

1 **STATE OF CALIFORNIA**
Department of Industrial Relations
2 Division of Labor Standards Enforcement
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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

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11 JOEL & TRESSA REYES, as guardian ad) CASE NO. TAC 32-03
litem for SIERRA REYES,)
12)
Petitioners,) **DETERMINATION OF CONTROVERSY**
13)
14 vs.)
15 BLAKE ARI MODELS, INC. a California)
Corporation dba BAM, BOOKING ACTORS)
16 & MODELS, BAM MODELS, ROBERT)
AMATRUDA,)
17)
Respondent.)

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20 On August 19, 2003, the above-captioned petition was filed by JOEL & TRESSA REYES as
21 guardian ad litem for SIERRA REYES, (hereinafter, "petitioners") The Proof of Personal Service
22 submitted to the Labor Commissioner by petitioner JOEL REYES indicates that the petition was
23 served on BLAKE ARI MODELS, INC. a California Corporation dba BAM MODELS, BOOKING
24 ACTORS & MODELS, BAM MODELS and ROBERT AMATRUDA via certified mail instead of
25 personal service, as required. As such, service was not proper in this case. Nonetheless, BLAKE
26 ARI MODELS, INC. a California Corporation dba BAM MODELS, BOOKING ACTORS &
27 MODELS, BAM MODELS, waived service by appearing at the hearing in this matter and not

1 contesting said service. ROBERT AMATRUDA, on the other hand, did not appear at this hearing.
2 Because he was not properly served, he is dismissed from this action.

3 Petitioners allege that BLAKE ARI MODELS, INC. a California Corporation dba BAM
4 MODELS, BOOKING ACTORS & MODELS, BAM MODELS, (hereinafter, "respondent" or
5 "BAM"), acted in the capacity of a talent agency without being licensed by the laws of the State of
6 California. Petitioners also allege that respondent unlawfully collected from them \$4,104.00 for a
7 model portfolio package and fees for their submission service. Petitioners seek determination of the
8 California labor codes that were violated by respondent and reimbursement of the \$4,104.00 they
9 paid to respondent.

10 Respondent argues that it has never claimed to be a talent agency and never *guaranteed*
11 petitioners' daughter any work. With respect to the model portfolio package, respondent argues that
12 it never collected any money for a model portfolio package from petitioners. Instead, it claims that
13 the money for the model portfolio package, which included a photo shoot and headshots, was paid to
14 another company called Model Development. Respondent acknowledges that it received \$480.00
15 (from the \$4,104.00 paid to Model Development) in fees from petitioners to cover the costs
16 associated with submissions and maintenance of a website, but points out that it did not receive this
17 money until after the parties entered into a written contract on October 6, 2002. Additionally,
18 respondent argues that it has fulfilled its obligation to petitioners' daughter by creating and
19 maintaining a website for her, as well as submitting her for auditions and casting calls. Respondent's
20 position is that all services have been rendered to petitioners and that no refund of the \$480.00 it
21 admits collecting, should be awarded.

22 The matter came on for hearing on July 16, 2004, before Edna Garcia Earley, Special Hearing
23 Officer, in Los Angeles, California. Appearing for petitioners was Joel and Tressa Reyes. Appearing
24 for respondent was Robert Macias, who stated that he is an independent contractor who has
25 provided services for respondent for the past 5 years as a client liaison and in customer service.
26 Christopher Smith who is in charge of submissions and Bona Rath Bory who works in customer
27 service, also appeared on behalf of respondent.

1 At the close of the hearing, the matter was taken under submission. Based upon the
2 testimony and evidence received at this hearing, the Labor Commissioner adopts the following
3 determination of controversy.

4 **FINDINGS OF FACT**

5 In August of 2002, petitioners' 16 year old daughter SIERRA REYES received a letter from
6 respondent inviting her to attend a local hotel in Columbus, Ohio to participate in a seminar and
7 selection for models and actors. On August 17, 2002, petitioners and their daughter attended the
8 seminar which was hosted by respondent. At this seminar, they met Robert Amatruda who was
9 contracted by BAM to be the guest speaker. After being ranked and reading a commercial script
10 which was videotaped, petitioners' daughter was told that she may be receiving a second call. And,
11 in fact, petitioners' daughter received a call the following day from a woman named Angela
12 Akhmedora, who represented that she was with BAM, respondent's company. Ms. Akhmedora
13 informed petitioners that Mr. Amatruda was very interested in their daughter due to her unique
14 features. Ms. Akhmedora also informed petitioners that respondent was requesting a second
15 interview with their daughter to take place the following day, August 19, 2002.

