

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel., MUNICIPAL)
CONSTRUCTION EQUIPMENT)
OPERATORS' LABOR COUNCIL)
P.O. Box 22037)
Cleveland, Ohio 44122)

and)

SANTO CONSOLO)
18875 Rivers Edge Dr.)
Chagrin Falls, Ohio 44023)

and)

CHARLES E. ADKINS)
4192 W. 143rd Street)
Cleveland, Ohio 44135)

and)

LOUIS A. CIPRIANO)
8365 Russell Lane)
Cleveland, Ohio 44144)

and)

LAWRENCE C. DOUGLAS (deceased))
17117 Hillsboro Road)
Cleveland, Ohio 44112)

and)

MICHAEL W. GRALEY)
175 Dorland Avenue)
Berea, Ohio 44017)

and)

THEODORE E. HUEY)
951 E. 143rd Street)
Cleveland, Ohio 44110)

and)

CASE NO.

06-2056

Original Action in Mandamus

FILED
NOV 06 2006
MARCIA J. MENGEL, CLERK
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and

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and

JOHN MOSES
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Relators

vs.

CITY OF CLEVELAND
601 Lakeside Ave.
Cleveland, Ohio 44114

and

FRANK JACKSON, MAYOR)
City of Cleveland)
601 Lakeside Ave.)
Cleveland, Ohio 44114)
)
and)
)
CLEVELAND CITY COUNCIL)
EMILY LIPOVAN, CLERK)
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)
Respondents)

ORIGINAL ACTION COMPLAINT FOR WRIT OF MANDAMUS

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COUNSEL FOR RESPONDENTS

Relator Municipal Construction Equipment Operators' Labor Council (the "CEO Union") and the individual Relators make the following statements as their complaint for a peremptory writ of mandamus, or an alternative writ directing that Respondents shall perform the acts as prayed for in this Complaint, or to show why the writ of mandamus should not issue. This complaint is supported by the attached memorandum, affidavits, and exhibits.

JURISDICTION

1. Jurisdiction with respect to this original action is supported by Article IV, §2(B)(1)(b) of Ohio's Constitution and Supreme Court Rule X.

PARTIES

2. Relator CEO Union is a non-profit Ohio corporation. It is an employee organization which has been certified as the exclusive collective bargaining representative of those persons who are employed by Cleveland, Ohio as construction equipment operators and master mechanics. The individual Relators are those persons who are or were employed by Cleveland as construction equipment operators or master mechanics, many of whom were plaintiffs and appellees in *Consolo v. Cleveland* (2004), 103 Ohio St. 3d 362. The members of the CEO Union and the individual Relators are hereafter collectively referred to as the "CEOs" or "CEO".

3. The CEO Union has standing to bring this action on behalf of its members, as their representative in litigation. The CEO Union is also the certified collective bargaining representative of a bargaining unit of the CEOs employed by Cleveland.

4. Respondent City of Cleveland is a political subdivision of Ohio which has adopted a municipal charter.

5. Respondent Frank Jackson is the duly elected mayor of Cleveland. Pursuant to the

Charter of the City of Cleveland, he is the executive officer of the municipality and oversees, *inter alia*, the office of the treasurer.

6. Respondent Cleveland City Council is Cleveland's legislative body. Pursuant to the Charter of the City of Cleveland, the City Council is responsible for setting the wages of employees and for appropriating funds for the payment of financial obligations of the City.

COUNT I

7. The Cleveland City Charter provides in part:

“ . . . in the case of employees in those classifications for which the Council provided in 1979 a schedule of compensation in accordance with prevailing wages paid in the building and construction trades, the schedule established by the Council shall be in accordance with the prevailing ... rates of salary or compensation for such services.” From sec. 191, Charter of the City of Cleveland (attached hereto as Exhibit “A”).

8. The CEOs are employed by Cleveland in the civil service classifications Construction Equipment Operator “Group A,” Construction Equipment Operator (the “CEOs”), “Group B,” or Master Mechanic.

9. The classifications Construction Equipment Operator Group ‘A’, Group ‘B’ and Master Mechanic are among the building and construction trades which are entitled to receive compensation in accordance with prevailing wages paid in the building and construction trades as set forth in paragraph 7 above.

10. Pursuant to the Cleveland City Charter, the CEOs were entitled to receive wages in accordance with the prevailing rates of salary or compensation for their services.¹

11. From May 1, 1994 through February 14, 2005 Cleveland paid the CEOs at a rate of

¹*State ex rel. IUOE v. Cleveland* (1992) 62 Ohio St. 3d 537: in the absence of a collective bargaining agreement, the Cleveland City Charter requires prevailing wages.

pay less than the prevailing wage rates for their services, as reflected in the Wage Chart attached hereto as Exhibit "B." The Wage Chart is hereby incorporated into this Complaint by reference, as if wholly re-written herein.

12. During the period May 1, 1994 to February 14, 2005, no collective bargaining agreement covered the CEOs working for Cleveland.²

13. During the period May 1, 1994 to January 30, 2003, the CEOs working for Cleveland were not in a bargaining unit and were not represented by an exclusive bargaining agent for any purposes within R.C. Chapter 4117.³

14. The CEO Union asserts the following facts as found in *SERB Opinion* 2006-008 after an evidentiary hearing by the State Employment Relations Board ("SERB"):

- (a) The CEO Union is an "employee organization" which on January 30, 2003 was certified by SERB as the exclusive representative of those persons that Cleveland, Ohio employs as CEOs.⁴
- (b) The CEO Union is the only "employee organization" that ever represented Cleveland's CEO Employees as a collective bargaining representative.⁵
- (c) From 1994 to February 14, 2005 the wages of Cleveland's CEO Employees were

²*SERB Opinion* 2006-008 at pp.2, 6 at ¶12, and 11 at no.6 (attached as Exhibit "C"); and *SERB Opinion* 2004-004 (attached as Exhibit "D").

³*SERB Opinion* 2006-008 at p. 2 and p.10 no.3,

⁴ *SERB Opinion* 2006-008 Finding of Fact ¶16.

⁵ SERB's response to *Consolo, supra*, Question No. 1. Local 18's motion to sustain this and SERB's administrative law judge's other recommended determinations, which have been adopted in SERB's Opinion, is attached as Exhibit "E" to this Complaint.

never the result of collective bargaining between Local 18⁶ and Cleveland.⁷

- (d) Cleveland and Local 18 never negotiated and implemented a benefits package for the CEO Employees with equal or better benefits than are provided in the City Charter.⁸
- (e) Until February 14, 2005, no collective bargaining agreement existed between Cleveland and any union representing Cleveland's CEO employees. On that date, the CEO Union and Cleveland entered into the first collective bargaining agreement which affected Cleveland's CEO Employees.⁹

15. Cleveland had and has a clear legal duty to pay its CEO employees the difference between the prevailing wage rates and the lower hourly rates that Cleveland actually paid to its CEO employees during the period from May 1, 1994 to February 14, 2005 (the "Underpayments"), as shown on the Wage Chart, Exhibit "B" hereto.

16. The CEOs have no adequate legal remedy which would allow them to recover Cleveland's Underpayments that were below the prevailing wage rates during the period of May 1, 1994 to February 14, 2005; thus the requested writ of mandamus is the appropriate remedy.¹⁰

COUNT II

17. Relators repeat into this Count II all of the assertions contained in paragraphs 1

⁶ International Union of Operating Engineers, Local 18.

⁷ *SERB Opinion* 2006-008 in response to *Consolo, supra*, Question No. 6.

⁸ *SERB Opinion* 2006-008 in response to *Consolo* Question No. 7.

⁹ *SERB Opinion* 2006-008 in response to *Consolo* Question No. 6.

¹⁰ *State ex rel. IUOE v. Cleveland, supra*, syllabus, 62 Ohio St.3d at 538.

through 16 of this Complaint.

18. Ohio Rev. Code §124.38 states in part:

“Each of the following shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay:

(A) Employees in the various offices of the . . . municipal . . . service, . . .

..... may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to personal illness, pregnancy, injury, exposure to contagious disease that could be communicated to other employees, and illness, injury, or death in the employee's immediate family. Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of one hour for every one hour of absence from previously scheduled work.”

19. Ohio Rev. Code §124.39 states in part:

“(B) Except as provided in division (C) of this section, an employee of a political subdivision covered by section 124.38 or 3319.141 of the Revised Code may elect, at the time of retirement from active service with the political subdivision, and with ten or more years of service with the state, any political subdivisions, or any combination thereof, to be paid in cash for one-fourth the value of the employee's accrued but unused sick leave credit. The payment shall be based on the employee's rate of pay at the time of retirement and eliminates all sick leave credit accrued but unused by the employee at the time payment is made. An employee may receive one or more payments under this division, but the aggregate value of accrued but unused sick leave credit that is paid shall not exceed, for all payments, the value of thirty days of accrued but unused sick leave.”

20. Cleveland's CEO employees were, during their period of employment with Cleveland, entitled to accrue paid sick leave and be paid for periods of illness, in accord with the provisions of state law set forth in paragraphs 18 and 19 of this Complaint, until February 14, 2005.

21. Cleveland has failed and refused to accrue or provide and pay for sick leave to CEO

employees since October 29, 1980, when it enacted an ordinance¹¹ excusing itself from paying sick leave to its building and construction trade employees. These sick leave benefits have not been provided for or paid by Cleveland to its employees from October 29, 1980 to February 14, 2005.

22. Cleveland has a clear legal duty to accrue and provide paid sick leave to its employees in accord with state law.

23. The CEOs have no adequate remedy at law to obtain the accrual of sick leave, or to obtain payment for periods of time they were absent from work due to illness or injury, or due to illness, injury or death in their immediate families, as provided in R.C. §124.38, or to obtain payment upon retirement for their accumulated but unused sick leave as provided in R.C. §124.39; thus a writ of mandamus is appropriate.

WHEREFORE, the CEO Union and the individual Relators named herein, pray that the Court shall issue an alternative writ requiring Respondents to show why the writ of mandamus should not issue, or a peremptory writ granting them relief as follows:

As to Count I, a writ of mandamus ordering that:

(a) Cleveland City Council shall establish a schedule of compensation for the CEO Employees in accordance with the prevailing wage rates in the private sector as shown on Exhibit "B", the Wage Chart, for the period of May 1, 1994 through February 14, 2005;

(b) Cleveland City Council shall appropriate funds for the payment to the CEO Employees of unpaid prevailing wage rates retroactively for the period of May 1, 1994 through February 14, 2005;

(c) The Mayor of Cleveland shall cause payment to issue to the CEO Employees so as to

¹¹ Cleveland's Codified Ordinances, Sec. 171.31 "Sick Leave" is attached in Exhibit "N" hereto.

compensate retroactively the difference between the actual wages paid and the prevailing wages for the period of May 1, 1994 through February 14, 2005.

As to Count II, a writ of mandamus ordering that:

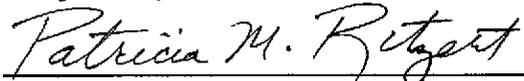
(d) the CEO employees shall be credited with accumulated sick leave at the rate of 4.6 hours for every 80 hours worked during the period from October 29, 1980 to February 14, 2005;

(e) those employees who were required to miss work due to illness or injury, or the illness or injury of a family member, shall be compensated for the time away from work to the extent of their accumulated paid sick leave at the time of the absence due to illness; and

(f) those employees who retired from service for Cleveland during the time period from October 29, 1980 through February 14, 2005, be paid in cash for one-fourth (1/4) of the value of their accumulated but unused sick leave, as provided in R.C. §124.39.

Further, the CEO Union and individual Relators pray the court to require the addition of pre-judgment interest at statutory rates to the wage deficiencies below the prevailing rates, running from the various payroll dates upon which wages were due, and that this court award Relators' attorney fees plus their costs and expenses of litigation, plus post-judgment interest from the date of the requested writ.

Respectfully submitted,



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OF COUNSEL:

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**MEMORANDUM IN SUPPORT
OF ORIGINAL ACTION IN MANDAMUS**

STATEMENT OF THE FACTS

This is a case about an Ohio city which fails and refuses to follow its own Charter's requirement¹² that it pay its CEO employees at prevailing wage rates during the period of 1994 - 2005. During that period, that city employed its CEOs as full-time employees. During that period, there was no collective bargaining agreement between that city and its CEOs.¹³ That city is Cleveland, Ohio.

Cleveland is a charter city. A copy of its Charter is attached as Exhibit "A"; section 191 of its text states in relevant part:

". . . in the case of employees in those classifications for which the council provided in 1979 a schedule of compensation in accordance with prevailing wages paid in the building and construction trades, the schedule established by the Council shall be in accordance with the prevailing rates of salary or compensation for such services."¹⁴ Adopted 1980. Effective February 17, 1981.

Cleveland's construction equipment operator employees were identified as being part of the building and construction trades in the schedule of compensation for 1979, as shown in Cleveland Ordinance 1682-79 (1979), which is attached as Exhibit "F".

Relator, the Municipal Construction Equipment Operators' Labor Council (the "CEO Union") is a labor organization which was certified by SERB in 2003 as the exclusive bargaining

¹² Cleveland City Charter Sec. 191 (Exhibit "A")

¹³ *SERB Opinion* 2006-008 (Exhibit "C"), which is incorporated herein by reference. Among other things, that Opinion finds that *no collective bargaining* occurred between Cleveland and its employee CEOs until after the below-described CEO Union became the CEOs' exclusive labor organization representative.

¹⁴ Charter for the City of Cleveland, §191 attached Exhibit "A". Construction equipment operators were among those building trades employees listed in the 1979 ordinance, Cleveland Ordinance 1682-79 (1979), attached hereto as Exhibit "F" setting wage rates for building trades employees.

agent for Cleveland CEOs. The individually named Relators are persons who previously worked as construction equipment operators and master mechanics for Cleveland, and are not represented by the CEO Union in this litigation.

Cleveland's CEO employees operate, repair, and maintain heavy construction equipment, including but not limited to, mechanized hoes, loaders, bulldozers, and graders. The CEOs have been variously referred to as "craft" employees, building trades employees, and operating engineers. The CEOs are classified by the Cleveland Civil Service Commission as Construction Equipment Operators Group 'A', Group 'B', or Master Mechanic.

Cleveland's obligation to pay the CEOs at the prevailing wage rate.

In *State ex rel. IUOE v. Cleveland*, (1992), 62 Ohio St. 3d 537, this Court recognized that in the absence of a collective bargaining agreement, Section 191 of Cleveland's Charter mandates payment to the CEOs at the prevailing wage rate. For the CEOs, the private sector contract which establishes the prevailing wage in Cleveland is the "Building Agreement."¹⁵ Copies of the wage rates from the Building Agreement documents from 1994 to 2005 are attached as Exhibit "J". Those are as set forth as the "prevailing wage" in the Wage Chart, Exhibit "B". During this period of time, Cleveland paid the CEOs at less than the prevailing wage rates.

The wage rates set forth in the Building Agreement documents (Exhibit "J") are the sum of various listed components, i.e. a base rate, plus an amount for "health & welfare," designated "H&W" which provides medical insurance, an amount to be applied to an employee's individual pension fund account, and components for an apprenticeship program and a construction industry

¹⁵See Exhibit "G", Inter-Office Correspondence October 28, 1993 from Assistant Water Commissioner N. Jackson to Water Commissioner Julius Ciaccia. Affidavit of Frank Madonia (Exhibit "H"), and Affidavit of Santo Consolo (Exhibit "I"). See also, *State ex rel. IUOE v. Cleveland* (1992), 62 Ohio St. 537 at 538 and SERB Fact-Finder Virginia Wallace-Curry's report, Exhibit "K", at p. 14, referring to "...the long-standing practice of paying these employees at the rate established by the CEA Building Agreement..."

service program. This Building Agreement sum-of-components method for establishing the prevailing wage rates for the CEOs is validated by the report of SERB-appointed Fact-Finder Virginia Wallace-Curry, which is attached as Exhibit "K". The Fact-Finder's report demonstrates how that calculation was made. (See p.13, Fact-Finder's Report, Exhibit "K").

Another example of the use of this sum-of-components method of calculating the prevailing wage rate for CEOs is provided by the Cleveland Inter-Office Correspondence dated October 28, 1993 which is attached as Exhibit "G". That use is identical to the method described by the SERB Fact-finder.

The Public Employees Collective Bargaining Act became effective in 1984.

The State Employment Relations Board ("SERB") was created in 1984 by Chapter 4117 of the Ohio Revised Code. That legislation is known as the Public Employees Collective Bargaining Act. This Act gave employees of political subdivisions the right, but not the obligation, to form bargaining units, designate an exclusive representative for bargaining and to bargain collectively. Following certification of the CEO Union, Cleveland's CEO employees chose not to exercise their right to bargain collectively nor to attempt to negotiate a collective bargaining agreement until 2003, after they formed the CEO Union. Cleveland's unfair labor practice of "surface bargaining" delayed achievement of a collective bargaining agreement until February 14, 2005.¹⁶

The CEOs and *State ex rel. IUOE, supra*

Several CEOs working for Cleveland in 1992 had previously worked as construction equipment operators in the private sector. During that private sector employment, they were members of Local 18 of the International Union of Operating Engineers ("Local 18"). After

¹⁶ *SERB Opinion* 2004-004, which is incorporated herein by reference, and attached as Exhibit "D" to this Memorandum.

becoming employed by Cleveland, they chose to continue their membership in Local 18.¹⁷ As a result of that relationship, they allowed Local 18 to represent them in the litigation in *State ex rel. IUOE, supra*.

The Court's opinion in *State ex rel. IUOE* makes a statement, which stemmed from an alleged and erroneous stipulation, that Local 18 was the certified collective bargaining agent for the CEOs. The truth was that Local 18 only acted as a litigation agent for its members. It was not a collective bargaining representative.¹⁸ A claim which surfaced later, that Local 18 should be considered a "grandfathered" or "deemed certified" collective bargaining representative due to activities prior to the passage of the Public Employees Collective Bargaining Act, has also been found erroneous by SERB.¹⁹ *State ex rel. IUOE, supra*, mandated that CEOs shall be compensated at prevailing wage rates under the Building Agreement for 1992 and thereafter.²⁰ Wages increased temporarily.

Cleveland's Failure to Pay the CEOs at Prevailing Wage Rates.

Then, in 1994, Cleveland unilaterally allowed wage rates to fall below the rising private sector prevailing hourly wage. For the next eight years, Cleveland developed one pretext after another for cutting the wages of the CEOs below the prevailing wage rate. Cleveland's various pretexts included a disagreement over which overtime hours are compensated at time-and-a-half and which at double-time; disputing the components of overtime pay; and complaining that it would

¹⁷Exhibit "H" Affidavit of Frank P. Madonia; Exhibit "I," Affidavit of Santo Consolo.

¹⁸ *SERB Opinion* 2006-008, at p. 2, no. 2, and p. 10: "It is undisputed that SERB has never certified Local 18 as the exclusive bargaining representative for the CEOs under §4117.05."

¹⁹ *SERB Opinion* 2006-008, at p. 2, no. 1, and p. 7: "... Local 18 never was the deemed-certified representative of the CEOs."

²⁰ *State ex rel. IUOE, supra* at 538.

rather use a different private sector contract than the one recognized in *State ex rel. IUOE, supra* at 538. As shown on Exhibit “B,” the Wage Chart, CEO wages fell farther below the prevailing wage rates every year during the period of 1994-2005.

One example of a pretext used by Cleveland for cutting CEO wages is Cleveland’s past assertion that CEO employees are not entitled to receive the “pension” component of the prevailing wage. One of Cleveland’s pretexts for reducing the wages of the CEOs below the prevailing wage was that it should carve out of the CEOs’ income the amount of its Employer Accumulation Fund obligation. Cleveland’s “rationale” for this position, was that it is required by law to make deposits into an “Employers Accumulation Fund” (R.C. §145.23(B)) under the Public Employees Retirement System (hereafter “PERS”). Cleveland’s “rationale” is erroneous because it fails to recognize that by law, employees do not receive those deposits.²¹ Instead, the Employers Accumulation Fund is used to provide insurance coverage for current retirants in the system if such coverage is granted by the public employees retirement board (R.C. §145.58), to make up the under-funding for already-accrued and vested pension liabilities, and if the amount in the earnings fund (R.C. §145.23(D)) is insufficient, the amount of the deficiency will be transferred out of the Employers Accumulation Fund. Nothing is earmarked for a particular employee. By law, the fund which holds the employers’ payments is a separate legal entity (R.C. §145.25) in which no individual is vested. No employee “receives” to their credit the Employers Accumulation Fund payments made by Cleveland; those payments do not accrue to the benefit of employee savings.²² See, *Wright v. Dayton* (2004), 158

²¹ See Exhibit “M” hereto, at paragraph 8, in which Cleveland claims not to know that the law provides that the annually-billed obligation of a public employer is deposited in the employers accumulation fund (R.C.145.23(B)), in which no employee is vested or has accounts, and does not accrue to the benefit of any individual employee.

