

County Commissioners Improperly Rejected Lowest Bidder for Alleged Prevailing Wage Violations

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The Ohio Supreme Court ruled yesterday that the Franklin County Board of Commissioners abused its discretion and improperly disqualified The Painting Company's lowest bid for painting services on the Huntington Ballpark based upon purported prevailing wage "violations." In disqualifying the Painting Company, the Commissioners determined that the settlement agreements the Painting Company made with the Department of Commerce for alleged underpayment of prevailing wages constituted prevailing wage "violations" under the bidding criteria adopted by Franklin County for the construction of its public improvement projects.

This local bidding criteria required that a contractor certify that it had not been "debarred from public contracts or found by the State (after all appeals) to have violated prevailing wage law more than 3 times in a 2-year period in the last 10 years." Because the Painting Company had entered into multiple settlement agreements with the Department of Commerce during that time period to resolve complaints alleged against it for unpaid wages on public improvement projects, the Commissioners concluded that these settlements were "violations." The Painting Company was, therefore, precluded from receiving the contract, which was awarded to the next lowest bidder.

In ruling that the Commissioners abused their discretion by clear and convincing evidence, the Supreme Court reasoned that the Commissioners improperly determined that The Painting Company's settlements with the Department of Commerce were evidence of "violations." The Court reasoned that this interpretation was not contemplated by the bidding criteria or by any provision in the prevailing wage statute.

Because the prevailing wage statute does not define the term "violation," the Court applied the plain sense of the term "violation," as it was used in the bidding criteria, to mean that the Department of Commerce must make a formal finding that a contractor or subcontractor intentionally violated the prevailing wage laws, and all appeals are exhausted. Though the Court concluded that the Commissioners had the discretion to adopt reasonable standards for accepting bids on county-funded projects, the Court found they abused their discretion in finding a violation through the settlements because no administrative or judicial authority made a final determination of an intentional violation of the statute. Nor was there a finding that the Painting Company violated the statute in any manner as intended by the bidding criteria through the phrase "found by the state (after all appeals) to have violated the prevailing wage law."

Moreover, because the Painting Company was permitted to expressly disclaim any violation or even wrongdoing under the settlement agreements, these agreements could not constitute violations within the meaning of the prevailing wage statute for purposes of the bidding criteria at issue. Accordingly, the Court ruled that the Commissioners misapplied the bidding criteria and abused their discretion.

Now we must wait and see whether the Ohio Supreme Court's ruling initiates a proposal to change the prevailing wage statute to define what constitutes a "violation," or whether Franklin County and other public

authorities that use "quality contracting standards" will change their bidding criteria.

[Click here](#) for the case summary issued by the Supreme Court of Ohio.