

Indiana Court Of Appeals Overturns Employer's Common Construction Wage Victory

May 1, 2013 | [Labor Agreements](#), [Labor Relations](#)



**Gerald F.
Lutkus**

Of Counsel
(Retired)

Gavel

We rarely see reported decisions on the common construction wage, so [William Wressell v. R.L. Turner Corporation](#) caught our eye. In this case, the Indiana Court of Appeals this month ruled that summary judgment was inappropriately entered for an employer on an employee's claim that he was paid under the wrong job classification.

Two items are of some note in the opinion. First, the trial court had struck from the summary judgment record eight paragraphs from the affidavit of a field auditor with the Indiana Department of Labor finding those paragraphs to be irrelevant and full of legal conclusions. In those paragraphs, the field auditor set forth the audit guidelines used by Indiana's DOL as well as items which cannot be included in the fringe benefit calculation under the Indiana common construction wage.

On appeal, the Court of Appeals found that ruling to be improper and reversed noting that the information in the affidavit was "unquestionably relevant" to the summary judgment. Secondly, the Court of Appeals said that it was an open question as to whether the employee had been properly paid for the work he did. The Court acknowledged that it seemed "obvious that there would be considerable overlap between job classifications on any CCWA job site" but that it is not the case that "a cement mason is instantly transformed into a carpenter simply because he may perform a task that a carpenter also performs."

The summary judgment entered for the employer was thus overturned and the case was returned to the trial court for determination as to whether Wressell, who was paid as a skilled cement mason, should have had hours instead paid to him at the higher rates available for a skilled carpenter or a skilled laborer. In addition, the trial court will be required to examine how the employer credited payments to the employee's fringe benefit calculation, specifically determining whether Wressell had been properly paid for his fringe benefits.

RELATED PRACTICE AREAS

Collective Bargaining
Labor and Employment
Labor Relations

RELATED TOPICS

Department of Labor