



In the Matter of:

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

ARB CASE NO. 05-093

ALJ CASE NO. 2002-CCP-1  
2003-CCP-1

PROSECUTING PARTY,

DATE: JAN 31 2007

v.

CALIFORNIA DEPARTMENT OF  
INDUSTRIAL RELATIONS,

and

CALIFORNIA APPRENTICESHIP  
COUNCIL,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

*For the Prosecuting Party:*

Scott Glabman, Esq., Stephen R. Jones, Esq., Charles D. Raymond, Esq., Gregory F. Jacob, Esq., Howard M. Radzely, Esq., *U.S. Department of Labor*, Washington, D.C.

*For the Respondent, California Department of Industrial Relations:*

Carol Belcher, Esq., Fred D. Lonsdale, Esq., *Office of the Director, Legal Unit, California Department of Industrial Relations*, San Francisco, California

*For the California Apprenticeship Coordinators Association and the State Building and Construction Trades Council of California, AFL-CIO, as Amicus Curiae:*

Sandra Rae Benson, Esq., Patricia M. Gates, Esq., M. Suzanne Murphy, Esq., *Weinberg, Roger & Rosenfeld*, Alameda, California, *for the California Apprenticeship Coordinators Association*, and Stephen P. Berzon, Esq., Scott A. Kronland, Esq., *Altshuler, Berzon, Nussbaum, Rubin & Demain*, San Francisco, California, *for the State Building and Construction Trades Council of California, AFL-CIO*

*For Associated Builders and Contractors, Incorporated, as Amicus Curiae:*

Maurice Baskin, Esq., *Venable LLP*, Washington, D.C.

## FINAL DECISION AND ORDER

This case arises under the National Apprenticeship Act of 1937 (NAA or the Act) and the regulations that implement it.<sup>1</sup> The NAA, commonly known as the Fitzgerald Act, provides the Secretary of Labor with the authority to formulate and promote labor standards necessary to safeguard the welfare of apprentices.<sup>2</sup> Apprentices are workers, at least 16 years old, who are employed to learn a skilled trade.<sup>3</sup>

The U.S. Department of Labor's Office of Apprenticeship Training, Employment and Labor Services (OATELS) administers the NAA on behalf of the Secretary of Labor.<sup>4</sup> OATELS has authority to approve apprenticeship programs for various "Federal purposes," such as a Federal contract.<sup>5</sup> But OATELS may choose to delegate its power to approve apprenticeship programs for Federal purposes to a state by "recognizing" a "State Apprenticeship Agency or Council" (SAC) that the state has established pursuant to its own apprenticeship laws. So long as a state's apprenticeship laws conform to federal standards and requirements, OATELS may recognize the state SAC to approve apprenticeship programs for "Federal purposes."<sup>6</sup> If a state does not continue to conform to the federal standards and requirements, however, OATELS has the authority to "derecognize" the SAC for "reasonable cause."<sup>7</sup>

Beginning in 1978, OATELS recognized the California Department of Industrial Relations (CDIR) and the California Apprenticeship Council (CAC) as SACs because California's apprenticeship law conformed to the Federal apprenticeship standards and requirements. But in 1999 California amended its apprenticeship law.<sup>8</sup> Then, in 2002, after conciliation efforts failed, OATELS began proceedings to derecognize CDIR and CAC, contending that the amended apprenticeship statute did not conform to federal standards. Those agencies requested a hearing before a U.S. Department of Labor Administrative Law Judge (ALJ).<sup>9</sup>

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<sup>1</sup> 29 U.S.C.A. § 50 (West 2006); 29 C.F.R. Part 29 (2006).

<sup>2</sup> 29 U.S.C.A. § 50.

<sup>3</sup> 29 C.F.R. § 29.2(e).

<sup>4</sup> OATELS has replaced the Bureau of Apprenticeship and Training (BAT) as the agency that administers the NAA although the regulations still refer to the BAT. *See* 29 C.F.R. § 29.2(c).

<sup>5</sup> 29 C.F.R. §§ 29.2(k), 29.3.

<sup>6</sup> 29 C.F.R. § 29.12.

<sup>7</sup> 29 C.F.R. § 29.13.

<sup>8</sup> *See* Cal. Lab. Code § 3075 (1999).

The parties submitted a Joint Stipulation of Facts to the ALJ. They then filed cross motions for summary decision.<sup>10</sup> OATELS argued that it properly derecognized CDIR and CAC and was therefore entitled to summary decision. CDIR and CAC argued that, as a matter of law, OATELS had no basis to derecognize them. Various amici filed briefs on both sides. The ALJ found that no material facts were in dispute.<sup>11</sup> He rejected OATELS's argument that it had the authority to derecognize CDIR and CAC solely on the basis that they had not requested or received OATELS's approval of the amended California apprenticeship statute prior to its enactment.<sup>12</sup> The ALJ did, however, accept OATELS's second basis for summary decision. He recommended that summary decision be granted to OATELS because he concluded that OATELS's contention that the amended California statute does not conform to federal apprenticeship standards is reasonable and that, therefore, OATELS had authority to derecognize CDIR and CAC.<sup>13</sup>

The Administrative Review Board automatically reviews the ALJ's recommended decision and order in cases arising under the NAA.<sup>14</sup> We review an ALJ's conclusions of law de novo.<sup>15</sup> We have thoroughly reviewed the record herein, the ALJ's recommended decision and order, and the briefs of the parties and amici.<sup>16</sup> Like the ALJ, we conclude that OATELS does not have authority to derecognize CDIR and CAC solely for their failure to obtain OATELS's prior approval of the amended apprenticeship statute. Nevertheless, we also conclude, as the ALJ did, that 29 C.F.R. § 29.13 authorizes OATELS to derecognize CDIR and CAC because OATELS reasonably interprets the amended California apprenticeship statute as not conforming to federal apprenticeship

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<sup>9</sup> 29 C.F.R. § 29.13(c) (3).

