

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
FAYETTE COUNTY

INTERNATIONAL BROTHERHOOD :
OF ELECTRICAL WORKERS, :
LOC. UNION NO. 575, : CASE NO. CA2012-02-003
Plaintiff-Appellant, : OPINION
 : 10/1/2012
- vs - :
 :
SETTLE-MUTER ELECTRIC, LTD., et al., :
Defendants-Appellees. :

CIVIL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 10CVH00038

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POWELL, P.J.

{¶ 1} Plaintiff-Appellant, International Brotherhood of Electrical Workers, Local Union No. 575, appeals a decision of the Fayette County Court of Common Pleas granting summary judgment in a prevailing wage case in favor of defendant-appellee, Settle-Muter

Electric, Ltd. For the reasons stated below, we affirm the decision of the trial court.

{¶ 2} This case arises from a public improvement project ("the project") in which the Fayette County Courthouse was renovated. Appellee is a contractor who won the electrical bid for the project. Appellant is a labor organization that represents electricians. Appellant brought this action against appellee alleging that appellee failed to compensate its employees the prevailing wage while working on the project.

{¶ 3} Appellant initially filed its complaint with the director of commerce. After the director failed to resolve the complaint within the statutory time allowed, appellant filed its complaint with the Fayette County Court of Common Pleas. On July 21, 2010, appellee filed a motion for summary judgment as to its alleged underpayments of the prevailing wage. Appellant filed a motion in opposition to appellee's motion for summary judgment, a cross-motion for partial summary judgment, and a motion for a continuance under Civ.R. 56(F). In its summary judgment motion, appellant argued that in addition to the prevailing wage rate violations, appellee also violated the reporting and notification provisions of R.C. Chapter 4115. Subsequently, the trial court granted appellee's motion for summary judgment, denied appellant's cross-motion for partial summary judgment, denied appellant's motion for a continuance, and dismissed the action.

{¶ 4} Appellant filed this appeal, asserting the following assignments of error:

{¶ 5} Assignment of Error No. 1:

{¶ 6} THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT GRANTED SETTLE-MUTER'S MOTION FOR SUMMARY JUDGMENT AND DISMISSED THIS ACTION.

{¶ 7} Assignment of Error No. 2:

{¶ 8} THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT.

{¶ 9} Assignment of Error No. 3:

{¶ 10} THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED PLAINTIFF'S CIV.R. 56(F) MOTION FOR A CONTINUANCE TO CONDUCT ADDITIONAL DISCOVERY.

Standard of Review

{¶ 11} This court's review of a trial court's ruling on a summary judgment motion is de novo, which means that we review the judgment independently and without deference to the trial court's determination. *Simmons v. Yingling*, 12th Dist. No. CA2010-11-117, 2011-Ohio-4041, ¶ 18, citing *Burgess v. Tackas*, 125 Ohio App.3d 294, 296 (8th Dist.1998). We utilize the same standard in our review that the trial court uses in its evaluation of the motion.

{¶ 12} Summary judgment is appropriate when there are no genuine issues of material fact to be litigated, the moving party is entitled to judgment as a matter of law, reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *Williams v. McFarland Properties, L.L.C.*, 177 Ohio App.3d 490, 2008-Ohio-3594, ¶ 7 (12th Dist.). To prevail on a motion for summary judgment, the moving party must be able to point to evidentiary materials that show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The nonmoving party must then present evidence that some issue of material fact remains to be resolved; it may not rest on the mere allegations or denials in its pleadings. *Id.* All evidence submitted in connection with a motion for summary judgment must be construed most strongly in favor of the party against whom the motion is made. *Morris v. First Natl. Bank & Trust Co.*, 21 Ohio St.2d 25, 28 (1970).

Summary Judgment Motions

{¶ 13} In appellant's first and second assignments of error, it argues that the trial court

erred when it granted appellee's motion for summary judgment and denied appellant's cross-motion for partial summary judgment. Appellant argues the trial court erred in three ways. First, the court erred when it defined a "violation" for purposes of R.C. Chapter 4115 as requiring intentional conduct. Appellee responds to this argument by contending that "violation" only applies to the situation in which the director of commerce, after all appeals, finds an intentional violation of the prevailing wage laws. Second, appellant argues that the court erred when it did not find that appellee's wage underpayment to its employees "violated" the prevailing wage laws. Third, the court erred when it failed to find that appellee violated the notification and reporting provisions of R.C. 4115.05 and 4115.071(C).

