

# REVIEW COMMITTEE

**PG and E**

**IBEW** 

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INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO  
LOCAL UNION 1245, I.B.E.W.  
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WALNUT CREEK, CALIFORNIA 94596  
(415) 933-6060  
L.N. FOSS, SECRETARY

D.J. BERGMAN, CHAIRMAN

DECISION  
 LETTER DECISION  
 PRE-REVIEW REFERRAL

Review Committee File No. 1412-76-16  
Drum Division Grievance No. 15-7-76-7  
Disqualification to Groundman Due to Age

March 1, 1977

MR. D. P. WILBUR, Company Member  
Drum Division  
Local Investigating Committee

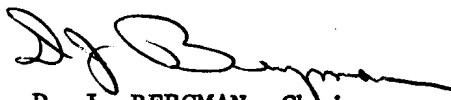
MR. E. A. FORTIER, Union Member  
Drum Division  
Local Investigating Committee


The above-subject grievance has been discussed by the Review Committee and is being returned to the Local Investigating Committee for settlement in accordance with the following:

The issue concerns the rejection of a transfer application submitted by the grievant, a Gas Serviceman, who is over 33 years of age to the Groundman classification. The reason stated for the bypass was the fact that the grievant could not demonstrate the necessary qualifications required to progress in the line of progression to which he was submitting the transfer request.

During the Review Committee's deliberations and discussions, it came to the attention of the Committee that the State Legislature had passed Assembly Bill 3636 which, among other things, prohibits any maximum age for apprentices. As a result of this legislation and the Attorney General's Opinion No. CB 73-65, the Master Apprenticeship Agreement has been amended, removing the age requirement contained in the Apprentice Lineman Guidelines, and the issue in dispute was moot as of January 1, 1977. Therefore, the Division should accept the grievant's transfer application pursuant to Subsection 205.5(b) of the Labor Agreement, provided grievant meets all other requirements for transfer to Groundman.

This case is considered closed and should be so noted by the Local Investigating Committee

  
D. J. BERGMAN, Chairman  
Review Committee

  
L. N. FOSS, Secretary  
Review Committee

DJB:rto

cc: REMetzker  
IWBonbright  
LVBrown  
JAFairchild  
FCBuchholz  
Personnel Managers

Assembly Bill No. 3676

CHAPTER 1179

An act to amend Section 1070 of the Education Code, and to amend Sections 1777.5, 1777.6, 3071, 3073, 3075, 3076, 3077.5, and 3096 of, and to add Sections 3074.3, and 3075.1 to, the Labor Code, relating to apprenticeship, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1976. Filed with Secretary of State September 22, 1976.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3676, Berman. Apprenticeship.

(1) The existing law specifies the duties of the Administrator of Apprenticeship, or his duly authorized representative.

This bill would, in addition, permit the administrator or his duly authorized representative to enter joint agreements with the Employment Development Department's outreach education and employment programs, and educational institutions on the operation of apprenticeship information centers.

(2) The existing law provides for the selection of local or state joint apprenticeship committees in any trade when justified by apprentice training needs of such trade, and specifies the functions of such committees.

This bill would also require all selection and disciplinary proceedings for apprentices or prospective apprentices to be duly noticed to such individuals and would require the Division of Apprenticeship Standards to audit all such proceedings.

(3) The existing law prohibits an apprenticeship training program from providing a maximum age for apprentices of less than 31 years at time of entry into the training program.

This bill would prohibit an apprenticeship training program from providing a maximum age for apprentices.

(4) The existing law requires the Division of Apprenticeship Standards, under certain conditions, to grant a certificate exempting a contractor from the ratio of one apprentice for each five journeymen on public work projects.

This bill would, instead, permit the division to grant such a certificate.

(5) Existing law makes it unlawful for an employer or a labor union to refuse to accept otherwise qualified employees or apprentices on any public works, solely on the ground of the race, religious creed, color, national origin, ancestry, or sex of such employee.

This bill would also make it unlawful for an employer or a labor union to refuse to accept otherwise qualified employees that are at least 16 years of age as apprentices on any public works, on the

ground of age.

