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THE URBAN LAW FIRM

A PROFESSIONAL CORPORATION

FILE NO. :
568.0007

January 31, 2020

Via Email and U.S. Mail

Nevada State Apprenticeship Council
Governor's Office of Workforce Innovation
Attn: Richard Williams, State Director of Apprenticeship
Grant Sawyer Building
555 E. Washington Ave., #4900
Las Vegas, NV 89101

Re: Objections of International Union of Operating Engineers Local 12 Journeyman and Apprentice Training Committee to Application for Apprenticeship Standards - Operator Engineer Apprentice - ABC Nevada, Associated Builders and Contractors, Southern Division Apprenticeship Trust
Hearing Date: Thursday, February 13, 2020 (9:00 a.m.)

Dear Mr. Williams,

Enclosed with this letter please find the Objections of the International Union of Operating Engineers Local 12 Journeyman and Apprentice Training Committee ("OE12 JATC") to the Application for Apprenticeship Standards for an "Operator Engineer Apprentice" filed by ABC Nevada, Associated Builders and Contractors, Southern Division Apprenticeship Trust for consideration by the Nevada State Apprenticeship Council at the Hearing scheduled for Thursday, February 13, 2020 at 9:00 a.m.

I have been retained to represent the OE12 JATC at the hearing of this matter on February 13, 2020. I will be present at the February 13, 2020 Council meeting along with a representative of the OE12 JATC. If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Nathan R. Ring, Esq.

cc: Client

**BEFORE THE
NEVADA STATE APPRENTICESHIP COUNCIL**

In the Matter of the:

Application for Apprenticeship Standards –
Operator Engineer Apprentice - ABC Nevada,
Associated Builders and Contractors, Southern
Division Apprenticeship Trust

Applicant.

Hearing Date: February 13, 2020

Hearing Time: 9:00 a.m.

**Objections to Standards and Request for Denial
Filed by
International Union of Operating Engineers Local 12
Journeyman and Apprentice Training Committee**

I. STATEMENT OF FACTS AND PRIOR PROCEEDINGS

On November 15, 2019, the Southern Nevada Operating Engineers Local 12 Journeyman and Apprentice Training Committee (“OE12 JATC”) received a copy of an Application for Apprenticeship Standards (“Application”) for an Operator Engineer Apprentice (“Operator Apprentice”) submitted to the Nevada State Apprenticeship Council (“Council”) by ABC Nevada, Associated Builders and Contractors, Southern Division Apprenticeship Trust (“ABC Trust”). The Application is a request for approval of a “parallel” training program, which would allegedly be located in Southern Nevada. The Application contains Standards, which would be parallel to the Council’s approved standards registered by the OE12 JATC. OE12 JATC is an interested party to the Application.

The Application initially came before the Council for review at the December 16, 2019 Council meeting. The Application was reset for hearing at the February 13, 2020 meeting due to a concern over the Open Meeting Law. The OE12 JATC takes this opportunity to resubmit and further revise its objections to the Application by the ABC for its parallel program.

It is the duty of the Nevada State Apprenticeship Council to “[e]stablish standards for programs and agreements that are not lower than those prescribed by this chapter.” NRS 610.090(1). Therefore, when a program’s standards do not meet the standards set under Chapter 610 of NRS and the regulations adopted thereunder, the Council has a duty to deny approval of the non-conforming program.

Equally as important as the duties of the Council are the duties of the program applying for approval of its standards. It is the program’s duty to “submit the standards in their entirety.” NAC 610.314.

II. OBJECTIONS TO ABC APPLICATION STANDARDS

The ABC Standards must be denied by the Council because the ABC Standards are not in compliance with Chapter 610 of the Nevada Revised Statutes and Chapter 610 of the Nevada Administrative Code. The Application is out of compliance with these governing laws for seven distinct and wholly separate reasons. Each of those seven reasons will be addressed separately.

1. The ABC Committee Does Not Conform with the Statute.

The ABC Application Standards do not include a Committee composed of an “*equal number of representatives of management and labor*” as required by NAC 610.225(2) (emphasis added). The purpose of requiring equal representation is to “ensure meaningful and trustworthy representation of employees and apprentices in the management of the program.” NRS 610.146.

