

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BILL LOCKYER
Attorney General
JULIAN O. STANDEN
Deputy Attorney General
State Bar No. 51637
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Telephone: (415) 703-5535
Fax: (415) 703-5480
Attorneys for respondent
California Apprenticeship Council

UNITED STATES DEPARTMENT OF LABOR
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF LABOR,
OFFICE OF APPRENTICESHIP TRAINING,
EMPLOYER AND LABOR SERVICES,
Prosecuting Party,

v.

CALIFORNIA DEPARTMENT OF INDUSTRIAL
RELATIONS and CALIFORNIA APPRENTICESHIP
COUNCIL,

Respondents.

Case No. 2002 - CCP - 1

CALIFORNIA APPRENTICESHIP
COUNCIL'S RESPONSES TO
OATELS'S FIRST SET OF
INTERROGATORIES

PROPOUNDING PARTY: U.S. DEP'T OF LABOR, OATELS
RESPONDING PARTY: CALIFORNIA APPRENTICESHIP COUNCIL
SET NUMBER: ONE

Respondent California Apprenticeship Council ("Council") responds as follows to the first set of interrogatories propounded to the Council by the U.S. Department of Labor ("OATELS").

The Council objects as follows to each of the interrogatories:

- 1. The interrogatories are compound.

1 2. The interrogatories seek information that is protected by the attorney client, attorney
2 work product and official information privileges.

3 INTERROGATORY NO. 1

4 1. What responsibility and/or authority do CDIR, particularly DAS, and the California
5 Apprenticeship Council ("CAC") have to process applications for registration of apprenticeship
6 programs, what is the legal and administrative relationship between
7 these two organizations, and how, if at all, have their roles and relationship changed since 1989?

8 RESPONSE TO INTERROGATORY NO. 1.

9 The Council objects to this interrogatory on the ground that it purports to require the
10 Council to provide information about the California Department of Industrial Relations ("DIR"),
11 a separate state agency.

12 The Council's statutory powers regarding the applications for registration of
13 apprenticeship programs are set forth in California Labor Code sections 3070 -3097. With the
14 exception of a 1999 amendment to Labor Code section 3075, the Council's statutory powers
15 have not changed since 1989. In addition, the Council has promulgated regulations concerning
16 such applications. See California Code of Regulations, title 18, sections 200 - 240 and in
17 particular sections 212 and 212.2.

18 The Council is a citizen commission within DIR.

19 INTERROGATORY NO. 2

20 2. For each year since 1989, please identify all CAC committees, subcommittees, legal counsel,
21 and advisory groups of any kind; provide the name, title, affiliation and address of all CAC
22 officials, committee members, committee or meeting participants; and specify all meeting dates,
23 locations and agendas.

24 RESPONSE TO INTERROGATORY NO. 2

25 For each year since 1989 the Council's legal counsel has been the California Attorney
26 General. The remaining information requested in the interrogatory is set forth in the Council's
27

1 minutes of its meetings in each year since 1989. Copies of these minutes will be produced to
2 OATELS upon request.

3 INTERROGATORY NO. 3

4 3. What is the administrative structure of the apprenticeship divisions of CDIR? Please state
5 what change there has been to that structure (e.g., to the Department's organizational chart) since
6 1989.

7 RESPONSE TO INTERROGATORY NO. 3

8 The Council objects to this interrogatory on the ground that it purports to require the
9 Council to provide information about the California Department of Industrial Relations (“DIR”),
10 a separate state agency.

11 The Council does not know the administrative structure of DIR.

12 INTERROGATORY NO. 4

13 4. For each year since 1989, please identify all apprenticeship programs, both overall and in the
14 building and construction trades that have applied for CDIR registration of a new or expanded
15 program, the program's sponsor and the other participating employers. Please state what action
16 CDIR and/or CAC has taken on each such application, the basis for that action and the status of
17 each application/program, the dates of the application and all CDIR action on it; and specify
18 whether the program was joint or unilateral, and the number of apprentices enrolled in each such
19 program. Please include in your response the total number of approved joint programs and of
20 approved unilateral programs, and the total number of rejected programs in each type of
21 program, both overall and in the building and construction trades, and break these numbers down
22 by year since 1989.

23 RESPONSE TO INTERROGATORY NO. 4

24 The Council objects to this interrogatory on the ground that it purports to require the
25 Council to provide information about the California Department of Industrial Relations (“DIR”),
26 a separate state agency.