²²R.C. §145.25.

Ohio App. 3d 152; and *Williams v. Columbus* (1987), 40 Ohio App.3d 71; R.C. §145.561. The court in *Wright v. Dayton*, supra, emphasized this, saying: “we are perplexed as to why [claimants] believed they were entitled to a share of the city’s money that it had budgeted for payment to PERS. . .” *Wright v. Dayton* at 160.

The treatment of an employee’s contribution, under law, is different than the Employers Accumulation Fund payment. An employee’s contribution is taken from his paycheck as a payroll deduction (R.C. §145.55) and deposited into an individual account in his name (R.C. §145.21) where it is held for him in the Employee Savings Fund (R.C. §145.23(A)).²³ If he leaves employment, the public employment relations board will return to him the “accumulated contributions” in his individual account (§145.40(A)(1)). However, “accumulated contributions” include only the employee’s own payments to his individual account, but does not include any portion of the Employers Accumulation Fund (§145.01(J)).

“ . . . in the event the employee terminates his employment, rather than retires, that portion which is regarded as the employee’s contribution is returned to him or her, but the employer’s contribution is not” *Williams v. Columbus* (1987, 5th Dist.), 40 Ohio App.3d at 74, and R.C. §145.40.

The withdrawal of his contributions “shall cancel” a former employee’s participation in the retirement system (R.C. §145.40(A)(1)). He will not receive anything except the return of what was taken out of his paycheck and put into his individual account.²⁴ No PERS statute or precedent allows Cleveland to deduct out of the paychecks of its employees any portion of its payments to the Employers Accumulation Fund.

²³ In R.C. Chap. 145, which covers the public employees retirement system (hereafter “PERS”) a “contributor” is an individual employee who has an account in the employee savings fund. R.C. §145.01(F). A “member” is any public employee. R.C. §145.01(B).

²⁴ With some interest, after December of 2000 pursuant to R.C. §145.471.

In summary, the employee does not “receive” the employer’s payments and an employer cannot deduct the amount it must pay from the wages due to an employee. Those funds are not deposited to the employees accounts. Employees are not receiving those funds any more than they receive Cleveland’s unemployment compensation and workers’ compensation deposits. Cleveland is not entitled to a “credit” against CEO wages for its obligation to the Employers Accumulation Fund.

The cited precedent and statutes make clear that Cleveland’s deduction of the employer’s portion of its PERS payment from the CEOs’ wages is improper.

SERB Answers this Court’s *State ex rel. Consolo, supra*, Questions.

In 2002, individual Relators and others sued Cleveland to once again bring their wages up to the prevailing rate in the private sector. Cleveland once again resisted and chose to ignore its City Charter requirement to pay its CEO employees at the prevailing wage rate. Cleveland again appealed to the Ohio Supreme Court its clear duty to pay the prevailing wage. That appeal was decided in *State ex rel. Consolo v. Cleveland*, (2004) 103 Ohio St. 3d 362, 2004-Ohio-5389. In *State ex rel. Consolo*, this Court identifies a number of factual issues, and states that those issues should be determined by SERB. Pursuant to this direction, and in response to the CEO Union’s Petition, SERB ordered and held a hearing to respond to the Court’s queries.²⁵ SERB administrative law judge Beth Jewell issued a recommended decision, which was adopted by SERB,²⁶ finding the following facts:

“(1) International Union of Operating Engineers, Local 18 was not a deemed-certified bargaining agent on or before April 1, 1984, for those persons employed by the City of

²⁵ The SERB Order directing a hearing on the issues is attached hereto as Exhibit “L”.

²⁶ *SERB Opinion* 2006-008. Exhibit “C”

Cleveland as construction equipment operators;

(2) International Union of Operating Engineers, Local 18 was not the exclusive representative for the construction equipment operators at any time during the period of 1994 to 1998;

(3) The City of Cleveland and International Union of Operating Engineers, Local 18 informed the construction equipment operators of the prevailing wage rate agreed to by International Union of Operating Engineers, Local 18 and the City of Cleveland to settle a contempt action, but International Union of Operating Engineers, Local 18 did not negotiate a decrease in compensation of those persons employed by the City of Cleveland as construction equipment operators with the knowledge or consent of the construction equipment operators;

(4) No evidence was presented in the record showing that the construction equipment operators themselves, as individual employees, had agreed to a decrease in compensation;

(5) The wages of the construction equipment operators who were appellees in *Consolo v. City of Cleveland* (2004), 103 Ohio St. 3d 362, 2004-Ohio-5389, were not the result of collective bargaining between International Union of Operating Engineers, Local 18 and the City of Cleveland; and

(6) No evidence was presented in the record showing that any benefits package was negotiated or implemented for the construction equipment operators until February 2005,²⁷ which was after SERB certified the Municipal Construction Equipment Operators' Labor Council as the construction equipment operators' exclusive representative in January 2003. (Emphasis Added).

IUOE Local 18 joined Petitioner CEO Union in asking that SERB adopt all of these findings.

Cleveland protested these recommended determinations of the administrative law judge to the full State Employment Relations Board. On September 28, 2006 SERB rendered Board Opinion 2006-008. In that opinion, SERB adopts and approves all of the determinations above, as well as the reasoning of the administrative law judge. No appeal was taken from SERB's decision; that decision

²⁷ The collective bargaining agreement reached by the CEO Union and Cleveland provided for a combination of hourly wage, days off with pay for vacations, holidays jury duty, funeral leave and personal days. The agreement also provided for other benefits of employment, notably health insurance plus dental and vision coverage, paid by Cleveland. The dollar value of the total package of compensation, when divided into an hourly rate, exceeded the dollar value of the then-current prevailing wage rates in the private sector Building Agreement, between the construction Employers Association and International Union of Operating Engineers, Local 18. See Exhibit "H", Affidavit of CEO Union President Frank P. Madonia.

is now final.

All of these facts are supported by the affidavit of Frank Madonia, CEO and President of the CEO Union, attached as Exhibit "H," and the other attached affidavits and Exhibits support this Complaint.

Count I - Prevailing wages

In 1992, this Court held in *State ex rel. IUOE v. Cleveland*²⁸ and re-affirmed again in *State ex rel. Consolo v. Cleveland*, (2004) 103 Ohio St. 3d 362, that:

"In *IUOE*, we stated that the city must comply with its charter, specifically because the employees' compensation was not a result of collective bargaining." (§ 22).

"...If appellees prevail before SERB on their claim that their wages did not result from collective bargaining, **then the city charter controls.**" (§ 22).

Section 191 of the Cleveland City Charter grants the right to CEOs, and other building trades employees, to be compensated at the same rates generally paid in the private sector.

The CEOs prevailed on their claim before SERB that their wages between 1994 and February of 2005 did not result from collective bargaining, therefore they are entitled to be paid at prevailing wage rates under the City Charter.

In response to this Court's *State ex rel. Consolo* inquiry, SERB has found that the CEOs' wages were not the result of collective bargaining and that no collective bargaining agreement existed until February of 2005. SERB's finding, and this Court's ruling in *State ex rel. IUOE* and *State ex rel. Consolo, supra*, that §191 of Cleveland's Charter obligates it to pay its CEOs at the

²⁸*State ex rel. IUOE v. Cleveland* (1992), 62 Ohio St. 3d 537.

prevailing wage rate in the absence of a collective bargaining agreement, yield the conclusion that CEOs are entitled to be paid at the prevailing wage rate. Based upon these facts and law, the CEOs pray that this Court will issue the prayed for writ of mandamus, ordering Cleveland to pay such amount in back wages as will compensate the CEOs for Cleveland's below-prevailing-wage-rate payments during the period of May 1, 1994 -February 14, 2005. The deficiency of those payments below the prevailing wage on an hourly basis is shown on attached Exhibit "B".

"Prevailing wage rates" include all components of the wages in the private sector.

This Court rendered its opinion in *State ex rel. Pinzone v. Cleveland* (1973), 34 Ohio St.2d 26, that mandamus will lie to compel compliance with a municipal charter requiring that municipal wages be set in accordance with the prevailing wage in private industry. Still further, this Court ruled that the prevailing wage rate should not be offset by fringe benefits, saying:

"Permitting an offset for such "fringe benefits" would necessarily encourage arbitrary and probably inaccurate lowerings of the municipal wage scale. Clearly, this is not the intent or meaning of Section 191." (*Pinzone* at p.31).

In 1979 Cleveland City Council enacted Ordinance 1682-79 (1979) (Exhibit "F"), which set the wage of building trades employees, including Construction Equipment Operators Group 1 (now referred to as "Group A") Construction Equipment Operators Group 2 (now referred to as "Group B") and Master Mechanics, at prevailing wage rates in private industry. The wages so set were taken from the then-current Building Agreement union contract for private sector construction equipment operators. A true copy of the relevant portion of the 1979 Building Agreement is attached to the affidavit of Santo Consolo, attached hereto as Exhibit "I." In accord with the Pinzone decision, all components (100%) of the wage rate in the private sector contract were added together to calculate

the prevailing wage rates prescribed in Cleveland Ordinance 1682-79.

In November 1980, the people of the City of Cleveland adopted the current version of Charter § 191 by popular vote, effective February 17, 1981. Sec. 191 of the Charter (Exhibit "A") refers specifically to the schedule of compensation for building trade employees passed by the city council in 1979 (Exhibit "F"). The "Building Agreement" wage rates shown for 1979 in Exhibit "I", when all components are totaled (100%), are the same as the prevailing wage rates in the 1979 ordinance, and the same as the wages paid in 1979 to Mr. Consolo, as also evidenced in attached Exhibit I.

The Building Agreements' components are as follows: Base rate + H & W (Health and Welfare) + Pension + Industry Advancement Program (IAP) + Apprenticeship Program.

Classification	Effective Date	1979 "Building Agreement" Private sector contract-100% of all components	1979 Ordinance #1682-79 pay range	Difference
CEO 1 (or A)	May 1, 1979	\$15.88	\$15.88	None
CEO 2 (or B)	May 1, 1979	\$15.73	\$15.73	None
CEO 3 (or C)	May 1, 1979	\$15.38	\$15.38	None
CEO 4 (or D)	May 1, 1979	\$14.60	\$14.60	None
Master Mechanic	May 1, 1979	\$16.38	\$16.38	None

This chart shows that the rates established in the benchmark 1979 Ordinance, referred to in City Charter § 191, included all components, and were thus equal to 100% of the prevailing wage. This is what the people of Cleveland approved when they voted on the Charter.

The charter of a municipality is enacted by the vote of the people and, as the will of the people, carries supreme authority within a municipality. The Ohio Supreme Court in *State ex rel. Pell v. Westlake* (1980), 64 Ohio St. 2d 360, stated:

We begin the analysis by recognizing that the charter of a city, as approved by the residents of that city, represents the framework

within which the city government must operate. *Cleveland ex rel. Neelon v. Locher* (1971), 25 Ohio St. 2d 49.

The Ninth District Court of Appeals expressed the relationship in this way:

A municipal charter acts as the constitution of the municipality. *Calco v. Stow* (Apr. 29, 1981) 9th Dist. No. 9990, at 4, citing *State ex rel. Pell v. Westlake* (1980), 64 Ohio St. 2d 360, 361. Accordingly, when provisions of a city's charter and its ordinances conflict, the charter provision prevails. *Reed v. Youngstown* (1962), 173 Ohio St. 265, paragraph two of the syllabus. See, also, *Deluca v. Aurora* (2001), 144 Ohio Spp. 3d 501, 511.

The Ohio Supreme Court has also held that “. . . ordinances and resolutions in conflict with provisions of [a] city charter [are] invalid.” *State ex rel. Plain Dealer Publishing Co., v. Barnes* (1988), 38 Ohio St. 3d 165 at 168. Consequently, the vote of the people of Cleveland, adopting a Charter requirement for compensation at prevailing wage rates, citing compensation set at 100% of those rates, may not be overridden by any other municipal power. The vote of the people requires payment to the CEOs at 100% of the prevailing wage. Cleveland's payment of wages at below the prevailing wage rates was improper and should be remedied by the issuance of the requested writ of mandamus.

If there is no collective bargaining agreement, 100% of the prevailing wage rates must be paid.

Under R.C. §4117.10(A), in the absence of a collective bargaining agreement, the public employer (here, Cleveland) and the public employees are “subject to all applicable state or local laws pertaining to the wages, hours, and terms and conditions of employment for public employees.”

This Ohio Supreme Court specifically ruled in 1992²⁹ that §4117.10(A) means that the wages of construction equipment operating engineers employed by Cleveland continue to be governed by the City Charter when “there is no collective bargaining agreement.” *State ex rel. IUOE v. Cleveland*

²⁹*State ex rel. IUOE v. Cleveland*, (1992) 62 Ohio St. 3d 537

(1992), 62 Ohio St.3d 357 at p.540.

“When negotiations between public employees represented by an exclusive bargaining agent and a city have not produced a collective bargaining agreement, will mandamus lie to resolve a wage dispute by compelling compliance with a city charter provision pursuant to R.C. 4117.10(A)? We find that it does, . . . and allow the writ.” *State ex rel. Internat’l Union of Operating Engineers v. Cleveland* (1992), 62 Ohio St. 3d 537 at 539.

Further

“. . . the city charter, in light of R.C. 4117.10(A), identifies a clear legal right to the relief sought and a concomitant clear legal duty to grant that relief.” *Id.* At 540.

See also, *Consolo, supra*, at 368, ¶12.

To reiterate, SERB determined³⁰ that Cleveland does not provide benefits of employment to CEOs.

Cleveland had no valid reason to reduce the gross wages of CEOs below the prevailing wage rates.

The remedy for an underpayment of compensation to public employees is the issuance of a writ commanding that the payment be made, plus pre-judgment interest.

"It is well settled that a claim by public employees for wages or benefits is actionable in mandamus." *State ex rel. Kabert v. Shaker Hts. City School Dist. Bd. of Edn.* (1977), 78 Ohio St.3d 37, citing *State ex rel. Chavis v. Sycamore City School Dist Bd. of Edn.* (1994), 74 Ohio St.3d 26, 34; *State ex rel. Madden v. Windham Exempted Village School Dist. Bd. of Edn.* (1989), 42 Ohio St.3d 86, 88. A request for a declaration of rights under law can be coupled with an action in mandamus to compel payment of amounts due under the law as so declared. *Fenske v. McGovern*, 11 Ohio St. 3d 129 at 131 (1984). Consequently, the CEOs are entitled to a writ of mandamus which requires that the Cleveland City Council set wages and appropriate funds for the payment of the described deficiency in the CEOs' prevailing wages during the period of 1994-2005, and further, that

³⁰*SERB Opinion* 2006-008. (Exhibit "C")

the Mayor of Cleveland cause the payment of that deficiency, as determined by this Court, to the CEO Union members and the individual Relators. Relators also pray for the award of pre-judgment interest, so that they may be made whole for their loss of income over a period of years. As R.C. §1343.03(A) states in part

“ . . . when money becomes due and payable upon any bond, bill, note . . . or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code.”

Prejudgment interest is not a form of punitive damages. “The Supreme Court has held that in determining whether to award prejudgment interest pursuant to R.C. 1343.03(A), a court need only ask one question: Has the aggrieved party been fully compensated?” *Royal Elec. Constr. Corp. v. Ohio State Univ.* (1995), 73 Ohio St.3d 110, 116.

Further,

“An award of prejudgment interest encourages prompt settlement and discourages defendants from opposing and prolonging, between injury and judgment, legitimate claims. Further, prejudgment interest does not punish the party responsible for the underlying damages, * * * but, rather, it acts as compensation and serves ultimately to make the aggrieved party whole. Indeed, to make the aggrieved party whole, the party should be compensated for the lapse of time between accrual of the claim and judgment.” *Royal Elec., supra*, as quoted in *Commsteel, Inc. v. Bender Constr., Inc.* (Dec, 3, 1998), Cuyahoga App. No. 74189, unreported.

Thus, the award of prejudgment interest is compensatory in nature. The CEOs seek to be made whole for the money due them but not paid, and therefore request the award of prejudgment interest on the difference between the amounts they were paid and the full prevailing wage rate, running from the various payroll dates on which their wages were due.

Count II - Sick Leave

Paid sick leave is required to be provided by political subdivisions in Ohio by R.C. §124.38. It should be treated separately and distinguished from other voluntary benefits of employment which might be granted to employees or not granted, in the discretion of the subdivision. Paid sick leave is mandatory, not discretionary. The sick leave statutes in R.C. Chap. 124 were enacted to be of state-wide application for the health and welfare of public employees in general. Constitutionally, they may not be overridden by local legislation such as municipal ordinances. Ohio Const., Art. II Sec. 34 and 26.

Ohio Revised Code §124.38 provides that public employees:

“ . . . shall be entitled, for each completed eighty hours of service, to sick leave of four and six-tenths hours with pay. . . . Unused sick leave shall be cumulative without limit.”

And pursuant to R.C. sec. 124.39,

“ . . . an employee of a political subdivision covered by section 124.38 or 3319.141 [3319.14.1] of the Revised Code may elect, at the time of retirement from active service with the political subdivision, and with ten or more years of service with the state, any political subdivisions, or any combination thereof, to be paid in cash for one-fourth the value of the employee's accrued but unused sick leave credit. . . . ”

The Home Rule powers of municipalities are specifically made subject to Sec. 3 of Article XVII of the Ohio Constitutions Article XVIII §3 limits the power of cities by stating that municipalities may enforce only such local laws “as are not in conflict with general laws.”

The Ohio Constitution states further:

All laws, of a general nature, shall have a uniform operation throughout the state; nor shall any act, except such as relates to public schools, be passed to take effect upon the approval of any other authority than the general assembly...” Ohio Const.Art. II Sec. 26.

Most specifically, with respect to "Welfare of Employees," the Ohio Constitution Article II, Sec. 26 provides:

"Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety, and general welfare of all employees, and no other provision of the constitution shall impair or limit this power."

Thus the home rule power Cleveland may exercise is limited. Cleveland may not exercise its home rule power so as to contradict a state law of uniform operation throughout the state, dealing with the comfort, health, safety, and general welfare of employees. Cleveland may not eliminate the right to paid sick leave which is granted to employees by virtue of RC §§ 124.38 and .39.

Even a charter city may not take away by ordinance an employee's right to sick leave under state law. The First District Court of Appeals put it this way:

"The issue presented in this case is whether the Home Rule Amendment of the Ohio Constitution allows a charter city to circumvent the provisions of R.C. 124.38 as it pertains to the transfer of an employee's unused accumulated sick leave. We hold that it does not..." *State ex rel. Reuss, v. Cincinnati* (1995) 102 Ohio App. 3d 521 at 522-523.

Cleveland City Code sec. 171.31, (attached as Exhibit "N", City of Cleveland Codified Ordinances) attempts to specifically exclude CEOs from receiving paid sick leave. This attempt to exclude CEOs from receiving sick leave must be ruled invalid.

Referring again to R.C. §4117.10(A), that section makes clear what governs the public employment relationship. That section provides that where no collective bargaining agreement exists, or where an agreement "makes no specification about a matter," state and local laws apply. No collective bargaining agreement which covered the CEOs was in effect prior to February of

2005.³¹ No specification existed in any alleged agreement about sick leave; therefore R.C. §§ 124.38 and 124.39 govern the employment relationship with respect to sick leave. Ohio Rev. Code §4117.10(A). Since October 29, 1980, Cleveland has failed to provide paid sick leave to the CEOs as required by R.C. §124.38, despite the fact that they are regular full-time hourly rate employees of Cleveland. See Affidavit of Frank P. Madonia, Exhibit "H".

Without paid sick leave for this period, if a CEO was injured or ill, he may be excused from work, but he would not be paid for any of the time he is not working. Because CEOs also were not allowed medical and hospitalization insurance as a benefit of employment, when an injured CEO is not working, he still must continue paying the premiums for his medical and hospitalization insurance. Without a paycheck, this may necessitate borrowing money to pay health insurance premiums. The CEO Union submits that this is contrary to the intent of R.C. sec. 124.38 and Ohio Const. Art. II sec. 34.

