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U.S. DEPARTMENT OF LABOR
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In the Matter of

U.S. DEPARTMENT OF LABOR,
OFFICE OF APPRENTICESHIP
TRAINING, EMPLOYER AND LABOR
SERVICES,

Prosecuting Party,

v.

CALIFORNIA DEPARTMENT OF
INDUSTRIAL RELATIONS,

Respondent,

and

CALIFORNIA APPRENTICESHIP
COUNCIL,

Respondent.

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

**MOTION FOR LEAVE TO FILE
BRIEF OF AMICI CURIAE IN SUPPORT OF
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

SANDRA RAE BENSON, Bar No. 121324
PATRICIA M. GATES, Bar No. 76498
M. SUZANNE MURPHY, Bar No. 145657
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
180 Grand Avenue, Suite 1400
Oakland, California 94612
Telephone: (510) 839-6600
Attorneys for Amicus Curiae
CALIFORNIA APPRENTICESHIP
COORDINATORS ASSOCIATION

STEPHEN P. BERZON, Bar No. 46540
SCOTT A. KRONLAND, Bar No. 171693
ALTSHULER, BERZON, NUSSBAUM,
RUBIN & DEMAIN
177 Post Street, Suite 300
San Francisco, California 94108
Telephone: (415) 421-7157
Attorneys for Amicus Curiae
STATE BUILDING AND CONSTRUCTION
TRADES COUNCIL OF CALIFORNIA, AFL-CIO

Pursuant to 29 C.F.R. §18.12, the California Apprenticeship Coordinators Association (“California ACA”) and the State Building and Construction Trades Council of California, AFL-CIO (“SBCTC”) respectfully request permission to file the attached Brief of Amici Curiae and Declaration of Sandra Rae Benson in support of the motion for summary judgment filed by respondent California Department of Industrial Relations (“CDIR”), in this action to review the decision of the United States Department of Labor (“DOL”), Office of Apprenticeship Training, Employer and Labor Services (“OATELS”), to derecognize CDIR and a related entity, California Apprenticeship Council (“CAC”), as its agents to register local apprenticeship programs for federal purposes—i.e., as a state apprenticeship council (“SAC”) within the meaning of 29 C.F.R., title 29.¹

I. INTRODUCTION

In this derecognition proceeding, OATELS contends that the “needs test” found in California Labor Code section 3075, “violates” the National Apprenticeship Act (29 U.S.C. §50 et seq. [commonly known as “the Fitzgerald Act”]), and its implementing regulations (29 C.F.R., §29.1 et seq.), allegedly because it limits rather than promotes apprenticeship opportunities in California. OATELS further contends that derecognition is appropriate simply because CDIR failed to obtain “prior approval” from OATELS before the “needs test”—which has been a feature of Labor Code section 3075 since 1939, when the Shelley-Maloney Apprentice Labor Standards Act of 1939 (“Shelley-Maloney Act”) was first enacted as the law of California (see Stats. 1939, ch. 220, §2, p. 1473)—was made more specific and clarified by the California Legislature in 1999 with the passage of Assembly Bill 921 (see Stats. 1999, ch. 903, §7).

Members of the SBCTC and the California ACA (collectively, hereafter,

¹ Because 29 C.F.R. §18.12 permits but does not prescribe any time limits for submission of amicus curiae briefs, this motion and accompanying brief are being submitted on the date for filing the parties’ reply briefs. (See Order Canceling Hearing and Establishing Briefing Schedule, issued August 12, 2004; and cf. Cal. Rules of Court, rules 29.1(f)(2), (4) [application, accompanied by proposed amicus curiae brief, must be filed within 30 days of the filing of the last authorized party’s brief in the California Supreme Court].)

“the JATC Amici”) sponsor and administer joint apprenticeship training programs² by which over 43,000 young, displaced, and underemployed workers are currently being educated and trained for careers in the various skilled trades required in the construction industry in California—i.e., in carpentry, ironwork, electrical, painting, heavy equipment operation, sprinkler fitting, roofing, and other trades. Members of SBCTC also represent the interests of more than 375,000 unionized construction workers in California, including journey-level workers and apprentices.

