Ready-mix companies prevail in AB 219 Case

U.S. District Court Judge R. Gary Klausner will soon be looking at a proposed final judgment and permanent injunction order that will kill AB 219, the controversial state law that required ready-mix concrete companies to pay their drivers prevailing wage on deliveries to public works projects.

The pending action stems from the California Central District judge granting a "motion of summary judgement" against the state March 6th, saying basically it had no case to support the their position and that the law violated the U.S. Constitution, under what is known as the "Equal Protection Clause" of the 14th Amendment, which the concrete companies used as the basis for their law suit last July.

How We Got Here

AB 219 passed in 2015, pushed through the legislature by organized labor, expanding coverage of California's prevailing wage law to include hauling and delivery of ready-mix concrete to public works projects, effective July 1, 2016 as California Labor Code Section 1720.9.

Eight concrete suppliers filed suit the day before the law went into effect to prevent enforcement of new provisions, citing the law's inclusion of only their drivers and not all materials drivers, which they said unfairly subjected their companies to AB 219's requirements.

Plaintiffs took the position that legislation enacted in AB 219 "is unconstitutional because it violates the Equal Protection Clause of the United States Constitution, arbitrarily subjecting ready mixed concrete suppliers, but not other similarly situated building material suppliers, to the prevailing wage law."

Companies involved in the suit included: Allied Concrete and Supply Co., CalPortland Company, Gary Bale Redi-Mix Concrete, Inc., Holliday Rock Co., Inc., National Ready Mixed Concrete Co., Robertson's Ready Mix, Ltd., Sprague's' Rock and Sand Company, and Superior Ready Mix Concrete L.P.

On August 22, 2016, the plaintiffs filed a motion for preliminary injunction to stop enforcement of the law, at least until the court case was settled. On October 18, 2016, Judge Klausner, a George W. Bush 2002 nominee to the federal bench, issued a written order granting the motion and ordered briefs from both sides to explain why the temporary injunction should be made permanent or not, by January 21 of this year.

The preliminary injunction stopped the Department of Industrial Relations and the state Labor Commissioner from getting prevailing wage enforcement underway. The state did warn contractors and others affected by the provisions of AB 219 that they intended to continue to pursue the prevailing wage scheme when it clears the court.

It's Not Over Yet

With the judge set to overturn the law, the state, with an unlimited legal defense fund, will likely appeal the district court decision to the 9th Circuit Court of Appeals. The oft-overturned appeals court could agree with the judge, in which summary judgement the state could appeal to the U.S. Supreme Court. If the appellate judges overturn the case they would send it back for trial.

An even more alarming "solution" to the state's case would be a new bill that meets the cement company challenge by expanding prevailing wage coverage to all public works sites if ALL material deliveries.

The original version of AB 219 included asphalt deliveries, but it was amended to affect only the cement side as the sponsors thought it would make a better test case. If the current law fails in the courts, the backers of the bill will come back to the California legislature for another try.

In the meantime, construction associations around the state are urging their members to "continue to comply with the enacted requirements of AB 219 until otherwise advised."