16 On August 19, 2002, petitioner JOEL REYES accompanied his daughter to the second
17 interview with respondent. Petitioner JOEL REYES met with Robert Amatruda who informed him
18 that his daughter had received very high marks and promised they would get her all kinds of jobs.
19 Mr. Amatruda informed petitioner JOEL REYES that his daughter needed to go to Los Angeles to
20 participate in a photo shoot. Petitioner JOEL REYES was assured that Shaun Alexander, who he
21 met at this seminar, would be the photographer they would meet with in Los Angeles. Ms.
22 Akhmedora had petitioner JOEL REYES sign a "Photography Services Contract." While the
23 contract purported to be between petitioners and photographer Shaun Alexander, Ms. Akhmedora,
24 who had previously represented to petitioners that she was with BAM, signed the contract on behalf
25 of Shaun Alexander. At this meeting, Ms. Akhmedora also went over the model portfolio packages
26 with petitioner JOEL REYES. The initial package she showed petitioner JOEL REYES was for
27 \$6,000.00. When he indicated that this was too much, Ms. Akhmedora informed him that without

1 pictures they could not get his daughter any acting jobs. Eventually, the parties worked out a deal
2 whereby petitioner JOEL REYES only had to pay \$4,104.00.¹ Petitioner JOEL REYES gave Ms.
3 Akhmedora authorization to charge a deposit of \$500.00 to his credit card. At no time did Ms.
4 Akhmedora inform petitioner JOEL REYES that the deposit was being charged to a company called
5 Model Development. Nowhere on the Photography Services Contract is the name Model
6 Development mentioned. In fact, throughout the entire seminar and in subsequent phone calls, there
7 was never any mention of any company other than BAM.

8 On August 21, 2002, petitioners feeling somewhat uneasy about the entire process and the
9 associated costs, communicated their concerns to respondent. In response, Robert Amatruda called
10 petitioners directly to reassure them that they were making the right decision in signing their daughter
11 up with BAM. During this phone call, Mr. Amatruda stated to petitioners that he could do a lot of
12 things for their daughter. Somewhat reassured, petitioner JOEL REYES agreed to attend a photo
13 shoot with respondent in California. The date and time of the photo shoot was arranged by Ms.
14 Akhmedora. Ms. Akhmedora also insisted that petitioners pay an additional \$1,500.00 on September
15 12, 2002 and the remainder on September 20, 2002, which petitioners paid. Again, there was no
16 mention of these fees being charged to Model Development.

17 On September 21, 2004, petitioner JOEL REYES and his daughter traveled to Los Angeles.
18 They attended a "Pre-Photo Shoot and Audition" workshop hosted by respondent at respondent's
19 office prior to attending the actual photo shoot.

20 Soon after attending the photo shoot, petitioners received a letter from respondent along with
21

22 ¹The model portfolio package included the following: 5 rolls or 180 exposures at \$250 per roll
23 (\$1,250.00), 5 changes, with make-up and hair (\$125.00), stylist (\$125.00), 250 zed cards (\$450.00),
24 10 digitally enhanced photos for portfolio at \$35.00 (\$350.00), digital retouching and enhancement up
25 to 2 hours (\$150.00 per hour), composition and design (\$150.00), portfolio case (\$100.00), all proofs
26 (\$250.00), 300 headshots (\$250.00), a lifetime upgrade policy (\$399.00) and submission services
27 (\$480.00 per year)

