

IN THE SUPREME COURT OF OHIO

**State of Ohio Ex Rel.
Northwestern Ohio Building
& Construction Trades
Council, et al.,**

Relators-Appellants,

v.

**Ottawa County Improvement
Corp., et al.,**

Respondents-Appellees.

* On Appeal from the Ottawa County
Court of Appeals, Sixth Appellate
* District

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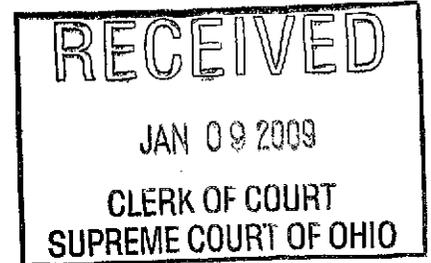
* Supreme Court
Case No: 2008-1069

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* Court of Appeals
Case No. OT-07-017

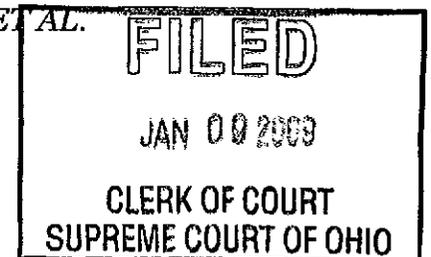
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**REPLY BRIEF OF APPELLANTS STATE OF OHIO EX REL.
NORTHWESTERN OHIO BUILDING & CONSTRUCTION TRADES
COUNCIL, ET AL.**

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Argument

The Prevailing Wage Law regulates public construction projects.¹ Public expenditures wholly unrelated to construction obviously do not come within the Law's purview, and Appellants do not claim that they do. Expenditures on office supplies, for example, clearly are not governed by the statute.² But, the Fellhauer Project is a publicly financed construction project that meets the prerequisites of R.C. 4115.03(A). As such, the Prevailing Wage Law applies.

A. "Construction" is broadly defined to include any expenditure necessary to complete the project.

The Prevailing Wage Law broadly defines "construction" in terms of the "total overall project cost."³ But, Appellee Fellhauer argues that "construction" only means the work actually performed on a public improvement project.⁴ Indeed, Fellhauer's interpretation of construction is so restrictive that it applies only to workers' wages.⁵ So that, at its extreme, even public-money expenditures on building materials would not demand prevailing wage compliance. The "total overall project cost" language, however, warrants a much broader interpretation than that suggested by Fellhauer.

¹ *State ex rel. Evan v. Moore* (1982), 69, Ohio St. 2d 88, 90-91 ("The General Assembly, in enacting the prevailing wage law, manifested a statewide concern for the integrity of the collective bargaining process in the building and construction trades.")..

² See Appellee Fellhauer's Merit Brief at 2 ("Hence, according to Appellants argument, prevailing wage laws will attach if a governmental entity provides public financing to a private company to purchase office chairs, computers and office equipment.")

³ See R.C. 4115.03(B).

⁴ Appellee Fellhauer's Merit Brief at 13.

⁵ *Id.*

“Total overall project cost” is an all-encompassing definition. Specifically, the statute treats the “project” as the entire undertaking.⁶ The Fellhauer Project consisted of land acquisition, renovation, machinery and equipment purchases, and installation in the Fellhauer building. Even the CDBG Grant agreement describes the Project as including both acquisition and renovation.⁷ Thus, the Fellhauer Project and all “projects” under the Prevailing Wage Law are understood as complete undertakings.

The General Assembly demonstrated its intent to define “construction” broadly by using the words “total” and “overall” in conjunction with “project” in the definition. The only way to give full effect to these words is to understand that they indicate that “construction” means more than just physical work. As a result, the “total overall project costs,” that is, “construction,” includes any expenditure needed to complete the project. Because the Fellhauer Project consisted of land acquisition and renovation, expenditures on acquisition were needed to complete the Project and were, thus, a part of the “construction” of the Project.

B. *The applicability of the “said sections apply” clause in R.C. 4115.03(A) is not conditioned on the satisfaction of R.C. 4115.032.*

The Prevailing Wage Law applies by virtue of the “said sections apply” clause of R.C. 4115.03(A). After defining institutional public authorities, R.C. 4115.03(A) provides that “said sections apply to expenditures of such institutions

⁶ See R.C. 4115.03(C); R.C. 4115.033; Ohio Adm. Code 4101:9-4-02(BB); Ohio Adm. Code 4101:9-4-02(FF); Ohio Adm. Code 4101:9-4-17(C).

