

Report On Labor Issues in the Audiovisual Industry

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Scope of Report

During the last decade a trend has emerged for certification among the various job classifications utilized by the audiovisual (AV) industry, which is represented by InfoComm International®, the trade association for the AV and information communications industries worldwide. Questions have arisen over the last few months concerning the utility of such certifications, including exactly how they may assist association members and the AV industry as a whole in improving margins, increasing revenue and acquiring new business.

Based on our firm's representation of numerous employers nationwide, in television, radio, the performing arts and the electronics communications industry including audiovisual providers, we have been asked to render an opinion on the various questions raised by the association's members. These questions include:

- What is a **standard occupational classification code (SOC)**, how does the coding structure work and what are the SOC codes for occupations in the audiovisual industry?
- How does the concept of "**apprenticeship**" affect the audiovisual industry, including work that is covered by **prevailing rate of wage statutes**, and how do the classifications of trainees and helpers affect prevailing rate of wage jobs?
- What is the **connection between apprenticeship and licensure** and the relationship between certification and licensure and how if at all, are these classifications of advantage regarding performing contracts and acquiring new business?

These questions do not require specific legal answers, but rather, are subjects that deal with the practical applications of marketing, acquiring new business, performing contracts, and to some extent, complying with applicable federal, state and local laws. Our opinion herein is based not on an interpretation of legal statutes or common law decisions, but rather on Clifton Budd & DeMaria, LLP's experience representing employers in labor and employment law and my own experience for the past two years on the Entertainment Services and Technology Association's (ESTA'S) Certification Council. This committee has established standards in rigging and electrical skills and has plans for extending the number of certifications available in the industry for theater, arenas and other venues.

The SOC Codes

The 2000 Standard Occupational Classification (SOC) System was developed in response to a growing need for a universal occupational classification system. Such a classification system allows government agencies and private industry to produce comparable data. Users of occupational data include government program managers, industrial and labor relations practitioners, students considering career training, job seekers, vocational training schools, and employers wishing to set salary scales or locate a new office or facility. It is used by federal agencies collecting occupational data, providing a means to compare occupational data across

agencies. It is designed to cover all occupations in which work is performed for pay or profit, reflecting the current occupational structure in the United States.

The 2000 SOC is the result of a cooperative effort of all federal agencies that use occupational classification systems to "maximize the usefulness of occupational information collected by the Federal Government." For additional information, see www.bls.gov/soc/socguide.htm

While SOC codes are useful for a number of the above-specified areas, there is no relationship between a SOC code and a certification, apprentice job or classification requiring a license. While certain SOC's require licensing, this is a matter of either federal, state or local law and has no relationship to the code system. One cannot necessarily tell from looking at a SOC whether or not that particular classification is one for which a license is needed. Likewise, to date, there is no general requirement that employees of an AV provider be certified by any organization. Neither licensure or certification is an essential component of an SOC which merely describes the job, but does not address qualifications.

The 2000 SOC classifies workers at four levels of aggregation: 1) major group; 2) minor group; 3) broad occupation; and 4) detailed occupation. All occupations are clustered into one of 23 major groups. For a complete listing of these groups, visit www.bls.gov/soc/socguide.htm.

In order to familiarize themselves with SOC code dynamics, AV providers should become acquainted with each of the above four levels of classification. Familiarity with the jargon of the classification system will be generally helpful as these codes will become more common, particularly since issuance of the most recent (2000) SOC system, and future revisions that will include the AV industry specifically.

A great deal of confusion has arisen concerning the SOC code for occupations in the audiovisual industry. To clarify this for InfoComm members and the audiovisual industry in general, InfoComm International has submitted and has had approved by the Department of Labor specific "Association/Industry Derived codes" assigned to the major group **27-4000 Media and Communication Equipment Workers**. Now, under **27-4011 Audio and Video Equipment Technicians** there are subsets that most accurately represent the occupations for the audiovisual industry:

27-4011.00A Audiovisual Communications Installation Technician
27-4011.00B Audiovisual Communications Systems Designer
27-4011.00C Audiovisual Communications Rental & Staging Technician

Other codes you may hear of include Radio and Telecommunications Equipment Installers and Repairers **49-2022** under which **49-2022.03** includes Information Transport Systems (ITS) Technicians and the Electronic Systems Technician. It should be noted that none of these more detailed codes, including the ones InfoComm has had approved, is as yet publicly published.