The JATC Amici have reviewed the parties’ briefs in support of their respective cross-motions for summary judgment, and the briefs of other amici curiae already on file in this proceeding. The JATC Amici are, thus, familiar with the legal matters involved in this case, and believe they can present additional arguments to assist Chief Administrative Law Judge John M. Vittone, of DOL’s Office of Administrative Law Judges (“OALJ”), in deciding the important issues raised by the parties to this proceeding.

II. INTERESTS OF THE JATC AMICI IN THESE PROCEEDINGS

A. The California Apprenticeship Coordinators Association

The California ACA is a non-profit, public benefit corporation whose members are apprenticeship coordinators and directors from every building trades JATC in California. The California ACA is funded through voluntary contributions from regional apprenticeship training associations and the individual JATCs on an annual basis. The purpose of the California ACA, as set forth in its bylaws, is to support the comprehensive apprenticeship laws and regulations adopted by the Legislature and the CAC for the betterment of registered apprentices throughout California. For many years, the California ACA has dedicated itself to protecting the welfare of apprentices registered with the DAS, and has served as an advisory group to the CAC as well.

The JATCs represented in the California ACA are jointly administered

² These programs, which are administered by Joint Apprenticeship Training Committees (“JATCs”) are also sometimes referred to as Joint Apprenticeship Committees (“JACs”).

labor-management cooperatives that operate apprenticeship programs under written standards approved by CDIR's Division of Apprenticeship Standards ("DAS") pursuant to California Labor Code section 3070 et seq., and California Code of Regulations, title 8, section 212 et seq. The JATCs receive funding from apprenticeship training trust funds that have been established through collective bargaining agreements between employer associations and unions in the construction industry. Of greatest relevance for present purposes, the JATCs recruit, train, dispatch, and monitor the progress of apprentices who work and receive on-the-job training on "public works" projects throughout California.

Generally speaking, JATCs are responsible for developing craft-specific curriculum and on-the-job training standards, which ensure that the apprentices participating in their programs receive training in all aspects of the relevant trade so as to justify the journeyman's certificate issued by the State of California upon completion of the program. Programs administered by members of the California ACA currently train over 43,000 registered apprentices in the building trades and crafts throughout the State of California under apprenticeship agreements on file with DAS, and have a direct interest in the CDIR's ability to certify apprenticeship programs approved by the CAC.

The California ACA, and the JATCs represented in that organization, are profoundly interested in ensuring that the standards of apprenticeship training in the building and construction trades are maintained at the highest level of quality consistent with current technology, that apprentice training is conducted in a safe manner, and that California apprentices are not simply exploited as a "cheap labor source" during their period of apprenticeship—an historical problem with apprenticeship programs that was specifically recognized by the State Legislature in 1999 when it adopted clear standards for application of the statutory "needs test." (See Stats. 1999, ch. 903, §1.) The California ACA is also dedicated to ensuring recruitment and outreach to all communities in California, especially to women and people from diverse backgrounds; to providing quality training of apprentices; to promoting safe and successful completion of the JATCs' apprenticeship programs; and to developing a steady supply of employment

opportunities for apprentices. To these ends, the California ACA has been an active participant in the efforts of the CAC to be inclusive, while maintaining the high standards that are necessary to provide safe and successful apprenticeship programs.

The members of the California ACA also have a substantial interest in seeing to it that the apprentices indentured into their programs are also certified by the California SAC for federal purposes. The California ACA believes that if OATELS is successful in its prosecution of the California SAC, and CDIR loses its authority to register apprentices for federal purposes, the real victims will be the men and women of California who are part of the existing apprenticeship community. Derecognition will create confusion and impede the ability of the California ACA's members to represent the rights of the individuals who participate in their apprenticeship programs. California apprentices in the building and construction trades, in particular, could lose employment opportunities currently available to them on federal public works projects in California. In addition, California apprenticeship programs will experience burdensome and duplicative paperwork requirements as they will be required to apply to both the federal and state apprenticeship agencies for review and approval of their standards. These programs will thus have less time and fewer resources to their core purposes of conducting community outreach for the recruitment of new apprentices, developing high quality curriculum for apprenticeship training, recruiting skilled instructors, promoting the health and safety of apprentices, and cultivating job opportunities for them.³