In *South Euclid Fraternal Order of Police v. D'Amico* (1983) 13 Ohio App. 3d 46 at 47 (Cuy. Cty.) a local ordinance which denied the use of sick leave where it was permitted by §124.38 was declared unconstitutional. Further, the 8th District Court of Appeals held R.C. §124.38 gives employees a vested right in accumulated sick leave, the right to use sick leave, and does not give the employing unit the right to choose whether to grant sick leave or to deny it.

Both *South Euclid, supra*, and *Fraternal Order of Police v. East Cleveland* (1989) 64 Ohio App. 3d 421 at 424 (Cuy. Cty) declare that R.C. sec. 124.38 and 124.39 prevail over conflicting municipal ordinances. See also, *Weir v. Rimmelin* (1984) 15 Ohio St. 3d 55 at 56. The City of Cleveland's attempt to exclude the CEO Union's members from receiving paid sick leave cannot be

³¹*SERB Opinion 2006-008* (Exhibit "C") p. 12: "Furthermore, the City and Local 18 do not dispute that they never entered into a collective bargaining agreement."

given effect. *See, also, State ex rel. Reuss v. Cincinnati* (1995) 102 Ohio App. 3d 521 at 524; *Ebert v. Bd. Of Mental Retardation* (1980) 63 Ohio St. 2d 31 at 33.

A writ should be granted mandating the accumulation of paid sick leave for the hours worked by the members of the CEO Union as provided by statute, at the rate of 4.6 hours for every 80 hours worked during the period from October 29, 1980 to February 13, 2005.

Further, it should be mandated that those employees who were required to miss work due to illness or injury, or the illness or injury of a family member, shall be compensated for the time away from work to the extent of their accumulated paid sick leave.

Finally, The CEO Union asks that it be also mandated that those employees who retired from service for Cleveland during the relevant time period, be paid in cash for one-fourth (1/4) of the value of their accumulated but unused sick leave pursuant to R.C. § 124.39.

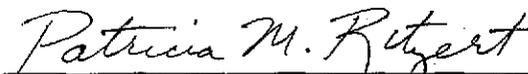
CONCLUSION

SERB has determined that the CEOs' wages were *not* the result of collective bargaining during the period of 1994 - 2005. In *State ex rel. IUOE* and *State ex rel. Consolo, supra*, this Court ruled that Cleveland was required to pay its CEOs at the prevailing wage rate, in the absence of a collective bargaining agreement. This issue was confused by Cleveland's erroneous claim that the CEOs' wages were the result of collective bargaining between it and Local 18 of the International Union of Operating Engineers. SERB's Opinion 2006-008, which is attached as Exhibit "C" to this Memorandum rejects Cleveland's claim. Since the evidence shows that Cleveland has not paid the CEO's at the prevailing wage rate, this Court should issue the writ of mandamus sought by this Complaint to remedy the underpayment of wages.

SERB Opinion 2006-008 also holds that no collective bargaining during the period of 1994-

February 17, 2005 affected benefits. Since the evidence shows that Cleveland wrongly failed to provide paid sick leave to the CEOs as required by Ohio R.C. §§ 124.28 and 124.39, this Court should also issue a writ of mandamus ordering sick leave accrual and payment as sought by this Complaint.

Respectfully submitted,



OF COUNSEL:

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Individual Relators*

LIST OF EXHIBITS

- A. Charter of the City of Cleveland, Ohio - Section 191 "Compensation of Officers and Employees" requiring compensation at prevailing wages for construction trades employees.
- B. Wage Chart showing the underpayment of CEOs on an hourly basis from \$0.92 in 1994 to \$6.97 in 2004.
- C. SERB Opinion 2006-008 in SERB Case No. 2002-REP-06-0116 –making findings of fact and conclusions of law – as directed by the Ohio Supreme Court in State ex rel. Consolo v. Cleveland (2004), 103 Ohio St.3d 362.
- D. SERB Opinion 2004-004, in SERB v. City of Cleveland, Case No. 2003-ULP-06-0322, (August 5, 2004) Order and Opinion finding that Cleveland committed an unfair labor practice by engaging in bad-faith bargaining with the Municipal Construction Equipment Operators' Labor Council.
- E. Motion by Local 18, filed August 31, 2006, for SERB to adopt the Recommended Determination of Administrative Law Judge Beth Jewell.
- F. Cleveland Ordinance #1682-79 (1979) setting prevailing wage rates for building trades employees.
- G. Cleveland Inter-Office Correspondence from N. Jackson, Assistant Commissioner to Julius Ciaccia, Commissioner of Division of Water, dated October 28, 1993 using the sum-of-components for the prevailing wage under the Building Agreement.
- H. Affidavit of Frank P. Madonia, President of the CEO Union.
- I. Affidavit of Santo Consolo, with 1979 prevailing wage rates attached.

- J. Prevailing Wage Rates from Building Agreements between the Construction Employers Association and International Union of Operating Engineers, Local 18, 1994 through 2005.
- K. SERB Fact Finder's report from Virginia Wallace-Curry dated May 10, 2004.
- L. SERB Order dated August 25, 2005 in SERB Case No. 02-REP-06-0116, directing an administrative hearing on the questions raised in *State ex rel. Consolo v. Cleveland* (2004), 013 Ohio St. 3d 362.
- M. Sworn statements of Cleveland Chief of Personnel Management admitting that CEOs are not given paid sick leave and do not receive benefits of employment.
- N. Codified Ordinances of Cleveland, Sec. 171.31 "Sick Leave," effective October 29, 1980. This code section provides paid sick leave for all full-time hourly rate employees except craft employees paid at building trades prevailing rates.

EXHIBIT "A"

Charter of the City of Cleveland, Ohio
"Compensation of Officers and Employees"

Section 191
Effective February 1981

Charter

City of Cleveland Ohio

Complete to December 31, 1990



Artha Woods, City Clerk
Clerk of Council
Jay Westbrook, Council President



CHARTER OF CITY OF CLEVELAND

Note: The original City Charter was adopted by the electors at a special election on July 1, 1913, certified to the Secretary of State on July 4, 1913, and effective January 1, 1914. Dates appearing in parentheses after a section indicate the effective date of such section either as an amendment, new enactment or repeal.

The inclusion of the Charter of the City of Cleveland in this publication of the Codified Ordinances of the City of Cleveland has suggested the desirability of providing chapter arrangement and titles for the respective sections of the Charter, and accordingly these have been supplied by the editor, although they do not appear in the Charter as adopted and amended by the electors.

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- § 19 Separate Recall Petitions Required
- § 20 Ballots in Recall Elections
- § 21 Result of Recall Election

CITY OF CLEVELAND



CERTIFICATE

Cleveland, Ohio January 1, 1991

TO WHOM IT MAY CONCERN:

**This will certify that the matter published
herewith is a true copy of the Charter of City of
Cleveland, in effect on the 1st day January, 1991**

Jay Westbrook

JAY WESTBROOK
President of Council

Artha Woods

ARTHA WOODS
City Clerk, Clerk of Council

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OFFICERS AND EMPLOYEES

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§ 191 Compensation of Officers and Employees

The salary or compensation of all officers and employees in the unclassified service of the City shall be fixed by ordinance, or as may be provided by ordinance. The salary or compensation of all other officers and employees shall be fixed by the appointing authority in accordance with ability, fitness and seniority within the limits set forth in the Council's salary or compensation schedule for which provision is hereinafter made. The Council shall by ordinance establish a schedule of compensation for officers and employees in the classified service, which schedule shall provide for like compensation for like services and shall provide minimum and maximum rates (which may be identical) of salary or compensation for each grade and classification of positions determined by the Civil Service Commission under Section 126 of this Charter. Only in the case of employees in those classifications for which the Council provided in 1979 a schedule of compensation in accordance with prevailing wages paid in the building and construction trades, the schedule established by the Council shall be in accordance with the prevailing rates of salary or compensation for such services. For the guidance of Council in determining the foregoing schedule the Civil Service Commission shall prepare salary or compensation schedules, and the Mayor or any director may, and when required by Council shall, prepare suggested salary or compensation schedules.

The salary of any officer or member of a board or commission in the unclassified service of the City shall not be increased or diminished during the term for which he was elected or appointed. Salaries and compensation fixed at the time this section takes effect shall continue in force until otherwise fixed as provided in this section. All fees pertaining to any office shall be paid into the City Treasury. (Effective February 17, 1981)

§ 192 Official Bond

The Mayor, the Director of Finance, the Commissioner of Accounts, the City Treasurer, and such other officers or employees as the Council may require so to do, shall give bonds in such amount and with such surety as may be approved by the Council. The premium on such bonds may be paid by the City. (Effective November 9, 1931)

§ 193 Continuation in Office

All persons holding administrative office, excepting the office of City Manager, at the time provisions of this Charter take effect, shall continue in office and in the performance of their duties until provisions shall have been made in accordance therewith for the performance of such duties or the discontinuance of such office. The directors of all departments, whether created by charter or by ordinance, shall continue in office and in the performance of their duties until their successors are appointed by the Mayor, as provided in this Charter, and until their successors have qualified. The powers which are conferred and the duties which are imposed upon any officer, commission, board or department of the City under the laws of the State shall, if such office or department is abolished by this Charter, be thereafter exercised and discharged by the officer, board or department upon whom or upon which are imposed corresponding functions, powers and duties hereunder. (Effective November 9, 1931)

EXHIBIT "B"

Wage Chart

Showing the underpayment of CEOs on an hourly basis from \$0.92 in 1994 to \$6.97 in 2004



**AMOUNTS CLEVELAND UNDERPAID ITS
CONSTRUCTION EQUIPMENT OPERATORS AND MASTER MECHANICS
ON AN HOURLY BASIS**

Master Mechanic	1994	1995	1996	1997	1998	1999	2000	2001	2002
Hourly Wages Paid	27.28	27.28	27.28	27.28	28.63	29.48	29.48	29.88	31.53
<u>Prevailing Hourly Rate</u>	<u>28.85</u>	<u>29.60</u>	<u>30.35</u>	<u>31.10</u>	<u>31.95</u>	<u>32.80</u>	<u>34.10</u>	<u>35.10</u>	<u>36.10</u>
Underpayment-Hourly (Deficiency)	-1.57	-2.32	-3.07	-3.82	-3.32	-3.32	-4.62	-5.22	-4.57

CEO Group "A"	1994	1995	1996	1997	1998	1999	2000	2001	2002
Hourly Wages Paid	27.28	27.28	27.28	27.28	28.78	29.63	29.63	30.03	31.03
<u>Prevailing Hourly Rate</u>	<u>28.35</u>	<u>29.10</u>	<u>29.85</u>	<u>30.60</u>	<u>31.45</u>	<u>32.30</u>	<u>33.60</u>	<u>34.60</u>	<u>35.60</u>
Underpayment-Hourly (Deficiency)	-1.07	-1.82	-2.57	-3.32	-2.67	-2.67	-3.97	-4.57	-4.57

CEO Group "B"	1994	1995	1996	1997	1998	1999	2000	2001	2002
Hourly Wages Paid	27.28	27.28	27.28	27.28	28.63	29.48	29.48	29.88	30.88
<u>Prevailing Hourly Rate</u>	<u>28.20</u>	<u>28.95</u>	<u>29.70</u>	<u>30.45</u>	<u>31.30</u>	<u>32.15</u>	<u>33.45</u>	<u>34.45</u>	<u>35.45</u>
Underpayment-Hourly (Deficiency)	-0.92	-1.67	-2.42	-3.17	-2.67	-2.67	-3.97	-4.57	-4.57

**AMOUNTS CLEVELAND UNDERPAID ITS
CONSTRUCTION EQUIPMENT OPERATORS AND MASTER MECHANICS
ON AN HOURLY BASIS**

Master Mechanic	Jan.-Apr. 2003	May 2003- Apr. 2004	May 2004- Feb. 13, 2005
Hourly Wages Paid	31.53	31.53	31.53
<u>Prevailing Hourly Rate</u>	<u>36.10</u>	<u>37.30</u>	<u>38.50</u>
Underpayment-Hourly (Deficiency)	-4.57	-5.77	-6.97

CEO Group "A"	Jan.-Apr. 2003	May 2003- Apr. 2004	May 2004- Feb. 13, 2005
Hourly Wages Paid	31.03	31.03	31.03
<u>Prevailing Hourly Rate</u>	<u>35.60</u>	<u>36.80</u>	<u>38.00</u>
Underpayment-Hourly (Deficiency)	-4.57	-5.77	-6.97

CEO Group "B"	Jan.-Apr. 2003	May 2003- Apr. 2004	May 2004- Feb. 13, 2005
Hourly Wages Paid	30.88	30.88	30.88
<u>Prevailing Hourly Rate</u>	<u>35.45</u>	<u>36.65</u>	<u>37.85</u>
Underpayment-Hourly (Deficiency)	-4.57	-5.77	-6.97

EXHIBIT "C"

SERB Opinion 2006-008 in SERB Case No. 2002-REP-06-0116

Directive making findings of fact and conclusions of law -- as indicated by the Ohio Supreme

Court in *State ex rel. Consolo v. Cleveland* (2004), 103 Ohio St.3d 362

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Municipal Construction Equipment Operators' Labor Council,

Employee Organization,

and

International Union of Operating Engineers, Local 18,

Employee Organization,

and

City of Cleveland,

Employer.

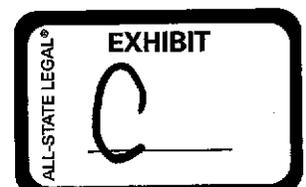
Case No. 2002-REP-06-0116

**DIRECTIVE
(OPINION ATTACHED)**

Before Chairman Mayton, Vice Chairman Gillmor, and Board Member Verich:
September 28, 2006.

On April 11, 2005, the Municipal Construction Equipment Operators' Labor Council ("MCEOLC") filed a "Petition for Administrative Hearing," in which it requested that the State Employment Relations Board ("SERB" or "Board") appoint a hearing examiner to adjudicate certain issues that the Ohio Supreme Court had found, in Consolo v. City of Cleveland (2004), 103 Ohio St.3d 362, 2004-Ohio-5389, to be within SERB's jurisdiction. On August 25, 2005, the Board issued an Order Directing Administrative Hearing identifying seven questions to be addressed through the hearing by the Administrative Law Judge.

On February 6, 2006, a hearing was held. Subsequently, all parties filed post-hearing briefs. On July 20, 2006, a Recommended Determination was issued by the Administrative Law Judge. On August 16, 2006, the City of Cleveland filed exceptions to the Recommended Determination. On August 29, 2006, MCEOLC filed a response to the exceptions. On September 1, 2006, the International Union of Operating Engineers, Local 18 filed a petition to join the response of MCEOLC in support of the Recommended Determination.



Directive

Case No. 2002-REP-06-0116

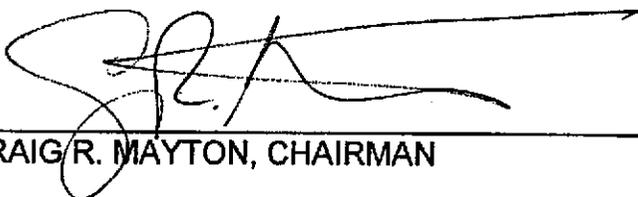
September 28, 2006

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After reviewing the record, the Recommended Determination, the Employer's exceptions, the Employee Organizations' responses to the exceptions, and all other filings in this case, the Board construes the Analysis and Discussion in the Administrative Law Judge's Recommended Determination as Conclusions of Law; adopts the Introduction, Procedural History, Issues, Findings of Fact, and Analysis and Discussion/Conclusions of Law in the Administrative Law Judge's Recommended Determination, incorporated by reference; and finds that: (1) International Union of Operating Engineers, Local 18 was not a deemed-certified bargaining agent on or before April 1, 1984, for those persons employed by the City of Cleveland as construction equipment operators; (2) International Union of Operating Engineers, Local 18 was not the exclusive representative for the construction equipment operators at any time during the period of 1994 through 1998; (3) the City of Cleveland and International Union of Operating Engineers, Local 18 informed the construction equipment operators of the prevailing wage rate agreed to by International Union of Operating Engineers, Local 18 and the City of Cleveland to settle a contempt action, but International Union of Operating Engineers, Local 18 did not negotiate a decrease in compensation of those persons employed by the City of Cleveland as construction equipment operators with the knowledge or consent of the construction equipment operators; (4) no evidence was presented in the record showing that International Union of Operating Engineers, Local 18 informed the City of Cleveland that the construction equipment operators themselves, as individual employees, had agreed to a decrease in compensation; (5) the wages of the construction equipment operators who were appellees in Consolo v. City of Cleveland (2004), 103 Ohio St.3d 362, 2004-Ohio-5389, were not the result of collective bargaining between International Union of Operating Engineers, Local 18 and the City of Cleveland; and (6) no evidence was presented in the record showing that any benefits package was negotiated or implemented for the construction equipment operators until February 2005, which was after SERB certified the Municipal Construction Equipment Operators' Labor Council as the construction equipment operators' exclusive representative in January 2003.

It is so ordered.

MAYTON, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



CRAIG R. MAYTON, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Court of Common Pleas within fifteen days after the mailing of the State Employment Relations Board's directive.

Directive
Case No. 2002-REP-06-0116
September 28, 2006
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I certify that a copy of this document was served upon each party's representative by certified mail, return receipt requested, this 5th day of October, 2006.



DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT

direct\09-28-06.02

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

**MUNICIPAL CONSTRUCTION
EQUIPMENT OPERATORS' LABOR
COUNCIL,**

Employee Organization,

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 18,**

Employee Organization,

and

CITY OF CLEVELAND,

Employer.

CASE NO. 02-REP-06-0116

**BETH A. JEWELL
Administrative Law Judge**

**RECOMMENDED
DETERMINATION**

I. INTRODUCTION

On April 11, 2005, the Municipal Construction Equipment Operators' Labor Council ("MCEOLC") filed a "Petition for Administrative Hearing," in which it requested that the State Employment Relations Board ("SERB" or "Board") appoint a hearing examiner to adjudicate certain issues that the Ohio Supreme Court had found to be within SERB's jurisdiction in Consolo v. City of Cleveland (2004), 103 Ohio St.3d 362, 2004-Ohio-5389. On August 25, 2005, the State Employment Relations Board ("SERB" or "Board") issued an Order Directing Administrative Hearing. In its order, SERB stated as follows:

We have considered the arguments raised by Local 18 and the Employer maintaining that the Board possesses no legal authority to conduct such a hearing outside the parameters of an unfair labor practice charge proceeding. However, in this particular matter, in which the Ohio Supreme Court has specifically identified issues that it says must first be addressed by SERB, we have decided to exercise our plenary jurisdiction to resolve them. We are cognizant of the mandate of Ohio Revised Code § 4117.22, which charges SERB with construing Chapter 4117 liberally to promote orderly and constructive relationships between public employers and public employees.

Thereafter, the Board assigned this Administrative Law Judge to take testimony for the purpose of preparing recommendations to the Board on seven questions. A hearing was held on February 6, 2006, wherein testimonial and documentary evidence was presented. Subsequently, all parties filed post-hearing briefs.

II. PROCEDURAL HISTORY

In 1973, the Ohio Supreme Court decided Pinzone v. Cleveland (1973), 34 Ohio St.2d 26 ("Pinzone"), holding that, under Section 191 of the City Charter of the City of Cleveland, wages for building and construction trades employees working for the City should be paid at the prevailing wage rates in the private sector, in accordance with a private sector contract between Cleveland Building and Construction Trades Employers Association and the Mechanical Contractors Association. The City argued that such items as paid sick leave, greater job security and more steady employment could be offset against the higher base wage in private industry. The Court disagreed: "Permitting an offset for such 'fringe benefits' would necessarily encourage arbitrary and probably inaccurate lowerings of the base municipal wage scale. Clearly, this is not the intent or meaning of Section 191." Pinzone, supra at 31.

In State ex rel. Internatl. Union of Operating Engineers v. Cleveland (1992), 62 Ohio St.3d 537 ("IUOE"), an action in mandamus brought by Local 18 as the bargaining representative for construction equipment operators and master mechanics (collectively, "CEOs") working for the City, the Ohio Supreme Court issued a writ of mandamus ordering the City to pay back and future wages to the CEOs in accordance with the City Charter.

