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BEFORE THE
CALIFORNIA APPRENTICESHIP COUNCIL

ALAMEDA COUNTY JOINT APPRENTICESHIP
AND TRAINING COMMITTEE FOR THE
ELECTRICAL (INSIDE WIREMAN) TRADE,
Charging party, Appellant and Appellee,

Case No. 2003-18

DECISION

v.

WESTERN ELECTRICAL CONTRACTORS
ASSOCIATION, INC. ELECTRICAL
APPRENTICESHIP AND TRAINING COMMITTEE

Respondents, Appellant and appellee.

FACTS AND PROCEDURAL HISTORY

On April 14, 1992, the Division of Apprenticeship Standards ("DAS") approved an application by the appellant and appellee Apprenticeship Committee of the Western Electrical Contractors Association, Inc. ("WECA") to train apprentices. WECA's standards stated that the program would operate in the Counties of Sacramento, Amador, Colusa, Yolo, Yuba and in portions of the Counties of Alpine, El Dorado, Nevada, Placer and Sierra ("the Original Area").

On December 3, 1997, DAS approved revised standards ("1997 Standards") that provided that WECA would operate throughout California. As of that date, former 8 C.C.R. section 212.2(f) and (g) required DAS to give notice of a proposed new program to existing programs in the apprenticeable occupation in the geographic area to be served by the proposed program. DAS did not comply with these notice requirements. WECA subsequently recruited substantial numbers of apprentices whose residences are outside the Original Area and offered training in LEAs outside the Original Area.

On December 1, 2001, a representative of appellant and appellee Alameda County Electrical Joint Apprenticeship Training Committee ("JATC") learned that DAS had approved

1 WECA's expanded geographic area. On December 7, 2001, JATC filed a complaint with DAS
2 seeking to set aside DAS' approval of the 1997 Standards.

3 The complaint was heard on December 3, 4 and 5, 2002 by a hearing officer appointed by
4 the Administrator of Apprenticeship. Acting Director Chuck Cake recused himself from
5 consideration of the complaint, and the compliant was submitted to Acting Chief Deputy
6 Suzanne Marria acting as the Administrator.

7 The Administrator's decision was issued on April 22, 2003 ("the Decision"). The
8 Decision found that the JATC's compliant concerning DAS' approval of the 1997 Standards was
9 not time-barred because the thirty day requirement in section 212.(j) had not begun to run due to
10 DAS' failure to comply with the notice requirement in section 212.2(h). The Decision found that
11 the JATC's compliant that WECA had recruited apprentices outside the Original Area was time-
12 barred under 8 C.C.R. section 201(a) because the JATC had knowledge of the recruitment more
13 than 30 days before the filing of the compliant.

14 The Decision found that DAS was required to give notice of the 1997 Standards because
15 section 212.2(f) requires notice "proposed standards" and a "proposed program". The
16 Administrator reasoned that Section 212.2(f) should not be read so narrowly as exclude a change
17 to an existing program's geographic fro the requirements of Section 212.2(f). In reaching this
18 conclusion, the Administrator followed the reasoning of the Sacramento Superior Court in the
19 PHCC and IRCC litigation, Sacramento Superior Court no. 01CS01172.

20 The Decision further found that DAS' confusion in interpreting the requirements of
21 section 212.2(h), and its good faith in approving the 1997 Standards, did not excuse its lack of
22 compliance with the notice requirements. The Decision further found that the subsequent
23 changes in section 212.2 did not support an interpretation of former section 212.2 that justified
24 DAS' failure to give the required notice.

25 The Decision found that WECA had justifiably relied to its detriment on DAS' improper
26 approval of its 1997 Standards. Due to this justifiable reliance, the Administrator decided that it
27 would be equitable to allow WECA to continue operating under its 1997 Standards pending
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1 DAS' reopening of the approval process. The Administrator directed that DAS' reopening of the
2 approval process should be governed by former section 212.2. The Administrator believed that
3 under the circumstances it would be unfair to WECA, its apprentices and its employers to order
4 the transfer of WECA's apprentices to other programs.

5 Additional facts are stated in the Director's decision. The Council upholds each of the
6 Director's factual findings.

7 The Administrator issued the following orders:

- 8 1. JATC's challenge to DAS' approval of the 1997 Standards was referred to the Council
9 for determination;
- 10 2. JATC's challenge WECA's recruitment of apprentices outside its Original Area was
11 dismissed as time-barred;
- 12 3. Pending further action by the Council, WECA was ordered to refrain from establishing
13 new training programs and training locations that are not in existence as of the date of the
14 Administrator's decision;
- 15 4. Pending further action by the Council, WECA was ordered to refrain from recruiting
16 apprentices outside its Original Area.

17 Both WECA and the JATC appealed the Administrator's decision.

18 The appeals were assigned to a panel consisting of Max Turchen, Burt Tolbert and
19 Dennis McCuen for review. The panel determined that a hearing was not required because the
20 Administrator's decision was based on an evidentiary hearing and because the parties had
21 submitted extensive briefs.

