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**3 ROUGH ROAD AHEAD**  
Forecast contains few bright spots for 2010.

**7 SUB JOBS**  
Subcontractor bids are due Feb. 2 for work on a Milwaukee apartment building.

## Mequon company wins worker training case

Five former employees who quit apprenticeship are on hook for bills

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Warning to employees who accept employer-paid training: Live up to the contract, or you'll have a bill to pay.

The Wisconsin District I Court of Appeals has ruled that five former employees of Mequon-based Frank D. Gillitzer Electric Co. Ltd. must pay the company for training they received in an apprenticeship program.

Gillitzer Electric filed the case, Frank D. Gillitzer Electrical Ltd. v. Marco L. Andersen, et. al., in June 2008. Gillitzer Electric alleged the five former employees started the five-year apprenticeship program, dropped out before finishing the training, then

resigned within four years of ending the training. The contract required that the employees stay with the company for at least four years.

"The whole purpose of sending people to training is to gain that added value to the company," said Dean Laing, an attorney representing Gillitzer Electric. "And this is the first case to construe reimbursement for that training."

Laing is with Milwaukee-based O'Neil, Cannon, Hollman, DeJong SC.

According to Laing, Gillitzer Electric lost \$17,000 for the five employees' tuition, in addition to \$20,000 in hourly wages paid to the employees while they were in the program. But when Gillitzer

Electric sued the employees to recoup the money, Milwaukee Circuit Court Judge Jean DiMotto found in favor of the employees.

DiMotto based her decision on the employees' original training contract, which contained a reimbursement clause and a noncompete clause. The judge ruled the noncompete clause was overly restrictive.

Paul Secunda, an associate professor of law at Marquette University Law School, said Wisconsin law for many years held that if one part of a contract was deemed restrictive and invalid, the whole contract could be unenforceable.

But in 2009, the Wisconsin Supreme Court ruled in another

## Professor: Supreme Court unlikely to reverse ruling

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case, Star Direct Inc. v. Dal Pra, that one unenforceable provision does not doom an entire contract. The court ruled other provisions could be separately enforced.

So Gillitzer Electric used that ruling to anchor its argument that the five employees' reimbursement clause remained valid, and on Wednesday, the District I Court of Appeals reversed the circuit court decision.

"We never got our value for the money," Laing said. "All they had to do was stay with us and give us the benefit of training, but they chose not to complete the program and walked away. We want that money back."

Daniel Habeck, an attorney with

Waukesha-based Cramer, Multhaupt & Hammes LLP representing the five employees, said the defense has not decided whether to petition for a review by the Wisconsin Supreme Court.

But with the defense's chief argument being that if one part of the contract is invalid, the whole contract is invalid, Secunda said it's unlikely the same Supreme Court that last year decided contract provisions can be separately enforced will rule differently this year.

"You'd be asking the same people to reconsider," he said. "It's not going to happen."

If the case is not reviewed by the Supreme Court, Laing said it will be

sent back to trial court to determine whether the defendants must pay Gillitzer Electric's attorney fees.

"The issue's dead," he said. "The court of appeals said we had to be paid back. It's only fair."

Although the Supreme Court's 2009 decision on contract enforcement set the stage for Gillitzer Electric's case, Secunda said the same Supreme Court that last year decided contract provisions can be separately enforced will rule differently this year.

"I think employees who go through training should be on guard," he said. "If you're taking the loan, you can't walk away and expect you're going to be free and clear of the obligation you agreed to and undertook."

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