In 2001, forty CEOs filed a complaint in the court of common pleas, asserting that the City was not compensating them in accordance with IUOE and the City Charter.¹ See Consolo v. Cleveland (2004), 103 Ohio St.3d 362, 2004-Ohio-5389 ("Consolo"). In Consolo, the CEOs claimed that the City stopped paying increases in prevailing wages after 1993 and that the City stopped paying pension contributions in 1998. The CEOs additionally claimed that in 1998, Local 18 negotiated with the City on their behalf but without their authorization. The CEOs claimed that Local 18 and the City verbally agreed that the CEOs would waive their rights to pension contributions and prevailing wage increases. Local 18 and the City argued that the CEOs' claims belonged before SERB as unfair labor practices because Local 18 was the CEOs' exclusive bargaining representative during the time periods in question. The trial court dismissed the CEOs' claims, holding that the allegations were tantamount to unfair labor practice claims and thus within SERB's exclusive jurisdiction. The CEOs appealed. Ultimately, the Ohio Supreme Court upheld the trial court's dismissal, holding that SERB has the exclusive authority to determine whether the CEOs' compensation levels were the result of collective bargaining. However, the Ohio Supreme Court noted the following arguments asserted by the CEOs as appellees in the Consolo litigation:

¹ On January 30, 2003, SERB certified the MCEOLC as the exclusive representative of City employees in a bargaining unit including CEOs.

It is important to note that the appellees' allegations are contrary to facts stipulated in IUOE. Appellees assert that Local 18 is not and never has been their exclusive bargaining representative. They also assert that the R.C. 4115.03(E) definition of "prevailing wage" is controlling. Before visiting the prevailing-wage issue, we first focus upon Local 18's relationship with appellees.

The city contends that appellees were in privity with Local 18 in IUOE and that the stipulations from IUOE estop appellees from asserting that Local 18 is not their exclusive bargaining representative. Collateral estoppel, however, does not apply because IUOE does not speak to Local 18's current status as collective-bargaining representative. Hence, even if appellees might otherwise have been estopped from litigating issues decided by IUOE, the identity of appellees' bargaining representative after 1992 was not an issue addressed in that opinion. Moreover, Local 18's status was neither actually litigated nor essential to our judgment. Local 18's status as a collective-bargaining representative appears to have been stipulated in IUOE to demonstrate its standing to file suit against the city. Here, appellees agree that Local 18 was a collective-bargaining agent but not their exclusive bargaining agent as contemplated by R.C. 4117.05. This distinction was immaterial to our IUOE decision. It may be key here. Therefore, IUOE does not bar appellees from arguing that Local 18 is not their exclusive bargaining agent.

Consolo, supra at 364-365. The Court concluded, in relevant part, as follows: "If appellees' compensation levels were the result of collective bargaining under R.C. Chapter 4117, then the city's charter provisions would be inapplicable.... If appellees prevail before SERB on their claim that their wages did not result from collective bargaining, then the city charter controls." Consolo, supra at 367.

Following the Ohio Supreme Court's decision in Consolo, the MCEOLC filed its "Petition for Administrative Hearing" with SERB.

III. ISSUES

The following seven questions were presented by the Board for the Administrative Law Judge's consideration:

1. Whether before April 1, 1984, the International Union of Operating Engineers, Local 18 ("Local 18") ever was the deemed-certified representative of those persons employed by the City as construction equipment operators, who are now represented by the Municipal Construction Equipment Operators' Labor Council ("MCEOLC") as their exclusive bargaining agent.

2. If Question No. 1 is answered affirmatively, how long may a deemed certified representative retain that status if Local 18 never complied with the reporting requirements of § 4117.19²?

3. Was Local 18 the "exclusive representative" of those persons employed by the City of Cleveland ("City") as construction equipment operators anytime during the period of 1994 through 1998?

4. Did Local 18 negotiate with the City a decrease in compensation of those persons employed by the City as construction equipment operators without their knowledge or consent?

5. Did Local 18 falsely inform the City that those persons employed by the City as construction equipment operators had agreed to a decrease in compensation?

6. Were the wages of the construction equipment operators who were appellees in Consolo v. City of Cleveland (2004), 103 Ohio St.3d 362, [2004-Ohio-5389,] the result of collective bargaining between Local 18 and the City?

7. Did the City and Local 18 negotiate and implement a benefits package that provided the construction equipment operators described above in Paragraph (6) with equal or better benefits than are provided by the City Charter?

IV. FINDINGS OF FACT³

1. The MCEOLC is an "employee organization" as defined in § 4117.01(D). (Consent Election Agreement, December 2002, SERB Case No. 02-REP-06-0116)

2. The International Union of Operating Engineers, Local 18 ("Local 18"), is an "employee organization" as defined in § 4117.01(D). (Consent Election Agreement, December 2002, SERB Case No. 02-REP-06-0116)

3. The City of Cleveland ("City") is a "public employer" as defined in § 4117.01(B). (Consent Election Agreement, December 2002, SERB Case No. 02-REP-06-0116)

² All references to statutes are to the Ohio Revised Code, Chapter 4117, unless otherwise indicated.

³ All references to the transcript of hearing are indicated parenthetically by "T.," followed by the page number(s). All references to the parties' stipulations of fact in the record are indicated parenthetically by "S.," followed by the stipulation number(s). References to the MCEOLC's exhibits in the record are indicated parenthetically by "P. Exh.," followed by the exhibit number(s). References to Local 18's exhibits in the record are indicated parenthetically by "U. Exh.," followed by the exhibit number(s). References to the City's exhibits in the record are indicated parenthetically by "C. Exh.," followed by the exhibit number(s). References to the record in the Findings of Fact are for convenience only and are not intended to suggest that such reference is the sole support in the record for that related finding of fact.

4. During the years before and at the time Chapter 4117 became effective, the Civil Service Employees Association ("CSEA") represented dues-paying civil service employees of the City by filing grievances on their behalf. The CSEA was open to all civil service employees, without regard to union affiliation. (T. 23, 57-58, 60)
5. Before and after Chapter 4117 became effective, the Construction Equipment Operators ("CEOs") working for the City received the prevailing wage under Section 191 of the City Charter. The CEOs relied upon Local 18 to inform the City of the current prevailing wage under Local 18's Building Agreement with the Construction Employers Association ("Building Agreement"). (T. 46, 111; U Exhs. 11-17; P. Exhs. 34-37)
6. On March 1, 1983, seven individual CEOs employed in the City's Water Department signed a letter to the Commissioner of the Water Department, accepting a new policy put in place by the department that clarified when the employees would receive overtime pay. Their signatures on the letter are witnessed by Local 18 Business Representative Dudley Snell. At that time, approximately 50 CEOs were employed by the City in various departments, including water, parks, streets, and the municipal power plant. (T. 124; C. Exh. 1, p. 7)
7. In 1987, employee organizations representing several bargaining units of employees working for the City entered into collective bargaining agreements with the City. These collective bargaining agreements typically involved wages in the amount of 80 percent of the prevailing wage rate, plus City fringe benefits. Although they were not receiving City fringe benefits, the CEOs did not want a collective bargaining agreement with a wage rate lower than the prevailing wage. The CEOs rejected the collective bargaining agreement proposed by the City. (T. 107-108; C. Exh. 1, pp. 7-9)
8. Between 1988 and 1996, many CEOs joined Local 18 and signed dues deduction authorization cards. (C. Exh. 8)
9. In 1992, the Ohio Supreme Court granted a writ of mandamus directing the City to comply with City Charter Section 191 by paying back and future wages to the City's CEOs in accordance with prevailing wage rates. Local 18 brought the mandamus action on behalf of its members who were working as CEOs for the City. State ex rel. Internatl. Union of Operating Engineers v. Cleveland (1992), 62 Ohio St.3d 537 ("IUOE").
10. On August 6, 1996, a meeting of Local 18 members working for the City was held at Local 18's Cleveland headquarters. At this meeting, Local 18 President Dudley Snell asked the members if they would like to vote on whether they wanted Local 18 to negotiate a contract with the City on their behalf. The members voted not to authorize Local 18 to represent them in negotiating a contract with the City. (T. 25-26, 27, 106, 132; P. Exh. 45)

11. After 1993, the City disputed the prevailing wage rate it was required to pay the CEOs. The City argued that it was entitled to offset certain items from the private sector prevailing wage rate. Local 18 then filed a contempt action to compel the City to comply with the terms of the Ohio Supreme Court's decision in IJOE, supra. In 1998, Local 18 and the City resolved this litigation by agreeing to a calculation of the prevailing wage rate that included a deduction for pension contributions, and Local 18 dismissed the contempt action. Local 18 President Snell and Assistant City Law Director Thomas Corrigan held a meeting with the CEOs to explain how Local 18 and the City had calculated the prevailing wage rate. The CEOs were not asked to vote on, and never voted to approve, the settlement of the litigation or the calculation of the prevailing wage rate. (T. 35-36, 134-135, 139-142, 143-144, 159-160; C. Exh. 1, pp. 24-27)

12. No City records can be found to indicate that the City Council approved a collective bargaining agreement between the City and a union that represented a bargaining unit including CEOs and master mechanics prior to February 14, 2005. (S., T. 12)

13. No City records indicate the receipt by the City prior to April 1, 1984, of a request for recognition by Local 18 to be the exclusive bargaining representative for a bargaining unit which included CEOs and master mechanics. (S., T. 13)

14. During the period of time from April 1, 1984 to February 5, 2002, SERB has no record of certification or recognition for the CEOs employed by the City in its Division of Streets or Division of Water. (P. Exh. 48)

15. On June 28, 2002, the MCEOLC filed a Request for Recognition with SERB, seeking to represent a proposed bargaining unit of City employees in the classifications of Master Mechanic, Construction Equipment Operator A, and Construction Equipment Operator B, within the City's Departments of Public Utilities and Public Service. (SERB Case No. 02-REP-06-0116)

16. Following the execution of a Consent Election Agreement, SERB conducted a secret ballot election on January 16, 2003. On January 30, 2003, SERB certified the MCEOLC as the exclusive representative of the employees in the proposed bargaining unit. (SERB Case No. 02-REP-06-0116)

V. ANALYSIS AND DISCUSSION

RECOMMENDED ANSWERS TO THE SEVEN QUESTIONS PRESENTED

1. Whether before April 1, 1984, the International Union of Operating Engineers, Local 18 ("Local 18") ever was the deemed certified representative of those persons employed by the City as construction equipment operators, who are now represented by the Municipal Construction Equipment Operators' Local Council ("MCEOLC") as their exclusive bargaining agent.

No. After examining the facts, and for the reasons that follow, it is recommended that Local 18 never was the deemed-certified representative of the CEOs.

1983 S 133, § 4, also referred to in SERB Opinions as the "temporary law" or the "uncodified law," provides in relevant part as follows:

(A) Exclusive recognition through a written contract, agreement, or memorandum of understanding by a public employer to an employee organization whether specifically stated or through tradition, custom, practice, election, or negotiation the employee organization has been the only employee organization representing all employees in the unit is protected subject to the time restriction in division (B) of section 4117.05 of the Revised Code. Notwithstanding any other provision of this act, an employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization under the provisions of this act and the State Employment Relations Board has certified an exclusive representative.

(B) Any employee organization otherwise recognized by the public employer without a written contract, agreement, or memorandum of understanding shall continue to be recognized until challenged as provided in this act, and the Board has certified an exclusive representative.

(C) Nothing in this act shall be construed to permit an employer to terminate or refuse to make payroll deductions of dues, fees, or assessments to any employee organization pursuant to written authorization; except that the deductions may not continue to be made after another employee organization has been certified under this act by the Board.

(F) This act does not preclude any nonprofit, voluntary, bona fide organization which, by tradition, custom and practice, has engaged in the processing of grievances for public employees before political subdivision civil service commissions as of June 1, 1983, from providing the services it has heretofore offered on a voluntary basis or from receiving a voluntary check-off of dues.

In In re City of Akron, SERB 94-012 (4-28-94) ("Akron"), at p. 3-81, SERB explained deemed-certified status as follows:

An employee organization has deemed-certified status if, at the time Chapter 4117 went into effect, it was recognized by the employer as the

exclusive bargaining representative of certain employees of an employer in a specific bargaining unit. Thus, the crucial time for determining deemed-certified status is the law's effective date, April 1, 1984. The policy behind creating deemed-certified status was to preserve the status quo when the new law took effect and to ensure stability in public sector labor relations as the state entered an era of regulated collective bargaining.

The controlling factor in determining deemed-certified status is the type of relationship existing between the employee organization and the employer on April 1, 1984, specifically whether the employer exclusively recognized the employee organization as the representative of certain employees of an employer in a given bargaining unit at that time. Obviously, the most significant indicator of exclusive recognition is a collective bargaining agreement or memorandum of understanding between the employee organization and the employer in effect on that date, which by its terms recognizes the employee organization as the exclusive representative. However, exclusive recognition not specifically written might be proven through tradition, custom, practice, election, or negotiation.

In this case, the parties agree that no collective bargaining agreement or other writing exists to establish Local 18 as the exclusive representative of the CEOs. Even Local 18 asserts that the CEOs limited Local 18's "representation" to periodically informing the City of the amount of the prevailing wage under the Building Agreement and to representing the CEOs in grievance proceedings.

SERB examined the concept of exclusive recognition established through tradition, practice and negotiation in SERB v. City of Bedford Hts., SERB 87-016 (7-24-87), aff'd 41 Ohio App. 3d 21 (11-25-87) ("Bedford Hts."). In Bedford Hts., a memorandum of understanding was in effect from January 1984 to December 1985, which encompassed the crucial time for deemed-certified status. However, the memorandum contained no provision recognizing the employee organization as the exclusive representative of the employees. Because the contract was silent on the issue of exclusive recognition, the Board looked to the parties' tradition, custom, and negotiation to ascertain the employee organization's status.

The facts in Bedford Hts. are significantly different from those presented in this case, where the parties have never entered into a contract. Here, as in Akron, supra, the absence of any collective bargaining agreement on April 1, 1984, presents particular difficulties in establishing exclusive recognition:

Although exclusive recognition may conceivably be established without a formal contract in existence on April 1, 1984, the party seeking to prove such status without a contract has a substantial burden.... A collective bargaining agreement, even one without an exclusive recognition clause,

is probative of the parties' relationship and may contribute to establishing exclusive recognition. The existence of a contract shows that the employer and the employee organization conducted negotiations on terms and conditions of employment. Typically, the contract identifies the employees covered by the contract or the bargaining unit. Where no contract exists, status must be proven solely by evidence of live conduct and interaction between the parties, which rises to the level of exclusivity.

Akron, supra at 3-82.

Here, without a contract, the City and Local 18 rely on dues deductions and grievance processing to establish exclusive representative status as of April 1, 1984. These factors are not persuasive. Under § 4(C) of the temporary law, an employer cannot refuse to make dues deductions under written authorization where no certified representative exists. But § 4(C) does not vest an employee organization with deemed-certified status. Under § 4(F) of the temporary law, an organization does not even have to be an employee organization to be allowed to continue processing grievances and have dues deducted if such was done as of June 1, 1983. An organization does not become deemed certified only by processing grievances and having dues deducted. Akron, supra at 3-82. Furthermore, the evidence in the record reveals that both Local 18 and the CSEA were involved in processing the CEOs' grievances. Even for grievance processing purposes, Local 18 was not an exclusive representative.

Moreover, the record does not establish that the City ever actually *negotiated* wages with Local 18 before April 1, 1984. The record shows only that Local 18 periodically wrote letters *informing* the City of the prevailing wage rate under the Building Agreement.⁴ Even Local 18 does not characterize the CEOs' wages as being the result of collective bargaining: "The wages paid the CEOs were based upon the City Charter requiring the city of Cleveland, absent a collective bargaining agreement, to pay the prevailing wage rate negotiated between construction union and private employers."⁵

The only other documentary evidence of pre-April 1, 1984 contact between the City and Local 18 is a March 1, 1983 document involving Local 18 members who worked in the City's Water Department. According to a March 2, 1983 cover letter sent from the Commissioner of the Water Department to the Assistant Commissioner, the subject of the document is a staggered work week for the employees. Most significant about this document is that it was signed by the employees themselves, "acknowledg[ing] their agreement to the policy change." The Local 18 business representative's signature appears only in the capacity of witness to the employees' signatures.⁶ Rather than an indication of exclusive recognition, this document

⁴ C. Exh. 1, pp. 1-5.

⁵ Post-Hearing Brief of Local 18, p. 11.

⁶ C. Exh. 1, pp. 6-7.

corroborates the hearing testimony of CEO witness Anthony Mangano, who stated that he understood that he was on his own regarding conditions of employment.⁷

The earliest documentation of specific discussions on working conditions between the City and Local 18 are July and August 1987 letters involving efforts to negotiate a collective bargaining agreement.⁸ Such efforts, even if they culminated in a written collective bargaining agreement, could not make Local 18 a deemed-certified representative because the critical date, April 1, 1984, had long passed. "Private agreements reached after April 1, 1984 cannot bestow on the employee organizations involved deemed-certified status and do not confer 4117 rights." Akron, supra at 3-82.

In sum, the parties in Bedford Hts. engaged in regular, full-fledged contract negotiations. The relationship between the City and Local 18 does not rise to the level of contract negotiations. In Bedford Hts., the description of the bargaining unit was clear. In this case, no evidence of a bargaining-unit description exists. And finally, in Bedford Hts., the employee organization had a written memorandum of understanding with the City effective January 1984 to December 1985, even though the written agreement was silent on the recognition issue. In the instant case, the City and Local 18 never signed a written agreement.

"Section 4 of the Temporary Law was designed to maintain the status quo in those public sector employer-employee collective-bargaining relationships predating April 1, 1984. But not all the degrees, shapes and forms of collective bargaining permitted by Chapter 4117 result in deemed-certified status. Only the existence of exclusive recognition on April 1, 1984 creates deemed-certified status after April 1, 1984." Akron, supra at 3-83 to 3-84. The record in the case at issue does not establish that the relationship between the City and Local 18 was one of exclusive recognition on April 1, 1984. Thus, Local 18 never was a deemed-certified representative of the CEOs employed by the City.

2. If Question No. 1 is answered affirmatively, how long may a deemed certified representative retain that status if Local 18 never complied with the reporting requirements of Ohio Revised Code Section 4117.19?

The answer to Question No. 1 is no. Therefore, Question No. 2 is not applicable.

3. Was Local 18 the "exclusive representative" of those persons employed by the City of Cleveland as construction equipment operators anytime during the period of 1994 through 1998?

No, Local 18 was not the exclusive representative of the CEOs at any time. Under Question No. 1, supra, Local 18 was not deemed certified. Furthermore, it is

⁷ T. 98, 112.

⁸ F.F. No. 7.

undisputed that SERB has never certified Local 18 as the exclusive collective-bargaining representative for the CEOs under § 4117.05.

4. Did Local 18 negotiate with the City a decrease in compensation of those persons employed by the City as construction equipment operators without their knowledge or consent?

The record demonstrates that in 1998, the City and Local 18 informed the CEOs of the prevailing wage rate agreed to by Local 18 and the City to settle a contempt action. The CEOs did not consent to the prevailing wage rate agreed upon.

After 1993, the City disputed the prevailing wage rate it was required to pay the CEOs. The City argued that it was entitled to offset certain items from the private sector prevailing wage rate. Local 18 then filed a contempt action to compel the City to comply with the terms of IUOE, supra. In 1996, Local 18 members working for the City voted, at a meeting called by Local 18 President Snell, on whether to authorize Local 18 to negotiate a contract with the City. The members voted no. Thereafter, in 1998, Local 18 and the City resolved their litigated dispute over the calculation of the prevailing wage rate. Local 18 President Dudley Snell and Assistant City Law Director Thomas Corrigan held a meeting with the CEOs to explain how Local 18 and the City had calculated the prevailing wage rate.⁹ At this meeting, the CEOs were not asked to approve or consent to the prevailing wage rate agreed to by Local 18 and the City in settlement of the contempt action.

5. Did Local 18 falsely inform the City that those persons employed by the City as construction equipment operators had agreed to a decrease in compensation?

No. No evidence is present in the record that Local 18 informed the City that the CEOs themselves, as individual employees, had agreed to a decrease in compensation.

6. Were the wages of the construction equipment operators who were appellees in Consolo v. City of Cleveland (2004), 103 Ohio St.3d 362, [2004-Ohio-5389,] the result of collective bargaining between Local 18 and the City?

