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PDC project free from wage rules

Prevailing wage - A judge says the law doesn't cover private contractors who get public help

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A redevelopment project run through Portland's urban renewal agency is not required to pay state-imposed minimum wages and benefits for construction workers, a Multnomah County Circuit judge ruled Wednesday.

Judge Henry Kantor took just minutes in a hearing to strike down arguments from the Oregon Bureau of Labor and Industries.

The labor bureau had said private construction projects that receive taxpayer subsidies and include government control over the work should pay prevailing wages.

But in this case, Kantor agreed with the Portland Development Commission. The agency said it didn't control construction because a private company managed the \$3.4 million renovation on a Northeast Portland building.

The cash at stake wasn't much -- \$225,000 according to the labor bureau. The bigger deal is the precedent the case may set for future government subsidized redevelopment and affordable housing projects.

Labor Commissioner Dan Gardner, a former union leader, has aggressively pursued prevailing wage cases to provide what his staff says are fair wages for workers. But the rulings also have made some developers skittish about the costs the standard wages would add.

Wednesday's ruling brought smiles and handshakes among PDC executives and their lawyer, Caroline R. Guest of the Portland firm Harrang Long Gary Rudnick, and unhappiness from labor bureau officials.

"On first blush, we find it hard to believe that a public agency can spend more than a quarter-billion (dollars) a year on construction projects and doesn't have to pay fair wages and benefits," said Annette Talbot, deputy labor commissioner. "That's one of the reasons we'd consider an appeal."

The state's 1959 prevailing wage law was intended to ensure that public works projects would be performed by contractors who didn't undercut standard wages and training, which would give them an advantage in contracts awarded to the lowest bidder.

The standard wages and benefits are set through annual surveys by the Oregon Employment Department. The state asks all Oregon contractors what they paid each craft during their peak week. The labor commissioner's prevailing wage is the rate that the majority of workers were paid. If there is no majority rate, the prevailing wage is set by the average wages paid. The rates vary by 14 regions across Oregon, said Christine N. Hammond, an administrator in the labor bureau.

The law requires prevailing wage for projects that use public funds and are "contracted for" or "carried on by" a public agency.

That clearly covers government work such as roads and fire stations. But there's a debate among union leaders and government officials about whether public-private projects should pay prevailing wage.

The PDC sued the labor bureau after the bureau wanted to require prevailing wage on a project the PDC subsidized but didn't own or, in its words, manage,

The case centers on a \$1.4 million subsidy to renovate a former bakery on Northeast Martin Luther King Jr. Boulevard into the new headquarters for Henry V, a corporate events planning company.

The PDC had a written agreement with Henry V to provide the financial support. But Henry V held the construction contract. With his decision, Kantor said that separation meant the project didn't equal a public work under the law.

It's not clear whether Kantor's ruling clears up what has been a murky state law.

Talbott said she's not sure how the decision will affect the labor bureau's interpretation of the law. "It's still our goal to make the law as clear as possible," she said. "We will work on that."

At the PDC, four more construction projects have been hung up by the prevailing wage debate. Rochelle Lessner, policy director, said she didn't know whether the ruling would lift any uncertainty but that her office would get to work on it today.

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