⁷ CDBG Grant Agreement, Attachment A, III. Project Description at SUPP0023.

made in whole or in part from public funds.”⁸ Appellee Fellhauer argues that “said sections apply” refers to R.C. 4115.03.⁹ Nonsense! “Said sections apply” refers to the Prevailing Wage Law as a whole and independently triggers its application. This is so for three reasons: (1) R.C. 4115.03(A) explicitly provides that “said sections” are R.C. 4115.03 to 4115.16; (2) the Administrative Code reiterates that “said sections” are R.C. 4115.03 to 4115.16; and (3) historically, prior to the phraseology “said sections apply,” the statute said “this Act shall apply,” and it was enacted forty-five years before the General Assembly enacted R.C. 4115.032.

First, the text of the statute states that the Prevailing Wage Law applies to public-money expenditures by institutional public authorities. R.C. 4115.03(A) begins with a statement of the applicability of its subdivisions. Specifically, it states that “[a]s used in sections 4115.03 to 4115.16 of the Revised Code: * * *.”¹⁰ Subdivision (A) immediately follows. Thus, when subdivision (A) speaks of “said sections,” it is referring to those sections that are previously stated, that is R.C. 4115.03 to 4115.16.

Second, the regulations clarify the meaning of “said sections” by providing the specific section numbers. Generally, the Administrative Code’s definition of “public authority” is identical to that in R.C. 4115.03(A). Except, the regulation provides that “Sections 4115.03 to 4115.16 of the Revised Code and division level 4101:9 rules of the Administrative Code apply to expenditures of such institutions

⁸ R.C. 4115.03(A).

⁹ Appellee Fellhauer’s Merit Brief at 4.

¹⁰ R.C. 4115.03.

made in whole or in part from public funds.”¹¹ The only difference is that the Administrative Code fills in which sections apply to public-money expenditures by institutional public authorities. Thus, “said sections” in R.C. 4115.03(A) applies R.C. 4115.03 to 4115.16, not R.C. 4115.032.

Third, historically, the Prevailing Wage Law, as a whole, applied to public-money expenditures by institutional public authorities. In 1953, “said sections apply” replaced the original clause that read “this act shall apply.”¹² As originally written, it is clear that the Prevailing Wage Law applies to all such public-money expenditures by institutional public authorities.

Additionally, the original clause was written in 1935. But, R.C. 4115.032 was not enacted until 1980, forty-five years later. Even the 1953 amendments (which enacted the current language) predated the enactment of R.C. 4115.032 by twenty-seven years. Thus, the General Assembly could not have intended that “said sections apply” refers to R.C. 4115.032.

C. The General Assembly intended R.C. 4115.033 to prohibit subdividing to avoid the Prevailing Wage Law

R.C. 4155.033 prohibits public authorities from subdividing construction projects into component parts.¹³ The clear legislative intent of this section is to prevent public authorities and project owners from avoiding the Prevailing Wage Law by cutting projects into “non-prevailing wage” pieces. Appellees, Ottawa County and Ottawa County Improvement Corporation, argue that R.C. 4115.033

¹¹ Ohio Adm. Code 4101:9-4-02(AA).

¹² The General Assembly made the language change in 1953 among the rest of the amendments creating the Revised Code.

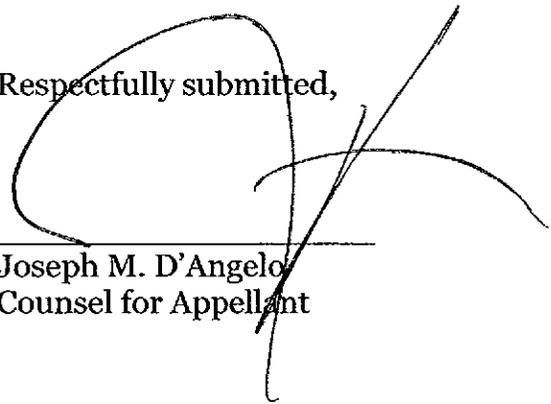
¹³ R.C. 4115.032.

