

Tuesday, November 6, 2007

Page 1

S.C. Invalidates State's Agreement With Engineers Union

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Provisions of a union agreement between the state and civil service engineers limiting the state's right to contract with private engineers conflict with Proposition 35, and are unconstitutional, the state Supreme Court ruled yesterday.

In a unanimous decision, the court upheld a Sacramento Superior Court judge's injunction prohibiting enforcement of the provisions, which were challenged by private engineers Engineers and Land Surveyors of California, Inc., John M. Humber, and Harris & Associates, Inc.

In November 2000, California voters approved Proposition 35, the "Fair Competition and Taxpayer Savings Act," adding Article XXII to the Constitution to allow the state to contract with private architectural and engineering firms for public works of improvement.

Proposition 35 created an exception to Article VII, which, with certain exceptions, has been interpreted by the courts to prohibit the state from contracting with private companies to perform services that can be performed by state employees.

Professional Engineers in California Government, a union representing civil service engineers, and the state entered into a collective bargaining agreement, Art. 24 of which gave preference to civil service engineers over outside engineers, except under specified circumstances; permitted termination of existing outside engineering contracts and transfer of the work to union engineers after the contracts were reviewed by a committee, half of whose members belonged to the union; and required actions, such as termination of outside contracts, to minimize the displacement of state engineers due to outside contracts.

The private engineers filed a petition for writ of mandate in the Sacramento Superior Court challenging the validity of the provisions and seeking injunctive and declaratory relief.

The union argued that the provisions merely created a committee to analyze nonconfidential data to determine whether the state was incurring unnecessary costs on existing contracts, and that the preference for using state employees did not violate Proposition 35.

But Sacramento Superior Court Judge Raymond Cadei disagreed, as did the Third District Court of Appeal and the Supreme Court.

Justice Carlos Moreno, writing for the high court, rejected the argument that the challenged provisions represented a legitimate exercise of the state's discretion to

choose between using state employees or private contractors under Proposition 35.

The justice cited *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, in which the court held last April that Proposition 35 implicitly repealed prior statutes regulating private contracting for architectural and engineering services. That ruling excused the state Department of Transportation, better known as Caltrans, from complying with pre-Proposition 35 statutes restricting its ability to contract out those services.

The collective bargaining agreement, Moreno said, “revives some of the restrictions on the ability of state agencies to enter into private contracts for architectural and engineering services contained in the statutes that we held in *Kempton* were impliedly repealed by Proposition 35.”

Tying the ability of the state to contract with private firms to its inability to complete the project in a timely manner using state employees is contrary to the intent of Proposition 35, the justice said.

Moreno went on to say:

“Like the Court of Appeal, we also reject Professional Engineers attempts to recast the purpose of article 24 as merely an innocuous mechanism for gathering and analyzing data on private contracting. The plain language of article 24 — allowing as it does for termination of private contracts and clearly serving to protect the interests of state employees — belies this interpretation. As the Court of Appeal majority noted, ‘By any measure, [article 24 imposes] significant restrictions on the ability of a state entity to contract out for architectural and engineering services on public works projects now and in the future.’”

The case is *Consulting Engineers and Land Surveyors of California, Inc. v. Professional Engineers in California Government*, 07 S.O.S. 6513.