Section II(B)(1) of the ABC Standards state “the Committee shall be composed of Apprenticeship sponsor companies to represent the membership of the Association selected by his or her fellow employees to represent the apprentices.” As it is written, this sentence is nonsensical. It is difficult to even interpret what the sentence is trying to say. The Standards do not provide for an equal number of representatives. Furthermore, the ABC Standards do not provide for a process of appointment of representatives of the employees and apprentices in the management of the program, which is required by NRS 610.146.

Section II(C)(2) of the ABC Application Standards state that “A quorum at meeting shall consist of at least one (1) member representing the employers and one (1) member representing the employees, selected by the group they are representing.” On its face, there is no issue with this quorum requirement because it provides for equal representation at meetings. But the issue is the Standards do not provide a process for how employee representatives will be appointed. Without a provision for appointment of employee representatives, the quorum of any meetings is completely irrelevant.

The Council must require this Applicant to delete or revise its inconsistent language in its Standards. The revisions must conform with the requirements of Chapter 610 of NRS. The Standards must clearly and unequivocally provide for an equal number of employee representatives, selected by the employees and apprentices. The Standards must also clearly provide for how the employee representatives will be appointed. In the form in which they were submitted to the Council, the ABC Standards cannot be approved.

2. The ABC Standards Do Not Provide Sufficient Background and Experience of Their Program’s Qualified Instructors.

The ABC Standards merely provide for two instructors the ABC claims are qualified to instruct Operator Engineer apprentices. Their claim of qualification is merely a certification from NCCER. The fact that someone has received a certification does not prove they are a qualified instructor under NRS Chapter 610.

NRS 610.110(2)(d)(2) requires the State Apprenticeship Director to assess the adequacy of “the protection of the public interest as related to the subject fields.” Nevada law also requires “related and supplemental instruction for apprentices, coordination of instruction with job experiences, and...selection and training of teachers...for that instruction [which is]...the responsibility of the local joint apprenticeship committees.” NRS 610.120(2). Nevada law further requires that Standards include “provisions for adequate and safe equipment and facilities for training...of apprentices in safety...in related instruction” and “assurance of qualified training personnel.” NRS 610.144(3)(i)-(n).

ABC’s Standards do not provide any background or real-world experience whatsoever of their instructors. Those persons teaching Apprentices must be qualified instructors and a simple claim of third party certification is insufficient to prove requisite experience for that instruction. The concern with not having qualified instructors is important in any apprenticeship program but the concern is more important here because of the dangerous work performed by those in this occupation.

ABC’s Standards do not provide proof of its Program having qualified instructors. Without this proof, the Council is being asked to blindly authorize a training environment without appropriate protections for the apprentices and the public. ABC must revise this specific standard to appropriately and fully provide for qualified and experienced instructors. For this reason, in the form in which they were submitted, the ABC Standards should not be approved.

3. The ABC Standards Do Not Provide a Training Facility.

In its purpose section, NRS 610.020 includes the establishment of “an organized program for...training of persons under approved standards for apprenticeship, *providing facilities for their training* and guidance in the arts and crafts of industry and trade, with instruction in related and supplementary education.” NRS 610.020 (emphasis added). Thus, within the explicitly stated legislative purpose of Nevada’s apprenticeship laws is a requirement for providing facilities for training

The ABC Standards do not provide any commitment on the Program’s part to provide a training facility for the training of apprentices. Existing approved parallel programs in this state include specific training sites and specific equipment that will be used to provide competent training to apprentices. The ABC Standards are silent on the site or location of the training facility and the equipment that will be used to train the Program’s registered apprentices. The ABC Standards do not provide any information to show financial capacity, investment or contribution of funds, facilities and equipment that is required to properly train apprentices. The ABC Standards lack a training facility, which requires the Council to reject the ABC Standards as submitted.

4. The Standards Violate the Guarantee on Payment of Program Costs

NRS 610.170 requires program sponsors, like the ABC here, to “use its best endeavors to procure...training for the apprentice” and requires the program to “accept full

responsibility...for...training.” Expounding upon this requirement, this Council adopted NAC 610.433, which provides that “a program must pay the costs of training an apprentice.” The ABC Standards do not provide the Council with an explanation of who will be responsible for the costs of the program. For this reason, the ABC Standards do not meet the requirements of Nevada law and should be denied.

