July 9, 1992
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ANALYSIS OF ASSOCIATED BUILDERS v. MASS. WATER RESOURCES AUTHORITY, 935 F.2d 345 (1st Cir. 1991) cert. granted, 118 L.Ed.2d 541

At the City Council meeting of July 7, 1992, the Mayor and Council requested this office to provide a written analysis of the above-entitled case in order that the Council might make an informed decision whether or not to join the National League of Cities (NLC) in supporting the position of the Massachusetts Water Resources Authority (MWRA) in this case.

The case arises out of the federally required project to clean up the pollution in Boston Harbor. As part of its bid specifications, MWRA, the agency charged with accomplishing the cleanup, placed a specification in its bid documents requiring contractors and subcontractors to comply with the terms of a previously negotiated labor agreement. The agreement in question, the Master Labor Agreement (MLA), was negotiated by the MWRA's program/construction manager, Kaiser Engineers, Inc., with the Building and Construction Trades Council and its affiliated labor organizations.

The MLA required, among other things, that contractors and subcontractors working on the project agree to hire union labor and abide by certain labor relations conditions in the course of their participation in the project. Associated Builders and Contractors, representing non-union construction industry employers, challenged the validity of the specification on several grounds.

The trial court ruled in favor of MWRA, denying plaintiffs' motion for a preliminary injunction. On appeal, the 1st Circuit Court of Appeals reversed, holding the provision requiring contractors and subcontractors to abide by the terms of a previously negotiated labor agreement to be preempted by the National Labor Relations Act (NLRA). On May 18, 1992, the U.S. Supreme Court granted certiorari. The matter is scheduled to be heard in the Court's forthcoming October term.

Local governments, through the NLC, are taking the position that the 1st Circuit's ruling is an interference with a local agency's right to require construction work on its own projects to be undertaken pursuant to union agreements, a right presumably held by the private sector. The plaintiffs' position is that the MWRA is not acting in its proprietary interest but as a market place regulator and as such its actions interfere with the collective bargaining process in violation of the NLRA. In a similar dispute, but based on a slightly different factual situation, the 9th Circuit Court of Appeals recently upheld the right of the City of Seward, Alaska to require a prehiring labor agreement in its bid specifications. Associated Builders and Contractors, Inc., et al. v. City of Seward, 92 Daily Journal (D.A.R. 7565 June 8, 1992).

The NLC, in addition to the National Institute of Municipal Law Officers, through the State and Local Legal Center, and the League of California Cities, through its Legal Advocacy Committee, will be monitoring this case closely. If it is the Council's desire to express its opinion in the Supreme Court on the case, the most efficient and least expensive manner to do so is by adding San Diego's name to any amicus brief either or both of those organizations may file in the case.

Respectfully submitted,
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