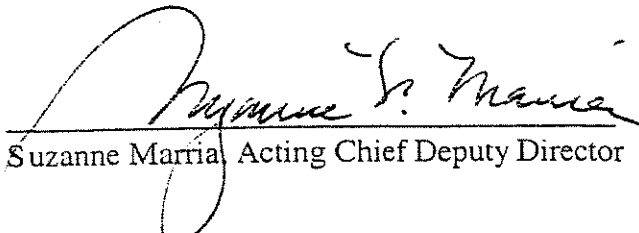
5 In light of the findings of facts and for the reasons described above, it is hereby
6 ordered that:

7
8 1. Insofar as the Complaint alleges that WECA violated its 1992 geographic
9 standards by recruiting apprentices outside of those approved areas both prior and
10 subsequent to December 1997, that portion of the complaint is time barred.

11
12 2. Insofar as the Complaint seeks to challenge DAS's December 3, 1997
13 approval of WECA's proposed geographical expansions of its Apprenticeship Program on
14 the basis that DAS did not comply with the notice and comment provision of section
15 212.2(f), the matter is hereby referred to the CAC together with this decision and the entire
16 record in this matter.

17
18 3. Pending further action by the CAC, WECA is to refrain from establishing any
19 new training programs/locations, including the hiring of new instructors and contracting with
20 new LEAs, that are not currently in existence as of the date of this decision and to refrain
21 from engaging in new apprentice recruitment covering geographic areas other than those
22 specified in WECA's original approved standards.

23
24 DATED: April 22, 2003

25
26 
27 Suzanne Marria, Acting Chief Deputy Director

PROOF OF SERVICE
(Code Civ. Proc. §§ 1013a, 2015.5)

1
2
3 RE: Alameda County Joint Apprenticeship and Training Committee for the
4 Electrical (Inside Wireman) Trade, on behalf of itself and all other similarly
5 situated Joint Apprenticeship and Training Committees in the State of California
6 for the Electrical Trade v. Western Electrical Contractors Association, Inc.,
7 Electrical Apprenticeship and Training Committee
8 Appeal No. DAS 02-0055 [DAS Complaint No. 200121]

9 I am employed in the City and County of Sacramento, California. I am over the age
10 of eighteen years and not a party to the within action; my business address is 2424 Arden
11 Way, Suite 130 Sacramento, CA 95825.

12 On April 24, 2003, I served the enclosed copy of:

13 **DECISION**

14 on the parties listed below by placing true copies thereof in sealed envelopes addressed as
15 shown below for service as designated below:

- 16 (A) By First Class Mail: I am readily familiar with the practice of the
17 Department of Industrial Relations, Office of the Director, for the collection
18 and processing of correspondence for mailing with the United States Postal
19 Service. I caused each such envelope, with first-class postage thereon fully
20 prepared, to be deposited in a recognized place of deposit of the U.S. Mail in
21 Sacramento, California, for collection and mailing to the office of the
22 addressee on the date shown herein.
- 23 (B) By Personal Service: I caused each such envelope to be personally delivered
24 to the office of the addressee by a member of the staff of the Department of
25 Industrial Relations, Office of the Director Legal Unit, on the date last
26 written below.
- 27 (C) By Messenger Service: I am readily familiar with the practice of the
28 Department of Industrial Relations, Office of the Director Legal Unit for
messenger delivery, and I caused each such envelope to be delivered to a
courier employed by Golden State Overnight, with whom we have a direct
billing account, who personally delivered each such envelope to the office of
the address at the place and on the date last written below.

1 (D) By Facsimile Transmission: I caused such document to be served via
2 facsimile electronic equipment transmission (fax) on the parties in this
3 action, pursuant to oral and/or written agreement between such parties
4 regarding service by facsimile by transmitting a true copy to the following
5 fax numbers:

<u>TYPE OF SERVICE</u>	<u>ADDRESSEE & FAX NUMBER (IF APPLICABLE)</u>	<u>PARTY REPRESENTED</u>
A	Ronald W. Brown, Esq. Cook Brown, LLP 555 Capitol Mall, Suite 425 Sacramento, CA 95814-4503	Attorney for Respondent
A	Fred Lonsdale, Esq. Department of Industrial Relations Attn: OD-Legal Unit P.O. Box 420603 San Francisco, CA 94142-0603	Attorney for DAS
A	Sandra Rae Benson, Esq. Kristina L. Hillman, Esq. Van Bourg, Weinberg, Roger & Rosenfeld 180 Grand Avenue, Suite 1400 Oakland, CA 94612	Attorneys for Charging Party
A	State of California Department of Industrial Relations California Apprenticeship Council P.O. Box 420603 San Francisco, CA 94142-0603	

16 Executed on April 24, 2003, at Sacramento, California. I declare under penalty of
17 perjury under the laws of the State of California that the foregoing is true and correct.
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Eileen Cruz, Declarant