



THE OHIO PREVAILING WAGE LAW APPLIES ONLY TO WORK PERFORMED ON THE SITE OF A PUBLIC IMPROVEMENT PROJECT.

On June 17, 2009, the Ohio Supreme Court ruled that Ohio's prevailing wage law applies only to persons whose work is performed directly on the site of a public improvement project. See *Sheet Metal Workers' Internatl. Assn., Local Union No. 33 v. Gene's Refrigeration, Heating & Air Conditioning Inc.*, 2009-Ohio-2747. The Court also ruled that a labor organization that obtains written authorization to represent one employee of a contractor on a public improvement project does not have standing as an "interested party" to sue for violations of the prevailing wage law on behalf of any other employee on the project.

Ohio's prevailing wage law requires contractors and subcontractors on public improvement projects to pay workers the so-called "prevailing wage" in the locality where the project is to be performed. The prevailing wage law authorizes an "interested party" to file a complaint alleging a prevailing wage violation. A labor organization can be an "interested party" under the statute.

In *Gene's Refrigeration, Heating and Air Conditioning* was awarded a contract to install an HVAC system on a public improvement project. Elie Cherfan, an employee of Gene's, worked in a fabrication shop that was not located on or adjacent to the project site. His job was to fabricate sheet metal into duct work that was later installed on the project site. Gene's paid Cherfan and other employees at its off-site fabrication shop at hourly rates that were lower than the prevailing wage.

Cherfan, but no other employees, signed a form authorizing the Sheet Metal Workers union to file a prevailing wage complaint on his behalf based on the company's failure to pay him the prevailing wage for his work performed at the off-site fabrication shop.

The Ohio Supreme Court ruled, with respect to the union's standing to sue as an "interested party," that a labor organization that obtains written authorization to represent one employee of a contractor on a public improvement project does not have standing as an "interested party" to sue for violations

of the prevailing wage law on behalf of any other employee on the project. The Court ruled that one employee's individual authorization does not convey carte blanche authority to the union to pursue claims on behalf of employees who did not authorize such action. As a result, the Court held that the union had standing to pursue prevailing wage claims on behalf of Cherfan only.

With regard to off-site employees, the Court held that the prevailing wage law does not mandate that prevailing wages be paid to employees who work off-site, even if they are working on materials to be used on or in connection with a public improvement project. Applying this rule to Cherfan, the Court ruled that although the materials he fabricated were ultimately used at the project site, he was not entitled to be paid the prevailing wage for any work he did not perform at the project site.

THE OHIO PREVAILING WAGE LAW APPLIES ONLY WHEN PUBLIC FUNDS ARE USED FOR THE CONSTRUCTION OF A PUBLIC IMPROVEMENT PROJECT.

On June 30, 2009, the Ohio Supreme Court ruled that the prevailing wage law does not apply to work performed on a private development construction project that was funded in part by state and federal economic development grants. See *Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa Cty. Improvement Corp.*, 2009-Ohio-2957. In this case, the Court was asked to determine whether the mere expenditure of public funds by a public institution triggers the prevailing wage requirement. The Court answered in the negative, holding that Ohio's prevailing wage law applies only when a public authority, including a public institution, spends funds to construct a "public improvement," which by definition must be constructed by a public authority or must benefit a public authority.

In *Ottawa Cty. Improvement Corp.*, a private company in the business of selling security systems, AV equipment, TVs, and home-theater systems was awarded federal and state economic development grants to purchase and renovate the building out of which it had been operating. The federal grant specified that all of the loan proceeds had to be used for

acquisition of the land and building. Similarly, the state grant was designated as additional financing for the purchase of the land and the building and for the acquisition of new equipment. Neither of the grants permitted the grant money to be used for actual construction work.

Upon learning of the public funding for the project, the Northwestern Ohio Building and Construction Trades Council filed suit seeking to prevent the project from moving forward, claiming that all work performed as part of the project must be subject to the prevailing wage law because it involved the expenditure of public funds on a construction project.

The Supreme Court disagreed, noting that, “Northwestern’s argument that *any* spending of public funds by an ‘institution’ would require payment of the prevailing wage would unjustifiably expand the scope of prevailing wage to include projects that are not public improvements, that are not constructed by a public authority, or that do not benefit a public authority.”

The Court reasoned that “an institution’s expenditure of public funds triggers the prevailing wage requirement only when the project meets the statutory criteria for determining the applicability of prevailing wage, i.e., where a public authority using public funds contracts to construct a public improvement.”

Applying this legal analysis to the case before it, the Court ruled that the project was not the “construction” of a “public improvement” by or for a public authority. Consequently, because no public funds were actually used to finance any construction of a public improvement benefiting a public authority, the Court ruled that the prevailing wage law did not apply in this case.

For More Information

Please contact a member of our Labor & Employment Law Practice Group at (419) 249-7100.

Justice G. Johnson, Jr.
johnson@marshall-melhorn.com
419.249.7115

David L. O’Connell
oconnell@marshall-melhorn.com
419.249.7135

Ruth Meacham
meacham@marshall-melhorn.com
419.249.7128

Roman Arce
arce@marshall-melhorn.com
419.249.7111

Michael S. Scalzo
Scalzo@marshall-melhorn.com
419.249.7129

Jennifer J. Dawson
dawson@marshall-melhorn.com
419.249.7139

Jill K. Bigler
bigler@marshall-melhorn.com
419.249.7147

About Marshall & Melhorn, LLC

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Business
-NonProfit
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Main Office
Four Seagate, 8th Floor
Toledo, OH 43604
419.249.7100
Fax: 419.249.7151

Michigan Office
204 S. Macomb Street
Monroe, MI 48161
734.457.2444

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