

October 9, 1983

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION Bureau of Apprenticeship and Training Washington, D.C. 20213 Symbols: TDTN/B.O'B.	<u>Distribution:</u> A-539 All Tech. Hdqtrs. A-544 All Field Techs. A-547 SD+RD/DRD +SAC;Lab.Com.	<u>SUBJECT:</u> Sheet Metal Workers International Association Supplemental Training Agreement <u>CODE:</u> 100.1
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Background : In 1980, the Sheet Metal Workers International Association furnished all local Business Managers with two agreements.

The first agreement is entitled "Supplement to Apprenticeship Agreement between Apprentice and Joint Apprenticeship Committee." This agreement provided the Joint Apprenticeship Committee with a method of recouping the money it expended in the training of the individual if the apprentice leaves the program after a year of training or upon completion of the training, and secures employment with a non-union employer.

The second agreement is aimed at the Journeyman who takes skill improvement courses and then takes employment in the non-union sector.

No opinion was received from the Solicitor concerning our 1980 inquiry.

After a second inquiry was recently received from the field, we resubmitted the question.

Action: William H. DuRoss' opinion is self-explanatory and is attached for your information.

Apprenticeship and Training Representatives should make the Solicitor's opinion available to sponsors contemplating use of similar supplemental agreements.

Apprenticeship and Training Representatives should also make sponsors aware that such supplemental agreements are separate and apart from their apprenticeship standards and that the Bureau recommends consultation with the sponsor's attorney for any additional information.

Attachment:

Memo from DuRoss to J. Kaiser
 Letter from IU dated May 5, 1980
 Supplements Nos. One and Two

*Varian*

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

FROM: WILLIAM H. DUROSS, III
Associate Solicitor for
Employment and Training

SUBJECT: Apprenticeship: Sheet Metal Workers
Union Supplemental Training Agreement

As requested in your September 9, 1983, memorandum to me on the above subject, this office has reviewed for legal sufficiency a supplemental training agreement for the Sheet Metal Workers International Union's apprenticeship and journeyman training program. The union participates in a Joint Apprenticeship Committee, and funds training for apprentices and journeymen. The union has observed that some workers, after receiving the union-funded training, have been going to work for nonunionized employers in the same geographic area. The union is concerned that it is subsidizing training for the nonunion market.

As a result, the union has suggested that it be permitted to require each apprentice and journeyman for whom it funds training to reimburse the Joint Apprenticeship Committee for the cost of the training. As an inducement for the worker to remain in union employment, the cost reimbursement requirement would be waived for workers who work for a unionized employer for an amount of time equivalent to the amount of time the worker was in the training (up to a maximum of two years). The union alternatively could go to court to enjoin the worker's nonunion employment. We have been asked to review this provision for legal sufficiency.

Based on our review of the National Apprenticeship Act and the apprenticeship regulations at 29 CFR Part 29, we see no legal problems under those enactments with the union requiring the worker to repay the cost of the training if he or she enters nonunion employment. The proposal

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would conserve the financial resources of the particular apprenticeship program, and the union would have the opportunity to receive fair value for its expenditure of union funds. In a similar situation involving an employer-funded apprenticeship program, an employer could induce the apprentice or journeyman to work for that employer, rather than for a competitor, by waiving reimbursement.

We do suggest that there may be some legal problems with the portion of the union agreement permitting it to seek injunctions to restrain workers from entering nonunion employment. A worker or a nonunion employer might challenge that provision as an unduly restrictive restraint of trade and of the worker's personal liberty. To that extent, that alternative restriction may be unenforceable.



Sheet Metal Workers' International Association

1750 New York Avenue Northwest
Washington, D.C. 20006
Phone: (202) ~~470-6668~~
783-5880

May 5, 1980

TO ALL BUSINESS MANAGERS
BUILDING TRADES AND INDUSTRIAL LOCAL UNIONS

Dear Sirs and Brothers:

A number of local unions have expressed concern over the fact that some apprentices and journeymen utilize the skills that they have learned in our local union apprenticeship training and journeymen skill improvement programs in the non-union market. This concern is a serious one because it represents the subsidization of non-union competition with monies from our joint union/management training trust funds.

