King County

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The Honorable Bob Ferguson
Attorney General
State of Washington
1125 Washington St. SE
PO Box 40100
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Dear Attorney General Ferguson:

As you are aware, a dispute between several concrete companies and their union has now halted most public and private construction in the King County region. Seven King County government projects have already been impacted, including the construction of Metro's Rapid Ride H Line and our Wastewater Treatment Division's Georgetown Wet Weather Treatment Facility. Many private housing development projects, and other public projects that impact the County – such as Sound Transit Light Rail expansion and Washington State Convention Center expansion – are also being delayed. This interruption in concrete supply, nearing its fourth month, has cost thousands of jobs and tens of millions of dollars, and threatens the region and state's post-COVID 19 economic recovery.

Because of this dramatic impact on our region, my office has been involved in trying to urge all parties to return to the negotiating table. After many of these conversations, I am concerned that coordination among the concrete companies has created an effective oligopoly and rendered fair and effective bargaining, including mediation, untenable. I request that your office investigate whether this apparent arrangement among the companies controlling nearly the entire concrete supply for our region, including industry bid practices and market allocation, is contrary to federal or Washington state law.

By way of background, the King County region's concrete industry is primarily controlled by five companies: Cadman Materials, Inc., CalPortland, Lehigh Cement, Salmon Bay Sand and Gravel Company, and Stoneway Concrete and each company has its own (now expired) collective bargaining agreement with Teamsters Local 174.

- **Cadman** and **Lehigh** are owned by a multinational company, Heidelberg Cement Group and managed by their North American subsidiary, Lehigh-Hansen.
- **CalPortland** is owned by Taiheiyo Cement, a multinational company.

- **Stoneway Concrete** is part of a family-owned American company, the Gary Merlino Construction Company.
- **Salmon Bay** is also a family-owned American company.
- **Teamsters Local 174** represents 272 drivers, 5 terminal attendants, 6 quality control employees, 7 yard/batch employees, 2 mechanics and 2 lab employees at Cadman, CalPortland, Lehigh, Salmon Bay, and Stoneway. Local 174 members work under seven contracts that are simultaneously bargained with all five companies. Local 174 also represents 34 drivers under a contract bargained separately with Gary Merlino Construction.

The seven collective bargaining agreements expired on July 31, 2021. On November 19, 2021, the 34 Teamster drivers at Gary Merlino Construction went on strike alleging Unfair Labor practices and violations of federal labor law. On December 3, 2021, Local 174 members initiated a general strike asserting that all five companies were violating federal labor law by failing to bargain in good faith for a successor agreement.

Over the last several months, I have heard a variety of concerns – some noted below – that the companies were coordinating in a manner that may raise serious legal concerns. While some coordination in labor negotiations may be permissible, the companies cannot boycott, price fix, or otherwise collude in bargaining with their employees' union. I request that your office investigate these concerns to ensure that no improper coordination is taking place.

- Local 174 members have reported hearing from representatives of the companies that they are planning to force members to strike into the spring, which will cause members' healthcare coverage to lapse. Such an event would likely increase the companies' power at the bargaining table.
- As concrete is sold to contractors via sales contracts whereby a concrete manufacturer provides a per yard quote for specific jobs and then a contractor accepts the quote by signing, it is believed that those contracts may allow manufacturers to increase their price quotes based on significant changes to the union contract. This would create an opportunity for the companies to invalidate their prior quotes to contractors.
- Local 174 members were told by representatives of Salmon Bay that the company was willing to concede to some of the union's demands in contract negotiations, but that Salmon Bay was threatened by the other four manufacturers that they would be boycotted by the other companies, which would refuse to sell them raw materials, essentially putting them out of business (it is believed that Salmon Bay purchases its stone and gravel from CalPortland). As I understand it, Salmon Bay was subject to similar retaliation from some of these same companies several years ago when there was a similar work stoppage with the operating engineers.
- A lawyer for Cadman told union representatives during negotiations that Cadman would be willing to agree to contract terms if those terms were agreed to by its competitors, evidencing coordination amongst the manufacturers in union negotiations.

Concrete supply requires precise travel times, so it is natural that sand and gravel companies may choose to focus on serving certain geographies. Below are some of the concerns I've heard that warrant further investigation to ensure that the companies are not limiting their service to specific geographies in ways that amount to bid-rigging and/or market allocations.

- Prior to Cadman's recent purchase of Corliss, a concrete manufacturer which used to purchase all of its ready-made concrete powder from Cadman, Cadman did not typically bid jobs in King County south of SeaTac, whereas Corliss would do most of its jobs in south King County and in north Pierce County.
- Further, Cadman has all of the Sound Transit light rail concrete contracts on the Seattle to Northgate line and on the Seattle to Redmond line, but no contracts on the line that go south from Seattle to the airport. Because concrete suppliers are sub-contractors to the contractors chosen by public agencies, it is unclear if Cadman bid on the south line or if there was an agreement amongst the manufacturers on who would bid which portions of the Sound Transit light rail system.
- Additionally, the smaller two Seattle players, Stoneway and Salmon Bay, seem to have split up their territories with Stoneway only taking work south of the Ship Canal Bridge and Salmon Bay only taking work north of the Ship Canal Bridge.

This work stoppage is dramatically impacting our region's economic recovery and has impacted thousands of working families through job losses. As such, it is my hope that your office will urgently investigate these issues to determine if any further action is warranted.

Thank you for your prompt attention to this matter.

Sincerely,

Dow Constantine

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