(6) This bill would declare it to be the state's public policy to encourage the utilization of apprenticeship as a form of on-the-job training, require state and local public agencies to make a diligent effort to establish apprenticeship programs for minorities and women in apprenticeable occupations, and require public sector apprenticeship programs to be fully compatible with affirmative action goals for women and minorities.

(7) This bill would also place an affirmative duty on joint apprenticeship committees to ensure equal employment and affirmative action in apprenticeship for women and minorities, require joint apprenticeship committees to arrange for the dispatch of apprentices to contractors to comply with designated requirements, require the joint apprenticeship committees to implement affirmative action programs, require the California Apprenticeship Council to issue regulations for affirmative action programs which include women and minorities in apprenticeship, and require the Administrator of Apprenticeship to coordinate the exchange of information of women and minorities available as apprentices.

(8) Existing law authorizes the governing boards of school districts to provide in each school of the district an organized and functioning counseling program, including career counseling.

This bill would require career counseling, if provided, to include encouraging students, including women and minorities, to seek apprenticeship training.

(9) Existing law permits the Department of Education and the Board of Governors of the California Community Colleges to provide related and supplemental instruction to isolated apprentices, as defined.

This bill would require the Superintendent of Public Instruction and the Chancellor of the California Community Colleges to recognize registration in an apprenticeship program approved by the Division of Apprenticeship Standards in the Department of Industrial Relations as an acceptable prerequisite to enrollment into such related and supplemental instruction.

(10) This bill would provide that neither appropriation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to this bill.

(11) This bill would take effect immediately as an urgency statute.

(12) This bill would incorporate additional changes in Section 1777.5 of the Labor Code, proposed by Assembly Bill No. 2466, to be effective only if Assembly Bill No. 2466 and this bill are both chaptered and become effective on or before January 1, 1977, and this bill is chaptered last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1777.5 of the Labor Code is amended to

read:

1777.5. Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is training.

When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him, in performing any of the work under the contract or subcontract, employs workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; provided, however, that the action by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall notify the appropriate dispatch agency of such approval in order for the contractor or subcontractor to comply with this section. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one apprentice for each five journeymen, except as otherwise provided in this section.

The contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the

contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 ratio as set forth in this section. This section shall not apply to contracts of general contractors involving less than thirty thousand dollars (\$30,000) or 20 working days or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five working days.

"Apprenticeable craft or trade," as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(a) In the event unemployment for the previous three-month period in such area exceeds an average of 15 percent, or

(b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or

(c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis.

(d) If assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

The Administrator of Apprenticeship's may grant an exemption pursuant to this section to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis. In such cases member contractors will not be required to submit individual applications for approval to the local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or

apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of such contributions in computing his bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. Such stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

All decisions of the joint apprenticeship committee under this section are subject to the provisions of Section 3081.

SEC. 2. Section 1777.5 of the Labor Code is amended to read:

1777.5. Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is training.

When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him, in performing any of the work under the contract or subcontract, employs workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; provided, however, that the approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal

employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one apprentice for each five journeymen, except as otherwise provided in this section.

The contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 ratio as set forth in this section. This section shall not apply to contracts of general contractors involving less than thirty thousand dollars (\$30,000) or 20 working days or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five working days.

"Apprenticeable craft or trade," as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) In the event unemployment for the previous three-month period in such area exceeds an average of 15 percent, or
- (b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or
- (c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis.

(d) If assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which

represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of such contributions in computing his bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. Such stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

All decisions of the joint apprenticeship committee under this section are subject to the provisions of Section 3081.

SEC. 3. Section 1777.6 of the Labor Code is amended to read:

1777.6. It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077, of such employee.

SEC. 4. Section 3071 of the Labor Code is amended to read:

3071. The California Apprenticeship Council shall meet at the call of the Director of Industrial Relations and shall aid him in formulating policies for the effective administration of this chapter.

