Sixth Circuit Upholds Michigan's Ban on Project Labor Agreements on Public Construction

By Thomas P. Brady / May 29, 2014

On September 6, 2013, the United States Court of Appeals for the Sixth Circuit reversed the lower court's decision in Michigan Building and Construction Trade Council v Richard Snyder, 194 LRRM 2776 (2012). The Court found that the Fair and Open Competition in Governmental Construction Act, which prohibits Michigan governmental units from requiring project labor agreements (PLA), was not preempted by the National Labor Relations Act (NLRA).

In 2011, Michigan enacted the Fair and Open Competition in Governmental Construction Act which prevented governmental units from entering into project labor agreements. In Michigan Building and Construction Trade Council v Richard Snyder, 192 LRRM 3320 (2012), the United States District Court held that the Act was preempted by the NLRA and was unenforceable. In 2012, Michigan enacted a new version of the Fair and Open Competition in Governmental Construction Act. This version prevents governmental units from requiring project labor agreements on government projects. The lower court found the new act was preempted by the NLRA and enjoined its enforcement. Governor Rick Snyder appealed both decisions.

The Sixth Circuit initially refused to decide the appeal of the first version of the Act because the Michigan Legislature amended the Act in 2012. The court found that the amended Act furthered Michigan's proprietary goal of improving efficiency in public construction projects, and the act was no broader than was necessary to meet those goals. Thus, the law was not preempted by the NLRA and was enforceable.

The court noted that the amended Act replaced Section 5, which had previously barred government spending on any project that included a contract or a subcontract that contained a PLA. The new Section 5 only barred governmental units from entering into PLAs themselves. It also forbade governmental units from discriminating against bidders on public projects based on whether the bidder had entered into a PLA. The legislature also added a new section to the Act stating that the Act " does not prohibit a governmental unit from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party " to a PLA so long as entering into that PLA " is not a condition for award of the contract, grant, tax abatement, or tax credit. "

Judge Karen Nelson Moore dissented finding that the amended Act was preempted by the NLRA.

The State may now enforce the provisions of the Fair and Open Competition in Governmental Construction Act. This will prevent Michigan governmental units from requiring PLAs. The Act does not prohibit contractors, who have construction contracts from a governmental unit, from entering into PLAs or requiring its subcontractors to sign a PLA. As the court noted, "Private entities, including contractors working on government projects, remain free to enter into PLAs. The law's effect is limited to forbidding governmental units from entering into PLAs and then forcing the terms and conditions found within on bidders, contractors, and subcontractors."

If you have any questions about the Fair and Open Competition in Governmental Construction Act or project labor agreements, you may contact Thomas P. Brady at (313) 965-8192 or tbrady@clarkhill.com , Marshall W. Grate, (616) 608-1103 or mgrate@clarkhill.com or another member of Clark Hill's Labor and Employment, Municipal and School, and Construction groups.

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