1 "Bookings Procedures" and a BAM contract. The letter explains in detail the services provided by
2 respondent through its website. Among other things, the letter which quotes directly from the
3 website, states: "...we now possess a greater scope of knowledge of our clientele, *allowing us to*
4 *develop and/or submit them more often and on better fitting roles. The model/actor can witness this*
5 *on their submission calendar (Pro Site only), which allows them to see every action the booker*
6 *makes on their behalf."* The "Booking Procedures" included in the letter package provides the
7 following, "For existing Zed Cards: Please make sure you supply us with enough cards *to submit you*
8 *for up to 6 months at a time*" and under the heading "WEBSITE & SUBMISSIONS," provides, "If
9 you see the word Submission on your Casting Calendar, *this means that we have sent out your zed*
10 *card or Headshot to a Casting Director."* The BAM contract, also included in the letter package,
11 provides that "services include and/or are limited to, messenger and courier expenses, U.S. postage,
12 overnight mail *services of my headshot/resume and/or zed comp cards to professional and REAL*
13 *CASTINGS of which BAM participates."* Notably, the BAM contract, like the contract entered into
14 with photographer Shaun Alexander, was also signed by Ms. Akhmedora.

15 About a month or so after signing the BAM contract, petitioners received their daughter's
16 portfolio. During this time, petitioners understood and in fact respondent testified that submissions
17 were being made on behalf of their daughter. However, for the next six months or so, petitioners
18 attempted to contact BAM to inform them of problems they were having with the website, such as
19 the web page not having their daughter's pictures posted, problems with the search function,
20 problems with the CDs that were mailed to them and general questions regarding the submission
21 process. Finally, after not having received any work for their daughter and not getting any response
22 to their questions/problems, petitioners filed the instant petition.

23 Respondent submitted a letter to the Labor Commissioner dated September 5, 2003
24 addressing the points raised in the petition. With respect to whether respondent was operating as a
25 talent agency, respondent reiterated what its website's frequently asked questions section stated, that
26 is, "We POST and MESSENGER your image for professional CASTINGS...with 100% reliance on
27 our computer program/database search functions to match daily castings (via talent spec criteria) for

1 our Members. *With old-fashioned messengers who peddle (local Hollywood), drive (local Los*
2 *Angeles) or fly (anywhere-Federal Express) - your zed/comp card and/or headshot/resume to the*
3 *Casting Directors or photographers*" and "[w]e are a talent website, submission and messenger
4 service for serious models and actors interested in a professional career." The letter further states,
5 "therefore, because BAM is not a "Talent Agency," we are not in violation of labor codes 1700.4 or
6 1700.5." Lastly, the letter also addressed petitioners' claims that BAM 'promised to obtain
7 employment' for their daughter in the entertainment industry by stating that BAM does not
8 *guarantee* work for any of its clients and that is another reason why it is not a "talent agency."

9 At the hearing in this matter, respondent again stated that it was a courier messenger service.
10 Respondent explained that it submits its client's likeness or images directly to casting directors and
11 sometimes to photographers via hard copy or electronically. Respondent also argued that it was not
12 a talent agency because it did not make phone pitches with respect to any one specific client, as do
13 talent agencies. Rather, it sends e-mails to the casting directors directly telling them of its talent. As
14 respondent described it, "this is the equivalent of taking somebody's head shot, putting it in an
15 envelope and having it messengered over to the casting director "

16 Furthermore, respondent claimed that Ms. Akhmedora did not work for BAM. Rather, it
17 claimed that she worked for Model Development, the company that received the money paid by
18 petitioners. With respect to Robert Amatruda, respondent claimed that he is contracted by BAM to
19 be the speaker and MC at seminars hosted by BAM. Respondent explained that once Mr. Amatruda
20 selects potential models/actors at these seminars, he then determines if they have a portfolio. If they
21 do, he then refers them to BAM. However, if they do not have a portfolio put together, he refers
22 them to Model Development or whatever other development company is present at the seminar, to
23 put together a portfolio for the model/actor. In this case, petitioners' daughter did not have a
24 portfolio and that is why she was referred to Shaun Alexander, who apparently is with Model
25 Development (per the charges appearing on petitioners' credit card statements). After Model
26 Development prepared a portfolio for petitioners' daughter, according to respondent, Model
27 Development then referred her to BAM.

1 CONCLUSIONS OF LAW

2 A. Petitioners' minor child is an "artist" within the meaning of Labor Code section
3 1700.04(b), which defines that term to include, *inter alia*, models and actresses.

