

CALIFORNIA APPRENTICESHIP COUNCIL

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ADDRESS REPLY TO:
California Apprenticeship Council
P. O. Box 420603
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**STANDARDS, RULES, REGULATIONS & OPERATING
PROCEDURES COMMITTEE**

Minutes

Wednesday, October 25, 2023

Chairperson Frank Quintero

I. Call to Order/Roll Call

Meeting was called to order at 3:15pm. Chairperson Quintero was unable to attend. Louis Ontiveros Chaired the meeting.

Chief Rood did the roll call.

Present: Richard Harris, Mark Burri, Larry Hopkins, Yvonne de la Pena, Jack Buckhorn, Paul Von Berg, Louis Ontiveros, Jason Rafter, and Chief Eric Rood.

Not present: Frank Quintero and Chip Martin

A Quorum was met.

II. Review/Approve Previous Minutes.

A motion and a second and approved the minutes from the prior meeting. All approved. The motion carried.

III. Old Business

CAC Operating Procedure/Governance Policy Discussion

The CAC Operating Procedure/Governance Policy was an item that was placed on the agenda for today's meeting, but the actual document was not

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unfortunately posted on the CAC website for the public to review and provide feedback if necessary.

The intention of the CAC Governance Policy will guide the conduct, decision-making, and behavior of the Council and Commissioners and provide a framework for the development of policies and practices that will drive the achievement of the Council's goals.

There was some discussion on this item.

One thing that was brought up was that the difference about this Governance Policy that we are considering here is it would only cover the CAC. Wouldn't have any influence on any other requirement of the CAC or the DAS.

With the CAC we agree on these conflict-of-interest rules and abiding by the Bagley-Keene, but it acknowledges that we have these responsibilities. How do we determine a quorum, do we allow Proxy voting and if you have an issue that is contested how do you resolve them. Is it a simple majority? Or is there some other process like Roberts rules?

Chief Rood stated that our Director, Katie Hagen, really wanted to see some uniformity. Get a little bit more roles for us to have a little bit more structure. as we move forward over the years

No action was taken on it.

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It will be posted on the CAC website and will be on the first quarter 2024 agenda.

Discussion on SB 544, Bagley-Keene Open Meeting Act: teleconferencing. The new law was passed with SB 544. Which is, it's actually modifying the Bagley Keene and the rules under that. This will go into effect January 2024.

So, the request for the Attorney General Office to really investigate this.

- So, what we would be looking at is to do an analysis of SB544. That goes into effect on January 1, as far as the requirements of that law, how it applies to the California Apprenticeship Council, and to be able to help us decide how that law will affect any government's documents.
- How it might affect the establishment of a quorum for the CAC. Because right now, under 5 d. A meeting includes any congregation of a majority (quorum) of the Commissioners at the same time and place to hear, discuss, and deliberate upon any item within the subject matter jurisdiction of the state body. It makes it very clear that you can't have a proxy.

Since the third quarter there have been some changes, we actually had 2 changes, one is the trailer Bill, that allows us to go to the Covid rules of

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Bagley-Keene till December 30, 2023. That's the reason why our commissioners who are online are being counted. So then, SB544 starts January 1, 2024. So, January 1st we have to have a majority of the of the body to be added in a location with an address that is ADA compliant.

The committee welcomed any questions or comments regarding this item.

The draft document will be posted on the CAC website and this item will be on the agenda for the 1st quarter 2024 meeting.

IV. New Business

Attorney Jack Davis asked the CAC to provide a letter to describe interpretation of Title 8, CCR section 230.1(a). If the Program agrees to dispatch under Labor Code section 1777.5.

Acting Chairperson Louis Ontiveros provided an opportunity for the public to make comments.

Attorney Carrie Bushman spoke and stated that her comments and concerns are the same since the last meeting. She stated that the CAC is not authorized by regulation or by statute to essentially adjudicate claims of alleged violations of the Labor Code or the CAC's regulations. It's the Labor Commissioner's office which is empowered by the Labor Code specifically, section 1741 to investigate alleged violations of the prevailing wage law, including the apprenticeship provisions and to issue a civil wage penalty assessment if they find a violation. So, if a contractor then wants to challenge a civil wage penalty assessment, charging them with a violation labor code section 1742, establishes a procedure for doing so, which

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includes the appointment of a neutral hearing officer and the opportunity for both sides to present their evidence at a duly noticed hearing.