Thereafter the California Apprenticeship Council shall meet quarterly at a designated date and special meetings may be held at the call of the chairman. The California Apprenticeship Council shall establish standards for minimum wages, maximum hours, working conditions for apprentice agreements, hereinafter in this chapter referred to as labor standards, which in no case shall be lower than those prescribed by this chapter; shall issue such rules and regulations as may be necessary to carry out the intent and purpose of this chapter, which shall include regulations governing equal



opportunities in apprenticeship, affirmative action programs which include women and minorities in apprenticeship, and other on-the-job training, and criteria for selection procedures with a view particularly toward eliminating criteria not relevant to qualification for training employment or more stringent than is reasonably necessary; shall foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment; shall insure that selection procedures are impartially administered to all applicants for apprenticeship; shall gather and promptly disseminate information through apprenticeship and training information centers; and shall maintain on public file in all high schools and field offices of the Department of Employment Development the name and location of the local area apprenticeship committees, the filing date, and minimum requirements for application of all registered apprenticeship programs. The California Apprenticeship Council shall make biennial reports through the Director of Industrial Relations of its activities and findings to the Legislature and to the public.

SEC. 5. Section 3073 of the Labor Code is amended to read:  
3073. The administrator, or his duly authorized representative shall administer the provisions of this chapter; act as secretary of the California Apprenticeship Council; cooperate in the formation of joint apprenticeship committees and advise with them on problems affecting labor standards; may enter joint agreements with the Employment Development Department outreach education and employment programs, and educational institutions on the operation of apprenticeship information centers, including positive efforts to achieve information on equal opportunity and affirmative action programs for women and minorities; shall supervise and recommend apprenticeship agreements as to these standards and perform such other duties associated therewith as the California Apprenticeship Council may recommend. The administrator shall coordinate the exchange, by the California Apprenticeship Council, the apprenticeship program sponsors, the Fair Employment Practices Commission, community organizations, and other interested persons, of information on available minorities and women who may serve as apprentices.

SEC. 5.5. Section 3074.3 is added to the Labor Code, to read:  
3074.3. In providing related and supplemental instruction pursuant to Section 3074, and notwithstanding the provisions of Sections 5753 and 5753.1 and subdivisions (c) and (d) of Section 11251 of the Education Code, the Superintendent of Public Instruction and the Chancellor of the California Community Colleges shall recognize registration in an apprenticeship program approved by the Division of Apprenticeship Standards in the Department of Industrial Relations as an acceptable prerequisite to enrollment into such related and supplemental classes of instruction.

**SEC. 6.** Section 3075 of the Labor Code is amended to read:

**3075.** Local or state joint apprenticeship committees may be selected by the employer and the employee organizations, in any trade in the state or in a city or trade area, whenever the apprentice training needs of such trade justifies such establishment. Such joint apprenticeship committees shall be composed of an equal number of employer and employee representatives. All selection and disciplinary proceedings for apprentices or prospective apprentices shall be duly noticed to such individuals. The Division of Apprenticeship Standards shall audit all such proceedings.

**SEC. 7.** Section 3075.1 is added to the Labor Code, to read:

**3075.1.** It is the public policy of this state to encourage the utilization of apprenticeship as a form of on-the-job training, when such training is cost-effective in developing skills needed to perform public services. State and local public agencies shall make a diligent effort to establish apprenticeship programs for apprenticeable occupations in their respective work forces. In furtherance of this policy, public agencies shall take into consideration (a) the extent to which a continuous supply of trained personnel is readily available to public agencies to meet their skill requirements in the various occupations which are determined to be apprenticeable, and (b) the application of established programs in the private sector, where appropriate. Public sector apprenticeship programs should be fully compatible with affirmative action goals for the participation of minorities and women in apprenticeship programs.