4 B. The first issue is whether based on the evidence presented, respondent operated as a
5 "talent agency" within the meaning of Labor Code section 1700.4(a). That statute defines a "talent
6 agency" as "a person or corporation who engages in the occupation of procuring, offering,
7 promising, or attempting to procure employment or engagements for an artist or artists." See also,
8 *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246.

9 C. If respondent did in fact operate as a talent agency, the next issue to be determined is
10 whether respondent unlawfully collected a "registration fee" from petitioners in violation of Labor
11 Code section 1700 2(b). Labor Code section 1700 40 provides that "no talent agency shall collect a
12 registration fee." The term "registration fee" is defined as "any charge made, or attempted to be
13 made, to an artist for . . . registering or listing an applicant for employment in the entertainment industry
14 [or for] photographs, film strips, video tapes, or other reproductions of the applicant [or] . . . any
15 activity of a like nature." It is well established, pursuant to section 1700.40 that a talent agency
16 cannot charge an artist for a photo shoot, for the printing of photographs, or for the production of a
17 portfolio of photographs. The statute is violated anytime a talent agency collects such fees from an
18 artist, even if the agent transmits the entire fee to another person without retaining any portion as a
19 profit, and even if the agent is not yet representing the artist at the time the fees are collected.

20 D. Labor Code section 1700.40(a) further provides that if a talent agency collects any
21 fees or expenses from an artist in connection with the agency's efforts to obtain employment for the
22 artist, and the artist fails to procure or to be paid for the employment, the agency must, upon
23 demand, reimburse the artist for such fees and expenses, and that if reimbursement is not made within
24 48 hours of the demand, "the talent agency shall pay to the artist an additional sum equal to the
25 amount of the fee."

26 1. Talent Agency

27 Respondent argues that it is not a "talent agency" because it never claimed to be a talent
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1 agency, because it does not *guarantee* its clients work, because it does not pitch any one particular
2 client to casting agents and/or photographers, because it does not charge its client a percentage of
3 their earnings and because unlike an agent or manager, it does not negotiate contracts. However,
4 "the Talent Agencies Act, ("Act"), should be liberally construed to promote the general object sought
5 to be accomplished; it should 'not [be] construed within narrow limits of the letter of the law.'" (Citations omitted). *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246, 254.
6 And that is why a single occurrence of procurement or even a promise or attempt to procure is
7 sufficient to establish a violation of the Act by someone who is unlicensed. *Waisbren, supra.*

9 **a. Promise to Procure**

10 While it is true that respondent does not claim to be a talent agent, this factor is not
11 dispositive as to the issue of whether respondent did, in fact, do or promise to do any of the things
12 that fall within the definition of a talent agency under Labor Code section 1700.04(a). The
13 undisputed evidence shows that Robert Amatruda and Angela Akhmedora promised to obtain
14 employment for petitioners' daughter as a model or artist at the BAM seminar in Columbus, Ohio
15 and again during a subsequent phone call to petitioners. None of the representatives for respondent
16 present at the hearing in this matter were at the Columbus, Ohio seminar and therefore could not
17 testify that these promises were *not* made. Thus, because respondent **promised to procure** work, it
18 unlawfully acted as a talent agency.

19 **b. Attempt to Procure**

20 Respondent did not just promise to procure work for petitioners' daughter, it actually made
21 attempts to procure work for her. The fact that respondent does not *guarantee* its clients work in the
22 entertainment industry is also not dispositive as to the issue of whether it operated as a talent agency
23 under Labor Code section 1700.04(a). An *attempt to procure employment* is all that is needed to
24 fall within the definition of a "talent agency" See Labor Code section 1700.04(a). The evidence
25 presented at the hearing clearly shows that respondent was attempting to procure employment for
26 petitioners' daughter. Respondent's letter to petitioners explaining its services clearly states that its
27 main goal is to procure employment for the artist in the entertainment industry. "Our number one

1 objective is to facilitate and accelerate your exposure to our industry. Our innovative system allows
2 you to track just how serious we are about getting you up and going in the business and then
3 ultimately, to where it matters, those auditions and castings." (See Petitioners' Exhibit K). The letter
4 goes on to state, "the web provides all actor/model members, as well as bookers and casting directors
5 an effective tool for the unbiased search, *submission and servicing of our talent*. With the assistance
6 of both the applicable booking software (developed by B.A.M. exclusively) and the web, we now
7 possess a greater scope of knowledge of our clientele, allowing us to develop and/or *submit them*
8 *more often and on better fitting roles*. The model/actor can witness this on their submission calendar
9 (Pro Site only) which allows them to see *every action the booker makes on their behalf*."