The Utility of SOC Codes for AV Employers

To date, SOC codes have not been utilized by AV employers to any material extent. Probably, Human Resource Managers and others would find SOC code usage a benefit in certain areas including, primarily, comparison of salaries or wage rates. Because of the standardization in reporting of wage rates by the U.S. Department of Labor and most state agencies that compile labor statistics, employers may be able to compare their own rates with those reported as prevailing (remembering that there can be a six month to twelve month time lag in the reporting, which would not take into account increases in rates during the period between reports). The closer AV industry jobs compare to the SOC, the more accurate will be the information on rates. For AV employers seeking to establish new offices or to supply services in a new venue, the U.S.

Department of Labor's Bureau of Labor Statistics (BLS) may be helpful in indicating the labor supply in the area since SOC codes are used by the BLS in reporting on the geographic dispersion of jobs. Moreover, for companies wishing to develop job descriptions for various human resource purposes, SOC codes may facilitate the drafting of the descriptions. As SOC codes become more generally utilized, there may be greater utility in becoming familiar with their use and application. From our standpoint, however, we do not believe that utilizing SOC codes has any relevance to acquiring new business or marketing the AV employer's services. Since information capable of being obtained from the government agencies that track statistics about different occupations is available freely on the Internet, it is recommended that if AV employers receive forms from various agencies requesting a SOC code or an O*NET-SOC code, the specific audiovisual codes specified above should be listed. Over time, this will assist the government to track more information about the AV industry and will help establish AV professional occupations as unique, rather than as under the existing system, combined with other less-related classifications.

We are aware that InfoComm International has engaged in a number of efforts to make constructive use of the code for the industry and for its individual members. For example with respect to workforce development, the association has submitted these SOC codes for inclusion in the 2006-2007 editions of the Department of Labor Statistics *Occupational Outlook Handbook*. These codes will be included under the current category, **27-4010.00** Broadcast and Sound Engineering Technicians and Radio Operators which includes **27-4011** Audio and Video Equipment Technicians. The association has just updated the description within this category to present a more current view of these jobs.

The *Handbook* describes work activities and environment, earnings, number of jobs and their location, and types of education, training, and personal qualifications needed to have the best prospects and is used by career counselors, students, and other job seekers. A link to InfoComm's website will also be included as a resource. Defining careers in the audiovisual industry is part of the association's mission to develop the industry's future workforce and to establish its legitimacy to those outside the industry. For more information about this book, visit www.bls.gov/oco/ocos109.htm

We predict that Human Resource personnel will become exposed to SOC codes in the next few years since many states and government agencies use SOC codes to establish job descriptions and categories. InfoComm has taken the results of its [2004 Dealer Compensation and Financial Survey](#), VTECS Occupations Comparative Analyses (used to develop InfoComm educational and certification programs) and the new audiovisual professional SOC codes and created a chart to help human resource departments develop more industry-standard categories and job titles for their companies. As they start using SOC codes on job descriptions and in government survey responses, a clearer, more accurate picture of these careers will develop not only within the industry, but for economists and career experts as well

Human Resource professionals may find these codes useful when comparing internal job equity among jobs within their own organization, as well as for comparisons with external equity, that is, rates paid by other AV employers for comparable classifications. Moreover, with the increased amount of litigation under the American's With Disabilities Act (ADA) having standard job titles with descriptions may be useful in presenting a defense to alleged complaints of disability discrimination. It is often important to demonstrate to the EEOC or relevant state agency that the complaining individual cannot perform the material elements of the job. Having such descriptions in place, before a complaint is made, has high evidentiary value.