**SEC. 8.** Section 3076 of the Labor Code is amended to read:

**3076.** The function of the joint apprenticeship committee shall be to work in an advisory capacity with employers and employees in matters regarding schedule of operations, application of wage rates, working conditions for apprentices, the number of apprentices which shall be employed in the trade under apprentice agreements under this chapter, in accordance with labor standards set up by the California Apprenticeship Council except as specific written authority is delegated to the joint apprenticeship committee by the parent bodies they represent; and to aid in the adjustment of apprenticeship disputes as they affect labor standards. The joint apprenticeship committee shall establish selection procedures which specify minimum requirements for formal education or equivalency, physical examination, if any, subject matter of written tests and oral interviews, and any other criteria pertinent to the selection process; shall specify the relative weights of all factors which determine selection to an apprenticeship program; shall submit in writing to the Administrator of Apprenticeship an official statement of each selection procedure including filing date and location of the joint apprenticeship committee; shall provide a copy of the selection procedures to each applicant; shall provide in writing to each applicant not selected an official explanation setting forth the reason or reasons for the nonselection, copies of which explanation shall be

retained as a public record in the files of the joint apprenticeship committee for a period of three years; and shall implement affirmative action programs for minorities and women in accordance with the rules, regulations, and guidelines of the California Apprenticeship Council.

SEC. 9. Section 3077.5 of the Labor Code is amended to read:

3077.5. No association of employers, organization of employees, or joint committee administering an apprenticeship training program under this chapter shall provide a maximum age for apprentices.

The provisions of this section shall not apply to any apprenticeship program established pursuant to any collective-bargaining contract or agreement entered into prior to the operative date of this section.

SEC. 10. Section 3096 of the Labor Code is amended to read:

3096. Complaints alleging discrimination against any person in the selection or training of that person in any apprenticeship training program because of the race, religious creed, color, national origin, ancestry, or sex of such person shall be filed with the State Fair Employment Practice Commission pursuant to Part 4.5 (commencing with Section 1410) of Division 2 of this code. Whenever such a complaint is filed with the commission, the commission shall immediately send a copy of the complaint to the Administrator of Apprenticeship for investigation and action by the Division of Apprenticeship Standards pursuant to this chapter and rules and procedures prescribed by the California Apprenticeship Council. The division shall hold at least one open hearing relative to the complaint during the 21-day period following the day upon which the division receives a written copy of the complaint. If the commission finds that the complaint is not being processed in accordance with this chapter and such rules and procedures, or if the commission finds that the division has not taken action which has resolved the complaint within 30 days, the commission shall report such findings in writing to the administrator, who upon verification may cause the division to take conclusive action prior to the 61st day following the day upon which a written copy of the complaint was filed with the division. Notwithstanding any other provision of this section, the administrator shall, upon request of, and after written report by, the commission, relieve the division of the case and assign it to the commission, on or before the 61st day following the day upon which a written copy of the complaint was filed with the division. Upon receipt of such assignment, the commission shall immediately proceed to act upon the complaint. The commission shall hold at least one open hearing within 14 days following the day of assignment. The commission shall complete its investigations and any attempts to eliminate any unlawful practices discovered and shall issue an accusation thereon or advise the complainant that the evidence does not warrant further proceedings thereon, within 30 days after the complaint is assigned to the commission. The

commission shall prepare such findings, determinations, and orders for issuance by the administrator, who shall notify the complainant and shall make available his findings within 10 days after review of such findings by the commission. Such findings, determinations and orders shall be subject to further legal processes as set forth in this chapter. In the event there is no action by the division or the commission within 101 days after the filing of a complaint with the commission, the person claiming to be aggrieved may bring a civil action under this part within one year after such 101st day.

The Division of Apprenticeship Standards shall inform the commission of the number and disposition of all complaints handled by the division pursuant to this section for inclusion in the commission's report to the Governor and the Legislature as required by this code.

SEC. 11. Section 1070 of the Education Code is amended to read:

1070. The governing board of any school district may provide in each school within the district an organized and functioning counseling program. Counseling shall include, but not be limited to, the following:

(a) Educational counseling, in which the pupil is assisted in planning and implementing his immediate and long-range educational program.

(b) Career counseling, in which the pupil is assisted in assessing his or her aptitudes, abilities, and interests in order to make realistic career decisions. Such career counseling shall include encouraging students, including women and minorities, to seek apprenticeship training.

(c) Personal counseling, in which the pupil is helped to develop his ability to function with social and personal responsibility.

