

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL
RE: PUBLIC WORKS CASE NO. 2002-012
CALIFORNIA STATE UNIVERSITY, SAN MARCOS
STUDENT HOUSING PROJECT

The undersigned, having reviewed the administrative appeal filed by the San Marcos University Corporation ("Corporation"), said appeal is hereby denied for the reasons set forth in the initial coverage determination dated October 21, 2002, which is incorporated by reference herein, and for the reasons set forth below. The scheduling of a hearing, which is a matter of discretion for the Director, is not required and is therefore denied.

In response to the issue of what should be considered in the definition of a less than fair market value rent, as a matter of statutory construction, Labor Code section 1720(b) simply refers to the value of the "rent" without qualifiers regarding other consideration, such as the long-

term value of the property.¹ Notwithstanding the language of section 1720(b), the long-term value of the property in 35 years is speculative. If the building depreciated considerably over those 35 years, the University could be receiving a building of little or no value, in which case the token rent would have yielded the University no profit while still permitting the Corporation an under-market value rent on the land.

This decision constitutes final administrative action in this matter.

Dated: 12-2-02

Chuck Cake
Chuck Cake
Acting Director
Department of Industrial
Relations

¹ The Corporation's letter of appeal dated November 8, 2002, cites *McIntosh et al. v. Aubry* (1993), 14 Cal.App.4th 1576 [18 Cal.Rptr.2d 680]. We note that the legislative history behind what is now Labor Code section 1720(b) (as amended by statutes of 2001, chapter 938, section 2), upon which the present determination is decided, shows a legislative intent to overrule the relevant holdings of the *McIntosh* decision. *Libbey Park Pergola Project*, PW No. 98-004 (June 10, 1998), was issued under the law as it existed prior to the passage of SB 975 and does not have a bearing on this case.