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**IN THE
COURT OF APPEALS OF INDIANA**

ASSOCIATED BUILDERS & CONTRACTORS)
INDIANA CHAPTER, INC., HENRY)
ELECTRIC, INC., AND FREDERICKS, INC.,)

Appellants-Plaintiffs,)

vs.)

LORI A. TORRES in her official capacity as)
Commissioner of the Indiana Department)
of Labor,)

Appellee-Defendant.)

No. 49A02-0910-CV-995

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gerald Zore, Judge
Cause No. 49D07-0904-PL-19138

July 27, 2010

MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION

ROBB, Judge

Associated Builders & Contractors Indiana Chapter, Inc. (“ABC”), Henry Electric, Inc. (“Henry Electric”), and Fredericks, Inc. (“Fredericks”) (collectively, the Appellants), have petitioned for rehearing of this court’s memorandum decision in Associated Builders & Contractors Indiana Chapter, Inc. v. Torres, 2010 WL 1064459 (Ind. Ct. App., Mar. 24, 2010), in which we held the trial court properly dismissed the Appellants’ complaint for lack of standing. We grant the petition for rehearing, but affirm our opinion in all respects.¹

The named plaintiffs in this action were ABC, Henry Electric, and Fredericks, suing the Indiana Department of Labor for publishing an agreed wage scale format that allegedly acts as an improperly promulgated rule and violates the Common Construction Wage Act. Henry Electric, a member of ABC, is an electric contractor that bids on Indiana public works projects, the “vast majority of which” adopt the common wage scale format published by the Department of Labor. Appellants’ Appendix at 41. Fredericks, also a member of ABC, is a general construction and roofing contractor that bids on Indiana public works projects, the “vast majority of which” adopt the common wage scale format. Id. The complaint alleges Henry Electric, Fredericks, and other ABC members have been harmed by the agreed wage

¹ The Indiana Department of Labor has not filed a brief in response to the petition for rehearing.

scale format, and specifically states Fredericks is currently performing work on two public projects which include common construction wage scales “patterned after” the wage scale format published by the Department of Labor. Id. at 43. The Appellants contend on rehearing that our opinion applied only to ABC and erroneously omitted consideration of Henry Electric and Fredericks, who “are in direct line to be harmed by the actions” of the Department of Labor. Petition for Rehearing at 2.

The Appellants assert their original briefs asserted errors applying equally to each party but that the memorandum decision applied the arguments only to ABC. It is true the memorandum decision does not specifically mention Henry Electric or Fredericks. On reconsideration, we believe our determination there was no standing is equally applicable to all Appellants. There is no allegation of specific public projects on which Henry Electric has bid and been subject to the agreed wage scale format. Although there is an allegation of specific projects on which Fredericks has bid, and further an allegation that the wage scales for those projects are “patterned” after the agreed wage scale format, the record does not include the specific wage scales for the Fredericks’ projects and there is therefore no basis upon which to conclude Fredericks has been harmed by the agreed wage scale format even as to the specific projects described.²

² Also as noted in our memorandum decision, the agreed wage scale format is not a requirement directed to contractors, but rather a recommendation issued to the committees in each county charged with holding wage hearings and setting the common construction wage scales for public projects. If a contractor finds the wage scale for a particular project objectionable, it would seem the Department of Labor is not the appropriate party from which to seek redress. Cf. Union Twp. School Corp. v. State ex rel. Joyce, 706 N.E.2d 183 (Ind. Ct. App. 1998) (State suing entity undertaking public works project and county common construction wage committee members for not acting in accordance with common construction wage statute in establishing wages for project).

Accordingly, we again affirm the trial court's decision that there is no justiciable controversy presented by the Appellants' declaratory judgment action.

BAKER, C.J., and BAILEY, J., concur.