

January 16, 1984

<p>U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION</p> <p>Bureau of Apprenticeship and Training Washington, D.C. 20213</p> <p>Symbols: TDTD/MMW</p>	<p><u>Distribution:</u></p> <p>A-539 All Tech. Hdqtrs.</p> <p>A-547 SD+RD/DRD +SAC;Lab.Com.</p>	<p><u>SUBJECT:</u> <u>CODE:</u> 450</p> <p>Registering Unilateral Apprenticeship Programs During Labor Disputes</p>
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PURPOSE: To modify the first paragraph of the ACTION section of BAT Circular 84-10, issued December 14, 1983. The modification is based upon comments from Donald J. Grabowski, Pres., NASTAD.

ACTION: The first paragraph of the ACTION section of Circular 84-10 is changed to read as follows:

"ACTION: The statement of opinions from the Solicitor has been reviewed and discussed, jointly, by representatives of NASTAD, BAT National Office, and BAT Regional Directors. The following BAT policies emanated from those discussions and are issued for guidance of BAT staff in such cases":

The subsequent paragraphs of this section in Circular 84-10 remain as originally issued under date of December 14, 1983.



December 14, 1983

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION Bureau of Apprenticeship and Training Washington, D.C. 20213 Symbols: TDTD:MRM	<u>Distribution:</u> A-539 All Tech. Hdqtrs. A-547 SD+RD/DRD +SAC;Lab.Com.	<u>SUBJECT:</u> <u>CODE:</u> 450 Registering Unilateral Apprenticeship Programs During Labor Disputes
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PURPOSE: To set forth policies regarding actions taken on requisition for approval of unilateral programs involving labor disputes.

BACKGROUND: The Associated General Contractors of America (AGC), has raised questions to the Bureau of Apprenticeship and Training (BAT) regarding requests to State Apprenticeship Councils (SACs) for registration of unilateral programs and the refusal of BAT/SAC to register a unilateral program for a contractor involved in a labor dispute. These questions were submitted to the Department of Labor Solicitor requesting opinions on those questions. A copy of that request dated June 30, 1983, is attached.

The Associate Solicitor provided opinions on those questions in a memorandum dated August 1, 1983, from Mr. William H. DuRoss, III. A copy of that memorandum is attached.

ACTION: The statement of opinions from the Solicitor has been reviewed and discussed, jointly, by representatives of NASTAD, BAT National Office, and BAT Regional Directors. The following policies emanated from those discussions and are issued for guidance in such cases:

- o The denial of registration of an apprenticeship program by either the BAT or a SAC solely on the basis of a labor dispute would result in an economic sanction against the requesting employer since the employer does not have any alternative method for obtaining the requested action. Therefore, a request from a potential sponsor for approval of an apprenticeship program on the sole basis that a labor dispute exists should not be disapproved on that basis alone, and the following policies are to be followed in acting on such requests.
- o If the agreement between an employer and a union has terminated, a request for approval of an apprenticeship program from an employer on a unilateral basis should be considered on its own merits without requiring labor concurrence.

- o If the agreement has not terminated, the consent of the union is required before a proposed unilateral apprenticeship program can be considered for registration.
- o In the event an actual labor dispute exists at the employer's work place, each request for registration of an apprenticeship program must be considered on the provisions of the National Apprenticeship Act which directs the Secretary of Labor to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices.
- o When it appears that a SAC has denied registration of a unilateral apprenticeship program expressly because of a labor dispute, the Regional Director should bring the incident to the attention of the BAT Director along with supporting documentation. Note also in the attached Solicitor's opinion that BAT regulations do not provide for a SAC to deny registration of a unilateral apprenticeship program because of a lack of funds or opposition to unilateral programs. These incidents along with supporting documentation, likewise, should be called to the attention of the BAT National Office.

Attachments



AUG 1 1983

MEMORANDUM FOR: JOYCE A. KAISER
Associate Assistant Secretary
for Employment and Training

FROM: WILLIAM H. DuROSS, III *W.H. DuRoss*
Associate Solicitor for
Employment and Training

SUBJECT: Registering Unilateral Apprenticeship
Programs During Labor Disputes

This is in response to your request for an opinion as to the proper policy to follow where a State Apprenticeship Council (SAC) refuses to register a unilateral apprenticeship program because of a lack of funds or opposition to unilateral programs. You also requested our opinion whether the Bureau of Apprenticeship and Training (BAT) should deny registration where the contractor sponsoring a unilateral program is involved in a labor dispute.