The Meaning of "Violation" for R.C. Chapter 4115

{¶ 14} Ohio's prevailing wage law is set forth in R.C. Chapter 4115. In general, these provisions require contractors and subcontractors for public works projects to pay laborers and mechanics the "prevailing wage" in the locality where the project is to be performed. *State ex rel. Associated Builders & Contrs. of Central Ohio v. Franklin Cty. Bd. of Commrs.*, 125 Ohio St.3d 112, 2010-Ohio-1199, ¶ 10. "[T]he 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." *Id.* To achieve this end, R.C. Chapter 4115 provides to employees who have been denied the prevailing wage a comprehensive statutory procedure of administrative and civil proceedings to ensure an employer's compliance with the prevailing wage laws. *State ex rel. Harris v. Williams*, 18 Ohio St.3d 198, 200 (1985).

{¶ 15} R.C. 4115.10(A) provides that "[n]o person, firm, corporation, or public authority that constructs a public improvement with its own forces * * * shall violate" the prevailing wage laws. If an interested party suspects that there has been a prevailing wage violation, that party may file a complaint with the director of commerce. R.C. 4115.16(A). "If the

director has not ruled on the merits of the complaint within the time provided * * * the interested party may file a complaint in the court of common pleas." *Id.* at (B).

{¶ 16} At issue in this case is whether any of appellee's conduct "violated" the wage provisions of R.C. 4115.03 to 4115.16. In its decision granting appellee's motion for summary judgment and denying appellant's cross-motion for partial summary judgment, the trial court relied upon a recent Ohio Supreme Court case, *Associated Builders*, in defining "violation" for purposes of the prevailing wage laws. In *Associated Builders*, the issue before the Court was whether a county correctly interpreted its selection criteria for contractors in awarding a public improvement project. One of the county's selection criteria was whether a contractor, after all appeals, had been found to have "violated" the prevailing wage laws. The Court found that "violated * * * refers to the situation in which the director makes a formal finding that a contractor or a subcontractor intentionally violated the prevailing-wage laws, and all appeals are exhausted." *Id.* at ¶ 29.

{¶ 17} In so holding, the court noted that:

the term "violated" as contained in [the selection criteria] is imprecise. Neither the board's contracting-standards criteria nor the Project Manual provides a definition of "violation." Nor is there a definition of "violation" in the prevailing wage statutes of R.C. Chapter 4115, or any indication of whether "violation" refers only to intentional violations or to any violation no matter how unintended or inconsequential.

Associated Builders at ¶ 29. In defining "violation" as requiring intentional conduct, the court reasoned that R.C. Chapter 4115 supports this conclusion. For example, R.C. 4115.13(C) excludes wage underpayments as a "violation" if the underpayment was a result of a misinterpretation of the statute or erroneous preparation of payroll documents and the employer makes restitution. *Id.* at ¶ 30.

{¶ 18} In the present case, the trial court found that "the underpayment of \$18.76 was due to a mistake or, inadvertence and was unintentional and de minimis to the spirit and

purpose of the Ohio prevailing wage laws." Thus, the court found that appellee did not violate any provision of R.C. Chapter 4115. Appellant argues that the trial court erred in finding that a violation must be intentional for purposes of the prevailing wage laws. Appellant contends that the Ohio Supreme Court's interpretation of "violation" was limited to the county's selection criteria in *Associated Builders* and the definition does not apply to R.C. Chapter 4115 as a whole.

