PATRICK W. HENNING LABOR COMMISSIONER OF THE STATE OF CALIFORNIA By: Laurence T. Emert, Hearing Officer 2 107 South Broadway, Room 5015 Los Angeles, CA 90012 3 213/620-2500 Attorney for the Labor Commissioner -5 BEFORE THE LABOR COMMISSIONER 7 OF THE STATE OF CALIFORNIA-8 9 YVETTE MARIE HOLLAND, professionally ) No. MP 115 - TAC 81-18 10 known as CHAKA KHAN, DETERMINATION 11 Petitioner. 12 VS. 13 OTIS SMITH. 14 Respondent. 15 The above-entitled controversy came on regularly for 16 × 17 hearing before the Labor Commissioner for the State of California on February 3, 1982 by Laurence T. Emert, Senior Counsel for the 18 State Labor Commissioner, serving as Hearing Officer under the 19 provisions of Section 1700.44 of the Labor Code of the State of 20 21 California. Petitioner, YVETT/ MARIE HOLLAND, professionally known as CHAKA KHAN, appeared by the Law Office of SILVERBERG, 22 23 ROSEN, LEON & BEHR, by SUSAN J. HELMS, and respondent, OTIS SMITH, 24 appeared by RONALD E. SWEENEY. Evidence, both oral and documentary, having been introduced, and the matter being briefed and 25 26 submitted for decision on March 26, 1982, the following determination is made: 27

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## DETERMINATION

2 It is the determination of the Labor Commissioner that 3 during the time in question, respondent did not act as a talent 4 agent as that term is defined in Labor Code §1700.4, nor was it 5 the intention of the parties that respondent perform services as a talent agent under their written agreement, and therefore, the 6 7 Labor Commissioner is without jurisdiction to adjudicate the dispute between the parties. The petition to defermine controversy 8 9 is therefore **DISMISSED**.

## DISCUSSION

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Petitioner is a singer and recording artist. On or about August 31, 1981, she filed a Petition to Determine Controversy with the State Labor Commissioner under Labor Code §1700.44, which provides in pertinent part:

> "In cases of controversy arising under this chapter, the parties involved shall refer the matter in dispute to the Labor Commissioner, who shall hear and determine the same, subject to cn appeal within 10 days after determination . . ."

In her petition, petitioner sought to invalidate a written agreement between herself and respondent which she alleged was entered into in Violation of Labor Code §1700 et seq. Specifically, petitioner contended that the writing in question called for respondent to perform services as a talent agency, that respondent was not licensed to so act, and that therefore the agreement was null and void.

In his answer to the petition, respondent denied that
the terms of the agreement called for him to perform services of a

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talent agency. Respondent affirmatively alleged that the agree-1 ment called for him to perform creative consultant duties, and that 2 his duties under the agreement were not intended to, nor actually 3 did fall within the category of a talent agency as defined by 4 Labor Code §1700.4. Respondent, therefore, contended that the 5 Labor Commissioner was without jurisdiction to hear the controversy 6 in question, and asked that the Labor Commissioner decline to hear 7 سين مستعمله 8 the controversy.

9 The agreement which is the center of this controversy 10 was entered into between the parties in February of 1980. It is 11 in the form of a four-page letter signed by both parties. At 12 first blush, a reading of the agreement, which was drafted by respondent's attorney, suggests that respondent would be required 13 14 in carrying out its term, to perform services which could possibly 15 include "... procuring offering, promising, or attempting to 16 procure employment or engagement for an artist . . . " (Labor Code) **× 17** §1700.4) and thus come within the jurisdiction of the Labor 18 Commissioner. The terms of the agreement were not drafted with 19 sufficient clarity and are ambiguous as to exactly what was 20 expected of respondent. Under the normal rule of thumb, the con-21 tractual-ambiguities would be construed against respondent who 22 prepared the agreement. Pacific Lumber Co. v. Industrial Acc. 1 23 Comm., 22 Cal. 2d 410(1943).

However, substance mist control over form, and what is controlling is the intention of the parties in entering into the agreement. (Civil Code §1636) The testimony of respondent which was corroborated by petitioner was that it was not the intention

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1 of the parties for respondent to perform the services of a talent 2 agency. Rather, in retaining respondent, it was petitioner's 3 desire to have someone assist her in promoting her career and 4 marketing her records. Respondent was ideally suited for such a 5 job, having spent 22 years working in the record industry doing 6 promotion and advertising.

7 Furthermore, the uncontroverted evidence at the hearing 8 was that any services performed by respondent under the agreement 9 were in the nature of advising petitioner with regard to the pro-10 motion and enhancement of her career. There was no evidence that respondent performed any services normally furnished by a talent 11 12 agent. Indeed, petitioner admitted that she had no evidence that 13 respondent attempted to procure employment for her. Nor would there be any reason for respondent to perform as a talent agent, 14 15 since petitioner already had one under contract.

16 The petition to determine confrdversy is dismissed and 17 the relief requested therein is denied. 4 18 DATED: LAURENCE T. EMERT, Attorney for 19 State Labor Commissioner

20 ADOPTED:

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PATRICK W. HENNING

STATE LABOR COMMISSIONER

Having decided that the Labor Commissioner has no jurisdiction over the controversy in question, it is unnecessary to decide whether respondent performed under the agreement. Resolution of this question will be resolved by the court.

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