

Court rules in Portuguese business case, but fight isn't over

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NEW BEDFORD — Portuguese-owned construction companies cannot be considered minority-owned businesses for state contracts, a judge has ruled, but the fight may be far from over.

A new state study could serve as the basis to re-classify Portuguese businesses as such, and tens of millions of dollars are at stake.

Judge Douglas Wilkins ruled Feb. 20 in Suffolk Superior Court that the state cannot classify Portuguese-owned businesses as minority-owned under existing law. He said Eydie Silvia, then-director of the Supplier Diversity Office, arbitrarily certified them as such in 2007, without investigating whether people of Portuguese descent were socially or economically disadvantaged.

“At no time did SDO possess any evidence that persons of Portuguese origin have ever suffered discrimination in the construction industry in Massachusetts,” Wilkins said in the decision.

State regulations require 10.4 percent of the value of state building contracts, not including transportation work, to go to businesses owned by minorities or women.

A woman business owner, Janet Butler of Federal Concrete in Hopkinton, filed the lawsuit against the Executive Office for Administration and Finance after the general contractor on a school in Abington rejected her bid in favor of two Portuguese-owned firms in 2015.

Although Wilkins' ruling blocks the practice indefinitely, he acknowledged in the decision that things could change if a disparity study shows strong evidence of past discrimination against Portuguese-owned businesses. During the course of the case, the state's Division of Capital Asset Management and Maintenance commissioned such a study, and it was released in December.

Now, supporters and detractors are arguing over the results.

Sen. Michael Rodrigues, D-Westport, who supports the minority designation, told The Standard-Times the study shows Portuguese-owned businesses suffer approximately the same level of discrimination as women-owned businesses.

And he said the historic discrimination is clear, because many local people can recall a time when Portuguese people were insulted with slurs and mistreated in other ways. He said they were excluded from golf courses, for example.

He plans to continue to follow the issue for his constituents, many of whom are business owners of Portuguese descent.

“It means a lot to them,” he said.

But Jeffrey Pyle, an attorney for Federal Concrete, disputes Rodrigues’ assessment of the study.

“Everybody knows what the slurs were for Italians and Irish a hundred years ago,” he said in an interview. The issue is discrimination today, he said.

Pyle said the study found that Portuguese owners of construction firms make more money than non-Portuguese white men who own construction firms. He also said the study eked out the conclusion the state wanted by lumping Brazilian Portuguese-speakers with Portuguese people from Europe.

The executive summary of the study indicates that it found “statistical evidence consistent with the presence of business discrimination” against business owned by minorities, women, and people of Portuguese descent. The study analyzed multiple industries, not just construction.

Court documents show that in 2015, Portuguese-owned companies received more than \$15 million in minority construction contracts — more than 61 percent of the total awarded under the minority regulations.

Some SouthCoast businesses lost significant income after the court issued a preliminary injunction in April 2016.

Victor Fernandes, who co-owns Fernandes Masonry in New Bedford with his brothers, said the company lost a lot of work and laid people off. At one point he had 120 employees, and the payroll fell to about 70 sometime during the period from 2015 to 2017, he said.

Fernandes said his view is that state construction contracts should be awarded without any preference for particular groups, but if it happens for some, it should happen for Portuguese people, who in some cases speak little English.

“Why should they lose their jobs over somebody else?” he said.

Gov. Charlie Baker’s press secretary, Brendan Moss, said in an email that the administration is carefully reviewing the court ruling and assessing its legal options.

With regard to the study, the state plans to hold [stakeholder input meetings](#), according to Baker's press office.

The ruling does not affect transportation work, for which Portuguese-owned businesses do have diversity status.