<sup>10</sup> See 29 C.F.R. § 18.40. The standard that applies to "summary decision" motions under the rules of practice and procedure for hearings before ALJs is essentially the same as that used under Fed. R. Civ. P. 56, the rule governing summary judgment in the federal courts. See *Hasan v. Burns & Roe Enters., Inc.*, ARB No. 00-080, ALJ No. 2000-ERA-6, slip op. at 6 (ARB Jan. 30, 2001).

<sup>11</sup> Recommended Decision and Order On Cross Motions for Summary Judgment (R. D. & O.) at 18.

<sup>12</sup> R. D. & O. at 26.

<sup>13</sup> *Id.* at 27.

<sup>14</sup> Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the Administrative Review Board the Secretary's authority to review cases arising under, inter alia, the NAA); 29 C.F.R. § 29.9 (b).

<sup>15</sup> See 5 U.S.C.A. § 557(b) (West 1996).

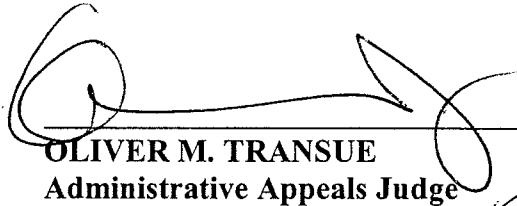
<sup>16</sup> The Associated Builders and Contractors, Inc. filed a brief in support of the ALJ's recommended decision and order. The California Apprenticeship Coordinators Association and the State Building and Construction Trades Council (the "JATC amici") filed a brief opposing derecognition.

standards. We have examined OATELS's interpretation of the amended statute. We agree with the ALJ that OATELS's interpretation is consistent with the NAA and the relevant regulations and that OATELS has reasonably exercised its discretion to implement and enforce the NAA.<sup>17</sup>

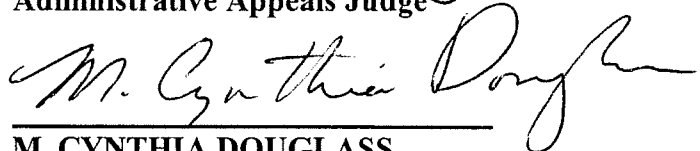
The arguments the parties and the amici make to us are essentially the same as those they presented to the ALJ. They have not convinced us that the ALJ committed legal error. With respect to whether OATELS can derecognize CDIR and CAC for failure to receive prior approval for the amended statute, OATELS and the Associated Builders and Contractors have not demonstrated, as they must, that OATELS's interpretation of 29 C.F.R. § 29.13 is reasonable. Likewise, CDIR, CAC, and the JATC have not convinced us that OATELS has unreasonably determined that the amended statute does not conform to federal apprenticeship standards and that, therefore, it has authority to derecognize.

The ALJ clearly and thoroughly recites the relevant background, the issues presented, and the position of the parties and amici. Furthermore, he applied the correct standard of review and relevant case law in determining whether OATELS's interpretation of 29 C.F.R. § 29.13 and the amended statute are reasonable. Therefore, we adopt as our own the ALJ's April 22, 2005 Recommended Decision and Order on Cross Motions for Summary Judgment and attach it hereto as part of this Final Decision and Order.

**SO ORDERED.**



**OLIVER M. TRANSUE**  
Administrative Appeals Judge



**M. CYNTHIA DOUGLASS**  
Chief Administrative Appeals Judge

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<sup>17</sup> See *Miami Elevator Co. and Mid-American Elevator Co., Inc.*, Nos. 98-086, 97-145, slip op. at 16 (ARB Apr. 25, 2000); see also *Millwright Local 1755*, No. 98-015, slip op. at 7 (ARB May 11, 2000); *Dep't of the Army*, Nos. 98-120, 98-121, 98-122, slip op. at 16 (ARB Dec. 22, 1999) (citing *ITT Fed. Servs. Corp. (II)*, No. 95-042A (ARB July 25, 1996) and *Service Employees Int'l Union (I)*, No. 92-01 (BSCA Aug. 28, 1992)); *Titan IV Mobile Serv. Tower*, No. 89-14, slip op. at 7 (WAB May 10, 1991) (citing *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965)) (deferring to the Department of Labor's Wage and Hour Administrator as being "in the best position to interpret those rules in the first instance . . . , and absent an interpretation that is unreasonable in some sense or that exhibits an unexplained departure from past determinations, the [Wage Appeals] Board is reluctant to set the Administrator's interpretation aside.").