is not applicable because they did not subdivide the Project to stay under the threshold amount.¹⁴ But, Appellees nevertheless subdivided the Fellhauer Project in order to avoid the Prevailing Wage Law. If R.C. 4115.033 had the meaning argued by Ottawa County, any project owner could avoid prevailing wage requirements by ensuring that workers wages were not paid with public money. Such a large loophole would eviscerate the legislative intent behind R.C. 4115.033. Further, it would allow all but the most obtuse project owners to circumvent the Prevailing Wage Law. R.C. 4115.033 necessarily prohibits all the types of subdividing that are intended to segregate public money in order to avoid the Prevailing Wage Law.

Conclusion

For all of the reasons discussed above and those in Appellant's Merit Brief, the decision of the Court of Appeals should be reversed.

Respectfully submitted,



Joseph M. D'Angelo
Counsel for Appellant

¹⁴ Appellees Ottawa County Improvement Corporation and Ottawa County Board of Commissioners Merit Brief at 21.

Certificate of Service

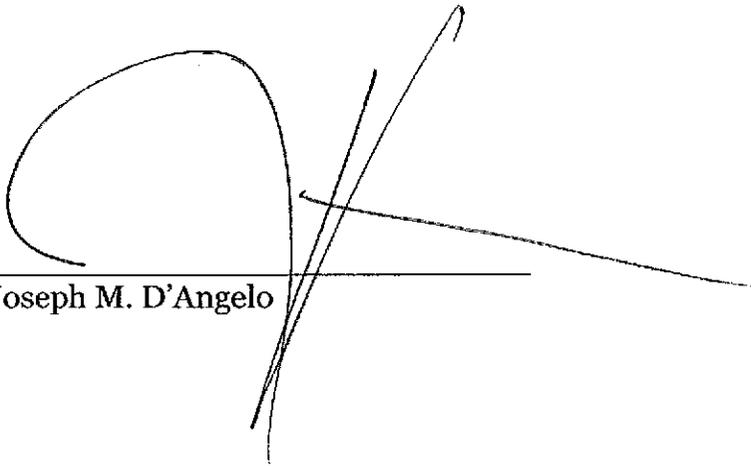
I certify that on this 8th day of January, 2008, a copy of this Reply Brief of Appellant State of Ohio ex rel. Northwestern Ohio Building and Construction Trades Council, et al. was sent by ordinary U.S. Mail to counsel for Appellees:

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APPENDIX

R.C. 4115.03

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*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH NOVEMBER
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TITLE 41. LABOR AND INDUSTRY
CHAPTER 4115. WAGES AND HOURS ON PUBLIC WORKS
PREVAILING WAGE LAW

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ORC Ann. 4115.03 (2008)

§ 4115.03. Definitions

As used in sections 4115.03 to 4115.16 of the Revised Code:

(A) "Public authority" means any officer, board, or commission of the state, or any political subdivision of the state, authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any institution supported in whole or in part by public funds and said sections apply to expenditures of such institutions made in whole or in part from public funds.

(B) "Construction" means either of the following:

(1) Any new construction of any public improvement, the total overall project cost of which is fairly estimated to be more than fifty thousand dollars adjusted biennially by the director of commerce pursuant to section 4115.034 [4115.03.4] of the Revised Code and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority;

(2) Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of any public improvement, the total overall project cost of which is fairly estimated to be more than fifteen thousand dollars adjusted

biennially by the administrator * pursuant to section 4115.034 [4115.03.4] of the Revised Code and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority.

(C) "Public improvement" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a public authority of the state or any political subdivision thereof or by any person who, pursuant to a contract with a public authority, constructs any structure for a public authority of the state or a political subdivision thereof. When a public authority rents or leases a newly constructed structure within six months after completion of such construction, all work performed on such structure to suit it for occupancy by a public authority is a "public improvement." "Public improvement" does not include an improvement authorized by section 1515.08 of the Revised Code that is constructed pursuant to a contract with a soil and water conservation district, as defined in section 1515.01 of the Revised Code, or performed as a result of a petition filed pursuant to Chapter 6131., 6133., or 6135. of the Revised Code, wherein no less than seventy-five per cent of the project is located on private land and no less than seventy-five per cent of the cost of the improvement is paid for by private property owners pursuant to Chapter 1515., 6131., 6133., or 6135. of the Revised Code.