10 Furthermore, the "Bookings Procedures" included with the letter also clearly shows that respondent
11 attempts to procure work for its clients. Specifically, in regard to Zed Cards, respondent's policy is
12 explained as follows: "Please make sure you supply us with enough cards *to submit you* for up to 6
13 months at a time. Likewise, under the procedures for Website & Submissions, it states, "If you see
14 the word Submission on your Casting Calendar, *this means that we have sent out your zed card or*
15 *Headshot to a Casting Director*." Why respondents would think such activity does not fall under the
16 definition of a "talent agency" is beyond comprehension. Clearly the purpose of submitting Zed
17 cards or headshots to casting directors is to procure employment for the artist.

18 Other evidence showing that respondent attempted to procure work for petitioners' daughter
19 is the BAM contract entered into by the parties in October 2002 and respondent's answers to
20 frequently asked questions posted on its website. With respect to the BAM contract, it provides:
21 "Services include and/or are limited to, *messenger and courier expenses, U.S. postage, overnight*
22 *mail services of my headshot/resume and/or zed/comp cards to professional and REAL CASTINGS*
23 *of which BAM participates*. As to the website, it provides: We POST and MESSENGER your image
24 *for professional CASTINGS*...with 100% reliance on our computer program/database search
25 functions to match daily castings (via talent spec criteria) for our Members. *With old-fashioned*
26 *messengers who peddle (local Hollywood), drive (local Los Angeles) or fly (anywhere-Federal*
27 *Express) - your zed/comp card and/or headshot/resume to the Casting Directors or photographers*."

1 Respondent's letter submitted to the Labor Commissioner in response to the petition states,
2 "BAM has fulfilled our part in creating *as well as submitting the client for auditions and casting*
3 *calls* and maintaining a website for this client, (as you can see from her own exhibit E)." Petitioners'
4 Exhibit E is a document entitled 'BAM - Booking Actors and Models (Submissions on Calendar)
5 Sierra Reyes which lists all the submissions made by respondent on behalf of petitioners' daughter.
6 This evidence further shows that respondent was in fact operating as a talent agency.

7 The fact that respondent does not pitch any one particular client to casting agents and/or
8 photographers, does not charge its clients a percentage of their earnings or negotiate contracts does
9 not mean that it is not operating as a talent agency. The evidence presented at the hearing in this
10 matter, through documentary evidence as well as testimony by the parties, as discussed hereinabove,
11 more than meets the minimal standard of *Waisbren, supra*.

12 2. Registration Fees

13 Having determined that respondent unlawfully operated as a 'talent agency,' the next issue
14 that must be determined is whether it unlawfully collected a registration fee from petitioners in
15 violation of Labor Code section 1700.2(b). As previously stated, a talent agency cannot charge an
16 artist for a photo shoot, for the printing of photographs, or for the production of a portfolio of
17 photographs. In this case, petitioners authorized Angela Akhmedora to charge a total of \$4,104.00
18 to their credit card to pay for a model portfolio package. While respondent argues that
19 Ms. Akhmedora was an independent contractor hired by Model Development, the company name
20 that appears on petitioners' credit card statement, the evidence presented indicates otherwise.
21 Specifically, the evidence showed that at the seminar in Columbus, Ohio and in subsequent phone
22 conversations and meetings with petitioners, Ms. Akhmedora represented herself to be with BAM
23 and never mentioned that she was with any company other than BAM. Ms. Akhmedora negotiated
24 the price of the model photo portfolio that she ultimately sold to petitioners. Ms. Akhmedora signed
25 the Photography Services Contract on behalf of photographer Shaun Alexander. Ms. Akhmedora set
26 up the photo shoot for petitioners' daughter. Finally, Ms. Akhmedora signed the contract between
27 BAM and petitioners. Thus, while she may be an independent contractor hired by Model