(d) Evaluating and interpreting test data.

(e) Counseling and consultation with parents and staff members on learning problems and guidance programs for pupils.

For purposes of this section, a person performing counseling services to pupils shall be a school counselor possessing a valid credential with a specialization in pupil personnel services and assigned specific times to directly counsel pupils regarding their educational, vocational, and social adjustment.

A governing board of a school district which offers such counseling services, may contract with the governing boards of any other school districts, or private schools, or other public and private agencies or organizations, to render such counseling services. In so contracting, the governing board of a school district shall not contract at less than cost to a private school, or private agency or organization.

Nothing in this section shall be construed as prohibiting persons participating in an organized advisory program approved by the governing board of a school district, and supervised by a school district counselor, from advising pupils pursuant to the organized advisory program.

Notwithstanding any provisions of this section to the contrary, any person who is performing such counseling services pursuant to law authorizing the performance thereof in effect before the effective date of this section shall be authorized to continue to perform such services on and after the effective date of this section without compliance with the additional requirements imposed by this section.

SEC. 12. There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because there are no new duties, obligations or responsibilities imposed on local government by this act.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that the California Community Colleges and adult education programs may continue to offer classroom training to apprentices on an uninterrupted basis, it is necessary that this act take effect immediately.

SEC. 14. It is the intent of the Legislature, if this bill and Assembly Bill No. 2466 are both chaptered and become effective on or before January 1, 1977, both bills amend Section 1777.5 of the Labor Code, and this bill is chaptered after Assembly Bill No. 2466, that Section 1777.5 of the Labor Code, as amended by Section 1 of Assembly Bill No. 2466, be further amended on the effective date of this act in the form set forth in Section 2 of this act to incorporate the changes in Section 1777.5 proposed by this bill. Therefore, if this bill and Assembly Bill No. 2466 are both chaptered and become effective on or before January 1, 1977, and Assembly Bill No. 2466 is chaptered before this bill and amends Section 1777.5, Section 2 of this act shall become operative on the effective date of this act and Section 1 of this act shall not become operative.

O

Opinion No. CV 73-65—June 1, 1973

**SUBJECT: COLLECTIVE BARGAINING AGREEMENTS SUBJECT TO MAXIMUM AGE LIMITATION PROVISIO FOR APPRENTICESHIP PROGRAMS**—A collective bargaining agreement to be reopened, renewed or modified must apply the maximum age limitation of not less than 31 years for entry into an apprenticeship training program.

Requested by: DIRECTOR, DEPARTMENT OF INDUSTRIAL RELATIONS

Opinion by: EVELLE J. YOUNGER, Attorney General  
Asher Rubin, Deputy

The Honorable H. Edward White, Director of the Department of Industrial Relations has requested an opinion on the following question:

Are collective bargaining agreements entered into prior to the enactment of Labor Code section 3077.5 but modified, renewed, or reopened following the enactment of the section subject to the maximum age limitation contained in the statute?

The conclusion is:

When a collective bargaining agreement entered into prior to the enactment of Labor Code section 3077.5 is modified, renewed, or reopened, the maximum age proviso of that statute becomes a part of the new agreement.

#### ANALYSIS

Labor Code section 3077.5 states,

"No association of employers, organization of employees, or joint committee administering an apprenticeship training program under this chapter shall provide a maximum age for apprentices of less than 31 years, at time of entry into the training program."

"The provisions of this section shall not apply to any apprenticeship program established pursuant to any collective bargaining contract or agreement entered into prior to the operative date of this section."

The section was enacted by Stats. 1967, ch. 1611, p. 3853, § 1 and a minor amendment not here relevant was made in 1968, Stats. 1968, ch. 1123, p. 2139, § 1.

The problem presented is at what point this statute becomes effective and binding on the parties to a collective bargaining agreement, and arises from the last paragraph of section 3077.5, commonly called a "grandfather clause." We recognize that collective bargaining agreements are unique. *Transportation Union v. Union Pacific R. Co.*, 385 U.S. 157, 160 (1966). Most such agreements are in force for a period of one year and frequently call for automatic renewal unless notice is given by either party of an intention to amend or terminate the agreement. See C.C.H. Labor Law Reporter, § 59,540; 48 Am. Jur. 2d, Labor and Labor Relations, §1289, p. 797.

