

**IN THE SUPREME COURT OF OHIO**

**SHEET METAL WORKERS'  
INTERNATIONAL  
ASSOCIATION, LOCAL  
UNION NO. 33**

Appellee,

v.

**GENE'S REFRIGERATION,  
HEATING & AIR  
CONDITIONING, INC.**

Appellant.

\*  
\* On Appeal from the Medina County  
\* Court of Appeals, Ninth Appellate  
\* District  
\*  
\* Supreme Court Case No. 2008-0780  
\*  
\* Court of Appeals  
\* Case No. 06CA0104-M  
\*  
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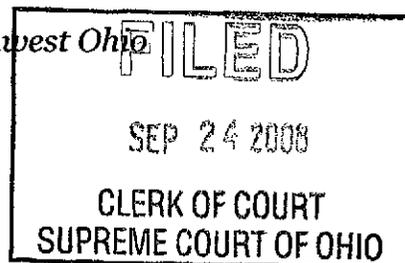
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**BRIEF AMICUS CURIAE OF THE SHEET METAL CONTRACTORS  
ASSOCIATION OF NORTHWEST OHIO, INC.**

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## **I. ISSUE PRESENTED FOR REVIEW**

Whether Ohio's Prevailing-Wage Law Applies to Employees of a Contractor Who Perform Off-Site Work on Material to be Used in or in Connection with a Public Improvement.

## **II. CONCERN OF THE AMICUS CURIAE**

"The prevailing wage law evidences a legislative intent to provide a comprehensive, uniform framework for, inter alia, worker rights and remedies vis-a-vis private contractors, subcontractors and materialmen engaged in the construction of public improvements in this state. \* \* \* Above all else, the primary purpose of the prevailing wage law is to support the integrity of the collective bargaining process by preventing the undercutting of employee wages in the private construction sector."<sup>1</sup>

This oft-quoted language states the precise concern of the Sheet Metal Contractors' Association – preventing the undercutting of employee wages in the private construction sector.

The decision of the Ninth District prevents this undercutting by putting all contractors on equal footing when it comes to bidding for and working on projects. All contractors take into account material and labor costs when bidding projects. The sheet metal industry, in particular, involves large amounts of shop time because the duct work for each project must be fabricated, a task which is done off-site, before it can be installed on-site.

Through the collective bargaining process, union sheet metal contractors have a set wage to pay for each hour of work. There is no difference whether the hours are worked at a project site or whether the hours are worked in a shop

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<sup>1</sup> *Int'l Union of Operating Engineers, Local 18 v. Dan Wannemacher Masonry Co.* (1988), 36 Ohio St. 3d 74, 78 (quoting *State ex. rel. Evans v. Moore* (1982), 69 Ohio St. 2d 88, 91.

fabricating duct work for a project. The scheduled prevailing wage rate for off-site work is the same one that applies to on-site work.

Union contractors agree to pay the prevailing wage for all hours worked. If non-union contractors are able to pay a greatly reduced wage for the off-site portion of the contract, the integrity of the collective bargaining process is frustrated, and the level playing field is lost.

If the purpose of the prevailing wage is to prevent the undercutting of employee wages when working upon a public improvement, the law must be construed to cover the entire contractual undertaking, and not be limited to only on-site work. The law is written to include the fabrication of material used in a public improvement.

The Sheet Metal Contractors' Association of Northwest Ohio, Inc. is concerned with maintaining a fair process under which union and non-union contractors may bid on equal footing without the possibility of being undercut by those paying less for project-related shop work.

### **III. THE SHEET METAL CONTRACTORS' ASSOCIATION OF NORTHWEST OHIO, INC.**

The Sheet Metal Contractors' Association of Northwest Ohio, Inc. ("Sheet Metal Contractors' Association") is an association of unionized sheet metal contractors. The Association is a member of the Sheet Metal and Air Conditioning Contractors' National Association. ("SMACNA"). The local Association represents numerous sheet metal contractors and their employees throughout Northwest Ohio.

#### **IV. STATEMENT OF THE CASE**

Sheet Metal Contractors' Association adopts the statement of the case as presented by Appellee, Sheet Metal Workers' Local Union No. 33.

