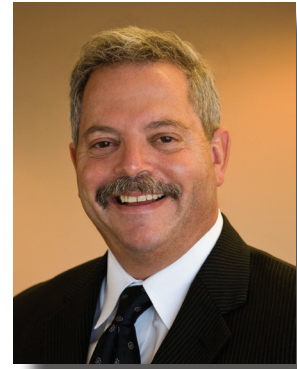




LABOR ISSUES

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Federal Court Enjoins Quincy REO

On March 12, 2012, relying in large part on the filings and arguments made in the successful UCANE / Fall River (FR) / REO lawsuit, the Merit Construction Alliance, several of its contractor members and their employees (collectively "MCA") brought suit to enjoin the Quincy Responsible Employer Ordinance (QREO). Like Fall River, the QREO required general contractors and their subcontractors on Quincy public works projects to employ a minimum 33% of their workforce comprising Quincy residents, and it mandated that each maintain apprenticeship, health and welfare and pension plans. The suit alleged the QREO violated the federal Privileges and Immunities Clause and the Equal Protection Clause of the United States Constitution and the federal Employee Retirement Income Security Act (ERISA).

After the City voluntarily agreed to issuance of a Temporary Restraining Order (TRO), Quincy chose to continue to defend the lawsuit.

The MCA sought a Preliminary Injunction. The parties filed briefs in support and opposition to the Preliminary Injunction. The MCA brief closely followed UCANE's FR filings. Quincy tried to distinguish itself from Fall River and the QREO from the FR REO. To summarize, Quincy's factual arguments: (1) Quincy claimed Fall River failed to defend its residency requirement; (2) Quincy claimed it had a rational basis for enactment of its residency requirement: (a) to spur local economic development; (b) combat high unemployment; and (c) an ongoing need to develop local skilled labor (apprentice program), and (3) enjoining the QREO would delay construction of critical Quincy public works projects, in particular, its Central Middle School. In large measure, Quincy's arguments were a rehash of arguments raised by Fall River.

United States District Court Judge Rya Zobel was unpersuaded by Quincy's factual and legal defenses. First, she found Quincy had no substantial reason to justify it legislating discrimination against non-residents. She found Quincy had failed to prove its discrimination was justified by either "economic hardship" or a desire to capture redevelopment expenditures to improve local employment. She concluded Quincy's "return on investment" residency requirement justifica-

tion was simply a cloak for illegal discrimination and unconvincing. She next rejected Quincy's legal arguments that the QREO was not an impermissible mandate prohibited by ERISA. Judge Zobel wrote, "Quincy acknowledges the similarity of its health and welfare and pension provisions to those in the Fall River Ordinance and (Quincy) does not seriously argue for their survival." For like reasons she dismissed the Quincy defense of its apprenticeship plan mandate.

Judge Zobel issued a Preliminary Injunction prohibiting Quincy from either prequalifying bidders by reference to its QREO or utilizing or enforcing the QREO in bid specifications or contract awards. This Preliminary Injunction remains in effect. Quincy must either agree to its terms or attempt to set the Preliminary Injunction aside by either prevailing on a Motion for Summary Judgment or success at trial. It is unlikely Quincy will set aside Judge Zobel's Preliminary Injunction. Judge Zobel's decision should withstand a Quincy Motion for Summary Judgment (or a trial). Whether or when Quincy agrees to settle or fight the case depends upon Quincy politics. Until then, the Preliminary Injunction remains in effect. ■