Despite the automatic renewal provision, we believe that upon expiration of the old agreement, a new contract between the parties has been entered into. The failure of either party to seek termination of the provisions of the old agreement indicates mutual assent to carry those provisions intact into the new agreement. See Civ. Code §§ 1550, 1565, 1580, 1581. Thus, where the agreement specifies that it will be in force for one year and will thereafter be renewed automatically, when the renewal becomes operative the statute will apply to the agreement and will supersede any contractual provisions to the contrary. Any attempt by the parties to carry forward the restrictive age provision in the old contract would be invalid as it would be inconsistent with an applicable legislative enactment. See *State Comp. Ins. Fund v. McConnell*, 46 Cal.2d 330, 340 (1956); *Smith v. Bach*, 183 Cal. 259 (1920); *Gleason v. Spray*, 81 Cal. 217 (1889); *Stonebocker v. Cassano*, 154 Cal. App. 2d 732, 736 (1957).

This view is consonant with a well established principle that "grandfather" clauses are to be strictly construed with full consideration given to the general purpose of the legislation to which the particular clause provides an exception. *People ex rel San Francisco Bay etc. v. Town of Emeryville*, 69 Cal.2d 533, 543-545 (1968); *Harris v. ABC Bd.*, 61 Cal.2d 305, 309-310 (1964).

Moreover, we believe that this narrow construction gives effect to the intent of the Legislature and to the basic regulatory scheme underlying the context in which the parties bargained. Cf. *NLRB v. C. & C. Plywood Corp.*, 385 U.S. 421, 430 (1966); *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 285 (1955).

While we have been unable to discover specific expressions of legislative intent concerning this statute, certain extrinsic materials as well as the legislative history of the bill do provide some clues.

Manifestly, California has a continuing need for large numbers of skilled workers in its economy. In 1965, a subcommittee on apprenticeship training was created by the Legislature to study certain proposed laws dealing with apprenticeship. In its report, it stated in part,

"... [T]he subcommittee was concerned not only with the quality of the present program but with the quantity of skilled workers which can be produced.

"California's economy will grow and prosper in direct relation to industry's ability to expand its facilities in operation. But in the face of an increasingly accelerated technological development, industry cannot expand without a sufficient skilled work force. It was with this in mind that the subcommittee sought for means to develop an apprenticeship program capable of meeting the present and future needs of this State for a well-trained work force. ..."

See Final Report of the Assembly Interim Committee on Industrial Relations, Assembly Interim Committee Report 1963-1965, Vol. 2, No. 9, pp. 104, 105.

It is thus apparent that the Legislature wished to maximize the use of apprentices and the expansion of the apprenticeship program.

This conclusion is buttressed by the legislative path followed by the subject code section. AB 2181 bill was introduced on April 11, 1967, and was proposed as an amendment to section 3077 of the Labor Code. The language of the bill as it was submitted on that date included the following: "The term 'apprentice' as used in this chapter, means a person at least 16 years of age, but not more than 31 years of age . . ." In light of subsequent changes in the bill, it is reasonable to conclude that this wording created a possibility not foreseen by the Legislature. As originally drafted, the bill would permit the administrators of an apprenticeship program to set arbitrary age limits for new apprentices. For example, the parties could have agreed that they would accept no persons older than 21 years for participation in the program. Rather than serving to expand the program, this approach would have effectively cut down on the number of persons eligible for apprenticeship. The amendments which followed removed this possibility. The first amendment on May 27, 1967, changed the numbering of the section to 3077.5 and struck the prior language dealing with the maximum age limitation, substituting the following, "No employer, association of employers, organization of employers, or joint committee administering an apprenticeship training program under this chapter shall provide a maximum age for apprentices of less than 31 years."

