

REPRESENTATIVE FOR PETITIONER: Thomas E. Moss,  
Paul T. Berkowitz & Associates

REPRESENTATIVE FOR RESPONDENT: Robert M. Schwerd,  
Schwerd, Fryman & Torrenga, LLP

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Laborers International Union of	)	Petitions:	64-029-16-2-8-02098-16
North America, Laborers Local 81	)		64-029-15-2-8-00204-15
	)		64-029-14-2-8-20567-15
Petitioner,	)		64-029-14-2-8-20566-15
	)		
v.	)	Parcels:	64-10-29-177-009.000-029
	)		64-10-29-177-010.000-029
Porter County Assessor,	)		64-10-29-177-011.000-029
	)		64-29-8000-00180-29
Respondent.	)		
	)	County: Porter	
	)		
	)	Assessment Years: 2014-2016	

Appeals from the Final Determinations of the  
Porter County Property Tax Assessment Board of Appeals

**November 22, 2017**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. To qualify for exemption under Ind. Code § 6-1.1-10-16(a), a taxpayer must predominantly use its property for educational or other statutorily enumerated purposes.

Laborers International Union of North America, Laborers Local 81 seeks an exemption on grounds that it used part of its facility and personal property to host classes on construction-related safety issues. Assuming without deciding that those classes were educational uses and therefore exempt, Local 81 also used the facility for non-exempt purposes. And it failed to show that the classes, as opposed to the non-exempt activities, were the facility's predominant use. We therefore deny Local 81's exemption claims.

### PROCEDURAL HISTORY

2. Local 81 applied for exemptions for the 2014-2016 tax years. The Porter County Property Tax Assessment Board of Appeals ("PTABOA") denied the exemptions and found the property 100% taxable for all three years. In its Findings and Conclusions of Law for the 2014 claims, the PTABOA indicated that the property was predominantly used for an apprenticeship program, but that it did not qualify for exemption because the program primarily benefited Local 81's members. Local 81 timely filed Form 132 petitions with the Board for all three years.<sup>1</sup>
3. On July 14, 2017, our designated administrative law judge, Kyle C. Fletcher, held a hearing on the petitions. Neither he nor the Board inspected the property.
4. Thomas Moss of Paul T. Berkowitz & Associates appeared as counsel for Local 81. Robert M. Schwerd of Schwerd, Fryman & Torrenga, LLP appeared for the Porter County Assessor.
5. Patrick Hill, bookkeeper for Local 81, testified under oath.

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<sup>1</sup>In its exemption applications, Local 81 sought a 100% exemption for its entire facility as well as for personal property it did not specifically identify beyond listing its parcel number and assessed value. At the hearing before the Board, Local 81 sought exemption only for the part of its facility that it used for classes and monthly membership meetings. It did not specifically address personal property at the hearing. *Moss Argument; Pet'r Exs. 5, 10, 14, 19.*

6. Local 81 submitted the following exhibits:

- Petitioner's Ex. 1: 2014 Form 120 Notice of Action on Exemption Application for Parcel 64-10-29-177-010.000-029
- Petitioner's Ex. 2: 2014 Form 132 Petition and Letter to the Board for Parcel 64-10-29-177-010.000-029
- Petitioner's Ex. 3: 2014 Section III of Form 132 and Affidavit of Patrick Hill for Parcel 64-10-29-177-010.000-029
- Petitioner's Ex. 4: 2014 Form 114 Notices
- Petitioner's Ex. 5: 2014 PTABOA Findings of Fact and Conclusions of Law
- Petitioner's Ex. 6: 2014 Form 136 Application for Exemption and Exhibits
- Petitioner's Ex. 7: 2014 Form 120 Notice for Parcel 64-10-29-177-009.000-029
- Petitioner's Ex. 8: 2014 Form 132 Petition and Letter to the Board for Parcel 64-10-29-177-009.000-029
- Petitioner's Ex. 9: 2014 Section III of Form 132 and Affidavit of Patrick Hill for Parcel 64-10-29-177-009.000-029
- Petitioner's Ex. 10: 2014 Form 136 Application for Exemption and Exhibits
- Petitioner's Ex. 11: 2015 Form 120 Notice
- Petitioner's Ex. 12: 2015 Form 132 Petition and Letter to the Board
- Petitioner's Ex. 13: 2015 Section III of Form 132 and Affidavit of Patrick Hill
- Petitioner's Ex. 14: 2015 Form 136 Application for Exemption and Exhibits
- Petitioner's Ex. 15: 2016 Form 120 Notice
- Petitioner's Ex. 16: 2016 Form 132 Petition and Letter to the Board
- Petitioner's Ex. 17: 2016 Form 132 Section III
- Petitioner's Ex. 18: Second<sup>2</sup> Affidavit of Patrick Hill with Exhibits
- Petitioner's Ex. 19: 2016 Form 136 Application for Exemption and Exhibits
- Petitioner's Ex. 20: List of Related Parcels under Exemption Appeal
- Petitioner's Ex. 21: Asbestos Abatement Worker Refresher Course Textbook
- Petitioner's Ex. 22: Asbestos Abatement Supervisor Refresher Course Textbook
- Petitioner's Ex. 23: Hazardous Waste Worker Refresher Course Textbook
- Petitioner's Ex. 24: ICRA for Occupied Facilities Course Textbook
- Petitioner's Ex. 25: INDOT Work Zone Traffic Control Guidelines 2013
- Petitioner's Ex. 26: INDOT Traffic Safety Program Outline 2015
- Petitioner's Ex. 27: Laborers' Training Trust Fund Winter Training Schedule