{¶ 19} We find that a "violation" for purposes of the prevailing wage statute requires the employer to intentionally violate the prevailing wage laws. Although, the issue in *Associated Builders* specifically regarded the definition of "violation" for purposes of the selection criteria, we find that *Associated Builders* also defined "violation" as used in R.C. Chapter 4115. Additionally, the express language in the prevailing wage laws supports this understanding as R.C. 4115.13(C) allows an exception for unintentional violations of the statute.¹

{¶ 20} Appellee argues in its brief that a trial court is limited to the director of commerce's findings regarding an employer's violation of the prevailing wage laws. Appellee interprets *Associated Builders* as stating that a "violation" can only occur for purposes of R.C. Chapter 4115 upon a finding by the director of commerce, after all appeals, that the contractor intentionally violated the statute. Thus, appellee maintains that the trial court could not make a finding that it "violated" the prevailing wage laws because the director of commerce never made this finding.

{¶ 21} R.C. 4115.16(A) provides that when an interested party suspects a prevailing wage violation, the party may file its complaint with the director of commerce. However, if the

1. We note that the Sixth District has found that a party "violates" R.C. Chapter 4115 and is required to pay attorney fees, court costs, and penalties, when the party intentionally or unintentionally fails to comply with the statute. *Internatl. Bd. of Electrical Workers, Local Union No. 8 v. Stollsteimer Electric, Inc.*, 168 Ohio App. 3d 238, 2006-Ohio-3865 (6th Dist.). However, we interpret the Ohio Supreme Court's decision in *Associated Builders* as superseding the Sixth District's decision.

director has not ruled upon the merits of the complaint within the time allowed, the interested party may file a complaint in the court of common pleas. R.C. 4115.16(B). Upon the filing in the trial court, the director shall cease investigating the complaint. *Id.* The trial court's finding of a violation has the same consequences as the director's finding. *Id.* Additionally, the Ohio Supreme Court has held that mandamus, the extraordinary writ that is issued only when a plain and adequate remedy does not exist at law, is inappropriate when the director of commerce fails to review a prevailing wage complaint. *State ex rel. Natl. Electrical Contrs. Assn., Ohio Conference v. Ohio Bureau of Employment Services*, 83 Ohio St.3d 179 (1998). The Court reasoned the statutory provision which allows filing of a complaint in the trial court if the administrator fails to make a determination is an adequate remedy at law. *Id.* at 184.

{¶ 22} We find that the express language of the statute and case law refutes appellee's understanding of R.C. Chapter 4115. The statute expressly provides for a trial court's review of a prevailing wage violation and adopting appellee's understanding of *Associated Builders* would effectively render the trial court's review meaningless and strip away an interested party's rights. Moreover, in *Natl. Electrical Contrs.*, the Ohio Supreme Court recognized the trial court's ability to review prevailing wage violations in cases where the director fails to make a determination. Therefore, in reviewing whether appellee "violated" R.C. Chapter 4115, this court is not limited to the director's finding regarding a "violation" and we will look to whether appellee intentionally violated the prevailing wage laws.

Wage Violations

{¶ 23} We now turn to whether there was a genuine issue of material fact as to appellee's "violation" of the prevailing wage laws. In its brief, appellant argues that appellee "violated" R.C. Chapter 4115 when it underpaid three of its employees a total of \$18.74 and when it improperly included a bonus program as a fringe benefit claimable under the prevailing wage.

{¶ 24} R.C. 4115.10 provides that no person who constructs a public improvement project shall violate the prevailing wage rate. The prevailing wage rate is defined as the sum of:

- (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; and
- (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.

R.C. 4115.03(E). The "basic hourly rate of pay" refers to the "portion of the prevailing wage, excluding fringe benefits, paid directly to the employee before deductions." *Id.* at (B).

{¶ 25} Fringe benefits include medical insurance, pensions, compensation for injuries resulting from occupational activities, supplemental unemployment benefits, life insurance, vacation and holiday pay, and other bona fide fringe benefits. *Id.* at (E)(3); Ohio Adm.Code 4101:9-4-02(N).

{¶ 26} We find that the trial court did not err in granting appellee's motion for summary judgment as to the prevailing wage rate violations. Upon a thorough review of the record, we find that there was no genuine issue of material fact that appellee did not violate the prevailing wage rate by unintentionally underpaying its employees. Appellee underpaid three of its employees a total amount of \$18.76 and once it became aware of this underpayment, it promptly made restitution. Appellant offered no evidence that appellee intentionally underpaid its employees and the de minimis nature of the amount suggests that this was an unintentional oversight on behalf of the appellee.

