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RICHTER-WIMBERLEY, P.S.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
MAY 21 1993
JAMES R. LARSEN, Clerk
Deputy

INLAND PACIFIC CHAPTER OF ASSOCIATED BUILDERS AND CONTRACTORS, et al.,

Plaintiffs,

vs.

JOSEPH A. DEAR, et al,

Defendants.

JUDGMENT IN A CIVIL CASE

CS-92-354-JLQ

This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that:

1. Plaintiffs shall reapply to the Washington State Apprenticeship Council if they seek registration for their training program.

2. Defendants shall consider Plaintiff's application without applying the "no parallel program" rule. Defendants shall not reject registering Plaintiff's program due to the fact that there is another apprenticeship program in place.

3. Defendants are HEREBY ENJOINED from rejecting any apprenticeship/training program's application for state registration, whose standards comply with 29 CFR 29 as well state law in accordance therewith, on the basis that it is a "parallel program" to an apprenticeship program that has previously been registered and is in effect.

U.S. DEPARTMENT OF LABOR
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4. In all other respects, Plaintiff's Motion for Mandamus or Preliminary Injunction is DENIED.

Dated: May 21, 1993

JAMES R. LARSEN, Clerk

by Lee Ann Mauk

Lee Ann Mauk, Deputy

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

INLAND PACIFIC CHAPTER OF ASSOCIATED BUILDERS AND CONTRACTORS, et al., Plaintiffs, vs. JOSEPH A. DEAR, et al., Defendants.	NO. CS-92-354-JLQ MEMORANDUM OPINION AND ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

BEFORE THE COURT is Plaintiff's Motion for Writ of Mandamus or Preliminary Injunction heard on May 5, 1993. Stephen Drummond represented Plaintiffs. Leslie V. Johnson and Richard W. Young represented Defendants. Hugh Hafer represented Intervenors.

Plaintiffs filed this action seeking a Writ of Mandamus, or in the alternative, a Temporary Restraining Order and Permanent Injunction against the Defendants. It is clear that the State of Washington has determined to identify a "test case" to get a ruling on whether a 1991 Ninth Circuit case, Electrical Joint Apprenticeship Committee. v. MacDonald, 949 F.2d 270 (9th Cir. 1991), cert. denied, ___U.S.___, 112 S.Ct. 2991 (1992) applies to the Washington State Apprenticeship Council rules regarding the State registration of apprenticeship programs. It appears

obvious that this has been identified as that "test case".

Plaintiff seeks to (1) prohibit Defendants from refusing to apply 29 CFR Part 29 standards in approving and registering apprenticeship and training programs; (2) prohibit Defendants from failing or refusing to grant full recognition, approval, and registration status as apprenticeship programs those programs that have previously or will hereafter be approved by BAT as meeting the requirements of 29 CFR Part 29; (3) prohibit Defendants from refusing to grant registered apprentice program status to the ABC-IPC Training Trust program; (4) prohibit Defendants from discriminating against the ABC-IPC Training Trust; (5) prohibit Defendants from enforcing RCW 49.04.030(3), RCW 39.12.021, WAC 296-04-001, WAC 296-04-005, WAC 296-127-021, and WAC 296-127-014; and (6) prohibit Defendants from refusing to comply with the requirements of Electrical Joint Apprenticeship Committee v. MacDonald, supra.

FACTUAL BACKGROUND

Plaintiff, the Inland Pacific Chapter (IPC) of Associated Builders and Contractors ("ABC") is a nonprofit Washington corporation engaged in representing and providing services for its members, all of whom are involved in the construction industry. IPC is the local chapter of ABC. ABC organized and sponsored the Inland Pacific Associated Builders and Contractors Apprenticeship and Training Trust (Training Trust)

as a separate entity to provide, inter alia, apprenticeship training to persons interested in pursuing occupations in the construction trades.

Plaintiff, Rainbow Electric, Inc. ("Rainbow") is an electrical contractor, licensed and registered by the State of Washington. Rainbow is a member of ABC, and has employed apprentices enrolled in the Training Trust program on public works projects.

The Defendants are the State of Washington; the Washington Department of Labor and Industries; the Washington State Apprenticeship and Training Council; and Joseph A. Dear, Director of the Washington Department of Labor and Industries. Intervening on behalf of the Defendants are the Washington State Building and Construction Trades Council; Spokane Area Electrical Joint Apprenticeship and Training Committee; Inland Empire Plumber, Steamfitter, Refrigeration Fitter Joint Apprenticeship Training Committee; Washington State Association of Electrical Workers; and Washington State Association of Plumbers and Pipefitters.

The ABC Training Trust training standards have been approved and certified federally as a training program by the Department of Labor's Bureau of Apprenticeship and Training, Employment and Training Administration (BAT). However, the Defendants have refused to approve and register the ABC

as the ABC Training Trust program.

It is not disputed that Plaintiffs applied in 1984-86 to the State Apprenticeship Council (SAC) for registration of its apprenticeship program, and that the SAC consistently rejected its applications, because, at least in part, Plaintiff refused to abide by the regulations requiring the setting of apprentices' wages by reference to the state prevailing rate for journeymen. However, WAC 296-04-270(c) was amended in January 1993, removing the wage-setting provision. Nevertheless, RCW 39.12.021 provides:

> Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council. . . must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.

Likewise, WAC 296-127-021 provides:

> **Apprentice Worker.** Any apprentice employed on public works projects for whom an apprentice agreement is registered and approved by the state apprenticeship council. . . within 60 days of hiring may be considered an apprentice and paid the applicable prevailing hourly rate for an apprentice of that trade for all hours worked.

On November 8, 1991, the Ninth Circuit decided the MacDonald case, supra, 949 F.2d 270, holding that the Nevada