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<sup>2</sup> The Affidavits of Patrick Hill included in Exhibits 3, 9, and 13 appear to be identical. The affidavit in Exhibit 18 is distinct. We refer to it as the "Second Affidavit" for clarity.

Petitioner's Ex. 28: Laborers' Training Trust Fund Webpage Printout  
Petitioner's Ex. 29<sup>3</sup>: List of Training Offered at the Subject Property

7. The Assessor offered no exhibits.
8. The following items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

Board Ex. 1: Appearance of Thomas Moss on Behalf of Petitioner

Board Ex. 2: Parties' List of Stipulated Facts<sup>4</sup>

Board Ex. 3: Hearing sign-in sheet

We also recognize as part of the record (1) all motions and briefs filed by both parties, (2) all notices and orders issued by the Board or our ALJ, and (3) a digital recording of the hearing.

#### **OBJECTIONS**

9. Local 81 objected to the Assessor asking Mr. Hill how the average taxpayer benefits and saves tax dollars from the instruction at Local 81. Local 81 claimed that the question called for a legal conclusion. We disagree. The Assessor asked Mr. Hill to explain what benefits derive from work done by Local 81. We therefore overrule the objection.

#### **FINDINGS OF FACT**

10. Local 81 is a labor organization representing construction workers in northwest Indiana. It is a local union of the Indiana Laborers District Council ("ILDC"), which is a District Council of the Laborers International Union of North America. *Bd. Ex. 2.*
11. Local 81 owns real and personal property at 3502 Enterprise Avenue in Valparaiso. In 2014, the real property consisted of two separate parcels: 64-10-29-177-009.000-029 and

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<sup>3</sup> Local 81 included an Exhibit 30 on its exhibit list but did not offer it at the hearing.

<sup>4</sup> Paragraph 15 of this document is not part of the stipulation.

64-10-29-177-010.000-029. Later, the property was combined into a single parcel labeled 64-10-29-177-011.000-029. *Bd. Ex. 2.*

12. Local 81 built a facility at the subject property for everyday union business and for training its members. Two large rooms within the facility host classes. It is for those two rooms that Local 81 seeks an exemption. They make up approximately 61.5% of the facility's total area<sup>5</sup>. Before building the facility, Local 81 rented space at local colleges to host classes. *Hill Testimony; Pet'r Ex. 18.*
13. The ILDC and the Indiana Construction Association, a chapter of the Associated General Contractors of America, created the Indiana Laborer's Training Trust Fund ("ILTTF") to train people in the construction industry. The ILTTF provides financing and instructors for the classes at Local 81's facility. It also runs an apprenticeship program, which is entirely separate from those classes. *Hill Testimony; Pet'r Ex. 18; Bd. Ex. 2.*
14. Members of Local 81, supervisors, and contractors may take "refresher" classes at Local 81's facility. They take those classes to maintain certifications in various areas, such as asbestos abatement, dealing with hazardous waste, and flagging for road construction. State governments, and in some instances, the federal government, require that tradespeople and supervisors be certified in some of those activities to work on job sites. Lack of certification may lead to authorities shutting down a job site and fining contractors. *Hill Testimony; Pet'r Exs. 18, 21-24, 29.*
15. Local 81 does not advertise that it offers classes, and educating the public is not part of its constitution. The ILTTF can accommodate members of the public ad hoc if they pay for the class. *Hill Testimony; Pet'r Ex. 14.*

