



**STERN | VAN VLECK LLP**

ATTORNEYS AT LAW

December 10, 2008

John C. Duncan, Director  
Department of Industrial Relations  
455 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, CA 94101

RE: CCPOA vs. CDCR and DAS

Dear Director Duncan:

I am writing to you in your capacity as the Administrator of Apprenticeship. As you know, the California Correctional Peace Officers Association ("CCPOA") has filed a complaint with your office against the Division of Apprenticeship Standards ("DAS") and the California Department of Corrections and Rehabilitation ("CDCR") regarding the CDCR Apprenticeship Program. You have appointed Vanessa Holton to act as the hearing officer with regard to CCPOA's complaint. This matter is not moving forward at a reasonable pace, and I am requesting your assistance in seeing that the legal issues pertaining to CCPOA's complaint get resolved quickly, so that, if necessary, CCPOA can have an evidentiary hearing on its complaint in early 2009.

On March 13, 2008, CCPOA filed its complaint with the Administrator of Apprenticeship, seeking, among other things, deregistration of the CDCR Apprenticeship Program. It took your office several months to take any action regarding CCPOA's complaint. Eventually, you appointed Ms. Holton to act as the hearing officer, and on July 10, 2008, Ms. Holton held a hearing at which time CCPOA made clear its request for an evidentiary hearing on its complaint. Ms. Holton requested, and the parties agreed, that the parties would first brief the following three preliminary legal issues:

1. Whether from July 1, 2005, to the present the Apprenticeship Program of the California Department of Corrections and Rehabilitation ("CDCR") has been in violation of California Labor Code section 3075(a) on the basis that the program has not been sponsored by a joint labor-management committee?
2. If the Apprenticeship Program is in violation of Labor Code section 3075(a), what are the consequences of such a violation?
3. If the Apprenticeship Program is not in violation of Labor Code section 3075(a), what procedures govern CCPOA complaints about the program?

The parties agreed to brief these issues in lieu of having an immediate evidentiary hearing. CCPOA made it clear, however, that if the hearing officer's decision on these issues did not result in a recommendation that the Administrator of Apprenticeship immediately deregister the Apprenticeship Program, CCPOA wanted a prompt evidentiary hearing to address the numerous

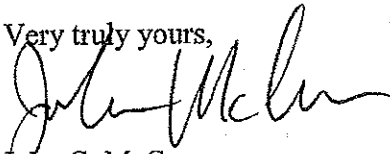
deficiencies in the Apprenticeship program that also justify deregistration of the Program. Ms. Holton made it clear at the hearing that she intended to resolve these issues expeditiously.

On August 25, 2008, the parties completed their briefing on these issues. Approximately three and a half months have passed with no decision on these issues. This unreasonable delay in resolving these issues and, if necessary, affording CCPOA an evidentiary hearing on its complaint, is unfair and is in violation of 8 CCR section 202. Pursuant to 8 CCR section 202(a), the Administrator of Apprenticeship has 60 calendar days from the date of the complaint to determine whether or not to dismiss the complaint. Obviously, you have determined that CCPOA's complaint has merit and you have not dismissed it. In that event, pursuant to 8 CCR section 202(b), you are required to hold a hearing in accordance with the procedures set forth in that section. Those procedures include allowing the parties to present evidence, both in writing and through witness testimony. CCPOA has not been afforded that opportunity. Pursuant to 8 CCR section 202(d), within 60 days of a hearing in this matter, you are required to issue a decision on the complaint. In other words, the regulation allows you 60 days in which to investigate CCPOA's complaint and decide whether or not to dismiss it. Having not dismissed the complaint, you are required to hold a hearing, and within 60 days from the date of that hearing issue your decision on the complaint. Under any reasonable interpretation of section 202, Ms. Holton's decision on the issues that were briefed in August is long overdue.

Moreover, this delay is contrary to Ms. Holton's assurances that these issues would be handled quickly. At the July hearing, Ms. Holton asked the parties to brief certain issues in advance of, and perhaps in lieu of, an evidentiary hearing in this matter. CCPOA agreed to this procedure because Ms. Holton assured the parties that she would resolve these issues expeditiously, and that doing so would lead to a more orderly resolution of the issues raised by CCPOA. It appears that CCPOA has been duped into believing that Ms. Holton would in fact resolve these issues quickly. CCPOA's complaint has now been pending for approximately nine months, and CCPOA has not received an evidentiary hearing or a decision on the preliminary legal issues that it briefed back in August of 2008.

CCPOA would certainly prefer a cooperative process in resolving the important issues raised by CCPOA's complaint. I exchanged e-mails with Ms. Holton a few weeks ago about the timing of her decision, and she indicated that she was working on it and thanked the parties for their patience. Unfortunately, CCPOA cannot tolerate further delay in having these issues resolved. CCPOA therefore requests your assistance in resolving these issues. If these issues are not resolved within two weeks of the date of this letter, CCPOA will have no choice other than to file a petition for writ of mandate with the Superior Court seeking to compel your office to decide these issues and, if necessary, provide CCPOA with an evidentiary hearing on its complaint.

Very truly yours,



John C. McCarron

cc: Jennifer M. Garten  
Fred Lonsdale  
Vanessa Holton