



THOMAS L. BOLICH
DIRECTOR OF PUBLIC WORKS

County of Santa Cruz

DEPARTMENT OF PUBLIC WORKS

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AGENDA: JUNE 11, 2002

June 4, 2002

SANTA CRUZ COUNTY BOARD OF SUPERVISORS
701 Ocean Street
Santa Cruz, California 95060

SUBJECT: LOCAL HIRING OF APPRENTICESHIP ORDINANCE

Members of the Board:

On April 23, 2002, your Board considered an ordinance amending Chapter 2.33 of the Santa Cruz County Code relating to provisions requiring local hiring of apprentices for County public works projects. The ordinance was approved "in concept" and scheduled to return on May 7, 2002, for final adoption.

During the Board meeting on May 7, 2002, several questions were raised by members of the public, including local contractors regarding the impact of the proposed ordinance. Due to the interest generated by this item, your Board deferred adoption of the ordinance and directed staff to return today with a report on the potential impacts that the ordinance would have on public works projects. In researching this issue staff learned that, subsequent your Board's May 7, 2002, meeting, the U.S. Department of Labor's Office of Apprenticeship Training, Employer and Labor Services (OATELS) initiated derecognition proceedings against the California Department of Industrial Relations (CDIR) for imposing "processes that prevent or inexcusably delay efforts to advance apprenticeship" (Attachment "A").

OATELS is the federal agency that oversees the national registered apprenticeship system. Its mission is to promote apprenticeship opportunities for workers. OATELS has charged the California Department of Industrial Relations with restricting the approval of new apprenticeship programs in the construction trade, thereby limiting apprenticeship opportunities on public works projects. OATELS plans to withdraw recognition of California approved apprentices on federal projects unless the CDIR takes corrective action by requesting legislation or requesting a hearing before the federal agency. CDIR must take some action by the middle of June in order to avoid decertification. As this action by OATELS will impact existing apprenticeship programs and the way future apprenticeship programs are organized, staff recommends that your Board direct staff to monitor this development and return at a later Board meeting with an update on this issue.

It is therefore recommended that your Board accept and file this report and direct Public Works to return on August 13,2002, with an updated report on the Local Hiring of Apprentices Ordinance.

Yours truly,



THOMAS L. BOLICH
Director of Public Works

DJH:bbs

Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

Copy to: Redevelopment Agency
 General Services Department
 Parks, Open Space and Cultural Services
 County Counsel
 Public Works Department



MAY 10 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Stephen Smith
Director
California Department of Industrial Relations
10th Floor
455 Golden Gate Avenue
San Francisco, California 94102

Re: Initiation of Derecognition Proceedings

Dear Mr. Smith:

This is to notify you, as well as *the* State sponsors, that the Office of Apprenticeship Training, Employer and Labor Services (OATELS) is hereby instituting derecognition proceedings against the State Apprenticeship Agency for the State of California (the California Department of Industrial Relations or CDIR), under 29 C.F.R. §29.13. Under the National Apprenticeship Act (NAA), OATELS oversees the national registered apprenticeship system in order to protect the welfare of apprentices and to promote apprenticeship opportunities.

OATELS has determined that reasonable cause exists to believe that the CDIR has failed to fulfill or operate in conformity with the requirements of 29 C.F.R. Part 29. In particular, the California Labor Code (CLC) §3075(b) provides for CDIR approval of new apprenticeship programs in the building and construction trades only where apprentice-training needs so justify for the craft or trade and geographic area specified in an application for program registration.

Under CLC §3075(b), the requisite need can be demonstrated only where either (1) there is no existing program approved for the craft or trade and geographic area in question; (2) there is an approved program but that program does not have the capacity or neglects or refuses to supply employers at a public works site with apprentices; or (3) there is an approved program but it has been identified by the State as deficient in meeting its obligations. In addition, CLC §3075(c) provides that the CDIR can approve a new apprenticeship program where special circumstances, as established by regulation, so justify.

In response to OATELS' repeated expressions of concern that CLC §3075(b) unacceptably limits apprenticeship opportunities, the CDIR has maintained that the "need requirement" is necessary to protect apprentices from transient or exploitative programs. While OATELS shares CDIR's concern that only genuine programs achieve registration, we maintain that the State can achieve that goal through measures that do not have CLC §3075(b)'s detrimental impact on apprenticeship opportunities.



