

Construction Group Calls Agreement Unfair

8/17/2009

By Mandy Jackson

A construction trade group is demanding fairness for its apprenticeship program and all similar non-union programs under a \$2.1 billion school renovation bond measure that will be spent in San Diego.

Two months after the San Diego Unified School District approved a project stabilization agreement for construction work under Proposition S, the San Diego chapter of the Associated General Contractors of America Inc. filed a lawsuit alleging that the PSA's requirement that companies use apprentices only from "joint-labor management apprenticeship programs" discriminates against non-union apprentices.

Citing California labor code and prevailing wage law violations, the AGC filed the lawsuit on July 30 in San Diego County Superior Court. The contractors' group is seeking an injunction to stop the school district from enforcing the PSA, which was approved by the school district's Board of Education with a 3-2 vote on May 26 for work funded by Proposition S, the \$2.1 billion bond measure passed by voters in November.

The agreement focuses on wages, benefits and hiring from the local employment pool.

Union and non-union contractors bidding on Proposition S jobs valued at more than \$1 million must provide health care benefits for employees on those projects and hire only workers who live in San Diego County. Seventy percent must reside within school district boundaries.

Jim Ryan, executive vice president of AGC's San Diego chapter, said the way the school district wrote the PSA for Proposition S work excludes 1,300 apprentices from the AGC's program and other similar state-certified programs from working on jobs that will continue for the next 10 to 15 years.

"Our goal is to get an injunction to get them to stop implementing the PSA at least on this issue," Ryan said. "We would expect that the PSA would have to be rewritten and renegotiated."

Stu Markey, the school district's overseer for the capital improvement bond program, said the district was not surprised by the AGC's lawsuit because the organization raised concerns about apprenticeship programs during negotiation of the PSA.

Markey could not comment directly on litigation involving the school district, but he said issues similar to the one raised by the AGC in its lawsuit have been challenged unsuccessfully in regard to PSAs and project labor agreements throughout California.

Cynthia Reed-Porter, the school district's communications supervisor for Proposition S, said that since the Board of Education approved the PSA the district plans to move forward with work

under the agreement when it goes into effect in the next few months.

“We have projects that have already been awarded under Proposition S,” Reed-Porter said. “We will continue to take projects forward in the current situation.”

The Center on Policy Initiatives, a labor-backed think tank in San Diego that participated in negotiation of the PSA, said the AGC’s lawsuit continues that organization’s pattern of wasting taxpayer dollars and municipal resources with baseless legal threats.

The center claims that the lawsuit forces reconsideration of legal points that have been settled in a previous ruling in favor of the Rancho Santiago Community College District.

The San Diego Unified School District’s PSA is designed to make sure construction contracts under Proposition S create good jobs in local communities, according to the Center on Policy Initiatives. Without it, companies that hire low-paid workers from outside San Diego County and cut corners on safety and health benefits would be able to outbid responsible employers, according to the center.

One of the requirements for working on a public works project in California is the employment and training of apprentices through state-approved programs.

The AGC’s apprenticeship program in San Diego began in 1988 and it has been approved by the Federal Department of Labor, the California Department of Apprentice Standards and the California Apprenticeship Council to train workers for two to four years in the areas of carpentry, cement masonry, drywall, heavy equipment, painting and general labor.

Apprentices from the AGC program and from the various union-only apprenticeship programs have worked on the school district’s Proposition MM projects since that bond measure’s passage in 1998.

“We have a board of 21 members and they voted unanimously to move forward with [the July 30 lawsuit],” Ryan said. “Roughly half are union contractors. No one agrees with what was done here.”

Steven M. Schneider, partner in the Los Angeles office of Mitchell Silberberg & Knupp LLP, said it would be discriminatory for a public entity to require that contractors and subcontractors use union workers by requiring them to utilize only union apprenticeship programs.

Prevailing wage requirements, which provide wages similar to union scale for workers on public works projects, are designed to level the playing field for all contractors. Schneider said that when public entities require union employment exclusively, that goes too far in trying to provide work equally for both union and non-union contractors.