

## Private Property Improvements for Benefit of State – Lessee Held Not Subject to Prevailing Wages

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An Ohio trial court in Franklin County recently ruled that a private company's improvements to its property are not subject to prevailing wages, even if those improvements are for the benefit of the tenant – a state agency.

In Zurz v. 770 West Broad AGA, LLC, the defendant, a private company ("770 West Broad"), agreed to lease its property to the Ohio Department of Rehabilitation and Correction. As a condition of the lease, 770 West Broad was required to make numerous improvements to the property at its own expense. The lease also stated that 770 West Broad was to comply with the "applicable provisions" of the prevailing wage law.

770 West Broad did not pay workers the prevailing wage for improvements to the property, which resulted in a hefty fine from the Ohio Department of Commerce. 770 West Broad argued that the Ohio prevailing wage law did not apply to the improvements.

The Court applied the 2009 Ohio Supreme Court decision in Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa County. The Court cited to Northwestern's holding that prevailing wage law applies only when the project is a public improvement *and* when the project is paid for with public funds. Because 770 West Broad paid for the improvements at issue, the Court held that the Ohio prevailing wage law did not apply.

The Department of Commerce argued that since the project at issue concerned leased property, Northwestern — decided in the context of new construction — did not apply. The Court rejected that argument, explaining that there was no reason not to apply Northwestern to situations where the State is leasing a property rather than building it from scratch. The Court further noted that while it is true that leased property can be a "public improvement," public funds are still required to render the project subject to prevailing wages. Since public funds were not used, 770 West Broad was not required to pay prevailing wages for work on the improvements, regardless of whether the State was leasing the property.

Finally, the Department of Commerce argued that the lease itself required 770 West Broad to pay prevailing wages. The Court disagreed, stating that the boilerplate contract provision meant that only if Ohio prevailing wage law applies would 770 West Broad be required to pay prevailing wages. Since Ohio prevailing wage law did not apply, 770 West Broad did not have any responsibility to pay prevailing wages.

It is important to note that the decision was from a trial court. Thus, other courts are not required to follow the ruling. Whether it will be appealed is also not yet known. It is significant, however, for the broad reading it gives to the Northwestern decision, and thus the limitation it could impose on Ohio's prevailing wage law if it is affirmed or more broadly followed.

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