(D) "Locality" means the county wherein the physical work upon any public improvement is being performed.

(E) "Prevailing wages" means the sum of the following:

(1) The basic hourly rate of pay;

(2) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program;

(3) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing the following fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected:

(a) Medical or hospital care or insurance to provide such;

(b) Pensions on retirement or death or insurance to provide such;

(c) Compensation for injuries or illnesses resulting from occupational activities if it is in addition to that coverage required by Chapters 4121. and 4123. of the Revised Code;

(d) Supplemental unemployment benefits that are in addition to those

required by Chapter 4141. of the Revised Code;

(e) Life insurance;

(f) Disability and sickness insurance;

(g) Accident insurance;

(h) Vacation and holiday pay;

(i) Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the laborers and mechanics affected;

(j) Other bona fide fringe benefits.

None of the benefits enumerated in division (E)(3) of this section may be considered in the determination of prevailing wages if federal, state, or local law requires contractors or subcontractors to provide any of such benefits.

(F) "Interested party," with respect to a particular public improvement, means:

(1) Any person who submits a bid for the purpose of securing the award of a contract for construction of the public improvement;

(2) Any person acting as a subcontractor of a person mentioned in division (F)(1) of this section;

(3) Any bona fide organization of labor which has as members or is authorized to represent employees of a person mentioned in division (F)(1) or (2) of this section and which exists, in whole or in part, for the purpose of negotiating with employers concerning the wages, hours, or terms and conditions of employment of employees;

(4) Any association having as members any of the persons mentioned in division (F)(1) or (2) of this section.

(G) Except as used in division (A) of this section, "officer" means an individual who has an ownership interest or holds an office of trust, command, or authority in a corporation, business trust, partnership, or association.

HISTORY:

GC § 17-3; 114 v 116; 116 v 206; Bureau of Code Revision, 10-1-53; 131 v 990 (Eff 11-3-65); 132 v S 225 (Eff 11-24-67); 133 v H 436 (Eff 10-14-69); 136 v H 1304 (Eff 8-25-76); 137 v H 1129 (Eff 9-25-78); 145 v H 350 (Eff 6-21-94); 146 v S 162 (Eff 10-29-95); 148 v H 471. Eff 7-1-2000.

R.C. 4115.032

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TITLE 41. LABOR AND INDUSTRY
CHAPTER 4115. WAGES AND HOURS ON PUBLIC WORKS
PREVAILING WAGE LAW

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ORC Ann. 4115.032 (2008)

§ 4115.032. Construction projects to which provisions apply

Construction on any project, facility, or project facility to which section 122.452 [122.45.2], 122.80, 165.031 [165.03.1], 166.02, 1551.13, 1728.07, or 3706.042 [3706.04.2] of the Revised Code applies is hereby deemed to be construction of a public improvement within section 4115.03 of the Revised Code. All contractors and subcontractors working on such projects, facilities, or project facilities shall be subject to and comply with sections 4115.03 to 4115.16 of the Revised Code, and the director of commerce shall, and any interested party may, bring proceedings under such sections to enforce compliance.

The director shall make the determination of wages as required under sections 122.452 [122.45.2], 122.80, 165.031 [165.03.1], 166.02, 1551.13, 1728.07, and 3706.042 [3706.04.2] of the Revised Code and shall designate one of the director's employees to act as the prevailing wage coordinator under section 4115.071 [4115.07.1] for any project, facility, or project facility for which a coordinator has not been designated by any public authority.

HISTORY:

138 v H 584 (Eff 12-17-80); 146 v S 162 (Eff 10-29-95); 148 v H 471. Eff 7-1-2000.

R.C. 4115.033

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TITLE 41. LABOR AND INDUSTRY
CHAPTER 4115. WAGES AND HOURS ON PUBLIC WORKS
PREVAILING WAGE LAW

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ORC Ann. 4115.033 (2008)

§ 4115.033. Restrictions on subdividing projects

No public authority shall subdivide a public improvement project into component parts or projects, the cost of which is fairly estimated to be less than the threshold levels set forth in divisions (B)(1) and (2) of section 4115.03 of the Revised Code, unless the projects are conceptually separate and unrelated to each other, or encompass independent and unrelated needs of the public authority.

