

Supreme Court of Ohio Limits Scope of State's Prevailing Wage Law

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Does the Ohio prevailing wage law require payment of prevailing wages to persons whose work is performed off the site of a public improvement project? No, according to a 6-1 ruling by the Supreme Court of Ohio in Sheetmetal Workers Int'l Ass'n. v. Gene's Refrigeration, Heating and Air Conditioning, Inc. The Court also held that a labor union that obtains authorization to represent a contractor's employee does not have standing as an "interested party" under Ohio law to pursue prevailing wage violations on behalf of any other employee on the project.

Gene's Refrigeration was awarded a contract to install an HVAC system. Gene's paid its employees who worked on the project site the prevailing wage. Elie Cherfan, who worked for Gene's in a shop that was not located on or adjacent to the project site, fabricated sheet metal into duct work that was installed in the fire station and other sites. Cherfan was not paid the prevailing wage for his work.

Cherfan signed a form authorizing a union to file a prevailing wage complaint on his behalf. The union was not the bargaining representative for Gene's employees. The union filed a prevailing wage lawsuit on behalf of all employees working on the project, not just Cherfan.

Ohio law requires payment of prevailing wages for labor "upon any material to be used in or in connection with a public work." The union argued that this language required prevailing wages for

work performed offsite in connection with the project. The Court rejected this interpretation. It first noted that most of the statute refers to work performed "on" the project. Additionally, the Court reaffirmed its 1934 decision holding that offsite work was not subject to the prevailing wage law. Finally, the Court examined industry custom and the potential consequences from a ruling to the contrary. In light of these considerations, the Court held that prevailing wages apply only to persons whose work is performed directly on the site of the public improvement project.

The Court also ruled that obtaining written authorization to represent one employee does not give a union standing to pursue violations of the prevailing wage law on behalf of any other employee on the project. In doing so, the Court rejected the union's argument that the authorization signed by Cherfan entitled it to pursue prevailing wage violations for employees other than Cherfan. The Court noted that Cherfan's authorization designated the union to represent only Cherfan. Thus, it did not "convey *carte blanche* authority to the union to pursue claims on behalf of persons who have not agreed to such actions."

Contractors, developers, and public authorities engaged in projects to which the prevailing wage may be applicable will want to review this decision to determine its impact.

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