

# Solid Waste Management Services: Ohio Appellate Court Addresses Whether Certain Services Constituted Grounds For Contract Termination



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The Court of Appeals of Ohio (“Appellate Court”) addressed in a May 12th Decision and Judgment (“Decision”) an issue arising out of a solid waste and transport agreement between two counties. See *Board of County Commissioners of Erie County v. Joseph Hintz, et al.*, 2023 WL 3404989.

This issue addressed was whether certain service deficiencies constituted a breach of the agreement.

The Erie County Board of Commissioners (“Erie”) and the Huron County Board of Commissioners (“Huron”) reached a five-year intra-government agreement for the provision of solid waste services. As part of the agreement, Erie agreed to perform solid waste services for Huron through subcontractors.

The agreement stated, in relevant part, that Erie “agrees to provide transport trailers equipped with automatic harpers to transport waste.” Further, Erie was responsible for any and all fines, penalties, and assessments leveled by the environmental agencies or state or federal courts.

Two years into the agreement, Huron became aware of numerous, routinely occurring substandard service issues. Specifically, Erie’s subcontractor was not providing enough solid waste trucks to transport waste. This resulted in the accumulation of residual solid waste debris at Huron’s transfer station in violation of Ohio Environmental Protection Agency regulations. Also, many of the trucks that it provided did not have the required tarps to contain loose materials. This resulted in waste spillage onto public roadways causing public nuisance conditions.

Due to Erie’s failure to correct the service deficiencies, Huron terminated the agreement prior to its expiration date. A substitute solid waste services provider was retained to complete the services for the remainder of the agreement’s term.

Erie sued Huron for breach of contract. Huron counterclaimed for the same.

Erie was found to be liable to Huron for all increased costs associated with securing an alternative solid waste contractor to complete the agreement’s term. The damages amounted to \$169,013.67.

Erie argued on appeal that the service deficiencies were not enforceable contract terms. Instead, they were argued to constitute “mere voluntary customer service efforts.” They were characterized as “unenforceable oral understandings from which no contractual liability can be attributed” to Erie.

Huron responded that the service issues, the violations of which ultimately resulted in the early termination of the agreement and the procurement of an alternative solid waste services provider, were explicitly and implicitly part of the document.

The Appellate Court agreed with the lower court's finding that the requirements regarding the number of waste trucks and the tarps:

...were terms of the parties' contract and not mere customer service items... and when Erie's subcontractor failed to meet all of these terms, Erie was in breach of its' contract obligations to Huron in significant ways.

The Appellate Court cited the explicit language of the contract which stated that:

"[Erie] agrees to provide transport trailers equipped with automatic harpers to transport the waste," and that "[Erie] shall be responsible for any and all fines, civil penalties, and assessments leveled by US EPA, Ohio EPA, or any federal or state court for failure to meet, perform, or comply with any and all applicable federal, state, and local laws, ordinances, rules, and regulations relating to the EC landfill." It also pointed to the record which "further reflect[ed] that Erie's conduct and performance during the course of [the agreement] consistently reflects the mutual understanding and agreement of the contracting parties that these obligations and duties fell upon Erie."

Email communication between the parties was also considered. An email from Erie asking its subcontractor to commit to the task of providing adequate trucks equipped with the proper equipment was noted. Erie also sent its subcontractor an email stating that "Huron County has reached the end of their patience [with the deficiencies]."

Erie also contended that Huron acted in violation of [R.C. 121.22](#) by improperly altering the agreement without public meetings. R.C. 121.22 states in relevant part: that "[t]his section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." [R.C. 121.22\(A\)](#). "[A]ll meetings of any public body or declared to be public meetings open to the public at all times." [R.C. 121.22\(C\)](#).

The Appellate Court found no legal authority in support of the notion that R.C. 121.22 operates so as to abrogate the possibility that contracting government entities, like any other contracting parties, may potentially operate in such a way so as to modify the details of their contract over the course of [the] contract. The subject agreement was not improperly altered without public meetings, as suggested by Erie."

A copy of the Decision can be downloaded [here](#).