{¶ 27} Additionally, we find that there was no genuine issue of material fact that

appellee properly included the annual Christmas bonus in its calculation of the prevailing wage rate. In this case, appellee included in its prevailing wage rate calculation for the project a Christmas bonus it gave to its employees in 2009. The construction of the project occurred in 2009. However, in 2010, appellee did not give its employees a Christmas bonus. Appellant argues that the holiday bonus was a fringe benefit and it should not be included in the 2009 prevailing wage rate because appellee failed to give the bonus in 2010. However, we find that the bonuses were not a "fringe benefit" under R.C. 4115.03(E) but instead part of the basic hourly rate of pay. As discussed above, the statute lists several types of "fringe benefits." These examples include unemployment compensation, health insurance, retirement plans, and vacation and holiday pay. On the other hand, a basic hourly rate of pay is defined as the portion of the pay that is paid directly to the employee. We find that the bonuses are much more similar to direct compensation made to an employee under a basic hourly rate of pay instead of a program maintained for the employee's benefits such as health insurance or a retirement plan. Moreover, because the bonuses were not a fringe benefit for purposes of the prevailing wage laws, they did not have to be carried out pursuant to an "enforceable commitment to carry out a financially responsible plan." Therefore, we find that the trial court did not err in granting appellee's motion for summary judgment.

Reporting and Notification Requirements

{¶ 28} In appellant's third argument, it contends that the trial court erred in overruling its cross-motion for partial summary judgment as to appellee's alleged reporting and notification violations. Appellee maintains that appellant's motion is procedurally deficient as it did not properly raise the notification and reporting violations in its complaint.

{¶ 29} We will first address whether appellant's complaint properly raised the notification and reporting violations. Ohio is a notice-pleading state and thus a complaint need only contain "a short and plain statement of the claim showing that the party is entitled

to relief." Civ.R. 8(A); *E.I. du Pont de Nemours & Co. v. Cincinnati Printers Co., Inc.*, 12th Dist. No. CA2008-12-307, 2010-Ohio-1631, ¶ 8. "The purpose of Civ.R. 8(A) is to give the defendant fair notice of the claim and an opportunity to respond." *E.I. du Pont* quoting *Leichliter v. Natl. City Bank of Columbus*, 134 Ohio App.3d 26, 31 (10th Dist.1999). "A party is not required to plead the legal theory of recovery or the consequences which naturally flow by operation of law from the legal relationships of the parties." *E.I. du Pont* at ¶ 8. "However, the complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory * * * or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." *Sexton v. Mason*, 12th Dist. No. CA2006-02-026, 2007-Ohio-38, ¶ 25 quoting *Fancher v. Fancher*, 8 Ohio App.3d 79, 83 (1st Dist.1982).

{¶ 30} This court has found insufficient notice of a claim for relief where a complaint listed several legal theories against a city regarding a subdivision's storm water system but did not allege that the city negligently managed the system. *Sexton* at ¶ 28. In *Sexton*, we reasoned that although the complaint listed several other theories of recovery, the complaint did not allege any legal theory or factual allegations from which the city could fairly be put on notice that it would face a claim that it negligently maintained the system. Further, the Ninth District has found a complaint that contains no factual allegations of a legal theory and merely contains general language as to the plaintiff's right to "any and all relief" does not satisfy Civ.R. 8(A). *Cincinnati Insurance Co. v. Colelli & Assoc.*, 9th Dist. No. 04-CA-008, 2004-Ohio-4726, ¶ 17.

{¶ 31} In the present case, the complaint filed by appellant generally listed that appellee violated the prevailing wage laws, "R.C. 4115.03 to R.C. 4115.16 and Ohio Adm.Code 4101:9-4-01 to Ohio Adm.Code 4101:9-4-2." The complaint stated that appellee committed violations of R.C. Chapter 4115, "including, but not limited to" its failure to

compensate its employees the prevailing wage for a public improvement project. The complaint listed no legal theory other than the appellee's violation of the prevailing wage rate. Moreover, the complaint was absent of *any* other factual allegations other than those pertaining to the failure to compensate the prevailing wage.

