Bond Case Briefs

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Internatl. Bhd. of Elec. Workers Local Union No. 8 v. Bd. of Defiance Cty. Commrs.

Court of Appeals of Ohio, Third District, Defiance County - November 25, 2013 - Slip Cop - 2013 -Ohio- 5198

Union filed a R.C. 4115.16(B) interested party prevailing wage enforcement action against County, alleging violations of the Ohio prevailing wage law during a Defiance County building project at the Historic Jail Building (the "Project).

The County began planning the Project in Fall 2009. The County then advertised for bids on the Project, initially stating that Ohio prevailing wage law would apply to the Project. On December 24, 2009, the County adopted Resolution No. 09–12–848, which declared the entire area within the County as a "Recovery Zone." On February 4, 2010, the County issued County Building Improvement General Obligation Bonds, Series 2010 (Federally Taxable—Recovery Zone Economic Development Bonds) (the "Bonds") to finance the construction of the Project. The United States Treasury agreed to pay the County an amount equal to 45 percent of the interest payable on the Bonds, which triggered the application of the Davis–Bacon Act. Funding for the Treasury payments derived from the American Recovery and Reinvestment Act ("ARRA").

On January 5, 2010, the County requested that each of the lowest bidders for the Project execute an acknowledgment stating that the provisions of Ohio prevailing wage law no longer applied, and that instead, the provisions of the Davis–Bacon Act applied to the Project. Each of the bidders executed the acknowledgments, which were then attached to the original construction contracts. On February 4, 2010, the Bonds were issued by the County and sold to Fifth Third Securities, Inc. The County deposited the proceeds from the Bonds into the County's Permanent Improvement Fund, which was used to pay for the construction of the Project.

Meanwhile, the County deposited the Treasury's reimbursement payments into a Bond Retirement Fund in order to extinguish its interest and principal obligations under the Bonds. Although no money from the Bond Retirement Fund was transferred into the Permanent Improvement Fund, the funding for the Project was obtained from the Bonds that will be retired through the Bond Retirement Fund. Checks to pay Project expenses were linked to the Permanent Improvement Fund.

The Union argued that the trial court erred by finding that the County was exempted from the Ohio prevailing wage law under R.C. 4115.04(B)(1). According to Local No. 8, the funds that were actually used to construct the Project came from the proceeds of the sale of the Bonds, which were deposited in the County's Permanent Improvement Fund and thus it was the County's Permanent Improvement Fund that paid for the "actual" construction of the Project. Thus, the federal funding, which was deposited into the Bond Retirement Fund, did not contribute to the actual construction of the Project. Like the trial court, found that this argument was "contrary to reason and common sense."

The appeals court concluded that federal funds were used in the construction of a public improvement, and therefore, the Project is exempted under Ohio prevailing wage laws under R.C. 4115.03(B). As such, it was proper for the trial court to grant summary judgment in favor of the County and to deny Local No. 8’s motion for summary judgment.