No. Collective bargaining cannot be held to have occurred because Local 18 never was the exclusive representative of the CEOs within the meaning of Chapter 4117. The wages paid to the CEOs were based upon the City Charter provision requiring the City to pay the prevailing wage rate in the Building Agreement negotiated between construction unions and private employers. Every witness who testified confirmed that Local 18 informed the City of the amount of prevailing wages only, and that Local 18 never was authorized by the CEOs to negotiate terms of employment.

⁹ F.F. No. 10.

Furthermore, the City and Local 18 do not dispute that they never entered into a collective bargaining agreement. The City did not enter into a collective bargaining agreement with a bargaining unit of CEOs until February 2005, after SERB certified MCEOLC as the CEOs' exclusive representative in January 2003.

7. Did the City and Local 18 negotiate and implement a benefits package that provided the construction equipment operators described above in Paragraph (6) with equal or better benefits than are provided by the City Charter?

No. No evidence is present in the record that any benefits package was negotiated or implemented for the CEOs until February 2005, after SERB certified MCEOLC as the CEOs' exclusive representative in January 2003.

EXHIBIT "D"

SERB Opinion 2004-004, in SERB v. City of Cleveland, Case No. 2003-ULP-06-0322,

(August 5, 2004)

Order and Opinion finding that Cleveland committed an unfair labor practice by
engaging in bad-faith bargaining with the Municipal Construction Equipment

Operators Labor Council

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Cleveland,

Respondent.

Case No. 2003-ULP-06-0322

ORDER
(OPINION ATTACHED)

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich:
August 5, 2004.

On June 17, 2003, the Municipal Construction Equipment Operators' Labor Council ("Intervenor") filed an unfair labor practice charge with the State Employment Relations Board ("Board" or "Complainant") alleging that the City of Cleveland ("Respondent") had violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5). On October 1, 2003, the Board found probable cause to believe an unfair labor practice had been committed and directed the unfair labor practice case to hearing.

On February 26, 2004, an expedited hearing was held. Subsequently, the parties filed briefs setting forth their positions. On April 15, 2004, a Proposed Order was issued by the Administrative Law Judge, recommending that the Board find that the Respondent violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5) when it engaged in bad-faith "surface bargaining" when it refused to propose any reasonable alternatives to the 31 pending bargaining items. On May 10, 2004, the Respondent filed exceptions to the Proposed Order. On May 24, 2004, the Complainant filed a response to the Respondent's exceptions.

After reviewing the record, the Proposed Order, and all other filings in this case, the Board adopts the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Proposed Order, incorporated by reference. The Board also issues this Order, with a Notice to Employees, to the City of Cleveland to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117, and from refusing to bargain collectively with the exclusive representative of its employees, by engaging in bad-faith "surface bargaining" when it refused to propose any reasonable alternatives to the 31 pending bargaining items during



the parties' negotiations for their initial collective bargaining agreement, and from otherwise violating Ohio Revised Code Sections 4117.11(A)(1) and (A)(5).

The City of Cleveland is hereby ordered to:

- (1) Bargain in good faith with the Municipal Construction Equipment Operators' Local Council toward an initial collective bargaining agreement;
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Municipal Construction Equipment Operators' Local Council work, the Notice to Employees furnished by the Board stating that the City of Cleveland shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (3) Notify the Board in writing within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

It is so ordered.

DRAKE, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



CAROL NOLAN DRAKE, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D) by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, within fifteen days after the mailing of the State Employment Relations Board's order.

I certify that a copy of this document was served upon each party's representative by certified mail, return receipt requested, this 9th day of August, 2004.



DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT



NOTICE TO EMPLOYEES

FROM THE STATE EMPLOYMENT RELATIONS BOARD

POSTED PURSUANT TO AN ORDER OF THE STATE EMPLOYMENT RELATIONS BOARD, AN AGENCY OF THE STATE OF OHIO

After a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this Notice. We intend to carry out the order of the Board and to abide by the following:

A. CEASE AND DESIST FROM:

Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117, and from refusing to bargain collectively with the exclusive representative of its employees, by engaging in bad-faith "surface bargaining" when it refused to propose any reasonable alternatives to the 31 pending bargaining items during the parties' negotiations for their initial collective bargaining agreement, and from otherwise violating Ohio Revised Code Sections 4117.11(A)(1) and (A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Bargain in good faith with the Municipal Construction Equipment Operators' Local Council toward an initial collective bargaining agreement;
2. Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Municipal Construction Equipment Operators' Local Council work, the Notice to Employees furnished to the State Employment Relations Board stating that the City of Cleveland shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
3. Notify the State Employment Relations Board in writing twenty calendar days from the date that this Order becomes final of the steps that have been taken to comply therewith.

SERB v. City of Cleveland, Case No. 2003-ULP-06-0322

BY

DATE

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This Notice must remain posted for sixty consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the State Employment Relations Board.

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT RELATIONS BOARD, :
 : CASE NO. 03-ULP-06-0322
Complainant, :
 :
 :
 v. : BETH C. SHILLINGTON
 : Administrative Law Judge
CITY OF CLEVELAND, :
 : PROPOSED ORDER
Respondent. :

I. INTRODUCTION

On June 17, 2003, the Municipal Construction Equipment Operators' Labor Council filed an unfair labor practice charge against the City of Cleveland (the "City"), alleging that the City violated §§ 4117.11(A)(1) and (A)(5).¹ On October 1, 2003, the State Employment Relations Board ("SERB or "Complainant") found probable cause to believe that the City violated §§ 4117.11(A)(1) and (A)(5) by refusing to bargain in good faith.

On February 17, 2004, a complaint was issued. An expedited hearing was held on February 26, 2004, wherein the parties presented testimonial and documentary evidence. Subsequently, both parties filed post-hearing briefs.

II. ISSUE

Whether the City violated §§ 4117.11(A)(1) and (A)(5) by refusing to bargain in good faith?

¹All references to statutes are to the Ohio Revised Code, Chapter 4117, and all references to administrative code rules are to the Ohio Administrative Code, Chapter 4117, unless otherwise indicated.

III. FINDINGS OF FACT²

1. The City of Cleveland is a "public employer" as defined by § 4117.01(B). (S. 1)
2. The Municipal Construction Equipment Operators' Local Council (the "Union") is an "employee organization" as defined by § 4117.01(D) and is the exclusive representative for a bargaining unit of the City's employees. (S. 2)
3. The Union was certified as the exclusive representative on January 30, 2003, replacing the International Union of Operating Engineers, Local 18. (S. 3)
4. Before the parties' initial collective bargaining session, as its initial proposal, the City mailed the Union a copy of a collective bargaining agreement it had recently reached with the Cleveland Building and Construction Trades Council ("CBCTC). On May 14, 2003, the Union mailed the City a counterproposal. (S. 5, 6; C. Exhs. 3, 4, 5, 6, 7)
5. The City and the Union met for their first collective bargaining session on June 13, 2003. (S. 4)
6. The June 13, 2003 meeting began at 10 a.m. in Cleveland City Hall and was attended by five negotiating-team members from each side. (T. 20; Jt. Exh. 2)
7. Assistant Law Director William Sweeney spoke first. He outlined the City's position and explained how the City's proposal came about from extensive negotiations between the City and the CBCTC. Mr. Sweeney explained that the City did not want to enter into a collective bargaining agreement with the Union that differed substantially from the City's collective bargaining agreement with the CBCTC because this situation would cause "labor chaos" and disrupt the relationships the City had established with other unions. The City also stated that it could not offer different benefits to the Union. (T. 21-23, 26, 95-96, 97)
8. The City demanded that the Union move off its wage counterproposal of 100 percent of the prevailing wage rate contained in a contract known as the "Building Agreement" between the International Union of Operating Engineers,

² References in the record to the Joint Stipulations of Fact filed by the parties are indicated parenthetically by "S.," followed by the stipulation number. References to the transcript of hearing are indicated parenthetically by "T.," followed by the page number(s). References to the Joint Exhibits in the record are indicated parenthetically by "Jt. Exh.," followed by the exhibit number(s). References to the Complainant's exhibits in the record are indicated parenthetically by "C. Exh.," followed by the exhibit number(s). References to the City's exhibits in the record are indicated parenthetically by "R. Exh.," followed by the exhibit number(s). References to the stipulations, transcript, and exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for the related Finding of Fact.

Local 18 and a number of private employers of construction equipment operators. The City demanded that the Union accept the City's wage proposal of 80 percent of a different prevailing wage rate contained in a contract known at the "Heavy Highway" contract. (T. 26-30)

9. The City reviewed with the Union a list of 31 items in the Union's counterproposal that the City viewed as unacceptable. Some of these items were unacceptable to the City because they differed from the City's current practices. The City also stated that it believed that the Union's proposals on management rights, overtime, and hiring were "illegal." The Union responded to the City's concern regarding management rights by offering to include a management rights clause in the collective bargaining agreement. (T. 31-32, 35, 61-62, 75-76, 79; C. Exh. 8)
10. The Union asked the City to set aside the wage issue and move forward to negotiate the remaining items of concern that the City had reviewed with the Union. The City refused, stating only that the Union's counterproposal was unacceptable. The City took the position that it would not discuss anything further until the Union moved off its wage proposal. The City asked the Union to caucus for the purpose of preparing a different counterproposal on the wage issue and on the other issues. (T. 32, 33-34, 99, 105-106, 126-128, 154-155; R. Exh. 2)
11. The Union refused to withdraw its counterproposal and submit new counterproposals. The City would not discuss anything further. The City left the bargaining session. The session lasted 52 minutes. (T. 33-35, 126-128)

IV. ANALYSIS AND DISCUSSION

Section 4117.11 provides in relevant part as follows:

- (A) It is an unfair labor practice for a public employer, its agents, or representatives to:
 - (1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code***;
* * *
 - (5) Refuse to bargain collectively with the representative of its employees recognized as the exclusive representative *** pursuant to Chapter 4117. of the Revised Code[.]

Section 4117.01(G) provides as follows:

EXHIBIT "E"

**Motion by Local 18 , filed August 31, 2006, for SERB to Adopt the Recommended
Determination of Administrative Law Judge Beth Jewell**

- Wages of Cleveland CEOs were not the result of collective bargaining until the CEO concluded a Contract in 2005
- No collective bargaining agreement covered the Cleveland CEOs
- No benefit package had been negotiated nor implemented for Cleveland CEOs
- Cleveland CEOs had no exclusive bargaining representative until the CEO Union was elected in 2003

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

MUNICIPAL CONSTRUCTION)
EQUIPMENT OPERATORS')
LABOR COUNCIL)

CASE NO. 02-REP-06-0116

Employee Organization,)

BETH A. JEWELL
Administrative Law Judge

and)

INTERNATIONAL UNION OF)
OPERATING ENGINEERS,)
LOCAL 18)

Employee Organization,)

and)

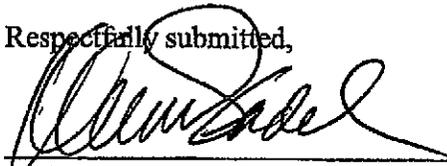
CITY OF CLEVELAND)

Employer.)

**INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18 PETITION TO
JOIN IN THE RESPONSE OF MUNICIPAL CONSTRUCTION EQUIPMENT
OPERATORS' LABOR COUNCIL AND MOTION TO ADOPT THE RECOMMENDED
DETERMINATION OF ADMINISTRATIVE LAW JUDGE JEWELL.**

The International Union of Operating Engineers, Local 18 hereby petitions this Board to allow it to join in the response of Municipal Construction Equipment Operators' Labor Council to the city of Cleveland's Exceptions and respectfully moves this Board to adopt the Recommended Determination of Administrative Law Judge Jewell rendered July 20, 2006.

Respectfully submitted,



WILLIAM FADEL, ESQ. (0027883)

Wuliger, Fadel & Beyer

1340 Sumner Ct.

Cleveland, Ohio 44115

(216)781-7777

Fax: (216)781-0621

Counsel for International Union of Operating
Engineers Local 18



CERTIFICATE OF SERVICE

I certify that a true copy of the **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18 PETITION TO JOIN IN THE RESPONSE OF MUNICIPAL CONSTRUCTION EQUIPMENT OPERATORS' LABOR COUNCIL AND MOTION TO ADOPT THE RECOMMENDED DETERMINATION OF ADMINISTRATIVE LAW**

JUDGE JEWELL was mailed to the following counsel on August 30, 2006:

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Equipment Operators' Labor Council

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COUNSEL FOR APPELLANT
City OF CLEVELAND
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216-664-2663 (fax)

The City of Cleveland



William I. Fadel, Esq.

EXHIBIT "F"

Cleveland Ordinance #1682-79 (1979)

The 1979 schedule of compensation in accordance with prevailing wages paid in the building and construction trades provided by the Cleveland City Council.

tract, or by separate contract for each or any combination of said items as the Board of Control shall determine. Alternate bids for a period less than a year may be taken if deemed desirable by the Commissioner of Purchases and Supplies until provision is made for the requirements for the entire year.

Section 2. The cost of said contract shall be charged against the proper appropriation account and the Director of Finance shall certify thereon the amount of the initial purchase thereunder, which purchase, together with all subsequent purchases, shall be made on order of the Commissioner of Purchases and Supplies pursuant to a requisition against such contract duly certified by the Director of Finance.

Section 3. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed September 24, 1979.
Effective September 25, 1979.

Ord. No. 1676-79.

By Councilmen Burten, Getz, Russo and Forbes (by departmental request).

An emergency ordinance to amend Section 1 and the title of Ordinance No. 2851-78, passed January 8, 1979, relating to the issuance of a permit for the construction of a spur track easement across East 48th Place.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That Section 1 of Ordinance No. 2851-78, passed January 8, 1979, be and the same is hereby amended to read as follows:

Section 1. That the Director of Public Service be and he hereby is authorized to issue a permit, revocable at the will of Council, to Harry Rock and Company, its successors and assigns for the construction, maintenance and use of a spur track easement at the following described location:

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio; and known as being part of East 48th Place and being a strip of land 30 feet in width extending 15 feet northeasterly and 15 feet southwesterly from the following described centerline:

Beginning on the westerly line of East 48th Place at its intersection with the southerly line of Woodland Avenue, S.E.; thence southerly along said westerly line of East 48th Place 592 feet to the principal place of beginning of said centerline; thence southeasterly in a direct line about 55 feet to a point on the easterly line of East 48th Place distant 631 feet southerly from the southerly line of Woodland Avenue, S.E.

Further, that the title of said ordinance be amended to read as follows:

An emergency ordinance authorizing the Director of Public Service to issue a permit to Harry Rock And Company for the construction of a spur track easement across East 48th Place.

Section 2. That existing Section 1 of Ordinance No. 2851-78, passed January 8, 1979, be and the same is hereby repealed.

Section 3. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed September 24, 1979.
Effective September 25, 1979.

Ord. No. 1852-79.
By Councilman Forbes (by departmental request).

An emergency ordinance to amend Section 33 of Ordinance No. 1266-A-79, passed June 11, 1979, relating to hourly rates for craft employees.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That Section 33 of Ordinance No. 1266-A-79, passed June 11, 1979, be and the same is hereby amended to read as follows:

Section 33. Hourly Rates—Crafts.
Compensation for all persons employed by the hour in any of the following classifications shall be fixed by the appointing authority within the limits established in the following schedule for each classification:

	Effective Date	Minimum	Maximum
1. Asbestos Worker	5-1-79	\$ 5.00	\$16.07
2. Asphalt Construction Foreman	5-1-79	5.00	14.35
3. Asphalt Raker	5-1-79	5.00	13.32
4. Asphalt Tamper	5-1-79	5.00	13.32
5. Boiler Maker	6-1-79	5.00	16.06
5a Boiler Maker—Certified High Pressure Welder	6-1-79	5.00	16.06
6. Bricklayer	5-1-79	5.00	16.25
7. Bricklayer Helper	5-1-79	5.00	13.97
8. Carpenter	5-1-79	5.00	16.31
9. Carpenter Foreman	5-1-79	5.00	17.06
10. No Provision			
11. Cement Finisher	5-1-79	5.00	15.89
12. Construction Equipment Operator—Group 1	5-1-79	5.00	15.88
13. Construction Equipment Operator—Group 2	5-1-79	5.00	15.73
14. Construction Equipment Operator—Group 3	5-1-79	5.00	15.36
15. Construction Equipment Operator—Group 4	5-1-79	5.00	14.60
16. Construction Equipment Operator—Oiler	5-1-79	5.00	12.10
17. Crane Operator—Electric	5-1-79	5.00	16.63
18. Curb Cutter	5-1-79	5.00	13.85
19. No Provision			
20. Curb Setter	5-1-79	5.00	13.85
21. Electrical Worker	5-1-79	5.00	16.63
22. Electrical Worker Foreman	5-1-79	5.00	17.53
23. Glazier	8-29-79	5.00	16.14
24. Ironworker	5-1-79	5.00	16.28
25. Ironworker Foreman	5-1-79	5.00	17.03
26. Jackhammer Operator	5-1-79	5.00	13.32
27. Master Mechanic	5-1-79	5.00	16.38
28. Overhead Floodlight Maintenance Man	5-1-79	5.00	16.63
29. Painter	5-1-79	5.00	14.83
	11-1-79	5.00	15.18
30. Painter Foreman	5-1-79	5.00	15.13
	11-1-79	5.00	15.48
31. Paint Spray Operator	5-1-79	5.00	15.23
	11-1-79	5.00	15.58
32. Paver	5-1-79	5.00	13.65
33. Paving Foreman	5-1-79	5.00	14.35
34. Pipefitter	5-1-79	5.00	16.37
35. Pipefitter—Certified High Pressure Welder	5-1-79	5.00	16.37
36. Pipefitter Foreman	5-1-79	5.00	16.87
37. Pipefitter Welder	5-1-79	5.00	16.37
38. Plasterer	5-1-79	5.00	16.24
39. Plumber	5-1-79	5.00	16.23
40. Plumber Foreman	5-1-79	5.00	16.98
41. Pounder	5-1-79	5.00	13.20
42. Roofer	5-1-79	5.00	16.11
43. No Provision			



EXHIBIT "G"

Cleveland Inter-Office Correspondence

From N. Jackson, Assistant Commissioner to Julius Ciacca, Commissioner of Division of
Water, dated October 28, 1993 - calculating the prevailing wage under the Building
Agreement

CITY OF CLEVELAND

Inter-Office Correspondence

Date: October 28, 1993
To: Julius Ciaccia, Jr., Commissioner
Division of Water
From: Nicholas P. Jackson
Assistant Commissioner
Subject: CEO Benefits

As you are aware, there was a recent ruling by the Courts requiring the City of Cleveland to pay prevailing wages to our Construction Equipment Operators along with back pay for overtime and incorrect wages. I have questioned some of the language requiring us to pay these wages. Therefore, I have been reviewing the contract between the Construction Employee Association Building Agreement and the International Union of Operating Engineers, which is what was used as the basis for determining the prevailing wages, and have found that we (the City of Cleveland) may have been improperly paying the CEOs. Not only as they are currently being paid, but the thousands of dollars of back pay which they have received may not have been properly calculated.

Indicated in the agreement between the two parties listed above, are requirements of Fringe Benefits to be paid. However, as indicated in Article IV, Paragraph 38, "Fringe Benefit Contributions shall be paid at the following rates for all hours paid to each employee by the employer under the agreement which shall in no way be considered or used in the determination of overtime pay". This being the case, we have paid several thousands of dollars to this group unnecessarily.

The break down of their salaries is as follows:

* Base Rate Group "A" Zone 1	\$23.02/Hr.
Health & Welfare	2.16/Hr.
Pension	2.00/Hr.
Apprenticeship	.25/Hr.
IAP (State)	.05/Hr.
CISP (Cleveland)	.07/Hr.
Total	\$27.55/Hr.

* However, based on Article IV, Paragraph 38, all overtime should be calculated based on the \$23.02/Hr., not \$27.55/Hr.



Apparently, we have been paying all overtime on the \$27.55/Hr., which means that the \$4.53/Hr. in Fringe Benefits was not only paid, but with a premium added to them, which should not have been.

I am not sure if all back monies recently paid were calculated with the Fringe Benefits included. However, I know that in the past, we (CWD) have paid all overtime with the benefit included, which was wrong.

Therefore, it is my recommendation that first, effective immediately, any overtime that is to be paid, be paid only on the base salary in the Division of Water. Furthermore, determine if all or any back pay was paid with benefits included. If it is determined that back monies were paid with benefits included, we should begin the process of recovering our funds immediately.