We believe that under the BAT regulations, 29 CFR Part 29, neither BAT or a SAC may deny registration of an apprenticeship program on the basis of a labor dispute. The BAT regulations generally make no provision for considering the existence of a labor dispute. In this regard, we note that the regulations of the Employment Service System (ESS), 20 CFR 653.9, provide that State employment agencies shall make no job referrals on job orders which will aid in the filling of a job opening at issue in a labor dispute. Accordingly, the ESS regulations specifically provide for a response to labor disputes; the BAT regulations do not. Therefore, it would be inappropriate for BAT or a SAC to consider the existence of a labor dispute in determining whether to register a program. If, as a matter of policy, you wish labor disputes to be considered, we suggest you amend the BAT regulations accordingly.

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Further, by not considering the labor dispute, BAT, or the SAC, would be limiting its involvement in the dispute to the extent that that is possible. Where a State employment agency refuses to make referrals which would aid in the filling of a job opening at issue in a labor dispute, the effect on an employer would be small; the employer can obtain employees elsewhere. However, if registration of an apprenticeship program is denied on the basis of a labor dispute, this would be an economic sanction depriving the employer of sub-minimum wage apprentices. On the other hand, by not considering the existence of the labor dispute, the SAC or BAT would be affording the employer little or no aid in the dispute. Rather, the SAC or BAT would be declining to sanction the employer on account of the dispute.

We do note however, that under certain circumstances, a union involved in a labor dispute could prevent the registration of the employer's apprenticeship program. Paragraphs 29.3(h) and 29.12(b)(10) of 29 CFR provide that where an employer proposes an apprenticeship program for registration, and the union participates in the operation of the program in accordance with the collective bargaining agreement, the consent of the union to the registration is required. Accordingly, a union involved in a labor dispute may be able to use this provision against the employer. However, in this situation, BAT, or the SAC, would be merely honoring the terms of the collective bargaining agreement.

Lastly, we note that the BAT regulations do not provide for a SAC to deny registration of a unilateral apprenticeship program because of a lack of funds or opposition to unilateral programs. Accordingly, if a SAC denies registration of a program for either reason, or because of a labor dispute, the SAC would not be operating in conformity with the BAT regulations. BAT's appropriate response would be to withdraw recognition for Federal purposes of the SAC in accordance with 29 CFR 29.13. The regulations would appear to preclude BAT from registering programs where a BAT-recognized SAC exists.

JUN 30 1983



MEMORANDUM FOR: WILLIAM H. DUROSS
Associate Solicitor for
Employment and Training

FROM: JOYCE A. KAISLER
Associate Assistant Secretary
for Employment and Training

SUBJECT: Request for Opinion on Registering
Unilateral Apprenticeship Programs
in Labor Dispute Situations

The Associated General Contractors of America (AGC) have raised questions regarding the refusal of the Bureau of Apprenticeship and Training (BAT) to register unilateral (nonunion) apprenticeship training programs for a contractor involved in a labor dispute. A copy of their June 16 letter to Minor Miller presenting their position is attached for your information.

In the specific case referenced by the AGC, the employer is located in a State with an apprenticeship council and had a joint program (management and labor) approved by the State Apprenticeship Council (SAC). The employer was involved in a labor dispute and requested BAT approval of a unilateral program. The BAT representative advised the employer that BAT had no authority to approve such program since it was in a SAC State and that unilateral programs could not be approved when joint programs currently were approved.

The AGC anticipates that requests for approval of unilateral programs may become more prevalent and may occur in BAT States as well as in those States with a SAC and have raised several questions regarding BAT national policies. We would appreciate an opinion from your office concerning the following questions with respect to the above cited situations:

- o What should be the BAT policy when requested to approve unilateral apprenticeship programs when a State Apprenticeship Council refuses to register the program due to reduced or lack of funds or due to opposition to the concept of unilateral programs?
- o What should be the BAT policy in approving or registering unilateral programs for a contractor involved in a labor dispute? The AGC contends that by injecting the labor dispute issues into the decision process, BAT improperly makes itself a party to the labor dispute.
- o If BAT should decide to act on the request for unilateral program, what point in the labor negotiations process or what conditions should be met to consider the labor dispute resolved for the purposes of approving an apprenticeship program? If such conditions are to be satisfied who in DOL should be responsible for determining that the labor dispute has been resolved?

Attachment

TDT:MRMiller:ma 6/27/83 Rm. 6404 PHB 376-7139

cc: Kaiser/Jones/Hague/Miller/Kolb/Vandiver/Van Horne/Read.file/Ofc.file