Workers' Compensation Rates

Because insurance premiums for Workers' Compensation benefits have uniformly skyrocketed throughout the country, some members have asked whether or not there may be some

advantage to submitting SOC codes to insurance brokers when applying for insurance. While SOC codes differentiate between low voltage and high voltage classifications, this difference is descriptive rather than substantive, in our opinion. We are familiar with Workers' Compensation Insurance having litigated a number of issues in this area and understand that underwriters refer to numerous factors in connection with setting rates. The most material include the industry, the particular job (regardless of whether or not there is an underlying SOC code) and the loss experience with respect to the industry and the company's own experience ratio with regard to Worker's Compensation claims. Other factors are: cost per \$100 of payroll, safety equipment, on site inspections, ergonomic aspects, protective gear, the local insurance market and state insurance law requirements. We would conclude that there is no benefit in using a SOC code with respect to Workers' Compensation premiums

Apprenticeship and Certification Issues

Apprenticeship

Apprenticeship is a term of art. It generally denotes one who is learning by practical experience a skilled worker's trade and who has enrolled in a specific program, usually one sponsored by the union having jurisdiction over that trade. In this connection, two laws are very important: The *Fitzgerald Act* (The National Apprenticeship Act, 1937) and the *Davis-Bacon Act*.

The Bureau of Apprenticeship and Training (BAT) is the Federal agency responsible for the administration of the National Apprenticeship System in the United States. BAT was established by the National *Apprenticeship Act of 1937*, as amended, Public Law 75-308, commonly known as the *Fitzgerald Act*. This legislation was enacted to secure apprentices' benefits and safeguard the apprentices' welfare. Government plays a supportive role. The BAT is a program office of the Office of Apprenticeship Training and Employer and Labor Services (ATELS) located in the Employment and Training Administration of the United States Department of Labor.

There is no basic connection between apprenticeship and certification. In fact, it could generally be said that there is not even a relationship between the two terms. As noted above, apprenticeship programs are generally established by law under the offices of either a federal or state agency and the training programs leading to apprenticeship are severely regulated and enforced by both the government and the unions (or other entity) providing the training in compliance with applicable laws. As employees progress through the apprenticeship training, their wages generally progress according to a scale as the training is completed. The individual is awarded with an increase and specified rate upon the successful conclusion of the program. Such a rate is below the rates of more experienced "journeymen" within the union's craft and the amounts paid are mandated by the collective bargaining agreement which covers the particular apprentice. By definition, although apprenticeship is open to non-union members, if the union obtains a job for the individual, that person would be covered by the applicable collective bargaining agreement and would be considered to be a "union member," meaning a person covered by the collective bargaining agreement. While not absolutely co-extensive, particularly in non Right to Work States, apprenticeship status and union membership are generally considered to be synonymous.

Licensure is not related to SOC codes except that a number of SOC classifications, will indicate that the job requires a license, for example, "licensed electrician".

Certification

Certification is a process, often voluntary, by which acknowledgment is accorded to individuals who demonstrate a level of knowledge and skill required in a profession or skill set. Certification is typically qualified and issued by a trade organization or manufacturer. Certification offered by

InfoComm International includes the Certified Technology Specialist (CTS) designation recognizing general, design or installation proficiency, and the company level Certified Audiovisual Solutions Provider (CAVSP) designation. Other examples include Electronic Systems Technician (EST) which is listed on the office of apprenticeship training, employer and labor services officially recognized list of apprenticeable occupations (RAIS Code **1041, 49-2022-03**).