{¶ 32} We find that appellant's complaint did not sufficiently plead reporting and notification violations of the prevailing wage laws. Appellant's complaint did not contain allegations from which an inference could be fairly drawn at trial that appellee violated the reporting and notification requirements. The complaint did not contain any reference to these legal theories or any factual allegations at all regarding these violations. Moreover, the general language found in the complaint that appellee violated R.C. Chapter 4115 is insufficient on its own to put a party on notice regarding claims of relief. We are also not persuaded by appellant's argument that the Third District's decision in *United Assn. of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry, Local Union 575 v. Jack's Heating, Air Conditioning & Plumbing*, 3rd Dist. No. 6-10-11, 2011-Ohio-167, requires reversal. Notably, in reasoning that the trial court did not err in finding that prevailing wage violations were sufficiently pled even though the violations were not specifically listed, the court noted that the appellant *never objected* to the issue. *Id.* at ¶ 10. In this case, appellee specifically objected to appellant's failure to plead reporting and notification violations in its summary judgment motion. Therefore, we find *Jack's* distinguishable and hold that the reporting and notification claims were not properly pled pursuant to Civ.R. 8(A).

{¶ 33} Now that we have found that the reporting and notification claims were not sufficiently pled, we must determine whether the trial court properly denied summary judgment as to these unpled claims. Civ. R. 56(A) permits a party to move for summary judgment "upon a claim, counterclaim, or cross-claim." Thus, because Civ. R. 56(A) requires a party to move for summary judgment on a "claim," a party generally cannot move for

summary judgment on an issue that is not raised in a complaint. *McGinnis, Inc. v. Lawrence Economic Development Corp.*, 4th Dist. No. 02-CA-33, 2003-Ohio-6552, ¶ 22. Although a pleading could be amended by express or implied consent by the parties, if the party timely objects to the new issue, the trial court may properly deny summary judgment as to those new issues. *McGinnis* at ¶ 25. See Civ.R. 15(A).

{¶ 34} We find that the trial court did not err in overruling appellant's cross-motion for partial summary judgment regarding appellee's reporting and notification violations. As discussed above, appellant raised these violations for the first time in its cross-motion for partial summary judgment as the complaint did not raise any of these issues. In its reply motion for summary judgment, appellee specifically objected to appellant raising these issues for the first time in a summary judgment motion. Therefore, the trial court properly denied appellant's cross-motion for partial summary judgment.

{¶ 35} Appellant's first and second assignments of error are overruled.

Motion for Continuance

{¶ 36} In appellant's third assignment of error, it argues that the trial court erred when the court denied its motion for a continuance to conduct additional discovery. Appellant claims that the continuance was essential because it needed to obtain payroll documents regarding all of appellee's employees' prevailing wage and non-prevailing wage hours during the project. Appellant maintains that these documents were crucial to determine (1) if appellee correctly compensated its employees for overtime on the project, and (2) whether the 401K fringe benefit complied with the prevailing wage rate.

{¶ 37} Civ.R. 56(F) "affords a party a mechanism whereby it can seek deferral of action on a motion for summary judgment so that it may obtain affidavits opposing the motion or conduct discovery relevant to it." *BAC Home Loans Servicing, L.P. v. Kolenich*, 194 Ohio App.3d 777, 2011-Ohio-3345 (12th Dist.), ¶ 18 quoting *Gates Mills Invest. Co. v. Pepper*

Pike, 59 Ohio App.2d 155, 168-169 (8th Dist.1978). A motion for a continuance to conduct discovery under Civ.R. 56(F) "must be supported by a proper affidavit." *Silver v. Jewish Home of Cincinnati*, 190 Ohio App.3d 549, 2010-Ohio-5314 (12th Dist.), ¶ 20, quoting *St. Joseph's Hosp. v. Hoyt*, 4th Dist. No. 04CA20, 2005-Ohio-480, ¶ 24. General averments requesting a continuance for the purpose of discovery are insufficient, as "the party seeking the Civ.R. 56(F) continuance must state a factual basis and reasons why the party cannot present sufficient documentary evidence without a continuance." *Id.* Lack of diligence in pursuing discovery by the party moving under Civ.R. 56(F) militates against grant of a delay. *Drake Constr. Co. v. Kemper House Mentor, Inc.*, 170 Ohio App.3d 19, 2007-Ohio-120 (11th Dist.), ¶ 29.

