

Bond Case Briefs

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PREVAILING WAGE ACT - PENNSYLVANIA

Ursinus College v. Prevailing Wage Appeals Board

Supreme Court of Pennsylvania - February 21, 2024 - A.3d - 2024 WL 696765

Private, non-profit college sought review of decision by Pennsylvania Prevailing Wage Appeals Board which reversed the decision of the Department of Labor and Industry, Bureau of Labor Law Compliance, concluding that construction project undertaken by college and financed by bonds issued by public authority was “public work” covered by the Pennsylvania Prevailing Wage Act (PWA), entitling members of labor union to prevailing minimum wages for project work already completed.

The Commonwealth Court reversed. Discretionary review was granted.

The Supreme Court held that the project was not paid for in whole or in part with public funds and, thus, did not constitute a “public work” within meaning of the PWA.

As shown by relevant dictionary definitions, plain reading of phrase “paid for in whole or in part out of the funds of a public body,” as used in provision of the Pennsylvania Prevailing Wage Act (PWA) defining “public work” to mean construction, reconstruction, demolition, alteration, and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where estimated cost of total project is in excess of \$25,000, requires the work to be marked by the receipt of payment, in whole or in part, from available pecuniary resources from or possessed by the Commonwealth of Pennsylvania, any of its political subdivisions, any authority created by the General Assembly of the Commonwealth of Pennsylvania, and any instrumentality or agency of the Commonwealth of Pennsylvania.

Construction project undertaken by private, non-profit college and financed by bonds issued by public authority was not paid for in whole or in part with public funds, and so was not a “public work” covered by Prevailing Wage Act (PWA); in providing conduit financing for project, a private endeavor, authority assigned loan agreement to trustee and then sold bonds to private underwriter, which paid purchase price with private monies directly to trustee, which deposited monies into project fund and then disbursed monies to college or others designated by it for project costs, college alone repaid bond debt from its own revenue, again directly to trustee, which deposited funds into bond fund from which bondholders were paid, at no time did relevant monies flow through authority’s coffers, and neither authority nor taxpayers bore any risk or liability relative to the bonds.

For a construction project to be a “public work” covered by the Pennsylvania Prevailing Wage Act (PWA), the statute’s clear requirement that the project be “paid for in whole or in part out of the funds of a public body” cannot be satisfied by either the mere involvement of a public body in the transaction or a “but for” test pursuant to which “but for” the public body’s involvement in the transaction the project could not have occurred; allowing a “but for” test or mere involvement of the public body to suffice would require court to impermissibly add to or otherwise modify statutory language to expand the PWA’s coverage beyond its plain terms.