Thus, the thrust of the section was changed by the amendment. No longer could apprenticeship agreements be limited to persons between 16 and 21 or 16 and 25; the parties administering the program were compelled to consider any qualified persons who were not over the age of 31 years. Of course, if the parties wished to consider individuals over the age of 31, the statute would not be a hindrance.

On June 22, 1967, the bill was again amended and two provisions were added. First, it was stated that the 31 year maximum age limitation would apply "at time of entry into the training program." This simply fixed the age proviso with greater precision than existed in the bill proposed earlier. Another significant provision was added: "The provisions of this section shall not apply to any collective bargaining contract or agreement entered into prior to the operative date of this section." Two further amendments of no great substance were later made prior to the time the bill was finally enacted into law.

It is apparent from this history that in enacting section 3077.5 the Legislature had the objective of making the apprenticeship program available to more persons and minimizing age as a barrier to entry into the program.

In our judgment, this objective can best be accomplished by the approach asseverated above. Parenthetically, we would observe that any other interpretation of the "grandfather" clause contained in the statute could conceivably prolong a practice which the Legislature has seen fit to reject. Suppose, for example, an employer and a union had a collective bargaining agreement which provided for an apprenticeship program. The agreement, let us say, provided that the contract would be renewed after one year unless timely notice of intent to modify or terminate were given by one of the parties. Suppose further that the original agreement provided that no person over the age of 18 would be accepted for



apprenticeship training. If the parties annually renewed this contract and the contract was not thereafter subject to section 3077.5, the parties could obviously frustrate the intent of the Legislature indefinitely. Cf. *Aluminum Co. of America v. NLRB*, 159 F.2d 523 (7th Cir. 1946).

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Opinion No. CV 71-372—June 5, 1973

**SUBJECT: AREA HEALTH PLANNING AGENCIES**—The Health Planning Council may withdraw approval of a voluntary area health planning agency whenever such agency is not able to function properly and carry out its responsibilities of determining community needs for health services and analyzing existing facilities and their utilization. The Council, however, may not name itself as a replacement for the voluntary health planning agency but may designate another or interim agency to act in the place and stead of an agency which no longer has approval of the Health Planning Council.

Requested by: EXECUTIVE SECRETARY, CALIFORNIA HEALTH PLANNING COUNCIL

Opinion by: EVELLE J. YOUNGER, Attorney General  
Edward M. Belasco, Deputy

The Honorable James W. Gentry, Executive Secretary, California Health Planning Council, has requested an opinion on the rights and duties of the Health Planning Council when a voluntary area health planning agency is unable to exercise its function or ceases to exist.

The questions which may be stated as follows are:

1. May the Health Planning Council withdraw its approval of a voluntary area health planning agency if in its opinion the agency will not be able to fulfill its responsibilities under the comprehensive health planning law?
2. May the Health Planning Council designate itself, the Department of Public Health, or another voluntary area health planning agency to carry on as a voluntary area health planning agency when no viable agency exists in an area?
3. Would an application submitted 30 days prior to the dissolution of a voluntary area planning agency automatically be approved by default 90 days from the date of its submission, even though there no longer exists a voluntary area health planning agency?

The conclusions are:

1. The Health Planning Council may withdraw its approval of a voluntary health planning agency whenever such agency cannot meet its statutory obligations set forth in sections 437.7 and 438 of the Health and Safety Code.

# Information Bulletin



STATE OF CALIFORNIA, AGRICULTURE AND SERVICES AGENCY,  
DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF APPRENTICESHIP STANDARDS

P. O. BOX 603, SAN FRANCISCO, CALIF., 94101

TEL. (415) 557-2950

February 10, 1977

INFORMATION BULLETIN NO. 77-1

SUBJECT: LEGAL INTERPRETATION OF REMOVAL OF UPPER AGE LIMIT FOR APPRENTICES  
(LABOR CODE SECTION 3077.5)

In the 1976 session, the Legislature passed AB 3676 which, among other things, prohibits any maximum age for apprentices (Labor Code Section 3077.5). There is a provision that the section shall not apply to any apprenticeship program established pursuant to any collective bargaining agreement entered into prior to the operative date of this section (September 20, 1976).