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<sup>5</sup> Although Hill testified (and Local 81 argued) that 65% of the facility was used for training, blueprints included with Hill's Second Affidavit show that the two classrooms make up 61.5% of the facility's total area. *Hill testimony; Pet'r Brief at 18; Pet'r Ex. 18.*

16. In the year ending on March 1, 2015, four classes were taught at Local 81’s facility—two dealing with asbestos removal and two dealing with hazardous waste. That number increased to five classes in the year ending on March 1, 2016, again split between those two subject areas. Each class was eight hours. *Hill Testimony; Pet’r Exs. 18 (Second Affidavit at Ex. A), 29.*
17. Mr. Hill testified that other classes covering topics such as microbial remediation, lead abatement, and flagger and highway worker safety, were offered at Local 81’s facility. But Local 81 offered no specific evidence to show when or how often it offered those classes, or their duration. At most, when asked on cross-examination how many classes are taught at the facility in an average month, Hill responded, “I’d say two.” *Pet’r Ex. 3, Ex. 29; Hill Testimony.*
18. Local 81 also used the classrooms for monthly meetings. The record is silent as to the meetings’ content or duration. Local 81 does not rent out the space for any other uses, leaving it available to schedule future classes. *Hill Testimony.*

#### **CONCLUSIONS OF LAW AND ANALYSIS**

19. While all tangible property is generally subject to taxation, the legislature may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes. Ind. Const., Art. 10 § 1. Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer therefore bears the burden of proving that its property qualifies for an exemption. *Id.*
20. Indiana Code § 6-1.1-10-16(a) provides an exemption for “[a]ll or part of a building” that is owned and either exclusively or predominantly used or occupied for educational, literary, scientific, religious, or charitable purposes. Ind. Code § 6-1.1-10-16(a); I.C. § 6-

1.1-10-36.3(c); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Ass'r*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009) *reh'g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009). That exemption extends to the land on which the building sits and to personal property that is owned and used in such a manner that it would qualify for exemption if it were a building. I.C. § 6-1.1-10-16(c), (e). A property is predominantly used or occupied for exempt purposes if it is used or occupied for those purposes more than 50% of the time that it is used or occupied in the year ending on the assessment date. I.C. § 6-1.1-10-36.3(a). Where a property is predominantly, but not exclusively, used for exempt purposes, its exemption corresponds to that proportional use.<sup>6</sup> I.C. § 6-1.1-10-36.3(c)(3).

21. Broadly speaking, exemptions are granted where property is used to confer a public benefit justifying the loss of tax revenue. *E.g.*, *Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1265 (Ind. 2006); *Fort Wayne Sports Club, Inc. v. State Bd. of Tax Comm'rs*, 147 Ind. App. 129, 258 N.E.2d 874, 881 (1970). Where, as here, a taxpayer claims an educational-purposes exemption, it may demonstrate the requisite public benefit by showing that it uses its property for educational training related to courses found in public schools, even if the taxpayer's courses are not direct analogs to public school offerings. *Roller Skating Rink Operators*, 853 N.E.2d at 1266; *see also Trinity Sch. of Natural Health v. Kosciusko County Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003).
22. Although Local 81 originally sought an exemption for its entire facility, it has now limited its claim to the classroom area. It identified two general activities that occurred in that area during the years at issue—union meetings and classes. Although Local 81 offered extensive evidence about the nature of the classes, it offered nothing about the nature of the monthly meetings, beyond the fact that they somehow related to the union. Union activities are not inherently exempt. *See 6787 Steelworkers Hall, Inc. v. Scott*, 933

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<sup>6</sup> But a property that is predominantly used for an exempt purpose by a church, religious society, or not-for-profit school is totally exempt. I.C. § 6-1.1-10-36.3(c)(2).

N.E.2d 591, 596 (Ind. Tax Ct. 2010) (“[A]s the Indiana Board recognized, Local 6787 provided no citation to Indiana statutes, case law, or any other persuasive authority for the proposition that unions are inherently charitable.”). Absent any evidence to show how the union meetings were educational (or charitable, literary, scientific, or religious), we find that those meetings were not an exempt use.

