

March 16, 2012

Federal Judge Rules Ban On Project Labor Agreements Unconstitutional

In August 2011, we reported on Public Act 98, which essentially prohibited the use of Project Labor Agreements (PLAs) on all publicly funded construction projects. The law prohibited Michigan public entities — such as cities, counties and school districts — from mandating PLAs on construction projects funded by tax dollars. PLAs, which are supported by unions, set wages and work rules and generally require contractors to abide by a collective bargaining agreement for the term of the project. PLA opponents contend that the provisions discriminate against nonunion contractors by discouraging them to bid on work. Because most of those public-funded projects are subject to the Federal Davis-Bacon Act's prevailing wage provisions, or those of the companion Michigan Act, the primary significance of PA 98 was simply relief to contractors from the PLA requirement they be signatory to a Building Trades Union Agreement. PA 98 had no application to projects or PLAs already in existence at the time of its passage; nor did it prevent or prohibit PLAs on privately-funded projects.

Shortly thereafter, the Michigan Building and Construction Trades Council (AFL-CIO) and Genesee, Lapeer, Shiawassee Building and Construction Trades Council (AFL-CIO) filed suit in U.S. District Court challenging the legality of the Act. The plaintiffs alleged that PA 98 was preempted by the National Labor Relations Act (NLRA).

By order dated February 29, 2012, the U.S. District Court for the Eastern District of Michigan enjoined enforcement of PA 98. In an Opinion authored by District Judge Victoria Roberts, the District Court found the Michigan statute is a state regulation of labor relations preempted by federal law, specifically the National Labor Relations Act and the U.S. Constitution's Supremacy Clause. The District Court placed specific emphasis on the NLRA's protection of collective bargaining as protected activity, as well as its express authorization of pre-hire agreements in the construction industry. The court ruled yesterday that the Michigan ban violated federal law, which "explicitly allows for PLAs in the construction industry."

The Snyder Administration announced on March 6th that that the state would appeal the federal court judge's ruling, and has filed a notice of appeal with the court. Attorney General Schuette stated he also intends to file a motion seeking a stay of the order striking down the law while the appeal moves forward. As of today, that motion has not been filed. Until the court rules on that motion, or the United States Court of Appeals for the Sixth Circuit rules otherwise, the State, the various subordinate governmental entities, school districts and other public entities may once again fund projects that include the requirement of a PLA.

We shall alert you to further developments in the matter as the case progresses. If you have any questions, please contact your Butzel Long attorney or the author of this Client Alert.

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