HISTORY:

145 v H 350. Eff 6-21-94.

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4101:9 Wage and Hour
Chapter 4101:9-4 Prevailing Wage Regulations

OAC Ann. 4101:9-4-02 (2008)

4101:9-4-02. Definitions.

The following definitions are provided for the purposes of clarifying the meaning of certain terms as they appear in sections 4115.03 to 4115.16 of the Revised Code and division-level 4101:9 rules of the Administrative Code.

(A) "Apprentice" means any employee who is enrolled or indentured per trade occupation as a member of a bona fide apprenticeship program, or a person in the first ninety days of probationary employment as an apprentice in such an apprenticeship program who has been certified by the Ohio apprenticeship council or registered with the Ohio apprenticeship council through those states with which Ohio holds reciprocal apprenticeship agreements to be eligible for probationary employment as an apprentice.

(B) "Basic hourly rate of pay" means that portion of the prevailing wage, excluding fringe benefits, paid directly to the employee before deductions.

(C) "Bona fide apprenticeship program" means a comprehensive training program registered with the Ohio apprenticeship council, or certified by those with which Ohio holds reciprocal apprenticeship agreements.

(D) "Business association" means a business in any form including, but not limited to, a sole proprietorship, partnership or corporation.

(E) "Classification" means the level of experience within an occupation, trade or craft.

(F) "Common labor" means the classification for unskilled employees.

(G) "Construction" means:

(1) Any new construction of any public improvement, the total overall project cost of which is fairly estimated to be more than fifty thousand dollars ("threshold") adjusted biennially by the administrator and performed by other

than full-time employees who have completed their probationary period in the classified service of a public authority.

(2) Any construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decorating of any public improvement the total overall project cost of which is fairly estimated to be more than fifteen thousand dollars ("threshold") adjusted biennially by the administrator and performed by other than full-time employees who have completed their probationary period in the classified service of a public authority. Construction includes, but is not limited to, dredging, shoring, demolition, drilling, blasting, excavating, clearing, clean up, landscaping, scaffolding, installation and any other change to the physical structure of a public improvement.

(H) "Contractor" means any business association that is involved in construction of a public improvement. Contractor includes an owner, developer, recipients of publicly issued funds, and any person to the extent he participates in whole or in part in the construction of a public improvement by himself, through the use of employees, or by awarding subcontracts to subcontractors as defined in paragraph (GG) of this rule. Contractor also includes any business association that administers, conducts, and oversees construction of a public improvement by directing contractors and subcontractors on a specific project, but is not physically performing work on the project.

(I) "Commerce" means the Ohio department of commerce.

(J) "Director" means the director of the Ohio department of commerce.

(K) "Employee" means any person in the employment of an employer who performs labor or work of the type performed by a laborer, workman, or mechanic in the construction, prosecution, completion or repair of a public improvement and includes owners, partners, supervisors, and working foremen who devote more than twenty per cent of their time during a work week to such labor or work for the time so spent. Employee does not include an individual who is a sole proprietor. Employee also does not include full-time employees of a public authority who have completed their probationary periods in the classified civil service of the public authority, except such persons are employees if performing work outside the classification specifications of the civil service position for which the probationary period has been served. Employee does not include any person in a program administered by a public authority approved at the discretion of the director in writing prior to work on any project or program, including, but not limited to, local workfare or community action programs.

(L) "Employer" means any public authority, contractor, or subcontractor.

(M) "Enforceable commitment" means a legally binding contractual obligation of an employer.

(N) "Fringe benefits" means:

(1) Medical or hospital care or insurance to provide such;

(2) Pensions on retirement or death or insurance to provide such;

(3) Compensation for injuries or illnesses resulting from occupational activities if it is in addition to that coverage required by Chapter 4121. and 4123. of the Revised Code;

(4) Supplemental unemployment benefits that are in addition to those required by Chapter 4141. of the Revised Code;

(5) Life insurance;

(6) Disability and sickness insurance;

(7) Accident insurance;

(8) Vacation and holiday pay;

(9) Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the employees affected;

(10) Other bona fide fringe benefits.

None of the benefits enumerated in this rule may be considered in the determination of prevailing wages if federal, state, or local law requires contractors or subcontractors to provide any such benefits.