Serious concern about the interpretation of the section was expressed by members of the California Apprenticeship Council at its October 1976 meeting in Los Angeles. They requested the matter be referred to the Legal Counsel of the Department of Industrial Relations for study, with particular attention to the Opinion of the Attorney General CV73/65, dated June 1, 1973.

This has been done, and it has been determined that the Attorney General's Opinion is applicable to this situation and is still effective.

To the question, "Are collective bargaining agreements entered into prior to the enactment of Labor Code Section 3077.5 but modified, renewed, or reopened following the enactment of the section subject to the maximum age limitation contained in the statute?"

The Attorney General concluded, "When a collective bargaining agreement entered into prior to the enactment of Labor Code Section 3077.5 is modified, renewed, or reopened, the maximum age proviso of that statute becomes a part of the new agreement."

Therefore, the maximum age limit must be expressed, specifically stating the maximum age (whatever age) in the collective bargaining agreement or in standards which are incorporated by reference or pursuant to a CBA in order to be protected. The maximum age limit must be removed when the contract is terminated, modified, or renewed. It need not be removed on automatic changes in wages, etc., which were agreed to in the original negotiations. No other documents expressing a maximum age limit are protected by Section 3077.5 of the Labor Code.

Distribution: Tabs 2, 3, 5, 6, and 17



Los Angeles electrical apprentices honored at completion ceremony, November 13, 1976.

## *Omnibus apprenticeship law is approved*

An "omnibus" apprenticeship bill (AB 3676, Howard L. Berman, Los Angeles) was approved by the 1976 State Legislature and signed into law on September 20 by Governor Edmund G. Brown Jr. As an urgency statute, the bill became effective immediately.

The new law, which was supported by the Department of Industrial Relations, makes changes in the Labor Code, strengthening State-approved apprenticeship in several different areas: public works, affirmative action and promotion of apprenticeship, and related instruction.

AB 3676 strengthens the authority of Donald Vial, State Administrator of Apprenticeship, to enforce the ratio of one apprentice to every five journeymen employed on public works projects.

The approval of public works contractors by a joint apprenticeship committee is now further subject to the approval of the Administrator of Apprenticeship.

Joint apprenticeship committees are now required to arrange for the dispatch of apprentices to contractors approved to train apprentices on public works.

The new law places an affirmative duty on joint apprenticeship committees, which administer apprentice

programs in occupations used on public works, to insure equal employment and affirmative action for women and minorities.

A further amendment to Section 1777.5 of the State Labor Code reduces the ratio of apprentices to journeymen necessary for an employer to qualify for exemption on a particular project. The ratio, formerly one apprentice to every eight journeymen employed overall, has been reduced to one apprentice for every five journeymen.

A responsibility to implement affirmative action programs for minorities and women in accordance with the rules, regulations, and guidelines of the California Apprenticeship Council was added to the functions of joint apprenticeship committees by an amendment to Section 3076 of the State Labor Code.

Apprenticeship as a form of training to develop skills needed to perform public service is encouraged by a statement of public policy in the new Section 3075.1. The statement includes a responsibility for public sector apprentice programs to be fully compatible with affirmative action goals for the participation of women and minorities in apprenticeship.

The upper age limit for entry into apprentice programs was removed by Section 3077.5.

A person who has filed a complaint alleging discrimination in selection or training in any apprentice program, based on race, religious creed, color, national origin, ancestry or sex, is authorized to bring civil action in the event there is no action within 101 days after filing of the complaint.

The new law also requires schools with career counseling programs to encourage students, including women and minorities, to seek training as apprentices.

AB 3676 added Section 3074.3 to the Labor Code to require the Superintendent of Public Instruction and the Chancellor of the California Community Colleges to recognize registration in an approved apprentice program as an acceptable prerequisite for enrollment into classes of related and supplemental instruction for apprentices.

The State Division of Apprenticeship Standards is now required by law to audit all selection and disciplinary proceedings for apprentices or prospective apprentices who have been duly notified of such proceedings. This was an amendment to Section 3075 of the Labor Code.