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Judge delays bidding process for new schools

■ A temporary restraining order prohibits the city from seeking bids after contractors sue to block a project labor agreement.

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PROVIDENCE -- A Superior Court judge has issued a temporary restraining order that prohibits the city from soliciting bids to build two new schools on a site off Hartford Avenue.

The order issued Wednesday by Judge Michael Silverstein stems from a lawsuit filed last month by independent building contractors, who maintain that a project labor agreement attached to the contracts would prohibit non-union laborers from working on the project.

The lawsuit was filed by Associated Builders and Contractors of Rhode Island, a group with 90 members; Robert F. Audet Inc., of East Greenwich, an electrical contractor; Regan Engineering Service Inc., of Providence, and two non-union construction workers.

An evidentiary hearing on the lawsuit is slated to begin at 9:30 a.m. next Wednesday.

The suit is just the latest unwelcome development in a hurried plan to build the much-needed schools in time for the start of the new school year in September.

City officials had hoped to begin construction of a middle school and an elementary school on a 10-acre site at Hartford Avenue and Springfield Street by mid-April. If that time line is followed, city officials have vowed to have the elementary school completed and the two-winged middle school more than half completed by opening day Sept. 1.

While lawyers and city officials said they do not believe the lawsuit will delay construction of the project, it appears that environmental issues surrounding the site could.

Last month, the state Department of Environmental Management issued a cease-and-desist order, directing the city to stop excavating and grating solid waste and soil on the site without DEM authorization.

Under pressure to get the site construction-ready, city officials had cleared dozens of trees from the 10-acre parcel in early March; by mid-month, they had begun digging holes and moving soil, without DEM authorization -- an action prohibited by the state when the

land contains contaminated areas.

The cease-and-desist order says the city must stop all work at the site until after DEM reviews a report detailing the contamination, reviews the city's plan to clean it up and gives its approval for the proposed cleanup plan.

Paul Phillips, the lawyer representing the plaintiffs, said he does not expect the lawsuit to delay the start of construction on the two new schools, although he said the hearing is expected to include witness testimony and could last two or three days.

Phillips said his clients oppose the city's use of project labor agreements -- agreements which he says require contractors to hire only union workers on city projects. Phillips and his clients contend the agreements shut out a large part of the construction work force, which they maintain is 80 percent non-union.

By restricting the eligible work force, the city eliminates competition, Phillips said. "When you eliminate competition, the price goes up."

Phillips estimates that the construction costs associated with the \$30 million to \$35 million Hartford Avenue schools project will increase by \$3 million to \$4 million if contractors are forced to hire only union labor.

The city began using the project labor agreements (PLAs) for large, city-financed projects as a result of an executive order signed by Mayor Vincent A. Cianci Jr. in February 1998. At the time, Cianci predicted the PLAs would eliminate job slowdowns and delays caused by labor disagreements and strikes.

Also as part of the PLA accord, Cianci called for 10 percent of construction work to be set aside for businesses owned by women and minorities and for city residents to be given preference in hiring. The mayor said those provisions would expand opportunities for women, minorities and city residents to participate in city-financed projects.

Phillips contends that such opportunities are curtailed, not expanded, under those terms. He will argue that the PLAs create "a monopoly," because instead of 5 or 6 contractors bidding for a job, only one or two contractors will bid.

Even though non-union contractors could win the bid, they would be required to hire only union workers, who would then be referred to the contractors by union halls, Phillips said.

Phillips said there has not been a history of labor strife in the city between union and non-union laborers working on a project, which he implied would negate the need to add a clause that would prevent a work slowdown. He maintains that union and non-union groups could work together harmoniously.

"This issue [the legality of PLAs] has never been decided in Rhode Island," Phillips said. However, he cited two cases of high school

construction projects in Massachusetts where PLAs were challenged and eventually struck down.

The plaintiffs have also filed two other lawsuits seeking to block project labor agreements involving the construction of the Camden Avenue Recreation Center and the Courtyard by Marriott Hotel being built behind Union Station downtown. Those lawsuits are pending in Superior and U.S. District Courts, respectively.

The plaintiffs also tried to block a PLA attached to construction of the Fleet Skating Center last year. Work on the project was completed before the case could be argued; ultimately, the case was dismissed in Superior Court.

Even without the lawsuit, the road to construction at the Hartford-Springfield site has been far from smooth.

When the city first announced its plan to build the schools on the formerly wooded parcel, several neighbors raised concerns about whether the site was environmentally safe, given the fact that from 1965 to 1970 a portion of it served as a municipal landfill.

Moderate but excessive levels of petroleum, lead and arsenic were subsequently found at the site by a private consultant hired by the city to test the soil.

Alan Sepe, acting director of public property, has been working with DEM to draft a remediation plan to contain or remove the contaminated soil. His plan needs DEM approval before construction can begin.

Sepe said the cease-and-disorder came as the result of "a misunderstanding" between the city and DEM about what could and could not be done at the site.

Two DEM officials verbally ordered workers to stop digging when they visited the site on March 18 after learning that city workers had dug a huge hole and were moving soil and waste to another portion of the land.

The next day, DEM served the city an official order to stop all site work.

Gregory Fine, DEM supervising engineer for site remediation and brownfields, said city officials were digging in an area that included the former dump, but later said they did not know the area was part of the dump.

"We disagreed. They misunderstood; they apologized," Fine said.

Fine said his concerns were that there were no environmental officials overseeing the digging, that DEM would require the area to be wet before digging so that contaminated dust would not circulate through the neighborhood and that DEM was still in the process of completing its investigation of the site. That investigation would be hampered if soil and other materials were being moved from place to place, Fine said.

``Putting a school on an area that has been contaminated is not impossible," Fine said. But, ``if you're going to do that, you have to do it the right way."

The city fenced off the holes left at the site, posted warning signs and hired a guard to watch over the property, DEM officials said.

Stephanie Powell, a DEM spokeswoman, said the city turned in its remediation plan a week ago. DEM officials have begun reviewing the consultant's lengthy report of the test results, which could take two weeks, she said. Then they will begin reviewing the city's remediation plan.

Sepe said this week that he does not foresee a problem having all of project completed on time, as long as he is able to begin construction work around his initial target date of April 9 or April 10. But DEM's review of the report and then the plan will probably extend beyond those dates.

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[Back to top](#)

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