B. The State Building and Construction Trades Council

The SBCTC is a federation of labor organizations composed of approximately 200 local unions and 20 district councils, which together represent over 375,000 construction workers in California, including journey-level workers and apprentices. SBCTC was founded in 1901, and its primary mission is to

³ The facts underlying this statement of interest were submitted to OALJ in the Declaration of Michael Longeuay, filed August 8, 2002, in support of the California ACA's request for leave to participate in these proceedings.

represent the interests of its affiliates and their members, and to improve the health, jobs, safety, and economic conditions of all working men, women, and minors in the construction industry.

The vast majority of apprentices registered in state-approved apprenticeship programs in California are union members represented by the SBCTC and its affiliates. These apprentices are enrolled in programs jointly sponsored by building trades unions and union-signatory contractors. According to data from DAS, there are approximately 62,500 apprentices registered in state-approved apprenticeship programs in the building and construction trades in California. Of those 62,500 apprentices, approximately 57,000 are registered in joint apprenticeship programs set up pursuant to collective bargaining agreements between building trades unions and union contractors. Apprentices represented by building trades unions thus make up approximately 90 percent of the individuals who would be affected by the derecognition of the California SAC by OATELS.⁴

III. ISSUES IN NEED OF FURTHER BRIEFING

As we have noted, OATELS asserts two grounds for derecognition of CDIR and CAC as its agents to register local apprenticeship programs for federal purposes: first, that the “needs test” found in California Labor Code section 3075 “violates” the Fitzgerald Act and its implementing regulations by “limiting” rather than promoting apprenticeship opportunities in the construction trades in California; and second, that derecognition is warranted simply because CDIR failed to obtain “prior approval” from OATELS before Labor Code section 3075 was amended by the California Legislature in 1999. CDIR has ably briefed these issues. However, the JATC Amici believe there are several additional arguments that will assist the ALJ in deciding the merits of the parties’ cross-motions for summary judgment.

First, the JATC Amici will trace the legislative history of Labor Code

⁴ The facts underlying this statement of interest were submitted to OALJ in the Declaration of Robert L. Balgenorth, filed August 29, 2002, in support of SBCTC’s request to participate as amicus curiae.

section 3075 to show that the “needs test” has been a feature of California law since 1939, and was based on a model statute developed by DOL itself. The JATC Amici will also demonstrate that OATELS’s claim that the needs test in Labor Code section 3075 “limits” apprenticeship opportunities in California by preventing approval of so-called “unilateral” or non-union apprenticeship programs, is entirely speculative and without any basis in law or fact. Indeed, there is no showing in this case that any unilateral program has been denied approval based on the “needs test” for more than a decade. Thus, OATELS has not even made out a prima facie case to support its decision to “derecognize” the California SAC pursuant to 29 C.F.R. §29.13.

In addition, the JATC Amici will explain that, far from limiting apprenticeship opportunities in California, the “needs test” is “necessary to safeguard the welfare of apprentices.” In this regard, the “needs test” ensures that apprentices can obtain necessary skills in a timely fashion through “reasonably continuous employment,” under clear standards and in safe working conditions, and will not be exploited as a cheap source of labor.

The JATC Amici will also argue that, to the extent OATELS may be using this prosecution to force California to lower its standards for approving apprenticeship programs for “state purposes,” OATELS is acting in excess of its authority. Finally, the JATC Amici will explain that this ill-advised prosecution, if successful, will have dire consequences for the California apprenticeship system and California apprentices. Both new and existing programs, JATCs and unilateral programs alike, will be burdened with duplicative bureaucratic requirements which will waste the programs’ scarce resources—which would be far better directed toward apprentice training and efforts to improve the *quality*, rather than the *quantity* of the programs that provide such training—yet do nothing to expand opportunities for apprentices in California.

IV. CONCLUSION

For all the foregoing reasons, the JATC Amici respectfully request that the ALJ accept the attached Brief of Amici Curiae for filing, and consider their arguments in support of CDIR’s motion for summary judgment.