Here, if Mr. Davis's client believes that a contractor violated Labor Code section 1777.5 or section 230.1 of the CAC's regulations by failing to accept the dispatch of an apprentice beyond the 72-hour period. The appropriate mechanism for addressing that issue is for Mr. Davis's client to file a complaint with the Labor Commissioner. If the Labor Commissioner's office agrees and then issues a civil wage penalty assessment, the contractor can decide whether to challenge it and go to a hearing at which point they can plead their case and present evidence in support of their position. And there's a really important due process aspect to the complaint and hearing procedures which is totally missing here.

The CAC is being asked by the attorney, seemingly for one of the parties, to a dispute to adjudicate and decide the issue of whether the prevailing wage law has been violated without the affected contractor having been given the opportunity to present its case and its side of the story. So, the Council's been given a very limited and one-sided view of the situation and is being asked to apply a truly incomplete hypothetical. So, for example, here the CAC. Has no idea why this contractor apparently objected to the dispatch from an apprentice on a date other than the date they were requested. What if, for example, the reason why they objected is because the program was planning to dispatch on a day when they had no workers on site, or they didn't have a sufficient number of workers to provide appropriate supervision.

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The council also has been presented with Mr. Davis's characterization of the contractor's argument and their position, but that contractor hasn't been given that opportunity. So, the Council has no idea whether or not it's been given an accurate representation of the facts or the contractors' legal arguments. And that's precisely why there's a process set up for the Labor Commissioner's office to hear a let about alleged violations of the prevailing wage law, and to go through an appropriate adjudicatory process to decide whether or not there's been a violation, so I would strongly urge the Council not to adopt this letter in this particular setting.

The commissioners were able to reply and stated that we're not adjudicating, that we're not being asked to adjudicate. We're being asked to give an interpretation of our regulation.

It was stated as these regulations were adopted by the CAC after a rulemaking process where there was discussion.

This letter is asking if the intent of the regulation when it was adopted, if a contractor after 72 h hasn't received apprentice, that they're not required under prevailing wage law to ever hire an apprentice again. It's an interpretation we're being asked. If that's what is best for the apprentice.

So, the question isn't specific to me to any contractor, certainly there was a specific case that happened, we're aware of that. And it is labor Commissioners job to look at all the details around that particular case and make it make a judgement, that's their job. But it's our job to make it very clear what the regulations mean and what our intent is.

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I don't think contractors are relieved of their obligation to hire apprentices on public works jobs if they haven't received that apprentice within 72 hours of requesting it. I think the contract has an obligation to request and the JATC has an obligation to provide that apprentice and for some reason they can't do it within the 72 hours I don't think that's it is in the best interest of the apprentice that they no longer have to take apprentices on the job and it is believed that was discussion that took place when that rule was adopted. Commissioner Buckhorn believed an interpretation of our rule is appropriate.

A motion to submit the letter that to our CAC Chair Louis Ontiveros from the The Standards, Rules, Regulations, and Operating Procedures Committee Requesting that the interpretation, title 8, section 230.10 be sent to the CAC for consideration and possible adoption as an interpretation of that regulation. The was a second and this item was approved. The motion carried.

A question was asked if this letter was prepared by Jack Davis and if this letter was posted to the CAC website prior to this meeting for discussion.

The Letter was posted on the DAS website and provided to the apprenticeship community.

Yvonne made a comment and suggested that the letter read more like just our interpretation of this code is this. but taking out the specific references to the incident, so that it's actually our opinion of the actual code of regulation and what it means to us rather than it being for a specific incident.

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The motion was amended to submit the letter that to our CAC Chair Louis Ontiveros from the Standards, Rules, Regulations, and Operating Procedures Committee Requesting that the interpretation, title 8, section 230.10 be sent to the CAC for consideration and possible adoption as an interpretation of that regulation with the client specific language to be removed from the letter. There was a second and this item was approved. The motion carried.

V. Adjournment

The meeting was adjourned at 4:10 p.m.