

PRESS RELEASE

SUPREME COURT DECISION RESULTS IN MORE QUESTIONS THAN ANSWERS: ASSURES THAT PLA DISPUTE WILL CONTINUE

A recent ruling by the Pennsylvania Supreme Court has resulted in confusion in the construction industry regarding the legality of Project Labor Agreements in Pennsylvania. On January 18, 2011, the Pennsylvania Supreme Court issued brief Order which affirmed a prior single judge decision issued by Judge Pellegrini of the Commonwealth Court on December 1, 2009 in the case of Hawbaker, et al. v. Commonwealth of Pennsylvania Department of General Services, et al. However, the Supreme Court's ruling was issued in the extremely narrow context of upholding the denial of a request for a preliminary injunction, and was issued "per curiam" (without an opinion) and thus it has no precedential value, i.e., is not binding on any court.

The original lawsuit was filed in 2009 by numerous contractors, employees of contractors, and various Pennsylvania Chapters of Associated Builders and Contractors, Inc. ("Petitioners") to challenge the legality of the procurement process being used by DGS for various prison projects in Pennsylvania. Among the arguments raised by Petitioners was that the procurement process for many of the projects was illegal because it imposed a Project Labor Agreement ("PLA") on the contractors for the projects. Ultimately, after DGS agreed not to impose PLAs on two of the prison projects, DGS attempted to impose a PLA on the project at SCI Graterford. Petitioners sought to preliminarily enjoin the bid process for that project, and also sought a permanent injunction with respect to the use of PLAs generally on public projects in Pennsylvania. Petitioners' primary argument is that PLAs violate Pennsylvania's competitive bid laws. In denying Petitioners' request for a preliminary injunction in December 2009, Judge Pellegrini opined that he could not, as a

single judge, rule that all PLAs were illegal or legal, and thus was constrained to deny the injunction. Significantly, one of the primary grounds on which Judge Pelligrini denied the preliminary injunction was due to his belief greater harm would result in the delay of a \$400 million prison project which DGS argued was necessary to help address prison overcrowding, than would result if an arguably illegal bid process was permitted to proceed. As an opinion authored by a single judge, the Commonwealth Court decision is likewise not binding on any other courts.

On appeal to the Pennsylvania Supreme Court, Petitioners faced a high burden, as they had to demonstrate that Judge Pellegrini had no reasonable grounds to deny the request for a preliminary injunction. Additionally, DGS contended that the appeal was moot as immediately after the appeal was taken, DGS cancelled the procurement that was at issue in the litigation. By issuing a "per curiam" Order rather than a full Opinion, it is clear that while the Pennsylvania Supreme Court ruled that Commonwealth Court had at least one reasonable ground to deny Petitioners' request for a Preliminary Injunction, the Supreme Court opted not to specifically rule on the legality of PLAs in Pennsylvania at this stage in the suit. Significantly, in the Supreme Court's brief Order, two justices, including Chief Justice Castille, noted their disagreement with the Court's decision to only issue a per curiam order, but rather those justices favored oral argument and a resolution by a full opinion.

The case will now proceed at the Commonwealth Court for a full blown hearing on the merits of Petitioners' challenge and request for a permanent injunction. ABC and the Petitioners in the Hawbaker suit are committed to the development of a full and complete record on which the Commonwealth Court can decide the issues which form the basis of their request for a permanent injunction, including seeking a ruling that Project Labor Agreements on public projects conflict with public bid laws. ABC and the Petitioners believe

that such a ruling will result in an open and competitive bid environment that places everyone on a level playing field, and therefore will result in the lowest costs for the taxpayers of the Commonwealth. For now, until a final decision is rendered in the Hawbaker suit, there is still no caselaw in Pennsylvania to suggest that a public body simply may impose a PLA as a matter of preference, and the decisions to date in the Hawbaker lawsuit do not hold otherwise.