Prevailing Rate of Wage

Some members have asked whether or not hiring apprentices would be helpful in connection with meeting prevailing rate of wage requirements. The federal prevailing rate of wage program for federal jobs (Davis Bacon Act) or similar state laws ("little" Davis Bacon Acts) do not require employers to hire apprentices. Since the apprenticeship issue is normally raised in a union context, the question of whether or not an AV employer "must" hire an apprentice is a function of its collective bargaining agreement and negotiations over staffing with the union. Most employers seek to hire apprentices in greater numbers than usually allowed by the union due to the lower cost. On the other hand, while unions are anxious to give their apprentices work opportunities, they also need to protect their full-fledged members. Thus, there is usually a "ratio" worked out between apprentices and journeymen. Apprentices are almost always obtained through the applicable craft union's hiring hall. The rates paid are covered by the collective bargaining agreement, and in some cases can be negotiated with the union at different levels and provided for in the labor contract. It should be recalled that when utilizing apprentices they must meet the applicable definitions as persons being employed and individually registered in a bona fide apprenticeship program approved by the Bureau of Apprenticeship Training, or parallel State apprenticeship agency recognized by the U.S. Department of Labor. (There are some exceptions for those who are not individually registered but who have properly been certified to be eligible for probationary employment as an apprentice).

We have not encountered any situation where having apprentices used as part of the employer's work staff has assisted the employer in obtaining new business. Most purchasers of AV services are not interested in whether or not apprentices will be employed, but rather, in the performance of the contract. However, if an AV employer contemplates that it will be able to utilize a high proportion of apprentices as part of its staff, then its bid would be appropriately lower as it would not reflect much higher, standard, labor union-journeymen rates. Even for those AV employers who are not accustomed, or do not care, to hire apprentices directly, such jobs can always be subcontracted out to other organizations with collective bargaining agreements with the union appropriate for the job. Hiring "apprentices" would not, and, contrary to belief in some quarters, does not protect employers from becoming union. Because of unions' close association with apprenticeship programs everywhere, the hiring of apprentices is almost always related to an available union. Moreover, even where apprenticeship training approved by the government has been supplied by non-union organizations such as schools, etc., apprentices, our experience shows, quickly gravitate toward seeking out union membership after successful completion of the apprenticeship program due to the higher rates and generous benefits generally paid under labor agreement.

Trainees

Trainees differ from apprentices in the following respect. They must be persons registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have been so certified by that Administration.

Information on wage rates paid to apprentices and trainees is not reflected in Davis-Bacon wage determinations. Similarly, their addition through the additional classification procedure (conformance) is neither necessary nor appropriate. On projects funded by the Federal-Aid

Highway Act, apprentices and trainees certified by the Secretary of Transportation are not covered by Davis-Bacon labor standards.

The proper wage rates to be paid to apprentices and trainees are those specified by the particular programs in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices or trainees on a covered project have not been properly registered within the meaning of the Regulations and the contract stipulations, or are utilized at the job site in excess of the ratio to journeymen permitted under the approved program, they must be paid the applicable wage rates for laborers and mechanics employed on the project working in the classification of work they actually performed. This applies regardless of work classifications which may be listed on the submitted payrolls and regardless of their level of skill. Neither the classification of trainee nor apprentice has any connection to SOC codes.

Helpers

Confusion exists between the terms apprentice, trainee and helper. While all terms involve those who generally assist a more skilled individual and who work under that individual's supervision (not necessarily a supervisor or manager), helpers do not achieve the hierarchy status of trainees or apprentices. Helper classifications may be issued or added to a wage determination only where (a) the duties of the helpers are clearly defined and distinct from those of the journeyman classification and from the laborer, (b) the use of such helpers is an established prevailing practice in the area, and (c) the term "helper" is not synonymous with "trainee" in an informal training program."

License Requirements

Where an employee needs a license to perform a job; this is on the top level of the work hierarchy. A license is a legal credential obtained by an individual or business, usually issued by a government agency, which is required to perform work in a particular trade and/or jurisdiction. A license is often required by law or ordinance for workers in various building trades, including architecture, mechanical, electrical, and structural engineering, some low-voltage trades and other building design, engineering and construction roles.