A special committee of the General Executive Council, chaired by General Secretary-Treasurer Turner, studied this program and consulted with legal counsel concerning possible solutions. As a result of those efforts, we enclose two agreements to be used as general guidelines - one to cover apprentices and the other to cover journeymen. These agreements generally provide that apprentices or journeymen will not work non-union for a designated period of time after they receive training financed in part by a Joint Apprenticeship Committee.

The first enclosure is entitled "Supplement to Apprenticeship Agreement Between Apprentice and Joint Apprenticeship Committee." This guideline agreement should be executed in conjunction with the basic Apprenticeship Agreement. It provides that an apprentice who completes his first year of apprentice training will not work non-union for a period of one year after withdrawing from or completing the training program. In the event the apprentice violates that agreement, the Joint Apprenticeship Committee is authorized to seek an order restraining such non-union work or, in the alternative, to recoup the money it expended in training the individual. The promise not to work non-union is extended by one month for each month the apprentice continues in the training program, but the agreement provides that the time period of the promise not to work non-union will not in any event extend beyond two years. Again, if the apprentice violates the agreement, the JAC is authorized to seek a restraining order, or in the alternative, to recover the total cost expended to train the individual.

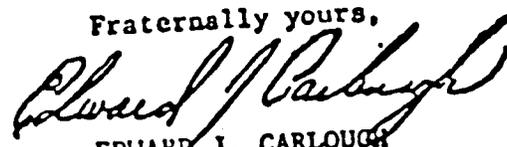
The cost actually expended on apprentice training varies widely among JACs. The guideline agreement should be modified by each JAC to specify the amount of reimbursement due the JAC in the event the agreement is violated; that amount should be based on actual JAC training expenditures and no effort should be made to enforce a penalty. Moreover, the JAC cannot recoup costs covered either by the National Training Fund or by state and/or local governments.

The second enclosure is entitled "Training Agreement Between Journeyman and Joint Apprentice Committee." This guideline agreement should be executed each time a journeyman takes a JAC skills improvement course. The agreement provides that the journeyman will not work non-union for a period of one year after completing the course. Again, in the event of violation the JAC can seek a restraining order or, in the alternative, reimbursement of the cost expended on the individual in the skills improvement course. The cost level specified in the agreement should again be based on actual training costs; no effort should be made to collect a penalty or costs covered by NTF or state and/or local governments.

We have asked our legal counsel to monitor the use of these agreements by local JACs. Therefore, if a JAC decides at any point to proceed to enforce an agreement based on the enclosed guidelines, it is requested that the JAC give advance notice to General Secretary-Treasurer Turner, who can consult with our legal counsel as to the situation in that particular legal jurisdiction.

If you have any questions, please do not hesitate to call General Secretary-Treasurer Turner.


DAVID S. TURNER
General Secretary-Treasurer

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Fraternally yours,

EDWARD J. CARROUGH
General President

Encls.

cc: International Representatives
International Organizers

EJC/DST:ver

BETWEEN

APPRENTICE AND JOINT APPRENTICE COMMITTEE

WHEREAS, the Sheet Metal Workers' Joint Apprentice Committee of
Local No. ____ (hereinafter "Committee") and _____
(Name of Apprentice)

(hereinafter "Apprentice") understand and agree that the Committee will
expend significant sums of money for the training of the Apprentice in the
specialized skills necessary for employment in the sheet metal industry, and

WHEREAS, the Apprentice hereby understands and agrees that the
Apprentice assumes certain obligations arising out of the training provided
by the Committee,

Now THEREFORE it is AGREED and COVENANTED as follows:

1. The Apprentice agrees that upon completion of the first year
of apprentice training, and within the market area served by Sheet Metal
Workers' Local Union No. ____, the Apprentice will neither seek nor accept
employment from any employer engaged in, nor become an employer engaged in,
any general, mechanical, sheet metal, testing and balancing, roofing, resi-
dential, sign or food service work or any other work covered by collective
bargaining agreements with Sheet Metal Workers' Local Union No. ____, that
does not have a collective bargaining agreement with Sheet Metal Workers'
Local Union No. _____. The obligation imposed upon the Apprentice under
this paragraph shall extend for a period of one year after withdrawal from
or completion of apprentice training. The provisions of this paragraph may
be specifically enforced through an injunction by the Committee.

2. In the event the Apprentice shall breach the agreement con-
tained in the foregoing paragraph number 1, the Committee may, in lieu of

injunctive relief, require the Apprentice to reimburse the Committee for all costs incurred by the Committee in the first year of training the Apprentice but in no event shall the reimbursement be less than \$_____.

3. The Apprentice further agrees that for each month of training in excess of one year, the obligation imposed upon the Apprentice in paragraph number 1 will continue for a period of one additional month. The provisions of this paragraph may be specifically enforced through injunctive relief by the Committee.

4. In the event the Apprentice shall breach the agreement in the foregoing paragraph number 3, the Committee may, in lieu of injunctive relief, require the Apprentice to reimburse the Committee for all costs incurred in the additional months of training but in no event shall the reimbursement be less than \$_____ per month.

5. The parties agree that the obligations contained in paragraph number 1 and number 3 hereunder shall, in no event, continue to bind the Apprentice for more than two years immediately following the withdrawal from or completion of apprentice training. This provision does not limit, however, the amount of reimbursement required pursuant to the obligation specified in paragraphs number 2 and 4 herein.

6. The parties agree that the obligation imposed by paragraphs 1 and 3 hereunder shall not bind an Apprentice who is expelled from the training program by the Committee.

Signed and agreed this _____ day of _____, 19_____.

Apprentice

Apprentice Coordinator

Joint Apprentice Committee

BY: _____
Chairman or Vice Chairman

Secretary

BETWEEN

JOURNEYMAN AND JOINT APPRENTICE COMMITTEE

WHEREAS, the Sheet Metal Workers' Joint Apprentice Committee of Local Union No. _____ (hereinafter "Committee") and _____ (Name of Journeyman)

(hereinafter "Journeyman") understand and agree that the Committee will expend significant sums of money for the training of the Journeyman in a specialized skills improvement course entitled _____ (Title of Course), and _____,

WHEREAS, the Journeyman hereby understands and agrees that the Journeyman assumes certain obligations arising out of the training provided by the Committee,

Now THEREFORE it is AGREED and COVENANTED as follows:

1. The Journeyman agrees that upon completion of the above-referenced course and for the period of one year thereafter, and within the market area served by Sheet Metal Workers' Local Union No. _____, the Journeyman will neither seek nor accept employment from any employer engaged in, nor become an employer engaged in, any general, mechanical, sheet metal, testing and balancing, roofing, residential, sign or food service work or any other work covered by collective bargaining agreements with Sheet Metal Workers' Local Union No. _____, that does not have a collective bargaining agreement with Sheet Metal Workers' Local Union No. _____. The provisions of this paragraph may be specifically enforced through an injunction by the Committee.

2. In the event the Journeyman shall breach the agreement contained in the foregoing paragraph number 1, the Committee may, in lieu of

injunctive relief, require the Journeyman to reimburse the Committee for all costs incurred by the Committee in offering the Journeyman the course but in no event shall the reimbursement be less than \$_____.

3. The parties agree that the obligation imposed by paragraph 1 hereunder shall not bind a Journeyman who is expelled from the course by the Committee.

Signed and agreed this _____ day of _____, 19_____.

JOINT APPRENTICESHIP COMMITTEE

Journeyman

BY: _____
Chairman or Vice-Chairman

Training Coordinator

BY: _____
Secretary