

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

In the Matter of Wagner Construction, Inc.
State Contract No. C01076;
State Project No. 69-654-03.

ORDER ON MOTIONS

On February 25, 2003, the undersigned Administrative Law Judge issued an Order Granting Impleader of Minnesota Aggregates, Inc. in this matter. That Order granted a Petition filed by Wagner Construction to implead Minnesota Aggregates into this case against Wagner brought by the Department of Transportation.

On February 27, 2003, Minnesota Aggregates filed Motions requesting relief from the Order. First, Minnesota Aggregates requested that the issue of impleader be certified to the Commissioner of Transportation pursuant to Minn. Rule Part 1400.7600. Secondly, Minnesota Aggregates requested an Order directing the parties to mediate the underlying dispute. Third, Minnesota Aggregates requested a continuance of the hearing (set for March 12) to allow it to engage in discovery. Finally, Minnesota Aggregate requested discovery subpoenas for a number of persons in order to prepare for the hearing.

On February 28, the Administrative Law Judge granted the Request for Continuance in order to allow the other parties to comment on the remaining motions. Both Wagner and the Department have now responded, the last response being received on March 7. No further hearings are needed to create an additional record prior to deciding these Motions.

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

ORDER

1. That Minnesota Aggregates' request for a hearing on its motions is DENIED.
2. That Minnesota Aggregates' motion for certification is DENIED.
3. That Minnesota Aggregates' motion for mandatory mediation is DENIED.
4. That Minnesota Aggregates' motion for a continuance is GRANTED.

5. That the Request for Subpoenas for Charles Groschen and Clancey Finnegan is moot as a result of the Department's letter of March 5. The Request for Subpoenas to Wayne Wilmot and Steve Ruhanan, who are employees of St. Louis County, a non-party to this proceeding, should be submitted on appropriate forms, with the appropriate fee. See, "OAH Procedural Forms and Subpoenas" on the OAH website, www.oah.state.mn.us. Assuming the standards of 1400.7000, Subp. 1 are met, the subpoenas will be issued.

Dated this 13th day of March, 2003.

_____/s/ Allan W. Klein_____
ALLAN W. KLEIN
Administrative Law Judge

MEMORADUM

The Administrative Law Judge has not granted Minnesota Aggregate's request for a hearing on these Motions. Minn. Rule Part 1400.6600 provides, in pertinent part:

"If any party desires a hearing on the motion, they shall make a request for a hearing at the time of the submission of their motion or response. ...A hearing on a motion will be ordered by the judge only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made."

In this case, Minnesota Aggregates made a full and complete argument in support of this Motion, and the Department a made a thorough Response to it. Wagner's Response was briefer, but left no doubt as to its position. There is simply no need for any further input before these Motions can be decided. And, an additional hearing would mean additional delay.

The Motion for Certification of the Impleader to the Commissioner was denied because the circumstances here do not meet the standards established by Minn. Rule Part 1400.7600. That Rule sets forth the following standards:

- A. Whether the Motion involves a controlling question of law as to which there is a substantial ground for difference of opinion; or
- B. Whether a final determination by the agency on the Motion would materially advance the ultimate termination of the hearing; or
- C. Whether or not the delay between the ruling and the Motion to certify would adversely affect the prevailing parties; or

- D. Whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or
- E. Whether it is necessary to promote the development of the full record and avoid remanding; or
- F. Whether the issues are solely within the expertise of the agency.

The Administrative Law Judge believes that the question of whether or not MnDOT has jurisdiction over a subcontractor in a prevailing wage dispute is not one where there can be a “substantial ground for a difference of opinion”. Statutory interpretation is not “solely within the expertise of the agency”. Without rehashing the analysis set forth in the Memorandum attached to the original Order, the Administrative Law Judge does not perceive an adequate basis to question the Commissioner’s jurisdiction. It is true, as Minnesota Aggregates argues, that Minnesota Aggregates will be forced to bear the cost of litigation and if, at the end of it all, the Commissioner is deemed not to have jurisdiction, Minnesota Aggregates will be harmed. But on the other hand, delaying this matter further for briefing and argument to the Commission will result in harm to Wagner and, potentially, the workers who may be due additional wages if the Department’s allegations are upheld. On balance, and considering the (un)likelihood of success before the Commissioner, Minnesota Aggregates’ Motion does not meet the standards set forth in the rule.

Wagner has expressed its opposition to mediation, and the Department does not believe mediation would be appropriate. Pursuant to Minn. Rule Part 1400.5950, subp. 3(C) the request for mediation must be denied.

The continuance was granted in order to allow Minnesota Aggregates adequate time to prepare for the hearing. It has already noticed two depositions, and the Department has agreed to make Department employees available.

A.W.K.