Furthermore, as indicated in Article IV, Paragraph 36, the Agreement between the above mentioned parties also states "the Fringe Benefit provision contained herein shall apply to all employer members of the Construction Employers Association for whom it holds bargaining rights". As you know, the City of Cleveland does not have any contractual obligation with the International Union of Operating Engineers. Therefore, why are we paying any of the \$4.53 in benefits listed?

I have attached copies of the wage scale and Article IV, Paragraph 38 for your review.

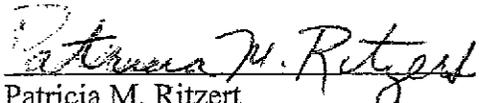
If you have any questions, please call me.

NPJ:sm

Attachments

Authentication

I hereby certify that the foregoing Exhibit B is a true and accurate copy of a document given to me by the City of Cleveland in response to a request made by me for the disclosure of public records.


Patricia M. Ritzert

Sworn to and subscribed before me this 7th day of February, 2006.

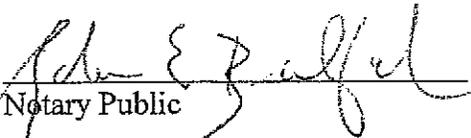

Notary Public
Robert E. Bulford, Esq.
State-wide; no expiration.

EXHIBIT "H"

Affidavit of Frank P. Madonia, President of the CEO Union

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel., MUNICIPAL)
CONSTRUCTION EQUIPMENT) CASE NO.
OPERATORS' LABOR COUNCIL, et al.,)
)
Relators)
)
vs.)
)
CITY OF CLEVELAND, et al.)
)
Respondents)

AFFIDAVIT OF FRANK P. MADONIA

Stewart D. Roll (0038004)
Patricia M. Ritzert, (0009428)
Persky, Shapiro & Arnoff Co., L.P.A.
Signature Square II
25101 Chagrin Boulevard, Suite 350
Beachwood, Ohio 44122
(216) 360-3737
Fax No. (216) 593-0921
sdan1@msn.com
pritzert@perskylaw.com

COUNSEL FOR RELATORS

Department of Law
ROBERT J. TRIOZZI
Director of Law City of Cleveland
Jose Gonzalez, Asst. Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(216) 664-2800
Fax No. (216) 664-2663
jgonzalez@city.cleveland.oh.us

COUNSEL FOR RESPONDENTS



8. The individual Relators named in this Complaint for a Writ of Mandamus worked for Cleveland as construction equipment operators or master mechanics.
9. Construction equipment operators in Group "A" and Group "B" are positions equivalent to Groups "A" and "B" respectively under the Construction Employers Association Building Agreement with International Union of Operating Engineers Local 18 (hereafter "Building Agreement").
10. CEOs in Groups "A" and "B" and Master Mechanics have historically been compensated according to rates set in the Building Agreement for Groups "A" and "B" and Master Mechanic respectively, because these rates are the prevailing wage rates in the Cleveland area private sector for the services performed by CEO's working for Cleveland.
11. I have examined payroll records from the City of Cleveland, obtained pursuant to requests for public records. Those payroll records show that during the period May 1, 1994 to February 14, 2005, CEOs and Master Mechanics were paid at the hourly rates set out in the Wage Chart which is Exhibit "B" to this Complaint in Mandamus.
12. The individuals named as "Relators" in this Complaint are or were employed by Cleveland as CEOs. Those individuals are not currently members of the CEO bargaining unit, and therefore are not represented by the CEO Union in this lawsuit. .
13. I joined the International Union of Operating Engineers in 1976, and then Local 18 in May, 1986. I am President of the CEO Union, but I am still also a member of International Union of Operating Engineers Local 18. However, Local 18 was never my collective bargaining representative to the City of Cleveland.

14. I am familiar with the Building Agreements between the Construction Employers Association and International Union of Operating Engineers Local 18 (hereafter "Local 18"), for the years since I first joined in 1976.
15. Exhibit "J" to the Complaint for a Writ of Mandamus is made up of true and accurate copies of the portions of those contracts, which include the list of prevailing wage rates for Operating Engineers "A", "B" and Master Mechanic for the years indicated on those copies.
16. The total wage as shown in the Building Agreements is the sum of the stated components in those contracts, including a base rate, "H&W" for Health and Welfare, Pension, Apprenticeship and "CISP (Cleveland)" for Construction Industry Service Program, and, in earlier years, "IAP". These components are listed in the prevailing wage rate tables in Exhibit "J".
17. The prevailing wage rates for CEOs and master mechanics in the Cleveland area are the total wages in those contracts referred to as the "Building Agreements" (Exhibit "J").
18. The prevailing wage rates under the Building Agreements take effect as of May 1st of each year, because the contract years run from May 1st on one year to April 30th of the next year.
19. From May 1, 1994 to February 14, 2005 the CEOs were paid below prevailing wage rates, by the deficiencies shown on the Wage Chart (Exhibit "B" to this Complaint).
20. No collective bargaining agreement covered the CEOs until after Cleveland was ordered by SERB in August of 2004 to cease and desist its bad faith conduct. The eventual agreement was ratified by the members of the CEO Union and was finally approved by the Cleveland City Council as of February 14, 2005.

21. As President of the CEO Union, I was the officer responsible for overseeing the negotiation of the collective bargaining agreement, and for presenting a tentative agreement to the membership for their ratification.
22. The collective bargaining agreement that was reached by the CEO Union and Cleveland provided for a combination of hourly wage, days off with pay such as for vacations, holidays, jury duty, funeral leave, and personal days. The agreement also provided for other benefits of employment, notably health insurance plus dental and vision coverage, paid by Cleveland. The dollar value of the total package of compensation, when divided into an hourly rate, exceeded the dollar value of the then-current prevailing wage rates in the private sector Building Agreement, between the construction Employers Association and International Union of Operating Engineers, Local 18.
23. From 1996 when I returned to employment by Cleveland, Cleveland gave one excuse after another as to why wages for CEOs and master mechanics were below the prevailing wage rate.
24. Prior to February 14, 2005 I was never credited with accumulated sick leave nor was paid sick leave during the time I was employed by Cleveland.
25. Prior to February 14, 2005 during the time of my employment with Cleveland I have not received any benefit of employment which is allowed to other regular full-time employees of the City.
26. During the period of my employment by Cleveland prior to February 14, 2005 I was offered coverage under a health insurance package maintained by Cleveland, but was required to pay the full cost of such coverage by payroll deduction. During a period of time when it was necessary for me to take unpaid sick leave while my wife was relapsing

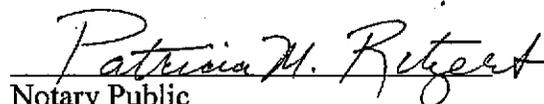
with multiple sclerosis, since I was not receiving a paycheck, I borrowed money to pay the health insurance premium through the City, in order to maintain my medical coverage. I later learned that the amount charged to me more than compensated Cleveland for its cost of including me in the coverage. Other (non-CEO) regular full-time employees of Cleveland received medical and hospitalization insurance coverage as a benefit of their employment.

27. Prior to February 14, 2005 I had never been paid by Cleveland during a sick leave related to my employment as a CEO or master mechanic.
28. All other factual statements contained in the Complaint for a Writ of Mandamus and the Memorandum in Support are true to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.


Frank P. Madonia

Sworn to and subscribed in my presence this 31 day of October, 2006.


Notary Public

PATRICIA M. RITZERT, Attorney-at-Law
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.

EXHIBIT "I"

Affidavit of Santo Consolo

With 1979 prevailing wage rates attached

EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel., MUNICIPAL
CONSTRUCTION EQUIPMENT
OPERATORS' LABOR COUNCIL

Petitioner

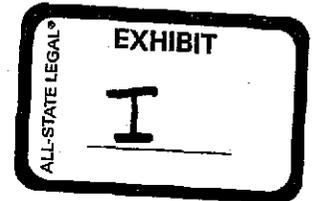
vs.

CITY OF CLEVELAND, et al.

Respondents

CASE NO. 86263

AFFIDAVIT OF
SANTO CONSOLO



STATE OF OHIO

CUYAHOGA COUNTY

ss:

Now comes Santo Consolo, being competent to testify and duly sworn, who states as follows:

1. The statements herein are based upon his own personal knowledge.
2. Affiant states that he was employed by the City of Cleveland beginning in 1968, and as a construction equipment operator (CEO) from 1969 until his retirement at the end of 1999, as a regular full-time civil service employee.
3. Affiant was a member of the International Union of Operating Engineers Local 18 from about 1967 until present, however at no time did he or other CEOs working for Cleveland vote to authorize that organization to represent them in collective bargaining or to affect their right under the Cleveland Charter to the full prevailing wage rate.
4. During his employment by Cleveland as a civil service construction equipment operator, affiant was not represented by an exclusive bargaining representative, however his wages were required by the Charter of the City of Cleveland to be in accord with the prevailing wage rate for equipment operators in the private sector building and construction industry. He has not been under social security since 1968 and he does not now qualify for Medicare.
5. The prevailing wage for construction equipment operators in the private sector was that wage negotiated by the IUOE Local 18 with associations of private construction employers. Because of this, affiant made efforts throughout his employment to remain informed of the contracts

entered into by the IUOE Local 18 with private employers of construction equipment operators or operating engineers in Cuyahoga County.

6. In 1979 the private sector contract which established the prevailing wage for construction equipment operators in Cleveland was that contract titled the "Ohio State Building Construction Agreement" ("Building Agreement") between the IUOE Local 18 and Associated Contractors of Ohio, the Associated General Contractors of America, Inc., for the years from May 1, 1977 to April 30, 1980.

7. True and accurate copies of the wage rates provided in the foregoing Building Agreement are attached hereto.

8. The prevailing wage rate for a Group 2 construction equipment operator in 1979 was an hourly rate which was a total of the 5 amounts shown in columns for each year on these copies for a Group B operator (pages 56 and 57 of the union contract attached hereto), i.e. base rate \$13.57 plus Pension \$1.00, H&W (Health and Welfare) \$.96, Apprenticeship \$.11 and Industry Advancement Program \$.09. Per Ordinance 1682-79, affiant was paid \$15.73 / hour.

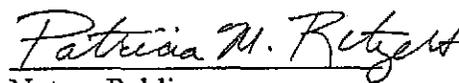
9. In 1979, the City of Cleveland designated groups of construction equipment operators by number instead of by letter. Sometime after 1979, these civil service classifications were changed such that Cleveland labeled construction equipment operators as Groups A, B, C, or D, plus master mechanic. A Group 1 construction equipment operator was equivalent to a Group A operator, Group 2 was equivalent to Group B, Group C was equivalent to Group 3 and Group D was equivalent to Group 4.

10. Affiant was employed as a group 2 or group B construction equipment operator.

Further, affiant sayeth naught.


Santo Consolo

Sworn to and subscribed in my presence this 10th day of February, 2006.


Notary Public

PATRICIA M. RITZERT, Attorney-at-Law
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.

**OHIO STATE
DEFINING CONSTRUCTION
AGREEMENT**

Effective
May 1, 1977, through April 30, 1978

Between



and

INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL UNION NO. 18
18, TRAFALGAR SQUARE
3375 PROGRESS AVENUE
CLEVELAND, OHIO 44115
216-492-2100

And



ASSOCIATED CONTRACTORS
OF OHIO
The ASSOCIATED GENERAL
CONTRACTORS OF OHIO

50 West Broad Street
Columbus, Ohio 43260
614-466-1100
ED FERGUSON
Executive Director
GENERAL OFFICE
Attn: Executive Director

**OHIO STATE
BUILDING CONSTRUCTION
AGREEMENT**

**Effective
May 1, 1977, through April 30, 1980**

Between

- *
*
*
*
*
*
*
*
*

INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL UNIONS NOS.
18, 18A, 18B and 18RA
3515 Prospect Avenue
Cleveland, Ohio 44115
216-432-3131

And

ASSOCIATED CONTRACTORS
OF OHIO, INC.
the ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, INC.

50 West Broad Street
Columbus, Ohio 43215
614-464-3364
ED FREDMAN
Executive Director
THOMAS REED
Asst. Executive Director



 18



 18

1641 W. Fifth Ave. Columbus, Ohio 43212
Area Code 614-488-9768

District No. 4

Covering the following Counties:

Aughsbe	Darke	Miami
Butler	Payette	Montgomery
Champaign	Greene	Preble
Clark	Logan	Shelby
Clinton	Madison	Warren
	Meacer	

District Representatives:

Paul M. Knott

Ronald Mihulovich Broten Collins Richard Hyland

6051 N. Dixie Drive Dayton, Ohio 45414
Area Code 513-890-5914

Mailing Address:

P.O. Box 1462, Northridge Branch,
Dayton, Ohio 45414

District No. 5

Covering the following Counties:

Adams	Hamilton	*Ross
*Adams	Highland	*Morgan
Brown	*Jackson	*Pike
Clermont	*Lawrence	*Scioto
*Callia	*Meigs	*Vinton

In Kentucky, the Counties of:

Boone	Kenton
Campbell	Pendleton

District Representatives:

Clifford Farwell

Thomas G. Wilson William Dold Melvin Spry

9730 Reading Rd. (Cincinnati) Evandale, Ohio 45215
Area Code 513-733-5575

*Counties served through District No. 3,
Columbus office:

Area Code 614-486-5281

District No. 6

Covering the following Counties:

Ashland	Holmes	Richland
Belmont	Jefferson	Stark
Carroll	Monroe	Summit
Coshocton	Noble	Tuscarawas
Guernsey	Portage	Washington
Harrison		Wayne

District Representatives:

Walter W. Linder

Denis McCausland	Walter Dye
Gene McVain	Ronald Sharpless
1767 Triplett Boulevard	Akron, Ohio 44306
Area Code 216-784-5461	

DIRECTORY

OFFICERS, SPECIAL REPRESENTATIVES
and DISTRICT REPRESENTATIVES
Locals Nos. 1A, 18A, 18B, 18C, 18G, 18RA

Estl A. Erwin
Business Manager

William H. Christian
President

Frank J. Miller
Vice President
and
Special Representative
Construction Field Engineers

Paul M. Knott
Financial Secretary

Steve J. Mayor
Recording-Corresponding Secretary

Walter W. Linder
Treasurer

Jack Kenney
Special Representative
and Director of Safety Education

John Ginley
Organizer

District No. 1

Covering the following Counties:
Ashtabula Erie Huron Medina
Cuyahoga Geauga Lake Lorain

District Representatives:
Steve J. Mayor

Ben Jacampo
Mike Kasper
James H. Gardner
Dana Moore

Dudley Snell
Don Felton
Roy Everett

3514 Prospect Avenue Cleveland, Ohio 44115
Area Code 216-432-3131

District No. 2

Covering the following Counties:

Allen	Henry	Sandusky
DeLancey	Lucas	Seneca
Fulton	Ottawa	Van Wert
Hancock	Paulding	Williams
Hardin	Putnam	Wood

District Representatives:

Ray Frankhouse
James McMahon
Fred Hohman
2412 South Reynolds Road Toledo, Ohio 43614
Area Code 419-865-0221

District No. 3

Covering the following Counties:

Crawford	Keon	Muskingum
Delaware	Licking	Perry
Fairfield	Martin	Pickaway
Franklin	Morrow	Union
Hocking		Wyandot

District Representatives:

Jesse Buckle
Johnie Jardine
Gordon Hartman
1641 W. Fifth Ave.
Area Code 614-486-5281

Horner Hysell
Del Ramey
Columbus, Ohio 43212
Jack Kenney
Special Representative

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**ASSOCIATED CONTRACTORS OF OHIO, INC.
THE ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.**

- S/W. A. GOTTER
Committee Chairman, Akron Div., ACO
- S/ED FRIEDMAN
Executive Director, ACO
- S/BOB HANNA
West Central Ohio Div., ACO
- S/GEORGE W. ATKINSON
Central Ohio Division, ACO
- S/NORMAN R. PRUSA
Building Trades Employers Assoc., Cleveland
- S/HOWARD KNAAF
Cincinnati Division, ACO
- S/A. L. BENTLEY
Associated Building Contractors of North-
western Ohio

EXHIBIT "A"

WAGE RATES AND FRINGE CONTRIBUTIONS

ZONE I covering Cleveland and Counties

For Cleveland and the following Counties: Ashtabula, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain and Medina

Classification:

MASTER MECHANIC (Cleveland and Counties)

	5/1/78	12/1/78	5/1/79
	\$13.67	\$13.52	\$14.22
H & W	.66	.81	.96
Pension	1.00	1.00	1.00
Apprenticeship	.11	.11	.11
Industry Advancement Program	.09	.09	.09

Classification:	5/1/78	12/1/78	5/1/79
GROUP A (Cleveland and Counties)	\$13.17	\$13.02	\$13.72
H & W	.66	.81	.96
Pension	1.00	1.00	1.00
Apprenticeship	.11	.11	.11
Industry Advancement Program	.09	.09	.09

Building
54

Operators of:

- | | |
|---|---|
| <ul style="list-style-type: none"> A-Frames All Rotary Drills used on Caisson Work for foundations and sub-structure work Boiler Operator or Compressor Operator when compressor or boiler is mounted on crane (Piggyback Operation) Boom Trucks (All Types) Cableways Cherry Pickers Combination Concrete Mixer & Tower Concrete Pumps Cranes (All Types) | <ul style="list-style-type: none"> Derricks (All Types) Draglines Dredge (dipper, clam or suction) 3 man crew Elevating Grader or Euclid Loader Floating Equipment Gradalls Helicopter Operator Hoisting Builders Materials Helicopter Winch Operator Hoisting Builders Materials Hoes (All Types) Hoisting Engines (two or more Drums) |
|---|---|

- | | |
|---|---|
| <ul style="list-style-type: none"> Lift Slab or Panel Jack Operators Locomotives (All Types) Maintenance Engineer (Mechanic or Welder) Mixer Paving (Multiple Drum) Mobile Concrete Pumps with Boom Panelboard (All Types on Site) Pile Driver | <ul style="list-style-type: none"> Power Shovels Side Booms Slip Form Pavers Straddle Carriers (Building Construction on Site) Trench Machines (Over 24" wide) Tug Boat |
|---|---|

54

55

Classification:
GROUP B (Cleveland and Counties)

- 56 -

	5/1/78	12/1/78	5/1/79
Building 56	\$13.02	\$12.87	\$13.57
H & W	.66	.81	.96
Pension	1.00	1.00	1.00
Apprenticeship	.11	.11	.11
Industry Advancement Program	.09	.09	.09
Operators of:			
Asphalt Pavers		Lead Greaseman	
Bulldozer		Mucking Machines	
C.M.I. Type Equipment		Power Grader	
Endloaders		Power Scoops	
Kolman Type Loaders (dirt loading)		Power Scrapers	
		Push Cat	

Classification:
GROUP C (Cleveland and Counties)

- 57 -

	5/1/78	12/1/78	5/1/79
Building 57	\$12.67	\$12.52	\$13.22
H & W	.66	.81	.96
Pension	1.00	1.00	1.00
Apprenticeship	.11	.11	.11
Industry Advancement Program	.09	.09	.09
Operators of:			
Air Compressor, pressurizing shafts or tunnels			
All Asphalt Rollers			
Fork Lifts		Submersible Pumps, 4" and over discharge	
Hoist, one drum		Trenchers, 24" and under	
House Elevators			
Man Lift			
Power Boilers (over 15lbs. pressure)			
Pump Operator installing or operating Well Points or other type of dewatering system			
Pumps, 4" and over discharge			

Classification:
GROUP D (Cleveland and Counties)

	5/1/78	12/1/78	5/1/79
Building 58	\$11.89	\$11.74	\$12.44
H & W	.66	.81	.96
Pension	1.00	1.00	1.00
Apprenticeship	.11	.11	.11
Industry Advancement Program	.09	.09	.09

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Operators of:
Compressors on Building Construction
Conveyors, Building Material
Generators
Guniting Machines
Mixers, capacity more than one bag
Mixers, one bag capacity (side loader)

Post Driver
Post Hole Digger
Pavement Breaker, Hydraulic or Cable
Road Widening Trencher
Rollers
Welder Operator

Classification:
GROUP E (Cleveland and Counties)

	5/1/78	12/1/78	5/1/79
Building 59	\$11.57	\$11.42	\$12.12
H & W	.66	.81	.96
Pension	1.00	1.00	1.00
Apprenticeship	.11	.11	.11
Industry Advancement Program	.09	.09	.09

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Operators of:
Backfillers and Tamper
Batch Plant
Bar and Joint Installing Machine
Bull Floats
Burlap and Curing Machines
Clefplanes
Concrete Spreading Machines
Crushers
Deck Hand
Drum Fireman (asphalt)

Farm Type Tractor pulling attachments
Finishing Machines
Form Trenchers
High Pressure Pumps, over 1/2" discharge
Hydro Seeders
Self Propelled Power Spreader
Self Propelled Sub-Grader
Tire Repairman
Tractors, pulling sheep foot roller or grader
Vibratory Compactors (with integral power)

Classification:
GROUP F. (Cleveland and Counties)

	<u>5/1/78</u>	<u>12/1/78</u>	<u>5/1/79</u>
Building 60	\$9.64	\$9.49	\$9.94
H & W	.66	.81	.96
Pension	1.00	1.00	1.00
Apprenticeship	.11	.11	.11
Industry Advancement Program	.09	.09	.09

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Operators of:
Oiler, Helper, Signalman
Inboard, Outboard motor boat Launch
Light Plant Operator
Power Driven Heaters (oil fired)
Power Boilers, less than 15 lbs. pressure
Pumps, under 4" discharge
Submersible Pumps, under 4" discharge

EXHIBIT "A"

WAGE RATES AND FRINGE CONTRIBUTIONS

ZONE II covering Akron and Counties, and Toledo and Counties

For AKRON and the following Counties: Ashland, Belmont, Carroll, Coshocton, Guernsey, Harrison, Holmes, Jefferson, Monroe, Noble, Portage, Richland, Stark, Summit, Tuscarawas, Washington and Wayne.