#### **V. LEGAL ARGUMENT OF THE AMICUS SHEET METAL CONTRACTORS' ASSOCIATION OF NORTHWEST OHIO, INC.**

The purpose of the prevailing wage law is to prevent the undercutting of employee wages in the private construction sector. The intent of the law as stated by this Court in *State ex rel. Evans v. Moore*, and the intent of the legislature as evidenced in the language of R.C. 4115.05 is the same – to support the integrity of the collective bargaining process by preventing the undercutting of employee wages in the private construction sector. This is done by establishing equal wage rates for all contractors working upon a public improvement.

*Clymer v. Zane* was decided in 1934 and restricted prevailing wage applicability to on-site work only.<sup>2</sup> The operative language in R.C. 4115.05 was enacted the following year, and expressly included material to be used in or in connection with a public work within the coverage of the prevailing wage. The language of the statute unambiguously applies to materials. R.C. 4115.05 clearly contemplates the inclusion of off-site work by stating which wage rate applies when the Project is in one locality and the work performed for the Project is in a separate locality.<sup>3</sup> The decision of the Ninth District limited that application to work which has an “intimate connection” with the Project.

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<sup>2</sup> (1934) 128 Ohio St. 359.

<sup>3</sup> R.C. 4115.05 (“The prevailing rate of wages to be paid for a legal day’s work \* \* \* upon any material to be used in or in connection with a public work, shall be not less than the prevailing rate of wages payable for a day’s work in the same trade or occupation **in**

The purpose of that clause of R.C. 4115.05 is clear. It creates a true balance between all contractors. Union contractors pay the same rate, the scheduled rate, for all work performed without regard to whether that work is on-site or off-site. The law applies that same rate to all persons working on, and all work performed under a public improvement construction contract. Only through this application does the prevailing wage law fully support the integrity of the collective bargaining process.

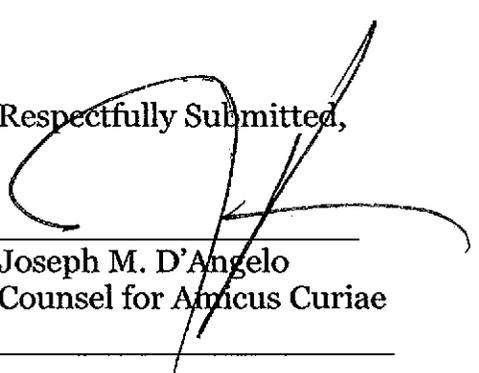
Any argument that the application of the prevailing wage law to off-site work would be unworkable is wholly without merit. Division of labor in a shop is a simple concept, especially because the project owner is likely already being billed for the time spent by the employee. When an employee is fabricating, as in this case, sheet metal for a particular project, they must be paid appropriately.

A shop employee's appropriate pay rate is also a simple concept. In this case, Mr. Cherfan was fabricating duct work. The sheet metal classification is the appropriate classification because he was fabricating sheet metal, which is clearly sheet metal work. The sheet metal rate in Medina County is the appropriate rate for the same reason.

### **CONCLUSION**

For the reasons stated above, the District of the Ninth District should be affirmed.

Respectfully Submitted,

  
\_\_\_\_\_  
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Counsel for Amicus Curiae

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**the locality within the state where such public work is being performed and where the material in its final or completed form is to be situated, erected, or used.”).**

Certificate of Service

I certify that on this \_\_\_\_\_ day of September, 2008, a copy of this amicus brief was sent by ordinary U.S. Mail to counsel for Appellants & Amicus:

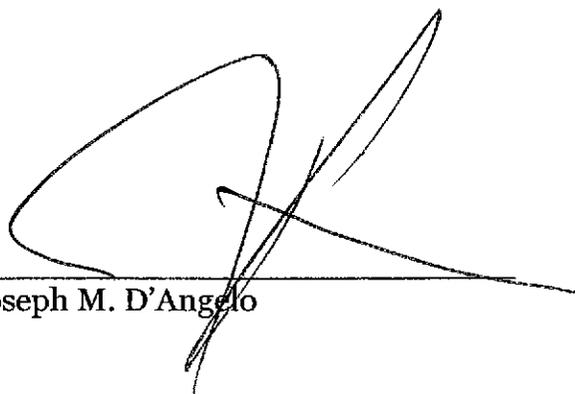
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