1 The Council objects to this interrogatory on the ground that it purports to require the
2 Council to provide information about the California Department of Industrial Relations (“DIR”),
3 a separate state agency.

4 The Council does not have this information.

5 INTERROGATORY NO. 8

6 8. Please identify, by name and title, all persons (including CDIR/CAC personnel) and entities
7 involved in the development or enactment of section 3075(b), and describe the role that each
8 actor played in the conception, proposal and passage of the statute.

9 RESPONSE TO INTERROGATORY NUMBER 8

10 Labor Code section 3075(b) was enacted by the California Legislature. The identities of
11 the members of the California Legislature at the time of the enactment, and their positions in the
12 Legislature, can be obtained from public records that are as accessible to OATELS as to the
13 Council.

14 The Council did not submit any reports to the Legislature in connection with the bill that
15 enacted Labor Code section 3075(b).

16 INTERROGATORY NO. 9

17 9. Please state the rationale for section 3075(b).

18 RESPONSE TO INTERROGATORY NUMBER 9

19 The Council objects to this interrogatory on the ground that it is vague and ambiguous
20 because the word “rationale” is undefined.

21 The Council does not know the motives of those Legislators who voted for the bill that
22 enacted Labor Code section 3075(b). The Council refers OATELS to the legislative history of
23 AB 921 in the 1999 Legislature. These documents are public records and therefore are as
24 accessible to OATELS as the Council. Under California law, the legislative history of a statute
25 may be consider as an aid to the interpretation of the statute.

26 INTERROGATORY NO. 10

1 10. Please state the rationale for section 3075(b)'s implicit repeal of CAC's
2 November 20, 1997 resolution, see CAC Minutes at 2-3 (Nov. 20-21, 1997), that, when
3 considering an apprenticeship program for approval, DAS shall not consider the existence of
4 other apprenticeship programs or the protection of existing programs from competition.

5 RESPONSE TO INTERROGATORY NUMBER 10

6 The Council objects to this interrogatory on the ground that it is vague and ambiguous
7 because the word “rationale” is undefined.

8 The Council cannot respond to this interrogatory because it incorrectly assumes that
9 Labor Code section 3075(b) was an “implicit repeal” of the Council’s resolution of November
10 20, 1997.

11 INTERROGATORY NO. 11

12 11. Please state the basis, including all factual support, for CDIR's contention, letter from CDIR
13 to Assistant Secretary DeRocco at 1 (Mar. 1, 2002), Administrative File 12, that section 3075(b)
14 is necessary to protect apprentices from transient or exploitative programs. Please identify all
15 such programs that you have discovered; and explain why it is not possible to provide protection
16 from such programs without insulating existing programs from competition.

17 RESPONSE TO INTERROGATORY NUMBER 11

18 The Council objects to this interrogatory on the ground that it purports to require the
19 Council to provide information about the California Department of Industrial Relations (“DIR”),
20 a separate state agency.

21 The Council has no knowledge about contentions expressed by DIR in its correspondence
22 with federal agencies.

23 INTERROGATORY NO. 12

24 12. For the purpose of implementing section 3075(b), how does CDIR determine whether an
25 existing apprenticeship program serves "the same craft or trade and geographic area," within the
26 meaning of the statute, as an apprenticeship program seeking registration, and what is the basis
27

1 for these determinations?

2 RESPONSE TO INTERROGATORY NUMBER 12

3 The Council objects to this interrogatory on the ground that it purports to require the
4 Council to provide information about the California Department of Industrial Relations (“DIR”),
5 a separate state agency.

6 The Council has no knowledge about the methodologies that underlie determinations
7 made by DIR. Under California law, DIR is required to comply with all applicable statutes,
8 including Labor Code sections 3070-3097 and all applicable regulations, including California
9 Code of Regulations, title 18, sections 200 - 240 and in particular sections 212 and 212.2.

10 INTERROGATORY NO. 13

11 13. For the purpose of implementing section 3075(b)(2), how does CDIR make the statutory
12 determination that an existing apprenticeship program lacks the capacity, or is neglecting or
13 refusing, to dispatch sufficient apprentices, and what is the basis for this determination?

14 RESPONSE TO INTERROGATORY NUMBER 13

15 The Council objects to this interrogatory on the ground that it purports to require the
16 Council to provide information about the California Department of Industrial Relations (“DIR”),
17 a separate state agency.