1 Development, the evidence presented clearly shows that she was also working for BAM and was an
2 authorized agent for BAM. Accordingly, in collecting the \$4,104.00 from petitioners for the model
3 portfolio package and turning the money over to Model Development, respondent, through Ms.
4 Akhmedora, violated Labor Code section 1700.2(b). Respondent argued at the hearing that it could
5 not owe money to petitioner that it had not received. However, the statute is violated anytime a
6 talent agent collects such fees from an artist, **even if the agent transmits the entire fee to another**
7 **person without retaining any portion as a profit** and even if the agent is not yet representing the
8 artist at the time the fees are collected. In this case, it is likely, given the evidence presented, that
9 respondent did have at least an indirect financial interest in the money that was paid for the model
10 portfolio package.

11 Ms. Akhmedora's ties to BAM is not the only evidence showing a relationship between BAM
12 and Model Development. Significantly, the models portfolio package that petitioners purchased not
13 only listed the photography services being offered by Shaun Alexander, but also listed and included
14 \$480.00 for Submission Services. The testimony by respondent revealed that this \$480.00 was
15 received by BAM to cover the cost of submissions on behalf of petitioners' daughter as well as
16 maintenance of her website. One must ask, why would a fee for a service that BAM provides appear
17 on a model portfolio package supposedly for a different company.

18 Additional proof that BAM and Model Development are somehow connected is shown by
19 petitioners' Exhibit O which is a printout from the Better Business Bureau's website regarding Model
20 Development, the company that allegedly received the fees for the model portfolio package that
21 petitioners purchased. Listed as the principal contact for Model Development on this report is none
22 other than Robert Macias who appeared at this hearing on behalf of BAM. This clearly shows that
23 the relationship between BAM and Model Development is more than respondent would like one to
24 believe.

25 To establish a violation of Labor Code section 1700.40(b), petitioners must show that
26 respondent "referred an artist to a person, firm or corporation in which the talent agency has a direct
27 or indirect financial interest." Here petitioners proved that BAM referred them to Model

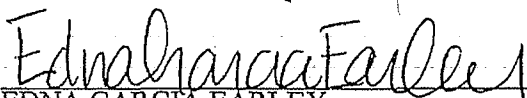
1 Development, a company in which BAM has at least an indirect financial interest. Both companies
2 depend on each other for clients. Petitioners are therefore entitled to reimbursement of the
3 \$4,104.00 they paid for the model portfolio package and Submissions Services.

4 With respect to the penalty under Labor Code section 1700.40(a), respondent failed to
5 reimburse the \$4,104.00 paid in "registration fees" to petitioners within 48 hours of their demand
6 included in their petition to determine controversy. As such, petitioners are entitled to an award of
7 penalties pursuant to section 1700.40. Without such an award, there would be little incentive for
8 respondent to conform its future conduct to the Act's requirements. Accordingly, petitioners are
9 entitled to \$4,104.00 in penalties.

10 **ORDER**

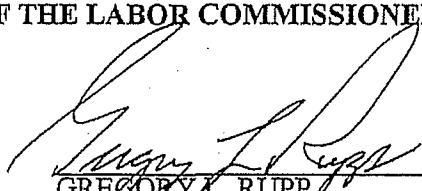
11 For all the reasons set forth above, IT IS HEREBY ORDERED that respondents BLAKE
12 ARI MODELS, INC. a California Corporation dba BAM MODELS, BOOKING ACTORS &
13 MODELS, BAM MODELS pay petitioners JOEL & TRESSA REYES as guardian ad litem for
14 SIERRA REYES, \$4,104.00 for reimbursement of unlawfully collected fees, plus \$869.15 in interest
15 on the unlawfully collected fees, pursuant to Civil Code section 3287 and \$4,104.00 in penalties
16 under Labor Code section 1700.40, for a total of \$9,077.15.

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18 Dated. 11/01/04


EDNA GARCIA EARLEY
Attorney for the Labor Commissioner

19
20 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:**

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22
23 Dated: 11-3-04


GREGORY L. RUPP
Acting Deputy Chief Labor Commissioner