5. Wages in the ABC Standards Do Not Conform With Nevada Law.

The ABC Standards do not include a commitment to abide by the prevailing wage requirements for apprentices under Nevada law. In particular, SB207 passed by the Nevada Legislature in 2019 requires a certain percentage of apprentice hours to be worked on certain public works projects. Work of an Operator Engineer apprentice will be “horizontal construction” as defined in SB 207. This means apprentices must be paid the required prevailing wage rate for their work on public works’ projects. The Labor Commissioner’s Operating Engineer wage rate is between \$73.59 and \$78.44 per hour. The ABC Standards provide for a \$30.00 per hour journeyman rate and assume a 50-75% legitimate fringe benefit, which is referenced in the 5910 Form. The rates proposed in the ABC Standards do not satisfy the requirements of SB207 and Nevada’s prevailing wage laws. Based upon this non-conforming standard, the Council must reject the ABC Standards.

6. The ABC Standards Do Not Provide Department of Education Approval of Their Classroom Training Curriculum and Do Not Provide Details of its Classes Offered.

NRS 610.144(3)(d) requires program standards to contain provisions for “organized, related and supplemental instruction in technical subjects related to the trade with a minimum of 144 hours for each year of apprenticeship, given in a classroom or...courses of equivalent value or other forms of study approved by the Council.” In attachment 5, the ABC Standards reference Apprentice Operator Related Training Instruction. This includes a list of 23 courses without any detail on the class or any specifications of the competency-based instruction for the 23 courses.

In the past, when considering approval of program standards, the Council has required a review and approval of curriculum for course instruction proposed by any new program. The ABC Standards do not contain a competent description of its classroom instruction. When approving previous programs, the Nevada Department of Education, through a designated curriculum professional, has approved course and classroom curriculum. The submitted ABC Standards do not contain approved course curriculum, and the Council should reject the ABC Standards.

7. Inadequate Apprentice to Journeyperson Ratio.

Nevada law requires the Council to ensure the ratio of apprentices to journeypersons is consistent with proper supervision, training, and safety. NRS 610.144(3)(g). The Council’s own regulations specifically spell out the appropriate ratio of apprentices to journeymen. The

Council's regulations state all "construction industry" programs must use a jobsite ratio of "not more than one apprentice for the first journeyman at the jobsite and not more than one apprentice for every three additional journeymen." NAC 610.438(1)(a).

Section XV(A) of the ABC Standards merely define their ratio as not "greater than the ratio approved for the employer as to the entire work force." Thus, if a participating employer under the ABC program employs a work force of equal number of apprentices and journeyman, the ABC Standards, if approved, allow the Program to avoid the jobsite specific requirements of Nevada law. Violating the jobsite specific requirements of NAC 610.438(1)(a) will expose apprentices and the public to unsafe conditions.

The ABC Standards are permitted to vary from the construction industry ratio laid out in NAC 610.438(1)(a) if they provide evidence demonstrating a "different ratio is consistent with the proper supervision, training, safety and continuity of employment of an apprentice". The ABC Standards do not provide evidence to demonstrate this to be true.

Without a jobsite specific ratio that conforms to the regulations previously adopted by the Council and without evidence that a different ratio will ensure proper supervision, training, and safety, the ABC Standards must be denied by the Council.

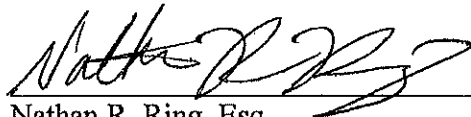
III. AGGRIEVED PARTY STATUS

OE12 JATC and its approved apprenticeship standards would be injured if the ABC Standards for the "Operator Engineer Apprentice" are approved. Because it files these objections and have an approved "parallel program" receiving notice from the Council, OE12 JATC requests that the Council deem OE12 JATC as a potential "aggrieved party."

IV. CONCLUSION

Based upon the arguments above and Nevada law governing this matter, OE12 JATC requests the Council deny approval of the ABC Standards for its Operator Engineer program (Southern Nevada). The Standards, as submitted, are incomplete and do not meet the requirements of Nevada law. The OE12 JATC further requests it be recognized as an "aggrieved party".

Respectfully submitted,



Nathan R. Ring, Esq.
The Urban Law Firm
Counsel for OE12 JATC