18 The Council has no knowledge about the methodologies that underlie determinations
19 made by DIR. Under California law, DIR is required to comply with all applicable statutes,
20 including Labor Code sections 3070-3097 and all applicable regulations, including California
21 Code of Regulations, title 18, sections 200-240 and in particular sections 212 and 212.2.

22 INTERROGATORY NO. 14

23 14. For the purpose of implementing section 3075(b)(2), what is a "qualified employer" within
24 the meaning of the statute? What does it mean for such employers to be "willing to abide by the
25 applicable apprenticeship standards"? How does CDIR determine whether an employer is
26 "qualified" and so "willing," and what is the basis for these determinations?

27

28

1 RESPONSE TO INTERROGATORY NUMBER 14

2 The Council has not promulgated any regulations, and is unaware of any judicial
3 decisions, interpreting the language of Labor Code section 3075(b).

4 The Council objects to this interrogatory on the ground that it purports to require the
5 Council to provide information about the California Department of Industrial Relations (“DIR”),
6 a separate state agency.

7 The Council has no knowledge about the methodologies that underlie determinations
8 made by DIR. Under California law, DIR is required to comply with all applicable statutes,
9 including Labor Code sections 3070-3097 and all applicable regulations, including California
10 Code of Regulations, title 18, sections 200 - 240 and in particular sections 212 and 212.2.

11 INTERROGATORY NO. 15

12 15. Please identify all regulations used to implement section 3075, before 3075(b) was enacted,
13 and state whether any apprenticeship program has been denied registration for failure to meet
14 section 3075 or any implementing regulation. If so, please state the date of the denial; identify
15 the program; and specify whether it was a joint or unilateral program, and the number of
16 apprentices enrolled therein.

17 RESPONSE TO INTERROGATORY NUMBER 15

18 The Council objects to this interrogatory on the ground that it purports to require the
19 Council to provide information about the California Department of Industrial Relations (“DIR”),
20 a separate state agency.

21 The Council assumes that the interrogatory is directed that portion of Labor Code section
22 3075 that empowers DIR to approve a program “...whenever the apprentice training needs justify
23 the establishment.” The Council believes that it did not promulgate any regulation that
24 implemented the quoted language.

25 The Council does not have any knowledge of the applications for registration that have
26 been submitted to DIR since the enactment of Labor Code section 3075.

1 The Council’s knowledge of applications that resulted in appeal to the Council from
2 DIR’s decisions of approval or denial is set forth in the minutes of the Council’s meetings since
3 the enactment of Labor Code section 3075. The minutes will be produced to OATELS to the
4 extent they are available.

5 INTERROGATORY NO. 16

6 16. Please identify all regulations used to implement section 3075(b), and state whether any
7 apprenticeship program has been denied registration for failure to meet section 3075(b) or any
8 implementing regulation. If so, please state the date of the denial; identify the program; and
9 specify whether it was a joint or unilateral program, and the number of apprentices enrolled
10 therein.

11 RESPONSE TO INTERROGATORY NUMBER 16

12 The Council has not promulgated any regulation implementing Labor Code section
13 3075(b) and has not approved any DIR decision denying registration pursuant to Labor Code
14 section 3075(b).

15 INTERROGATORY NO. 17

16 17. What is the purpose of the notice-and-comment requirement set by section 212.2(g)?

17 RESPONSE TO INTERROGATORY NUMBER 17

18 The Council objects to this interrogatory on the ground that it is vague and ambiguous
19 because the word “purpose” is undefined.

20 The Council refers OATELS to the Council’s rule-making file for Regulation 212.2(g).
21 Documents within the file state the Council’s reasons for the promulgation of Regulation
22 212.2(g). The file will be produced to OATELS upon request.

23 INTERROGATORY NO. 18

24 18. Please identify all apprenticeship registration applications in the building and construction
25 trades since 1989, either for a new program or expansion of an approved program, on which
26 existing programs notified under section 212.2(g), or any predecessor regulation, submitted
27

1 comments. For each such application, please identify the applicant, the disposition of the
2 application, the basis for that disposition, the dates of the application and all CDIR action on it;
3 and specify whether the applicant was a joint or unilateral program, and the number of
4 apprentices enrolled in the program. Please include in your response the total number of joint
5 programs and of unilateral programs whose applications were denied, or whose registration was
6 revoked wholly or partially in an ensuing appeal, based on the submitted comments. Please also
7 include the total number of each type of program whose applications were approved despite such
8 comments.