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OATELS has determined that the CDR's justification for CLC §3075(b) is insufficient, because the statutory requirements which discriminate against new programs are not necessary to achieve the ostensible purpose (assurance that only bona fide programs are approved). Rather, the above-cited terms of CLC §3075(b)(1)-(3) clearly subordinate the interests of would-be apprentices to the interests of existing apprenticeship programs.

Moreover, we understand that CLC §3075(b) has discouraged several California employer groups, such as the Plumbing, Heating, Cooling Contractors (PHCC) and the Western Electrical Contractors Association (WECA), Apprenticeship Training Committees, from applying for registration. The PWCC and the WECA maintain that it would be futile to apply for approval of new programs because the "need" criteria could never be met. Those employers further state that increased apprenticeship program capacity is desperately needed to meet the State's severe shortage of building trades journeymen.

The NAA is focused on meeting the needs of workers, not on furthering particular apprenticeship programs. In contrast, CLC §3075(b), even as ameliorated by CLC §3075(c), imposes processes that prevent or inexcusably delay efforts to advance apprenticeship. Therefore, OATELS has concluded that the overall impact of the "need requirement" is to improperly restrict, rather than promote, apprenticeship opportunities for workers, contrary to the letter and spirit of the NAA.

To remedy the identified nonconformity, the State of California needs to repeal CLC §3075(b).¹ Pending legislative action, we would be prepared to suspend the derecognition proceedings were the State to (1) issue and implement a regulation (including emergency regulatory action taking immediate effect, if necessary due to procedural requirements for conventional rulemaking), under CLC §3075(c), which provides that the OATELS finding of nonconformity constitutes a "special circumstance," under CLC §3075(c), that supersedes CLC §3075(b) for the purpose of registering new apprenticeship programs in the building and construction trades; and (2) process applications for registration without regard for the "need requirement" of CLC §3075(b). The promulgation of the regulation would need to be accompanied by a formal opinion from the California Attorney General's Office stating that the interim regulatory remedy was valid under California law.

OATELS proposes to withdraw recognition for Federal purposes unless corrective action is taken, or a hearing request mailed, within 30 days of the receipt of this notice.

¹ This legislative remedy would, presumably, include the repeal of CLC §3075(c), as that provision functions solely in relation to CLC §3075(b).

OATELS remains ready to work with you to resolve this situation. We have enclosed sample text for the necessary legislative and regulatory remedies to facilitate corrective action. Please contact me if I can be of further assistance.

Sincerely,



ANTHONY SWOOPÉ
Administrator

Office of Apprenticeship Training, Employer and Labor Services

Enclosure

cc: California apprenticeship program sponsors
Gray Davis, Governor
John Burton, President Pro Tem of the State Senate
Richard Polanco, Majority Leader of the State Senate
James L. Brulte, Senate Republican Leader
~~Herb~~ Wesson, Speaker of the Assembly
Fred Keeley, Speaker Pro Tempore
Kevin Shelley, Majority Leader of the Assembly
Dave Cox, Assembly Republican Leader

Legislative Remedy

Section 3075 of the California Labor Code is hereby amended as follows:

1. Existing Paragraph (b) is repealed in its entirety; and
2. Existing Paragraph (c) is repealed in its entirety.

Interim Regulatory Remedy

Add a new section to read:

~~212.05~~ Apprenticeship Training Needs.

The U.S. Department of Labor finding that CLC §3075(b) does not conform to the requirements of 29 C.F.R. Part 29 constitutes a "special circumstance," as provided under CLC §3075(c), which supersedes CLC §3075(b) for the purpose of registering new apprenticeship programs in the building and construction trades. Therefore, CLC §3075(b) is administratively superseded pending repeal of CLC §3075(b).

NOTE Authority cited: Section §3075(c), Labor Code.

Opinion from the California Attorney General's Office

The California Attorney General hereby finds that the promulgation of Regulation 212.05, California Code of Regulations, Title 8, Chapter 2, as an interim regulatory remedy pending legislative repeal of CLC §3075(b), is valid under California law.