{¶ 38} A trial court maintains the discretion to manage the discovery process. *Discover Bank v. Brockmeier*, 12th Dist. No. CA2006-07-078, 2007-Ohio-1552, ¶ 38. Granting a Civ.R. 56(F) motion is within the discretion of the trial court and is not mandatory. *Id.* Therefore, an appellate court will not reverse a trial court's decision regarding the discovery process absent an abuse of discretion. *Id.*

{¶ 39} In the present case, on March 26, 2010, appellant requested that appellee produce its complete payroll documents, including prevailing wage and non-prevailing wage hours for the entire period of the courthouse project. Appellee objected to this request, arguing that the payroll documents to nonprevailing wage project hours are not relevant to the action. However, appellee also noted that it produced documents containing this information. On June 25, 2010, appellant filed its first motion to compel. The motion identified several documents in which appellant sought more information, however the motion *did not* seek any relief regarding the payroll documents for prevailing wage and non-prevailing wage projects. Several months later, on November 5, 2010, the trial court resolved all discovery disputes between the parties and set January 6, 2011, as the final closing date

for discovery.

{¶ 40} Two weeks before the end of the discovery period, appellant deposed Gina Swisher, appellee's controller. Appellee originally attached Swisher's affidavit in its motion for summary judgment six months earlier on June 21, 2010. After the end of the discovery period, appellant filed its second motion to compel arguing that after the deposition of Swisher, it realized that it needed the payroll documents that were previously requested. Appellant then filed a motion for a Civ.R. 56(F) continuance along with its summary judgment motion. Appellant argued that it could not fully oppose appellee's motion for summary judgment without the information requested in its second motion to compel and thus the court should grant the continuance. Subsequently, the trial court denied appellant's second motion to compel and its Civ.R. 56(F) continuance.

{¶ 41} We find that the trial court did not abuse its discretion in denying appellant's Civ.R. 56(F) motion for a continuance. As stated above, a party's lack of diligence weighs against the granting of a Civ.R. 56(F) continuance. In this case, after appellee's objection to appellant's request for the payroll documents, appellant did not include these documents in its first motion to compel nor did it mention the payroll documents for six months. Appellant argues that it did not realize it needed the payroll documents until it completed the deposition of Swisher. However, appellant waited until there was two weeks left in the discovery period to depose Swisher. Therefore, we find that the trial court did not abuse its discretion in denying appellant's Civ.R. 56(F) motion for a continuance.

{¶ 42} Moreover, we find that appellant did not state sufficient reasons that the granting of the continuance would be "essential" to justify its opposition to the summary judgment motion. In calculating the prevailing wage that employees on public improvement projects must be paid, R.C. 4115.03(E)(2) allows employers to include fringe benefits in this calculation. Further, the prevailing wage laws also require employers to pay one and one-

half times an employee's wage to every employee that works overtime. Ohio Adm.Code 4101:9-4-08. Appellant argues that these documents are needed in order to value the 401K fringe benefit as well as determine whether appellee correctly compensated its employees for overtime pay.

{¶ 43} However, appellee has already provided appellant with the documents it requires in order to determine if appellee correctly compensated its employees for overtime and the 401K fringe benefit. Appellee has provided appellant with certified payroll documents that show the hours, compensation, and overtime pay of employees who worked on the project. Appellant's contention that it needs to have payroll documents for employees who did not work on the project in order to determine if they were compensated overtime is contrary to what the prevailing wage laws require. Ohio Adm.Code 4101:9-4-08. This action is solely for prevailing wage violations and the prevailing wage laws only apply to public works projects. Moreover, appellee has already provided appellant with documents that show the rate of the 401K fringe benefit. Thus the trial court did not abuse its discretion in denying appellant's Civ.R. 56(F) motion for a continuance.

{¶ 44} Appellant's third assignment of error is overruled.

{¶ 45} Judgment affirmed.

PIPER and BRESSLER, JJ., concur

Bressler, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.