Dated: October 4, 2004

WEINBERG, ROGER & ROSENFELD, A
Professional Corporation
Sandra Rae Benson
Patricia M. Gates
M. Suzanne Murphy

By: Sandra Rae Benson
SANDRA RAE BENSON

By: M. Suzanne Murphy
M. SUZANNE MURPHY
Attorneys for the CALIFORNIA
APPRENTICESHIP COORDINATORS
ASSOCIATION

ALTSHULER, BERZON, NUSSBAUM,
RUBIN & DEMAIN
Stephen P. Berzon
Scott A. Kronland

By: Scott A. Kronland
SCOTT A. KRONLAND
Attorneys for the STATE BUILDING AND
CONSTRUCTION TRADES COUNCIL OF
CALIFORNIA, AFL-CIO

9018/359878

SERVICE SHEET

Case Name: DOL – OFFICE OF APPRENTICESHIP TRAINING v. CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

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I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 180 Grand Avenue, Suite 1400, Oakland, California 94612-3752. I hereby certify that a copy of the above-referenced document was sent to the following this 4th day of October 2004:

Counsel for Litigation
U.S. Department of Labor
Division of Employment and Training
Legal Services
Room N-2101, FPB
200 Constitution Ave., N.W.
Washington, DC 20210

Jackson & Associates
Suite B
2300 Bethards Dr.
Santa Rosa, CA 95405

{Electronic – Regular Email}

{Electronic – Regular Email
and Hard Copy – Regular mail}

Director
Office of Grants and Contract
Management
U.S. Department of Labor/ETA
Room N-4720, FPB
200 Constitution Ave., N.W.
Washington, DC 20210

Office of Administrative Law Judges
U.S. Department of Labor
50 Fremont Street, Suite 2100
San Francisco, CA 94105

{Hard Copy – Regular Mail}

{Electronic – Regular Email
and Hard Copy – Regular mail}

Anthony Swoope
Administrator
Office of Apprenticeship Training
U.S. Department of Labor
Room N-4649, FPB
200 Constitution Ave., N.W.
Washington, DC 20210

Fred Lonsdale
California Dept. of Industrial Relations
Office of the Director – Legal Unit
Suite 9516
P.O. Box 420603
San Francisco, CA 94142-0603

{Hard Copy – Regular Mail}

{Hard Copy – Regular mail}

Eileen B. Goldsmith, Esq.
Altshuler, Berzon, Nussbaum, Rubin &
Demain
177 Post Street, Suite 300
San Francisco, CA 94108

{Hard Copy – Regular Mail}

Richard Freeman, Esq.
Sheppard, Mullin Richter & Hampton
LLP
Suite 300
12544 High Bluff Drive
San Diego, CA 92130-3051

{Hard Copy – Regular Mail}

Scott A. Kronland, Esq.
Altshuler, Berzon, Nussbaum, Rubin &
Demain
177 Post Street, Suite 300
San Francisco, CA 94108

{Hard Copy – Regular Mail}

Stephen R. Jones, Esq.
Office of the Solicitor
U.S. Department of Labor
200 Constitution Ave., N.W.
Room N-2101, FPB
Washington, DC 20210

{Hard Copy – Regular Mail}

John Rea
California Dept. of Industrial Relations
Office of the Director – Legal Unit
Suite 9516
P.O. Box 420603
San Francisco, CA 94142-0603

{Hard Copy – Regular Mail}

Julian O. Standen
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 1100
San Francisco, CA 94102-3664

{Hard Copy – Regular Mail}


Scott Glabman, Esq.
U.S. Department of Labor
Office of the Solicitor
Room S-4004, FPB
200 Constitution Ave., N.W.
Washington, DC 20210

{Hard Copy – Regular Mail}

Associate Solicitor for Employment and
Training
U.S. Department of Labor
200 Constitution Avenue, N.W.
Suite N-2101, FPB
Washington, DC 20210

{Hard Copy – Regular Mail}

I certify under penalty of perjury that the above is true and correct. Executed at Oakland,
California, on October 4, 2004.



Karen Scott