

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of Southern Minnesota
Construction Co., State Contract No.
C98534

PREHEARING ORDER

A prehearing conference in this matter was held on December 1, 2000.

Appearing on behalf of the Minnesota Department of Transportation was Michael A. Sindt, Assistant Attorney General.

Appearing on behalf of Southern Minnesota Construction Co. was Gerald Duffy, Attorney at Law.

Appearing on behalf of the International Brotherhood of Teamsters Locals 160, 120, 221 and 346 was Timothy W. Andrew, Attorney at Law.

Appearing on behalf of International Union of Operating Engineers Local 49 was Paul W. Iversen, Attorney at Law.

Based upon all of the files and proceedings herein, the Administrative Law Judge makes the following:

ORDER

1. That the hearing in this matter, presently scheduled for January 9, 2001, is continued pending a final decision on the Department's authority to order a contested case proceeding in lieu of a District Court Enforcement Action. This continuance is conditioned upon Mr. Duffy's agreement to vigorously pursue an action in the Ramsey County District Court to resolve this issue. Mr. Duffy shall, no later than February 1, 2001, inform the Administrative Law Judge of the status of that district court proceeding. In the event that any of the other parties have reasonable grounds to believe that Mr. Duffy's client is not proceeding to prosecute that matter in a reasonable fashion, they shall bring a Motion to the Administrative Law Judge requesting that a continuance be terminated and the matter set for contested case hearing.

2. The parties may engage in all forms of discovery (except for depositions) during the pendency of this continuance. Mr. Duffy has agreed that his client will respond to the discovery in a reasonable manner, without asserting the pendency of the District Court action as a reason to object to any discovery requests.

3. Mr. Duffy requested that a Protective Order be issued, similar to the one used in the Duininck Bros. administrative proceeding (OAH Docket No. 6-3000-11969-2). The terms of the protective order were discussed, and parties indicated that they had no objection to it. Mr. Duffy shall prepare a proposed Protective Order, and circulate it to the parties and the Administrative Law Judge. Unless there is an objection within 10 days, the Administrative Law Judge will execute it.

4. That the Petitions to Intervene filed by International Brotherhood of Teamsters Locals 120, 160, 221 and 346 and also by International Union of Operating Engineers Local 49 are both granted, but are both limited as set forth more fully below.

Dated this 11th day of December, 2000.

S/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

MEMORANDUM

The Petitions to Intervene filed by the Teamsters and 49ers are similar to those filed in the Duininck Bros. administrative proceeding, OAH Docket No. 6-3000-11969-2. In that case, after all parties had an opportunity to present argument, the Administrative Law Judge granted limited intervention. In this Southern Minnesota case, the same facts apply, and the same result is reached. The interveners will be allowed to present one witness each, as well as the opportunity to file briefs. This decision is reached for the reasons set forth in the Memorandum to the Second Prehearing Order in the Duininck Bros. case, which is incorporated by reference into this Prehearing Order.