23. Assuming, without deciding, that the classes qualify as educational, the classroom area was used for both exempt (classes) and non-exempt (union meetings) purposes. Local 81 therefore had the burden of proving that the classes were the facility’s predominant use. To meet its burden, Local 81 needed to compare the relative amounts of time that it used the area for each activity. *Hamilton County Ass’r v. Duke*, 69 N.E.2d 567, 571 (Ind. Tax. 2017); *Fraternal Order of Eagles # 3988, Inc. v. Morgan County Prop. Tax Assessment Bd. of Appeals*, 5 N.E.3d 1195, 1202 (Ind. Tax Ct. 2014).
24. Local 81 offered scant evidence from which to make that comparison. It offered nothing to show what, if any, classes it offered in the year ending on March 1, 2014. For the next year, it documented having offered four eight-hour classes. And for the last year at issue, it documented five eight-hour classes. Although Mr. Hill testified that other classes were taught at the facility, he gave no specifics, such as the dates or duration of those classes. His vague estimate that two classes are taught in an average month offers little help. It is not even clear whether his testimony relates to the tax years at issue.
25. In its brief, Local 81 argues that the classroom area was available “24/7 for educational use,” apparently relying on Mr. Hill’s testimony that it does not rent out the space for any other uses. *Pet’r Brief at 18*. Of course, the space is also necessarily available for union activities. In any case, the predominant use test requires a comparison of exempt and non-exempt uses for the time that a property is actually occupied and used. I.C. § 6-1.1-10-36.3(a) (stating that a property is predominantly used for a stated purposes if it is used or occupied for that purpose “during more than fifty percent (50%) of the time *that it is used or occupied* in the year that ends on the assessment date of the property.”) (*emphasis*



added); see also *Hamilton County Ass'r v. SPD Realty, LLC*, 9 N.E.3d 773, 778 (Ind. Tax Ct. 2014) (rejecting assessor's claim that property was not predominantly used for charitable purposes because the taxpayer occupied and used it only four months out of the year preceding the assessment date).

26. On the other side of the ledger, we know that Local 81 held monthly union meetings. But we know nothing about their duration. Given this sparse record, we cannot find that Local 81 used the classroom area for exempt purposes more than 50% of the time that it was in use for the year ending on any of the assessment dates at issue. Local 81 needed to make more than a "de minimis showing" which expected us to fill in the blanks with detailed factual findings. *State Bd. of Tax Comm'rs v. New Castle Lodge #47, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1264 (Ind. 2002) (quoting *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1025 (Ind. Tax Ct. 1999)).
27. Perhaps Local 81 felt that it did not need to offer evidence of comparative usage because, in its findings and conclusions addressing the 2014 exemption claims, the PTABOA indicated that the "education" taking place at the facility through Local 81's apprenticeship training program was the property's predominant use. Local 81 pointed to that finding in briefs attached to its Form 132 petitions and offered as exhibits. *Pet'r Ex. 3 at 2; Pet'r Ex. 17 at 6*. The parties, however, agree that the finding is wrong: No apprenticeship classes were taught at Local 81's facility.
28. More importantly, our proceedings are de novo. We are not bound by PTABOA findings, nor do they constitute substantive evidence of the underlying or ultimate facts. The PTABOA apparently based its finding on what it described as Hill's extensive testimony that the facility was used for the apprenticeship program 63% of the time and that other uses were incidental. *See id.* Hill did not testify to anything like that in our hearing. To the extent Local 81 had evidence comparing the relative amount of time the

property was used for exempt and non-exempt activities, it needed to offer that evidence in the hearing before us.

29. Thus, even if we assume that the classes were an educational use contemplated by Ind. Code § 6-1.1-10-16(a), Local 81's exemption claim still fails because it did not show that those classes were the predominant use of any part of its facility during the years under appeal.
30. Finally, Local 81 offered little evidence to identify the personal property at issue. The Form 136 applications simply list the property's assessed value without any further description. Hill testified that the classrooms had large-screen televisions. Presumably, those are included in the exemption claims. Local 81 also offered schematic drawings showing what appears to be classroom-type furniture. But it offered no evidence about how any of its personal property was used. At best, we might infer that it was used in the same manner as the real property, which leads us to the same conclusion—Local 81 failed to show that the property was used predominantly for educational purposes.

### **CONCLUSION**

31. Local 81 failed to prove that it predominantly occupied and used its real or personal property for exempt purposes during the 2014-2016 tax years. We therefore deny its exemption claims and find that the property was 100% taxable for those years.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.