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DISCUSSION

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WECA argues that DAS's conduct estoppes the Council from prohibiting WECA to
operate under its 1997 Standards, that public policy and federal law allow WECA to continue to
recruit apprentices throughout the State, and that the 1997 Standards were merely a revision of its
original Standards and as such were not subject to the notice requirements of section 212.2.

1 WECA's arguments are substantially identical to the arguments rejected by Council in previous
2 similar appeals and rejected by the courts in the PHCC/IRCC and ACTA litigation, both of
3 which are now on appeal. The Council sees no reason to depart from the reasoning of its
4 previous decisions. WECA also argues the JATC's appeal is untimely under 8 C.C.R. section
5 203(a) because the appeal was filed more than 10 days after the JATC was notified of the
6 Administrator's decision. However, the JATC's appeal was mailed on May 13, 2003, five days
7 after the mailing of WECA's appeal. Under California Rule of Court 3(e), the filing of an
8 appeal from a judgment in a civil action extends the time in which an opposing party may file a
9 cross appeal. While there is no equivalent to Rule 3(e) in the Council's regulations, the Council
10 believes section 203(a) should be interpreted as providing for a similar extension. The Council
11 accordingly concludes that the JATC's appeal was untimely. WECA's appeal is denied.

12 The JATC challenges the Administrator's conclusion that the JATC's complaint
13 concerning WECA's 1992 Standards was time-barred. However, the evidence supported the
14 Administrator's finding that the JATC's Director of Training knew as early as October, 2001
15 that WECA might have been training and recruiting outside its Original Area. Under section
16 203(a), a complaint must be filed within 30 days after "there is cause to believe" that a violation
17 has occurred. Since the JATC's complaint was filed on December 7, 2001, the Administrator
18 correctly concluded that the complaint was time-barred.

19 The JATC also argues that the Administrator should not have allowed WECA to continue
20 operating under its 1997 Standards pending the Council's decision on this appeal. However, the
21 Council believes that the Administrator's decision was an appropriate resolution of the problems,
22 and in particular the disruption to WECA's apprentices and employers, caused by DAS'
23 improper approval of WECA's 1997 standards and WECA's justifiable reliance on that approval.
24 The JATC's appeal is denied.

25 The Council concludes that the 1997 revisions to the original WECA standards
26 constituted a "new" program within the meaning of former section 212.2 because the revisions
27 changed the geographic area of the program and added new sources of related and supplemental
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1 instruction. instruction and because . The Council agrees that the revisions constituted a
2 "new"WECA has recruited apprentices outside its Original Area. Former Regulation 212.2 set
3 forth the procedure in 1997 for approval of new programs. DAS did not follow the this
4 procedure in its approval of the WECA 1997 Standards. The approval therefore is invalid
5 WECA accordingly is authorized to operate its program only under its original standards..

6 To avoid disruptions to their training and other inconveniences, those apprentices whom
7 WECA has recruited improperly up to the date of the Administrator's decision should be allowed
8 to remain with WECA. A letter from WECA's attorney to the Administrator, dated June 25,
9 2003, includes a representation that WECA would comply with paragraph 3 of the Order section
10 of the Administrator's Decision. Paragraph 3 directed WECA to cease recruiting and training
11 apprentices outside its Original Area. On the basis of this representation, the Council assumes
12 that WECA has not recruited or trained apprentices outside its Original Area after the
13 Administrator's decision and therefore sees no need to issue an order concerning such
14 apprentices.

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16 ORDER

17 The Council issues the following orders:

- 18 1. The Administrator's decision is upheld.
- 19 2. DAS's approval of WECA's 1997 Standards was invalid because DAS did not comply
20 with the notice provisions of section 212.2. WECA therefore is may operate only under its
21 original standards and its 1997 standards are null and void for all purposes. The record does not
22 reveal whether WECA has submitted a proper complete application for approval of a new
23 program. If it has, DAS shall process the application promptly pursuant to Regulation 212.2. If
24 not, WECA may submit such an application. The application shall be reviewed under the
25 version of section 212.2 that was in effect in 1997.
- 26 3. Apprentices who have been recruited by WECA outside WECA's Original Area may
27 remain with WECA if they chose. WECA is allowed to retain such LEAs and other facilities

1 outside its Original Area as are necessary to complete the training of apprentices indentured prior
2 to April 22, 2003, the effective date of the Administrator's decision. Upon completion of the
3 training of those apprentices, WECA shall discontinue use of all facilities and LEAS not
4 provided for in its 1992 Standards.

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6 DATED: 10-23-03

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9 CHAIRMAN, CALIFORNIA APPRENTICESHIP COUNCIL

10 RECOMMENDATION

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13 We recommend that the Council adopt the above decision.

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DATED: _____

CHAIRMAN, CALIFORNIA APPRENTICESHIP COUNCIL

RECOMMENDATION

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Max Turchen

Burt W. Tolbert

Burt Tolbert

Dennis McCuen

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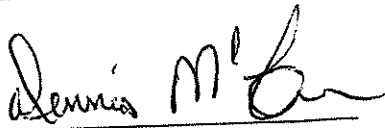
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8 CHAIRMAN, CALIFORNIA APPRENTICESHIP COUNCIL

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