- 61 -

Classification:
MASTER MECHANIC (Akron and Counties)

	<u>5/1/78</u>	<u>12/1/78</u>	<u>5/1/79</u>
Building 61	\$13.41	\$13.26	\$13.96
H & W	.66	.81	.96
Pension	1.00	1.00	1.00
Apprenticeship	.11	.11	.11
Industry Advancement Program	.13	.13	.13

EXHIBIT "J"

Prevailing Wage Rates from Building Agreements between the Construction Employers

Association and International Union of Operating Engineers, Local 18

1994 through 2005

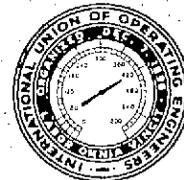


**CONSTRUCTION EMPLOYERS
ASSOCIATION
BUILDING AGREEMENT**

**EFFECTIVE
May 1, 1991 through April 30, 1994**

Between

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 18 AND ITS BRANCHES
(AFL-CIO)**



And

**CONSTRUCTION
EMPLOYERS ASSOCIATION**



EMPLOYERS

Construction Employers Association

981 Keynote Circle, Suite 31
Cleveland, Ohio 44131

Office: (216) 398-9860
Fax: (216) 398-9801

John Porada
Executive Manager

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AGREEMENT

Between

**THE CONSTRUCTION
EMPLOYERS ASSOCIATION (CEA)
which may be referred to hereinafter
as the "Association"**

AND

**The INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 18 and its Branches (AFL-CIO)
referred to hereinafter as the "Union"**

This Agreement is negotiated by and between the Association and the Union within the geographical area as defined herein through their authorized agents, to wit:

That, whereas, the parties desire to stabilize employment and promote efficiency in the Construction Industry, agree upon wage rates, hours and conditions of employment, and to eliminate strikes, boycotts, lockouts and stoppages of work, and

Whereas, the Union and the Employer shall, through the issuance of working rules and regulations to the workmen, inform them of the terms of this Agreement and enforce compliance with the terms thereof, and

Whereas, the Employers agree to recognize and subscribe to the approved referral system as adopted by International Union of Operating Engineers, Local 18.

Now, therefore, the undersigned Association and the Union agree as follows:

EXHIBIT 'A'

WAGE RATES AND FRINGE CONTRIBUTIONS

ZONE I covering Cleveland and the following counties: Ashtabula, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain and Medina

Classification:
MASTER MECHANIC

42

	5/1/91	5/1/92*	5/1/93
Rate	\$22.02	\$22.77	\$23.52
H & W	2.16	2.16	2.16
Pension	2.00	2.00	2.00
Apprenticeship	.25	.25	.25
IAP (State)	.05	.05	.05
CISP (Cleveland)	.07	.07	.07

*In the second year \$.25 per hour wage may be diverted to fringe benefits if negotiated as such in the Highway Heavy and A.G.C. of Ohio Agreements.

Classification:
GROUP A

43

	5/1/91	5/1/92*	5/1/93 15
Rate	\$21.52	\$22.27	\$23.02
H & W	2.16	2.16	2.16
Pension	2.00	2.00	2.00
Apprenticeship	.25	.25	.25
IAP (State)	.05	.05	.05
CISP (Cleveland)	.07	.07	.07

*In the second year \$.25 per hour wage may be diverted to fringe benefits if negotiated as such in the Highway Heavy and A.G.C. of Ohio Agreements.

Operators of:
A-Frames

Boiler Operators, Compressor Operators, Hydraulic Pumps & Power Pacs when mounted on a crane or regardless of where said equipment is mounted (Piggy-back Operation)
Boom Trucks (All Types)
Cableways
Cherry Pickers
Combination Concrete Mixers & Towers
Concrete Pumps

Cranes (All Types)

(Boom & Jib 200' and over - \$22.02 effective 5/1/91)
(Boom & Jib 300' and over - \$22.27 effective 5/1/91)
(Boom & Jib 200' and over - \$22.77 effective 5/1/92)
(Boom & Jib 300' and over - \$23.02 effective 5/1/92)
(Boom & Jib 200' and over - \$23.52 effective 5/1/93)
(Boom & Jib 300' and over - \$23.77 effective 5/1/93)
Derricks (All Types)
Draglines
Dredges (dipper, clam or suction), 3-man crew (over)

Elevating Graders or Euclid Loaders
 Floating Equipment
 Gradalls
 Helicopter Operators, Hoisting Builders Materials
 Helicopter Winch Operators, Hoisting Builders
 Materials
 Hoes (All Types)
 Hoists (two or more Drums)
 Lift Slab or Panel Jack Operators
 Locomotives (All Types)
 Maintenance Engineers (Mechanic or Welder)

Mixers, Paving (Multiple Drum)
 Mobile Concrete Pumps with Booms
 Panelboards (All Types on Site)
 Pile Drivers
 Power Shovels
 Rotary Drills, (ALL), used on Caisson work for fou
 dations and sub-structure work
 Side Booms
 Slip Form Pavers
 Straddle Carriers (Building Construction on Site)
 Trench Machines (Over 24" wide)
 Tug Boats

44

Classification:
 GROUP B

	5/1/91	5/1/92*	5/1/93
Rate	\$21.37	\$22.12	\$22.87
H & W	2.16	2.16	2.16
Pension	2.00	2.00	2.00
Apprenticeship	.25	.25	.25
IAP (State)	.05	.05	.05
CISP (Cleveland)	.07	.07	.07

45

*In the second year \$.25 per hour wage may be diverted to fringe benefits if negotiated as such in the Highway Heavy and A.G.C. of Ohio Agreements.

Operators of:

Asphalt Pavers
 Bulldozers
 CMI-Type Equipment
 Endloaders
 **Instrument Man
 Kolman-type Loaders (Dirt Loading)

Lead Greasemen
 Mucking Machines
 Power Graders
 Power Scoops
 Power Scrapers
 Push Cats

**The addition of this pay classification does not expand jurisdiction, but only establishes the pay classification if Operating Engineers are used.

**CONSTRUCTION EMPLOYERS
ASSOCIATION
BUILDING AGREEMENT**

**EFFECTIVE
May 1, 1994 through April 30, 1997**

Between

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 18 AND ITS BRANCHES
(AFL-CIO)**



And

**CONSTRUCTION
EMPLOYERS ASSOCIATION**



EMPLOYERS

Construction Employers Association

981 Keynote Circle, Suite 31
Cleveland, Ohio 44131

Office: (216) 398-9860
Fax: (216) 398-9801

John Porada
Executive Manager

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AGREEMENT

Between

**THE CONSTRUCTION
EMPLOYERS ASSOCIATION (CEA)
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as the "Association"**

And

**THE INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 18 and its Branches (AFL-CIO)
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This Agreement is negotiated by and between the Association and the Union within the geographical area as defined herein through their authorized agents, to wit:

That, whereas, the parties desire to stabilize employment and promote efficiency in the Construction Industry, agree upon wage rates, hours and conditions of employment, and to eliminate strikes, boycotts, lockouts and stoppages of work, and

Whereas, the Union and the Employer shall, through the issuance of working rules and regulations to the workmen, inform them of the terms of this Agreement and enforce compliance with the terms thereof, and

Whereas, the Employers agree to recognize and subscribe to the approved referral system as adopted by the International Union of Operating Engineers, Local 18.

Now, therefore, the undersigned Association and the Union agree as follows:

EXHIBIT "A"
WAGE RATES AND FRINGE CONTRIBUTIONS

ZONE IA covering Cleveland and the following counties: Ashtabula, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain and Medina

Classification:	85	70	70
MASTER MECHANIC	05/01/94	05/01/95	05/01/96
Rate	\$23.22	\$23.92*	\$24.62*
H & W	3.26	3.26	3.26
Pension	2.00	2.00	2.00
46 Apprenticeship	0.25	0.30	0.35
CISP (Cleveland)	0.12	0.12	0.12

*In the second and third year, monies may be diverted to fringe benefits.

Classification:			
GROUP A	05/01/94	05/01/95	05/01/96
Rate	\$22.72	\$23.42*	\$24.12*
H & W	3.26	3.26	3.26
Pension	2.00	2.00	2.00
Apprenticeship	0.25	0.30	0.35
CISP (Cleveland)	0.12	0.12	0.12

*In the second and third year, monies may be diverted to fringe benefits.

47 Operators of:	
A-Frames	Cranes (all types)
Boiler Operators, Compressor Operators, Hydraulic Pumps & Power Pacs when mounted on a crane or regardless of where said equipment is mounted (Piggy-back Operation)	(Boom & Jib 200' and over - \$23.22 effective 05/01/94) (Boom & Jib 300' and over - \$23.47 effective 05/01/94) (Boom & Jib 200' and over - \$23.92 effective 05/01/95) (Boom & Jib 300' and over - \$24.17 effective 05/01/95)
Boom Trucks (all types)	(Boom & Jib 200' and over - \$24.62 effective 05/01/96) (Boom & Jib 300' and over - \$24.87 effective 05/01/96)
Cableways	Derricks (all types)
Cherry Pickers	Draglines
Combination Concrete Mixers & Towers	Dredges (dipper, clam or suction), 3-man crew
Concrete Pumps	Elevating Graders or Euclid Loaders

(over)

Floating Equipment
 Gradalls
 Helicopter Operators, hoisting building materials
 Helicopter Winch Operators, hoisting building materials
 Hoes (all types)
 Hoists (two or more drums)
 Lift Slab or Panel Jack Operators
 Locomotives (all types)
 Maintenance Engineers (Mechanic or Welder)
 Mixers, Paving (multiple drum)

Mobile Concrete Pumps with Booms
 Panelboards (all types on site)
 Pile Drivers
 Power Shovels
 Rotary Drills, (all), used on caisson work for foundations and sub-structure work
 Side Booms
 Slip Form Pavers
 Straddle Carriers (building construction on site)
 Trench Machines (over 24" wide)
 Tug Boats

48

Classification:
 GROUP B

	8.5¢	70¢	70¢
	05/01/94	05/01/95	05/01/96
Rate	\$22.57	\$23.97*	\$23.97*
H & W	3.26	3.26	3.26
Pension	2.00	2.00	2.00
Apprenticeship	0.25	0.30	0.35
CISP (Cleveland)	0.12	0.12	0.12

*In the second and third year, monies may be diverted to fringe benefits.

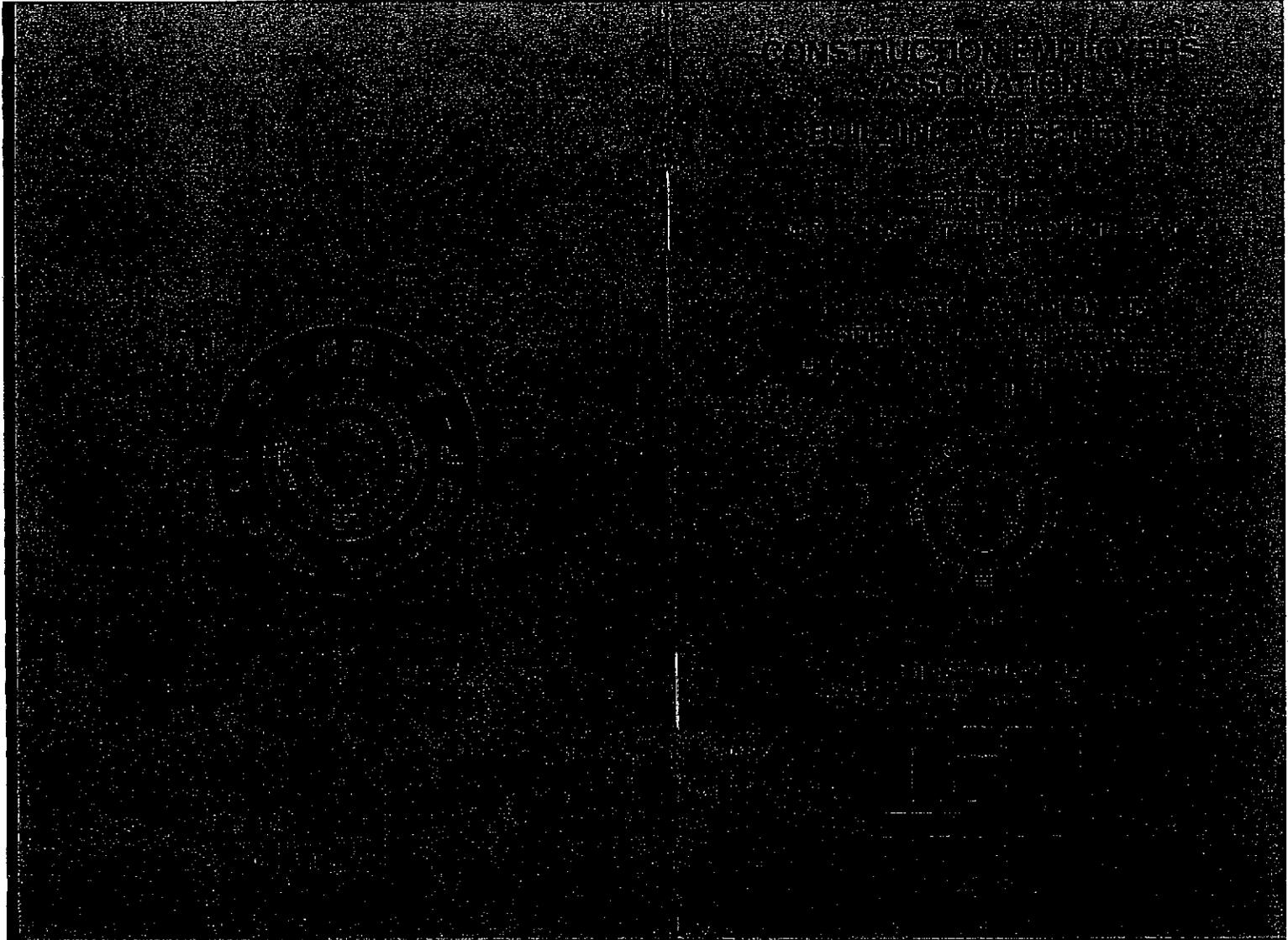
Operators of:

Asphalt Pavers
 Bulldozers
 CMI-Type Equipment
 Endloaders
 Instrument Man**
 Kolman-type Loaders (dirt loading)

Lead Greasemen
 Mucking Machines
 Power Graders
 Power Scoops
 Power Scrapers
 Push Cats

** The addition of this pay classification does not expand jurisdiction, but only establishes the pay classification if Operating Engineers are used.

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AGREEMENT

Between

**THE CONSTRUCTION
EMPLOYERS ASSOCIATION (CEA)
which may be referred to hereinafter
as the "Association"**

And

**THE INTERNATIONAL UNION OF
OPERATING ENGINEERS,
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That, whereas, the parties desire to stabilize employment and promote efficiency in the Construction Industry, agree upon wage rates, hours and conditions of employment, and to eliminate strikes, boycotts, lockouts and stoppages of work, and

Whereas, the Union and the Employer shall, through the issuance of working rules and regulations to the workmen, inform them of the terms of this Agreement and enforce compliance with the terms thereof, and

Whereas, the Employers agree to recognize and subscribe to the approved referral system as adopted by the International Union of Operating Engineers, Local 18.

Now, therefore, the undersigned Association and the Union agree as follows:

IN WITNESS WHEREOF, WE the undersigned duly authorized EMPLOYER REPRESENTATIVES and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18, and its BRANCHES, (AFL-CIO) executed this Agreement on the 1st day of May, 1997.

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 18 and its BRANCHES
(AFL-CIO)

S/JAMES H. GARDNER
Business Manager

S/DUDLEY E. SNELL
President

S/DAVID L. LUMBATIS
Vice President

S/LARRY F. MILLER
Financial Secretary

S/THOMAS E. LOUIS
Recording-Corresponding Secretary

S/LARRY G. REYNOLDS
Treasurer

S/PATRICK L. SINK
S/DAN ZAPOTOCHNY
S/CHARLES W. SCHERER

CONSTRUCTION EMPLOYERS ASSOCIATION

S/ELLIOT AZOFF, CO-CHAIRMAN
S/JOHN PORADA, CO-CHAIRMAN
S/RICHARD DIGERONIMO
S/STANLEY ROEDIGER, JR.
S/MIKE KELLEY

EXHIBIT "A"
WAGE RATES AND FRINGE CONTRIBUTIONS

ZONE 1A covering Cleveland and the following counties: Ashtabula, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain and Medina

Classification:	05/01/97	05/01/98	05/01/99
MASTER MECHANIC			
Rate	\$24.82	\$25.67*	\$26.52*
H & W	3.61	3.61	3.61
Pension	2.25	2.25	2.25
Apprenticeship	0.30	0.30	0.30
CISP (Cleveland)	0.12	0.12	0.12

*\$0.25, in each year of the second and third years, may be diverted to fringe benefits.

(over)

80

85

85

Classification:
GROUP A

30.48

	05/01/97	05/01/98	05/01/99
Rate	\$24.32	\$25.17*	\$26.02*
H & W	3.61	3.61	3.61
Pension	2.25	2.25	2.25
Apprenticeship	0.30	0.30	0.30
CISP (Cleveland)	0.12	0.12	0.12

*\$0.25, in each year of the the second and third years, may be diverted to fringe benefits.

48

Operators of:

- A-Frames
- Boiler Operators, Compressor Operators, Hydraulic Pumps & Power Pacs when mounted on a crane or regardless of where said equipment is mounted (Piggy-back Operation)
- Boom Trucks (all types)
- Cableways
- Cherry Pickers
- Combination Concrete Mixers & Towers
- Concrete Pumps

Cranes (all types)

- (Boom & Jib 200' and over - \$24.82 effective 05/01/97)
- (Boom & Jib 300' and over - \$25.07 effective 05/01/97)
- (Boom & Jib 200' and over - \$25.67 effective 05/01/98)
- (Boom & Jib 300' and over - \$25.92 effective 05/01/98)
- (Boom & Jib 200' and over - \$26.52 effective 05/01/99)
- (Boom & Jib 300' and over - \$26.77 effective 05/01/99)
- Derricks (all types)
- Draglines
- Dredges (dipper, clam or suction), 3-man crew
- Elevating Graders or Euclid Loaders

49

- Floating Equipment
- Gradalls
- Helicopter Operators, hoisting building materials
- Helicopter Winch Operators, hoisting building materials
- Hoes (all types)
- Hoists (two or more drums)
- Lift Slab or Panel Jack Operators
- Locomotives (all types)
- Maintenance Engineers (Mechanic or Welder)
- Mixers, Paving (multiple drum)
- Mobile Concrete Pumps with Booms

Panelboards (all types on site)

- Pile Drivers
- Power Shovels
- Robotics Equipment Operator/Mechanic
- Rotary Drills, (all), used on caisson work for foundations and sub-structure work
- Side Booms
- Slip Form Pavers
- Straddle Carriers (building construction on site)
- Trench Machines (over 24" wide)
- Tug Boats

80 85 85

Classification:
GROUP B

3033

	05/01/97	05/01/98	05/01/99
Rate	\$24.17 ⁷	\$25.02*	\$25.87*
H & W	3.61	3.61	3.61
Pension	2.25	2.25	2.25
Apprenticeship	0.30	0.30	0.30
CISP (Cleveland)	0.12	0.12	0.12

*\$0.25, in each of the second and third years, may be diverted to fringe benefits.