Certification does not approach the status of licensure since, as noted above, it is a process, often voluntary, by which acknowledgment is accorded to individuals who demonstrate a level of knowledge and skill required in a profession or skill set. It includes Certified Technology Specialist (CTS), the advanced specializations of CTS-Design and CTS-Installation, and the company level Certified Audiovisual Solutions Provider (CAVSP) designation. Other certifications include the Electronics Systems Technician (EST) and recently established rigging certifications. Rigging certifications have been established under the Entertainment Technician Certification Program (ETCP) which InfoComm International assisted in developing. Other certifications are in process.

The relationship between apprenticeship, licensure and certification and AV employer advantage

There are two separate issues involved in connection with the question as to whether or not employing apprentices or certified personnel will inure to an employer's advantage. From the standpoint of whether or not employing such individuals will improve revenue by adding a new dimension to the corporate marketing program, we have seen success with **BICSI's Registered Communications Distribution Designer (RCDD®)** certification's inclusion in specifications as its acceptance has grown. In recent years, InfoComm International has worked hard through its AVolution campaign and marketing initiatives aimed at potential clients who purchase AV equipment and services to establish its 20-year-old and growing certification program as the

industry designation for best practices and excellence. The success of these initiatives has translated into more and more InfoComm members embracing the company-wide certification program, the Certified AudioVisual Solutions Provider (CAVSP) designation. Some RFPs are beginning to refer to such staffing issues, and interest in certification across associations and in workforce development indicates that certification and professional development will increasingly become important in the buyer's decision to engage a firm.

Perhaps sparked by high profile accidents in recent years, certification programs have accelerated and it may well be that within the next five to ten years, certifications will be the existing norm. If and when that occurs, it is anticipated that many of the larger organizations will begin to require at least a certain percentage of certified personnel as part of the contract requirement or RFP. As certifications become more prevalent, as the existence of AV industry certifications becomes more recognized, and as more and more employees become certified under existing programs in operation today, employing certified personnel may well become a way of acquiring business, or at least holding on to clients already serviced. For many employers, the advantages of certification have become clear. AV employers are realizing these advantages as their customers make inquiries about certified staff. This will be less true of apprentices. While the certifying organizations conduct comprehensive advertising programs concerning the advantages of hiring certified personnel, no such comparable advertising mechanisms exist for those passing bona fide federal or state apprenticeship programs. Our experience in the industry, in dealing with unions and exposure to the ETCP program, leads me to believe that buyers will increasingly inquire about certification as a natural outgrowth of their interest in professionalism and safety, as well as the participation by the large AV buyers in the certification programs and financial contributions made by them to the development of such programs.

Of course, where licensed employees are mandated, the employer must warrant that such personnel will be employed. The other aspect of certification involves training costs, with respect to which there are pros and cons. Certification generally involves an initial cost since most employers pay all or part of the expenses of certification and will generally accommodate employees' requests for higher pay once a certification has been acquired. Union contracts may also begin to provide for bonuses or premium rates to certified personnel. On the other hand, training employees is a significant cost for most employers, particularly those in the AV industry. Hiring certified workers may eliminate, to some extent, the high training costs associated with the AV industry, reduce costly mistakes and provide some measure of cost control with the use of technical staff that is certified as knowledgeable and who have the skills and abilities and specific disciplines within the information, presentations, event and entertainment technology fields. In turn, this may enhance safety, avoid disasters by reducing workplace risk, improve productivity and performance and otherwise enable the AV employer to perform its contract with greater efficiency and possibly higher profit margins.

Conclusion

The findings reached in this report are not based on legal expertise but rather on widespread exposure to the industry and prevailing practices in the electronic communication field. The findings represent a highly educated guess as to the outcomes with a degree of prediction concerning the role that AV certification will take in the near future. As discussed, there is little evidence to indicate that AV employers should feel compelled to utilize SOC codes, engage in apprenticeship programs or license their employees. However, there is an increasing trend toward certification demonstrating skill level and professionalism necessary for correct installation of AV systems or staging of live events.

Respectfully submitted,

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