(O) "Fringe benefits credit" means payment made by an employer on behalf of an employee for fringe benefits. The amount of a contribution made by the employee to a fringe benefit, as described in rule 4101:9-4-07 of the Administrative Code, shall not constitute a fringe benefits credit.

(P) "Institution" means any society or corporation of a for-profit, not-for-profit, public or private character established or organized for any charitable, educational or other beneficial purpose.

(Q) "Interested party," with respect to a particular public improvement, means:

(1) Pursuant to division (F)(1) of section 4115.03 of the Revised Code, any person who submits a bid for the purpose of securing the award of a contract for construction of the public improvement;

(2) Any person acting as a subcontractor of a person mentioned in division (F)(1) of section 4115.03 of the Revised Code;

(3) Any bona fide organization of labor which has as members or is authorized to represent employees of a person mentioned in division (F)(1) or (F)(2) of section 4115.03 of the Revised Code and which exists in whole or in part for the purpose of negotiating with employers concerning the wages, hours, or terms and conditions of employment of employees.

(4) Any association having as members any of the persons mentioned in division (F)(1) or (F)(2) of section 4115.03 of the Revised Code.

(R) "Laborer, workman, or mechanic" means a person who performs manual labor, or labor of a particular occupation, trade or craft, or who uses tools of a particular occupation, trade or craft, or who otherwise performs physical work in such occupation, trade or craft which has been approved in writing by the director through issuance of prevailing wage rate schedules for such occupations, trades or crafts.

(S) "Legal day's work" means that portion of any twenty-four-hour time period during which an employee may work consistent with all applicable state or federal laws.

(T) "Locality" means the county in Ohio wherein the physical work upon any public improvement is being performed.

(U) "Materialman" means any supplier or furnisher of materials to be used in the construction of any public improvement.

(V) "Nonpublic user beneficiary" means any nongovernmental person who is the recipient of funds generated by the issuance of public obligations for such person's construction, use, occupancy, or enjoyment of a public improvement.

(W) "Occupation," "trade" or "craft" means the functional nature of work performed by an individual. The director may use the U.S. department of labor's "Dictionary of Occupational Titles" as a guide in determining an occupation, trade or craft.

(X) "Person" means any individual, institution, business association, or governmental agency.

(Y) "Prevailing wage" means the sum of the following:

(1) The basic hourly rate of pay;

(2) The rate of contribution irrevocably made by an employer to a trustee or to a third person pursuant to a fund, plan, or program which is communicated in writing to the employees affected prior to completion of any project to which sections 4115.03 to 4115.16 of the Revised Code apply;

(3) The rate of costs to the employer which may be reasonably anticipated in providing fringe benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which is communicated in writing to the employees affected prior to completion of any project to which sections 4115.03 to 4115.16 of the Revised Code apply.

(Z) "Prevailing wage rate schedule" means the determination of the department of the prevailing rates of wages to be paid to employees in applicable occupations and the ratios of helpers, apprentices, trainees, serving laborers, and assistants to skilled workers; it includes any subsequent modifications, corrections, escalations or reductions to any wage rates or ratios.

(AA) "Public authority" means any officer, board, or commission of the state, or any political subdivision of the state, authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any institution supported in whole or in part by public funds. Sections 4115.03 to 4115.16 of the Revised Code and division level 4101:9 rules of the Administrative Code apply to expenditures of such institutions made in whole or in part from public funds.

(BB) "Public improvement" means:

(1) All buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works which are:

(a) Constructed by a public authority of the state or any political subdivision, including, but not limited to, a municipality thereof;

(b) Constructed by any person for a public authority of the state or a political subdivision, including, but not limited to, a municipality thereof, pursuant to a contract with such public authority;

(c) Constructed pursuant to any statute of the Revised Code requiring payment of prevailing wage; or

(d) Constructed in whole or in part from public funds by an institution supported in whole or in part by public funds.

(2) All work performed on a newly constructed structure or work to suit it for occupancy by a public authority when a public authority rents or leases such a structure or work within six months after completion of such construction.