9 RESPONSE TO INTERROGATORY NUMBER 18

10 The Council objects to this interrogatory on the ground that it purports to require the
11 Council to provide information about the California Department of Industrial Relations (“DIR”),
12 a separate state agency.

13 The Council does not have any knowledge of the applications for registration that have
14 been submitted to DIR since 1989.

15 The Council’s knowledge of applications that resulted in appeal to the Council from
16 DIR’s decisions of approval or denial is set forth in the minutes of the Council’s meetings since
17 1989. The minutes will be produced to OATELS upon request.

18 INTERROGATORY NO. 19

19 19. What is the statutory and/or regulatory basis for revoking the registration of an
20 apprenticeship program where DAS failed to seek comment from (an) existing program(s)?

21 RESPONSE TO INTERROGATORY NUMBER 19

22 The Council objects to this interrogatory on the ground that it incorrectly assumes that a
23 program may be deregistered if DIR “failed to seek comment from (an) existing program.” The
24 grounds for deregistration are set forth in Code of California Regulations, title 18, section 212.4.

25 INTERROGATORY NO. 20

26 20. Please identify all apprenticeship registration applications in the building and construction
27

1 trades since 1989, either for a new program or expansion of an approved program, which DAS
2 failed to submit to existing programs for comment as required by section 212.2(g). For each such
3 application, please identify the applicant, the disposition of the application, the basis for that
4 disposition, the dates of the application and all CDIR action on it; and specify whether the
5 applicant was a joint or unilateral program, and the number of apprentices enrolled in the
6 program. Please include in your response the total number of joint programs and of unilateral
7 programs whose registration was revoked wholly or partially in an ensuing appeal because DAS
8 failed to notify existing programs. Please also include the total number of each type of program
9 whose registration was left intact despite this lack of notice.

10 RESPONSE TO INTERROGATORY NUMBER 20

11 The Council objects to this interrogatory on the ground that it purports to require the
12 Council to provide information about the California Department of Industrial Relations (“DIR”),
13 a separate state agency.

14 The Council does not have any knowledge responsive to this interrogatory.

15 INTERROGATORY NO. 21

16 21. For every registration revoked wholly or partially since 1989 because DAS failed to notify
17 existing programs, please state whether DAS has subsequently cured the lack of notice, and if
18 not, explain why not. Please include in your response the total number of joint programs and of
19 unilateral programs that have since been reinstated because DAS later provided notice, the total
20 number of each type of program whose applications were revived as a result of such notice but
21 were ultimately denied, and the total number of each type of program which remained revoked
22 because DAS never provided notice.

23 RESPONSE TO INTERROGATORY NUMBER 21

24 The Council objects to this interrogatory on the ground that it purports to require the
25 Council to provide information about the California Department of Industrial Relations (“DIR”),
26 a separate state agency.

1 The Council does not have any knowledge responsive to this interrogatory.

2 INTERROGATORY NO. 22

3 22. For each year since 1989, describe all actions DAS took to comply with the notice-and-
4 comment requirement of section 212.2(g), and any predecessor regulations, before approving
5 new or revised apprenticeship programs.

6 RESPONSE TO INTERROGATORY NUMBER 22

7 The Council objects to this interrogatory on the ground that it purports to require the
8 Council to provide information about the California Department of Industrial Relations (“DIR”),
9 a separate state agency.

10 The Council does not have any knowledge responsive to this interrogatory.

11 INTERROGATORY NO. 23

12 23. Please describe all efforts that CDIR and/or CAC have made since California became a SAC
13 state in 1978 to obtain approval from OATELS, before implementation, of proposed revisions or
14 additions to the State's apprenticeship law, procedures or policies. Please include in your
15 response an identification of all documents CDIR and/or CAC submitted to OATELS for this
16 purpose.

17 RESPONSE TO INTERROGATORY NUMBER 23

18 The Council objects to this interrogatory on the ground that it purports to require the
19 Council to provide information about the California Department of Industrial Relations (“DIR”),
20 a separate state agency.

21 The Council does not require prior approval from OATELS to make revisions or
22 additions to its apprenticeship laws. The Council understands that DIR routinely gives OATELS
23 notice of the Council’s new regulations and other actions.

24 INTERROGATORY NO. 24

25 24. For each year since BAT Circulars 88-5 and 88-9 were issued, please state the CDIR and/or
26 CAC position(s) about complying with the regulatory prior approval requirement discussed

27

28

