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A handwritten signature in cursive script that reads "Vittone".

August 7, 2003

Hon. John M. Vittone
Chief Administrative Law Judge
800 K Street, Suite 400
Washington, D. C. 200091-8002

RE: *United States Department of Labor, et al. v. California Department of Industrial Relations and California Apprenticeship Counsel*
Case No. 2002 - CCP - 1

Dear Hon. Judge Vittone:

Please find enclosed the original California Apprenticeship Council's Opposition to Oatels' Motion for Leave to File a Reply Brief. A copy of this document was also electronically mailed to your office on August 7, 2003.

Sincerely,

A handwritten signature in cursive script that reads "Julian Standen" followed by a small "md" monogram.

JULIAN STANDEN
Deputy Attorney General

For BILL LOCKYER
Attorney General

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Encl.

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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 OPPOSITION TO
OATELS' MOTION FOR LEAVE
TO FILE A REPLY BRIEF

OATELS' motion for leave to file a reply brief must be denied because the proposed
reply brief requests relief that was not requested in OATELS' original motion to compel.
Furthermore, the reply brief does not add anything to the dispute over the adequacy of the
response of respondent California Apprenticeship Council ("CAC") to OATELS' discovery
requests. As CAC repeatedly has told OATELS, CAC does not have any documents apart from
those that the California Department of Industrial Relations ("DIR") has made available to

1 OATELS because all of CAC's documents are maintained by DIR. Therefore, the list of
2 demands in OATELS' reply brief concerning the manner in which CAC should produce
3 documents is pointless because the documents are being produced by DIR.

4 In view of this tribunal's Order of August 5, 2003, implying that reply briefs are
5 disfavored, CAC will not respond to the merits of OATELS's proposed reply brief. If OATELS
6 is allowed to file a reply brief, CAC will leave to file a surreply on the ground that the reply brief
7 raises new issues.

8
9 OATELS'S PROPOSED REPLY BRIEF IS NOT BASED ON EVENTS
10 THAT OCCURRED AFTER THE FILING OF ITS MOTION TO COMPEL

11 According to OATELS, a reply brief is necessary because it did not know, when it filed
12 its original motion to compel, that CAC did not have any documents other than those maintained
13 by DIR. See proposed Reply Brief, p. 3. But CAC made this point clearly in its responses to
14 OATELS' document production requests by including the following language in its response to
15 each request:

16 "The Council's administrative functions, including the maintenance of documents, are
17 performed by the California Department of Industrial Relations ("DIR"). The Council
18 therefore does not have any document responsive to this request that is not in the
19 possession of DIR "

20 After months of litigation, OATELS still does not understand that CAC is nothing more
21 than a citizen commission composed of 17 members of the public. CAC does not have any
22 employees or offices, and all of its administrative functions, including the storage of documents,
23 are maintained by employees of respondent DIR. Since no CAC member has any of the
24 requested documents in his or her personal possession^{1/}, CAC does not have any documents

25 1. Before CAC filed its responses to OATELS' discovery, each current CAC member
26 was asked if he or she had any of the requested documents. No member answered this request in
27 the affirmative.

28 2.

1 independent of those documents that DIR already has produced or will produce once OATELS
2 decides that it is time to makes the necessary arrangements. Furthermore, since no CAC
3 member has served during the entire period that is at issue in this prosecution, i.e. 1990 to the
4 present, and most have served only a few of those years, no CAC member is able to give
5 testimony about the existence or location of any document in DIR's files. Finally, since CAC
6 does not have any documents independent of those maintained by DIR, CAC did not
7 independently withhold any documents on the basis of a privilege.

8 CAC recognizes its responsibility to ensure compliance with OATELS' discovery
9 requests. Counsel for CAC has worked with counsel for DIR to ensure the completeness and
10 accuracy of DIR's document production.

11 OATELS also does not recognize that CAC's inability to produce any documents does
12 not in any way prejudice OATELS. DIR has all the documents and, as DIR has explained, has
13 produced everything that OATELS has requested. For some reason, OATELS has not yet made
14 arrangements to review all of the documents that it identified in its discovery requests.
15 OATELS' failure to proceed with its discovery in an orderly fashion is not CAC's fault.

16
17 OATELS' PROPOSED REPLY BRIEF MAKES DEMANDS
18 THAT WERE NOT MADE IN ITS MOTION TO COMPEL

19 In its proposed reply brief, OATELS makes numerous demands that were not made in its
20 motion to compel. CAC will not respond to the merits of these new demands but will request
21 leave to do so in a surreply if OATELS is allowed to file its reply brief.

22 The new demands are the following:

23 Demands With Respect To Privileges

24 OATELS asks CAC to specify whether any responsive CAC materials are being withheld
25 by DIR under any privilege, and if so, to identify the documents. OATELS' proposed reply brief,
26 p. 23.

27 Demands With Respect To Interrogatory No. 4

1 OATELS asks CAC to identify, by request number, all summaries^{2/} of CAC decisions
2 since 1995 rejecting program applications. OATELS' proposed reply brief, pp. 16-17, 19.

3 OATELS asks CAC to specify, by Bates-stamped page numbers, the location of all
4 summaries of all appeals since 1995 to CAC from DAS administrative decisions rejecting
5 program applications. OATELS' proposed reply brief, pp. 16-17, 19.

6 Demands With Respect To Interrogatory No. 18

7 OATELS asks CAC to identify all CAC decisions since 1995 on appeals from DAS
8 decisions on program applications in the building and construction trades on which existing
9 programs submitted comments. OATELS' proposed reply brief, pp. 16 and 19.

10 OATELS asks CAC to identify, by request number, all summaries of CAC decisions
11 since 1995 on appeals of DAS decisions on program applications in the building and construction
12 trades on which existing programs submitted comments. OATELS' proposed reply brief, pp. 16-
13 17, 19.

14 OATELS asks CAC to specify, by Bates-stamped page numbers, the location of all
15 summaries of appeals since 1995 to CAC from DAS administrative decisions on program
16 applications in the building and construction trades on which existing programs submitted
17 comments. OATELS' proposed reply brief, pp. 16-17, 19.

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26 2. OATELS assumes, without establishing, that such "summaries" exist. As far as CAC
27 knows, they do not.

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CONCLUSION

OATELS' motion should be denied in its entirety.

DATED: August 7, 2003

BILL LOCKYER
Attorney General


JULIAN O. STANDEN
Deputy Attorney General
Attorneys for respondent
California Apprenticeship Council

DECLARATION OF SERVICE

(via e-mail and regular mail)

Case Name: U.S. DEPT. OF LABOR, et al. v. CALIF. DEPT. OF INDUSTRIAL
RELATIONS and CALIFORNIA APPRENTICESHIP COUNCIL

Case No.: 2002- CCP-1

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 7, 2003, I served the attached **CALIFORNIA APPRENTICESHIP COUNCIL'S OPPOSITION TO OATELS' MOTION FOR LEAVE TO FILE A REPLY BRIEF** by E- mailing a true copy to the parties addressed as follows:

Hon. John M. Vittone
Chief Administrative Law Judge
800 K Street, Suite 400
Washington, DC 20001-8002
E-mail: OALJ-filings@oalj.dol.gov

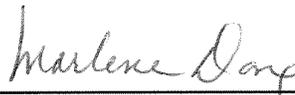
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 7, 2003, at San Francisco, California.

Marlene Dong

Typed Name



Signature