(3) Any construction where the federal government or any of its agencies furnishes all or any part of the funds used in constructing such improvement except where the federal government or any of its agencies provides the funds by loan or grant and prescribes predetermined minimum wages to be paid to

employees in the construction of such projects or where federal statute or regulation explicitly preempts the application of state prevailing wage law. Loan or grant does not include federal government insurance of state financing on the project nor a loan guarantee of private funds. To be predetermined the rates must be set according to the procedures of the U.S. department of labor, prior to the beginning of construction, and specifications of the project must reference the application of federal wage requirements.

(CC) "Rate of contribution" means the hourly credit of the amount irrevocably made by an employer to a fund, plan or program pursuant to division (E)(2) of section 4115.03 of the Revised Code.

(DD) "Rate of costs" means the hourly credit of the amount reasonably anticipated to be paid by an employer in providing fringe benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program pursuant to division (E)(3) of section 4115.03 of the Revised Code.

(EE) "State" means the state of Ohio or any of its instrumentalities or political subdivisions, and the departments, agencies, boards, or commissions thereof.

(FF) "Structures and works" means, to the extent not specifically stated in the definition of public improvement, all construction activity, including, but not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, streetscapes, subways, tunnels, mains, power lines pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals.

(GG) "Subcontractor" means any business association hired by a contractor to perform construction on a public improvement or any business association hired by such subcontractor, or any subcontractor whose subcontract derives from the chain of contracts from the original subcontractor.

(HH) "Supported in whole or in part by public funds" means any payment or partial payment directly or indirectly from funds provided by loans, grants, taxes, or any other type of payment from public funds of the federal government or of the state as defined in division level 4101:9 rules of the Administrative Code.

(II) "Third person" means a person responsible for safeguarding contributions to a fund, plan, or program pursuant to division (E)(2) of section 4115.03 of the Revised Code or fringe benefits provided pursuant to division (E)(3) of section 4115.03 of the Revised Code, or both. A third person must act in a fiduciary capacity and must assume the usual fiduciary responsibilities imposed upon trustees by applicable state or federal law.

(JJ) "Trainee" is one who is employed pursuant to and individually registered in a program which has received prior approval by the employment and training

administration (ETA), U.S. department of labor. Each occupation in which trainees are to be trained must be one commonly recognized throughout the construction industry.

(KK) "Trustee" means a person responsible for safeguarding contributions to a fund, plan, or program pursuant to division (E)(2) of section 4115.03 of the Revised Code or fringe benefits provided pursuant to division (E)(3) of section 4115.03 of the Revised Code, or both. A trustee must act in a fiduciary capacity and must assume the usual fiduciary responsibilities imposed upon trustees by applicable state or federal law. The terms used in these rules are to be construed according to the purposes of the prevailing wage law, general principles of Ohio law, custom and usage in the construction industry, the context of their usage, and the use of similar words therein.

History: Eff 2-15-90; 6-23-97; 6-3-04.

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WEEK OF DECEMBER 1-5, 2008 *

4101:9 Wage and Hour
Chapter 4101:9-4 Prevailing Wage Regulations

OAC Ann. 4101:9-4-17 (2008)

4101:9-4-17. Scope of project.

(A) The construction of a public improvement shall be "fairly estimated to be more than the threshold," based on the prevailing wage rates in the locality at the time the project is to be let out for bidding, whether done at one time or in phases.

(B) Whenever a contract for the construction of a public improvement project exceeding the threshold in value is awarded to a contractor by a public authority, and the contractor begins performance but is unable to complete the project, and it therefore becomes necessary for the public authority to contract with a new contractor to complete the project, any new contractor shall be required to pay the prevailing rates of wages regardless of whether the contract awarded to the succeeding contractor for completing the project is worth less than the threshold.

(C) A public authority may not subdivide a project into component parts or projects of less than the threshold unless such projects under the threshold are conceptually separate and unrelated to each other, or encompass independent and unrelated needs of the public authority. Phases may be considered as separate projects only where the public authority has proposed construction of the project in separate and distinct phases, the proposal to construct in phases is based upon lack of adequate funding necessary to award the contract as a whole, and a period of six months or longer of construction inactivity will occur between each phase. A single project which exceeds the fifteen-thousand-dollar limit as set forth in this rule shall constitute construction of a public improvement regardless of how many separate contracts are included within the project.

History: Eff 2-15-90; 6-23-97; 6-3-04.