



# Federal Court Strikes Down Fall River REO Residency Requirements, Mandatory Group Health, Pension and Apprenticeship Mandates Found Unlawful

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On October 4, 2011, U.S. District Court Judge Rya Zobel found unlawful sections of Fall River's Responsible Employer Ordinances ("REOs), which mandated General Contractors and Subcontractors on Fall River public works projects to: (1) hire Fall River residents; (2) required them to provide group health insurance, a pension plan or annuity; and, 3) maintain an apprenticeship program, because these requirements violated either the U.S. Constitution or the Employer Retirement Income Security Act ("ERISA"). The Court further forbade Fall River from including any of those mandates in its public bids or enacting any new ordinance to circumvent its ruling. *Utility Contractors Association of NE., et al v. City of Fall River*, \_\_ FSupp3d. \_\_, 10-cv-10992, (USDC MA Oct.4, 2011).

**B**y way of background, on or about June 2010, UCANE filed suit against Fall River alleging its REOs violated federal and state laws. Specifically, UCANE challenged the following sections of the Fall River REOs:

Sections 2a(iv) and 2-945(a), required that 100% of the apprentices and 50% of all other workers for any construction projects be Fall River residents.

The apprenticeship mandate Section 2a(iii) and (iv), which required all contractors for each apprenticeable trade must maintain and participate in an active apprentice program that must have operated without suspension for at least three years prior to the bid date and which must have graduated at least two apprentices per year per trade for the same period.

Section 2a(v) required contractors to furnish a pension or annuity plan for all employees on the project, and bidders and subcontractors

to furnish, at their expense, hospitalization and medical benefits for all their employees employed on the project.

The REO also required bidders to certify they would comply with the foregoing, mandates for themselves and subcontractors, had weekly compliance reporting requirements, provided for sanctions for non compliance including monetary penalties, stop work orders, and debarment.

UCANE challenged those mandates on the following grounds:

The residency provisions of the Fall River REO violated the Privilege and Immunities clause of the United States Constitution and the due process and equal protection clauses of the Massachusetts Constitution;

The mandatory apprenticeship, health and pension provisions were preempted by ERISA and Massachusetts and federal public bidding laws; and In addition, the residency,

apprenticeship, health and pension provisions violated the Home Rule Article of the Massachusetts Constitution which prohibits regulation of the private employer-employee relationship without statutory authority.

UCANE prevailed on each challenges and the Court struck down each of the offensive sections of the Fall River REO.

First, the Court held Fall River residency preferences, granted to journeymen, apprentices and foremen, were a violation of the federal Privileges and Immunities Clause because the REO acted to discriminate against out of state residents and were not justified by any facts argued by Fall River. (The Court found it unnecessary to reach UCANE's additional arguments that the same provision would have also discriminated against non-Fall River, Massachusetts residents under the Massachusetts Constitution and various Massachusetts laws).

The Court then found the mandatory group health; pension, annuity and apprenticeship sponsorship requirements were equally unlawful because they each violated the preemption (federal law supersedes state law section) section of ERISA. The Court held:

*ERISA preempts any and all State laws insofar as they may now or hereafter related to any "employee benefit plan" that is not otherwise exempt... An "employee benefit plan" is a plan that is established or maintained by an employer for the purpose of providing for its participants or their beneficiaries, medical... disability, health or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services... The court (therefore) need not engage in a prolonged analysis because the pension, healthcare and apprenticeship provisions of the REOs are all mandatory requirement provisions. The*

*contested provisions all specifically mandate that Fall River contractors provide various employee benefits or operate employee benefit programs. There(ore), is little doubt that an explicit decree to put into existence... benefit program(s) "relate[s] to" an "employee benefit plan for ERISA preemption purposes (and are pre-empted) .*

In sum, the Court found all challenged provisions of the Fall River REOs unlawful, including, the required certification, reporting, and sanction provisions as applied to the challenged sections of the Fall River REOs. In addition, recognizing Fall River had attempted to evade UCANE's challenge by repealing the challenged REO and reenacting a similar REO during the litigation, the Court ordered Fall River not to reenact the same or a similar REO in the future. Until and unless the case is reversed on appeal, Fall River is prohibited from enacting and enforcing any like restrictions on public bidding. Presently, UCANE's attorneys are drafting a proposed Judgment and will be filing a petition for its attorneys' fees.

(Richard D. Wayne, Esq. and Christina Lewis, Esq., Hinckley, Allen & Snyder LLP, acted as UCANE's attorneys) - #50434213