

1 Vanessa L. Holton, Chief Counsel, CSB No. 111613
Steven McGinty, Asst. Chief Counsel, CSB No. 170606
2 Fred Lonsdale, Counsel, CSB No. 071724
Email: flonsdale@dir.ca.gov

3 Gary O'Mara, Counsel, CSB No. 104761
Email: go'mara@dir.ca.gov

4 State of California
Department of Industrial Relations
5 Office of Director – Legal Unit
455 Golden Gate Avenue, Suite 9516
6 San Francisco, CA 94102
Telephone No.: (415) 703-4240
7 Facsimile No.: (415) 703-4277

8 Attorneys for Defendants
California Department of Industrial Relations,
9 Baker, Forman & Su

10
11 UNITED STATES DISTRICT COURT

12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 INDEPENDENT TRAINING AND
APPRENTICESHIP PROGRAM, a California
14 corporation, BRANDIN MOYER, and HAROLD
E. NUTTER, INC., a California corporation,

15 Plaintiffs,

16 v.

17 CALIFORNIA DEPARTMENT OF
INDUSTRIAL RELATIONS, an agency of the
18 State of California, by and through CHRISTINE
BAKER, in her official capacity as Acting Director
19 of the CALIFORNIA DEPARTMENT OF
INDUSTRIAL RELATIONS, DIVISION OF
20 APPRENTICESHIP STANDARDS, by through
GLEN FORMAN, in his official capacity as
21 Acting Chief, DIVISION OF LABOR
STANDARDS ENFORCEMENT, by and through
22 JULIE SU, in her official capacity as Labor
23 Commissioner,

24 Defendants.

Civil Case No. 2:11-CV-01047-GEB-DAD

**DECLARATION OF GLEN FORMAN IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' REQUEST
FOR PRELIMINARY INJUNCTION**

Date: July 11, 2011

Time: 9:00 A.M.

Judge: Hon. Garland E. Burrell, Jr.

(Complaint Filed: April 18, 2011)

1 apprentices in State-approved programs in California are apprentices in the building and construction
2 trades. Most apprenticeships in the building and construction trades last from three to five years. During
3 the time an apprentice is in a program, that apprentice receives on-the-job training from skilled
4 journeymen and also participates in classroom instruction.

5 6. The on-the-job training provided by an apprenticeship program is more than just work
6 experience. In State-approved programs, each program must have written program standards that
7 identify the work processes that must be learned over the course of the apprenticeship. The apprentice
8 maintains a book documenting the hours of instruction in particular work skills, such as wiring, or motor
9 installation. The apprenticeship program is responsible for making sure that the apprentice receives
10 training in all the work process for the occupation.

11 7. Typically an apprentice will receive between 144 and 220 hours of classroom instruction
12 each year in addition to the on-the-job training. In an electrician program – such as the electrician
13 program sponsored by Plaintiff – the apprentice would study electrical theory, the National Electrical
14 Code, Electrical Blueprints, Motors, wiring and other related subjects. The specific curriculum is
15 developed by the program sponsor and the local education agency.

16 17 **Number of Apprenticeship Programs**

18 8. The DAS presently oversees over one thousand State-approved apprenticeship programs.
19 Of those programs, approximately 378 programs are in the building and construction trades. A program
20 may be sponsored jointly by employer associations and labor organizations, in which case it is called a
21 “joint apprenticeship program.” A program may also be sponsored solely by an employer or an
22 association of employers, in which case it is called a “unilateral apprenticeship program.” Labor Code §
23 3075.

24 9. At the present time, there are approximately 325 active State-approved joint apprenticeship
25 programs in the building and construction trades, enrolling over 29,000 apprentices. There are
26 approximately 53 State-approved unilateral apprenticeship programs in the building and construction
27 trades, enrolling about 3,500 apprentices. Plaintiff Independent Training and Apprenticeship Program
28 has not submitted its program for state approval.

1 10. There is no fee for submitting a program for approval. Since the change in the California
2 law on program approval in 1999, 14 new programs have been approved and none denied. One program,
3 sponsored by Plumbing Heating Cooling Contractors of the Greater Sacramento Area was approved for
4 expansion by the Chief of DAS, but that approval was appealed to the California Apprenticeship Council.
5 The CAC first ruled to allow program expansion, then reversed that decision. There is a court
6 proceeding pending.

7
8 **There Has Been No Change In Policy**

9 11. DAS maintains a data base which contains the names of all apprentices that are registered in
10 approved programs. I am familiar with the practice of the Labor Commissioner and the Division of
11 Labor Standards Enforcement ("DLSE") with respect to verification of an apprentice's status. If a
12 contractor claims that a worker is being paid below the state prevailing wage because that worker is an
13 apprentice, DLSE uses the DAS data base to determine whether the worker is an apprentice in a state
14 approved program. When DAS receives a complaint that a contractor is not employing registered
15 apprentices as required by Labor Code § 1777.5, the DAS employees in our prevailing wage unit also use
16 this database to verify the status of the employee who is claimed to be a registered apprentice. Neither
17 DLSE nor DAS have recognized workers enrolled in federal training or apprenticeship programs as
18 registered apprentices for state purposes during the time that I have been with DAS and I can say with
19 particularity that there has been no change since 2006.

20
21 **Ability To Comply With The Regulations**

22 12. I also understand Nutter Electric contends that it cannot compete for public works jobs
23 unless it pays its workers enrolled in federal apprenticeship below the prevailing wage. I know of many
24 contractors who do not have a specific relationship with an apprenticeship program who, when working
25 on public works, request apprentices from programs that can supply apprentices to the public work
26 project so that they can meet the requirement to employ apprentices as required by Labor Code § 1777.5.
27 Many apprenticeship programs will dispatch state approved apprentices to contractors on public works
28 projects.

Application Of New Regulation To Public Works


1
2 13. Under California law, public works are defined as construction paid for in whole or in part
3 with "public funds." Labor Code § 1720. Public funds are defined to include federal, state and local
4 funds. California Code of Regulations ("C.C.R."), title 8, section 16000. Thus, federal projects are
5 "public works" within the meaning of 8 C.C.R. § 208(b).

6 14. State regulations also provide that for federal projects awarded by federal agencies the
7 prevailing wage, and therefore the prevailing apprentice wage, is determined by federal law. 8 C.C.R. §
8 16001(b).

9 15. The Department of Industrial Relations therefore does not interpret state law to require that
10 state prevailing wage rates, either for journeymen or apprentices, be paid on federal projects awarded by
11 federal awarding bodies. Instead, the Department views these projects as governed by the federal
12 prevailing wage law. This has been the policy of the Department since at least the 1980s.

13
14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct. Executed on the following date in San Francisco, California.

16
17
18 Date: June 27, 2011


GLEN FORMAN
Acting Chief, Division of Apprenticeship Standards,
Dept. of Industrial Relations, State of California