- 50 Operators of:
- | | |
|---------------------------------------|------------------------------------|
| Asphalt Pavers | Kolman-type Loaders (dirt loading) |
| Bulldozers | Lead Greasemen |
| CMI-Type Equipment | Mucking Machines |
| Endloaders | Power Graders |
| Horizontal Directional Drill Locator | Power Scoops |
| Horizontal Directional Drill Operator | Power Scrapers |
| Instrument Man** | Push Cats |

** The addition of this pay classification does not expand jurisdiction, but only establishes the pay classification if Operating Engineers are used.

Classification:
GROUP C

	05/01/97	05/01/98	05/01/99
Rate	\$23.67	\$24.32*	\$25.02*
H & W	3.61	3.61	3.61
Pension	2.25	2.25	2.25
Apprenticeship	0.30	0.30	0.30
CISP (Cleveland)	0.12	0.12	0.12

*\$0.25, in each of the second and third years, may be diverted to fringe benefits.

- 51 Operators of:
- | | |
|---|--|
| Air Compressors, pressurizing shafts or tunnels | Power Boilers (over 15 lbs. pressure) |
| Asphalt Rollers (all) | Pump Operators, installing or operating well points or other type of dewatering system |
| Fork Lifts | Pressure Groutings |
| Hoists, one drum | Trenchers (24" and under) |
| House Elevators (except automatic call button controlled) | Utility Operators |
| Man Lifts | |
| Mud Jacks | |

**CONSTRUCTION EMPLOYERS
ASSOCIATION**

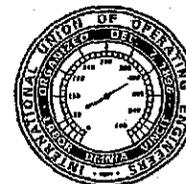
BUILDING AGREEMENT

EFFECTIVE

May 1, 2000 through April 30, 2003

Between

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 18 AND ITS BRANCHES
(AFL-CIO)**



And

**CONSTRUCTION
EMPLOYERS ASSOCIATION**



EMPLOYERS
Construction Employers
Association

950 Keynote Circle
Suite 10
Cleveland, Ohio 44131-1802

Office: (216) 398-9860
Fax: (216) 398-9801

John Porada
Executive Vice President

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AGREEMENT

Between

**THE CONSTRUCTION
EMPLOYERS ASSOCIATION (CEA)**
which may be referred to hereinafter
as the "Association"

And

**THE INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 18 and its Branches (AFL-CIO)**
referred to hereinafter as the "Union"

This Agreement is negotiated by and between the Association and the Union within the geographical area as defined herein through their authorized agents, to wit:

That, whereas, the parties desire to stabilize employment and promote efficiency in the Construction Industry, agree upon wage rates, hours and conditions of employment, and to eliminate strikes, boycotts, lockouts and stoppages of work, and

Whereas, the Union and the Employer shall, through the issuance of working rules and regulations to the workers, inform them of the terms of this Agreement and enforce compliance with the terms thereof, and

Whereas, the Employers agree to recognize and subscribe to the approved referral system as adopted by the International Union of Operating Engineers, Local 18.

Now, therefore, the undersigned Association and the Union agree as follows:

IN WITNESS WHEREOF, WE the undersigned duly authorized EMPLOYER REPRESENTATIVES and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18, and its BRANCHES, (AFL-CIO) executed this Agreement on the 1st day of May, 2000.

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 18 and its BRANCHES
(AFL-CIO)

S/JAMES H. GARDNER
Business Manager

S/THOMAS E. LOUIS
President

S/LARRY F. MILLER
Vice President

S/LARRY G. REYNOLDS
Financial Secretary

S/PATRICK L. SINK
Recording-Corresponding Secretary

S/CHARLES W. SCHERER
Treasurer

S/PATRICK L. SINK
Special Representative

S/STEVE DELONG
S/STEVEN MAYOR

CONSTRUCTION EMPLOYERS ASSOCIATION

S/STANLEY ROEDIGER, JR., CHAIRMAN
S/JAMES GRIFFIN
S/JOHN PORADA
S/RICHARD DIGERONIMO
S/MIKE KELLEY
S/JOHN LACHOWYN

EXHIBIT "A"
WAGE RATES AND FRINGE CONTRIBUTIONS

ZONE 1A covering Cleveland and the following counties: Ashtabula, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain and Medina

Classification:	05/01/00	05/01/01	05/01/02
MASTER MECHANIC			
Rate	\$26.92	\$27.92*	\$28.92*
H & W	3.61	3.61	3.61
Pension	3.00	3.00	3.00
Apprenticeship	0.45	0.45	0.45
CISP (Cleveland)	0.12	0.12	0.12

*In the event that additional funds are needed for



reverted from wages.

Classification:
GROUP A

	05/01/00	05/01/01	05/01/02
Rate	\$26.42	\$27.42*	\$28.42*
H & W	3.61	3.61	3.61
Pension	3.00	3.00	3.00
Apprenticeship	0.45	0.45	0.45
CISP (Cleveland)	0.12	0.12	0.12

*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

48

Operators of:

A-Frames
 Boiler Operators, Compressor Operators, Hydraulic
 Pumps & Power Pacs when mounted on a
 crane or regardless of where said equipment is
 mounted (piggy-back operation)
 Boom Trucks (all types)
 Cableways
 Cherry Pickers
 Combination Concrete Mixers & Towers
 Concrete Pumps

Cranes (all types)

(Boom & Jib 200' and over - \$26.92 effective 05/01/00)
 (Boom & Jib 300' and over - \$27.17 effective 05/01/00)
 (Boom & Jib 200' and over - \$27.92 effective 05/01/01)*
 (Boom & Jib 300' and over - \$28.17 effective 05/01/01)*
 (Boom & Jib 200' and over - \$28.92 effective 05/01/02)*
 (Boom & Jib 300' and over - \$29.17 effective 05/01/02)*
 Derricks (all types)
 Draglines
 Dredges (dipper, clam or suction), 3-man crew
 Elevating Graders or Euclid Loaders

49

Floating Equipment
 Gradalls
 Helicopter Operators, hoisting building materials
 Helicopter Winch Operators, hoisting building
 materials
 Hoes (all types)
 Hoists (two or more drums)
 Lift Slab or Panel Jack Operators
 Locomotives (all types)
 Maintenance Engineers (Mechanic or Welder)
 Mixers, Paving (multiple drum)
 Mobile Concrete Pumps with Booms

Panelboards (all types on site)
 Pile Drivers
 Power Shovels
 Robotics Equipment Operator/Mechanic
 Rotary Drills, (all), used on caisson work for
 foundations and sub-structure work
 Rough Terrain Fork Lifts with Winch/Hoist (when
 used as a crane)
 Side Booms
 Slip Form Pavers
 Straddle Carriers (building construction on site)
 Trench Machines (over 24" wide)
 Tug Boats

Classification:
GROUP B

	05/01/00	05/01/01	05/01/02
Rate	\$26.27	\$27.27*	\$28.27*
H & W	3.61	3.61	3.61
Pension	3.00	3.00	3.00
Apprenticeship	0.45	0.45	0.45
CISP (Cleveland)	0.12	0.12	0.12

*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

50

Operators of:

Asphalt Pavers	Kolman-type Loaders (dirt loading)
Bulldozers	Lead Greasemen
CMI-Type Equipment	Mucking Machines
Endloaders	Power Graders
Horizontal Directional Drill Locator	Power Scoops
Horizontal Directional Drill Operator	Power Scrapers
Instrument Man**	Push Cats

** The addition of this pay classification does not expand jurisdiction, but only establishes the pay classification if Operating Engineers are used.

Classification:
GROUP C

	05/01/00	05/01/01	05/01/02
Rate	\$25.32	\$26.22*	\$27.12*
H & W	3.61	3.61	3.61
Pension	3.00	3.00	3.00
Apprenticeship	0.45	0.45	0.45
CISP (Cleveland)	0.12	0.12	0.12

*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

51

Operators of:

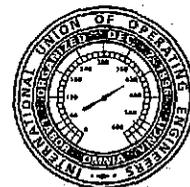
Air Compressors, pressurizing shafts or tunnels	Mud Jacks
Asphalt Rollers (all)	Power Boilers (over 15 lbs. pressure)
Fork Lifts	Pump Operators, installing or operating well points or other type of dewatering system
Hoists, one drum	Pressure Groutings
House Elevators (except automatic call button controlled)	Trenchers (24" and under)
Laser Screeds and like equipment	Utility Operators
Man Lifts	

**CONSTRUCTION EMPLOYERS
ASSOCIATION
BUILDING AGREEMENT**

**EFFECTIVE
May 1, 2003 through April 30, 2006**

Between

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 18 AND ITS BRANCHES
(AFL-CIO)**



And

**CONSTRUCTION
EMPLOYERS ASSOCIATION**



EMPLOYERS
Construction Employers
Association

950 Keynote Circle
Suite 10
Cleveland, Ohio 44131-1802

Office: (216) 398-9860
Fax: (216) 398-9801

John Porada
Executive Vice President

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AGREEMENT

Between

**THE CONSTRUCTION
EMPLOYERS ASSOCIATION (CEA)**
which may be referred to hereinafter
as the "Association"

And

**THE INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 18 and its Branches (AFL-CIO)**
referred to hereinafter as the "Union"

This Agreement is negotiated by and between the Association and the Union within the geographical area as defined herein through their authorized agents, to wit:

That, whereas, the parties desire to stabilize employment and promote efficiency in the Construction Industry, agree upon wage rates, hours and conditions of employment, and to eliminate strikes, boycotts, lockouts and stoppages of work, and

Whereas, the Union and the Employer shall, through the issuance of working rules and regulations to the workers, inform them of the terms of this Agreement and enforce compliance with the terms thereof, and

Whereas, the Employers agree to recognize and subscribe to the approved referral system as adopted by the International Union of Operating Engineers, Local 18.

Now, therefore, the undersigned Association and the Union agree as follows:

IN WITNESS WHEREOF, WE the undersigned duly authorized EMPLOYER REPRESENTATIVES and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18, and its BRANCHES, (AFL-CIO) executed this Agreement on the 1st day of May, 2003.

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 18 and its BRANCHES
(AFL-CIO)

S/JAMES H. GARDNER
Business Manager

S/PATRICK L. SINK
President

S/KENNETH M. TRIPPLETT
Vice President

S/LARRY G. REYNOLDS
Financial Secretary

S/CHARLES W. SCHERER
Recording-Corresponding Secretary

S/FLOYD S. JEFFRIES
Treasurer

S/STEVE DELONG
S/JEFF MILUM
S/PREMO PANZARELLO

CONSTRUCTION EMPLOYERS ASSOCIATION

S/STANLEY ROEDIGER, JR., CHAIRMAN
S/JOHN PORADA
S/RICHARD DIGERONIMO
S/GARY KNOPF
S/JOHN LACHOWYN
S/MARK STERLING

EXHIBIT "A"
WAGE RATES AND FRINGE CONTRIBUTIONS

ZONE 1A covering Cleveland and the following counties: Ashtabula, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain and Medina

Classification:	05/01/03	05/01/04	05/01/05
MASTER MECHANIC/EQUIPMENT FOREMAN			
Rate	\$29.62	\$30.82*	\$32.02*
H & W	4.11	4.11	4.11
Pension	3.00	3.00	3.00
Apprenticeship	0.45	0.45	0.45
CISP (Cleveland)	0.12	0.12	0.12

*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

(over)

Classification:
GROUP A

	05/01/03	05/01/04	05/01/05
Rate	\$29.12	\$30.32*	\$31.52*
H & W	4.11	4.11	4.11
Pension	3.00	3.00	3.00
Apprenticeship	0.45	0.45	0.45
CISP (Cleveland)	0.12	0.12	0.12

*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

Operators of:

50

A-Frames	Cranes (all types)
Boiler Operators, Compressor Operators, Hydraulic Pumps & Power Pacs when mounted on a crane or regardless of where said equipment is mounted (piggy-back operation)	(Boom & Jib 200' and over - \$29.62 effective 05/01/03)
Boom Trucks (all types)	(Boom & Jib 300' and over - \$29.87 effective 05/01/03)
Cableways	(Boom & Jib 200' and over - \$30.82 effective 05/01/04)*
Cherry Pickers	(Boom & Jib 300' and over - \$31.07 effective 05/01/04)*
Combination Concrete Mixers & Towers	(Boom & Jib 200' and over - \$32.02 effective 05/01/05)*
Concrete Pumps	(Boom & Jib 300' and over - \$32.27 effective 05/01/05)*
	Derricks (all types)
	Draglines
	Dredges (dipper, clam or suction), 3-man crew
	Elevating Graders or Euclid Loaders

Floating Equipment

Gradalls
Helicopter Operators, hoisting building materials
Helicopter Winch Operators, hoisting building materials
Hoes (all types)
Hoists (two or more drums)
Lift Slab or Panel Jack Operators
Locomotives (all types)
Maintenance Engineers (Mechanic or Welder)
Mixers, Paving (multiple drum)
Mobile Concrete Pumps with Booms
Panelboards (all types on site)

Pile Drivers

Power Shovels
Robotics Equipment Operator/Mechanic
Rotary Drills, (all), used on caisson work, wells (all types), Geothermal work and sub-structure work
Rough Terrain Fork Lifts with Winch/Hoist (when used as a crane)
Side Booms
Slip Form Pavers
Straddle Carriers (building construction on site)
Trench Machines (over 24" wide)
Tug Boats

51

Classification:
GROUP B

	05/01/03	05/01/04	05/01/05
Rate	\$28.97	\$30.17*	\$31.37*
H & W	4.11	4.11	4.11
Pension	3.00	3.00	3.00
Apprenticeship	0.45	0.45	0.45
CISP (Cleveland)	0.12	0.12	0.12

*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

Operators of:

Asphalt Pavers	Kolman-type Loaders (dirt loading)
Bulldozers	Lead Greasemen
CMI-Type Equipment	Mucking Machines
Endloaders	Power Graders
Horizontal Directional Drill Locator	Power Scoops
Horizontal Directional Drill Operator	Power Scrapers
Instrument Man**	Push Cats

** The addition of this pay classification does not expand jurisdiction, but only establishes the pay classification if Operating Engineers are used.

Classification:
GROUP C

	05/01/03	05/01/04	05/01/05
Rate	\$27.72	\$28.82*	\$29.92*
H & W	4.11	4.11	4.11
Pension	3.00	3.00	3.00
Apprenticeship	0.45	0.45	0.45
CISP (Cleveland)	0.12	0.12	0.12

*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

Operators of:

Air Compressors, pressurizing shafts or tunnels	Mud Jacks
Asphalt Rollers (all)	Power Boilers (over 15 lbs. pressure)
Fork Lifts	Pump Operators, installing or operating well points or other type of dewatering system.
Hoists, one drum	Pressure Groutings
House Elevators (except automatic call button controlled)	Trenchers (24" and under)
Laser Screeds and like equipment	Utility Operators
Man Lifts	

EXHIBIT "K"

SERB Fact Finder's report from Virginia Wallace-Curry dated May 10, 2004

STATE EMPLOYMENT RELATIONS BOARD

May 10, 2004

In the Matter of the Fact-finding Between:

CITY OF CLEVELAND)

And)

MUNICIPAL CONSTRUCTION EQUIPMENT)
OPERATORS' LABOR COUNCIL)

SERB Case No. 03-MED-06-0685

APPEARANCES

For the City:

Jon M. Dileno, Esq.
Bill Sweeney, Esq.
Sharon Dumas
Julius Ciaccia
Mark Richiutto

Outside Counsel
Asst. Director of Law
Asst. Director of Finance
Commissioner of Division of Water
Director of Public Service

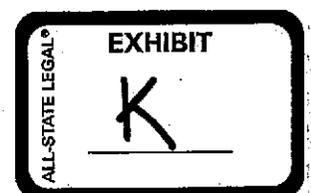
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Roman Dowhaniuk
Santo A. Consolo

Attorney
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Treasurer, CEO Group A
Witness, CEO Group B
Secretary, CEO Group A
Vice-President, CEO Group A
Witness, CEO Group B
Witness, CEO Group A
Witness

Fact-finder

Virginia Wallace-Curry



INTRODUCTION

This matter concerns the fact-finding proceeding between the City of Cleveland, (the "City") and the Municipal Construction Equipment Operators' Labor Council (the "Union" or "MCEO Union"). The bargaining unit consists of approximately 50 construction equipment operators and master mechanics. The parties are negotiating their first collective bargaining agreement. For many years, the equipment operators and support personnel were represented by the International Union of Operating Engineers Local 18 ("Local 18"). However, Local 18 was never "certified" as the union's representative, and the City and Local 18 never entered into a collective bargaining agreement.

In attempting to negotiate their first collective bargaining agreement, the City and the new MCEO Union met in June 2003. After one negotiating session, the negotiations were shut down by the Union. They recommenced in November 2003. After two meetings, the parties believed they reached a Tentative Agreement on all issues on December 9, 2003. However, the City disagreed with the Union's draft of the Agreement regarding the Recognition and Craft Jurisdiction sections of the Tentative Agreement. When the parties were unable to reach agreement on those issues, the City stated that the Tentative Agreement was no longer viable and reopened several issues for Fact-finding.

Virginia Wallace-Curry was appointed Fact-finder in this matter by the State Employment Relations Board. A fact-finding hearing was held on March 11 and March 12, 2004, at which time the parties were given full opportunity to present their respective positions on the issues. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

In making the recommendations in this report, consideration was given to criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board.

BACKGROUND

Historically, the wages of this bargaining unit were set by the City's Charter, because there was no collective bargaining agreement. The City's Charter requires that they be paid a "prevailing wage rate" as established by industry contracts in the geographic area. Hence, the City's equipment operators were paid a rate commensurate with private industry, and, like construction equipment operators in the private sector, they did not receive benefits, such as vacation, sick leave, longevity and health care.

In 2003, the equipment operators voted in the MCEO Union as its bargaining representative. It did not become a member of the Building Trades Council, a group of trades unions representing City employees which bargain together and have a single joint collective bargaining agreement. The MCEO Union and the City began negotiations for their own separate agreement in June 2003.

The parties believed they reached a Tentative Agreement in December 2003. The City argues that it made it clear that the final proposal was a package deal that must be accepted or "all bets are off." The Union prepared a draft of the Tentative Agreement and the members voted to accept it. However, when the Tentative Agreement was sent to the City, the City asserted that the Union incorrectly drafted the language the parties had agreed to. The City found three substantive changes in the draft, two of which the City argued significantly impacted the issues being externally litigated by the Union against the City. The Union initially agreed that two of

the three "changes" noted by the City could be deleted from the final draft, but insisted that the "Craft Jurisdiction" language remain as drafted by the Union.

The City had initially proposed that the language from the Trades Council Agreement be used as a guide in drafting the Craft Jurisdiction provision. However, the City argued that since the MCEO Union was not a member of the Trades Council, the specific references to that entity would need to be excised. In the draft agreement, references to the Trades Council Agreement were deleted; however, the Union made reference instead to the Construction Employer's Agreement. The last sentence of the Union's draft states: "The City will give special weight to the description of work to be performed by a [sic] Operating Engineers, as described in the current Building Agreement between the Operating Engineers and the Construction Employers Association."

The City took issue with this language, because the City argued that, by inserting the reference to the Building Agreement, the Union was attempting to create a recognition of the Construction Employers' Association Agreement ("CEA Agreement"), which is an issue being contested by the City before the Ohio Supreme Court in a separate litigation. The City responded that either no reference to an outside contract be mentioned or that the Highway Heavy Agreement be referenced as a guide for jurisdictional issues. The City believes that the Highway Heavy Agreement is the more applicable agreement. The Union rejected the City's proposals. Because the parties were unable to resolve the matter, it is now before the Fact-finder.

The City reopened six issues:

- Craft Jurisdiction
- Wages and Benefits
- Insurance

- Hours of Work and Overtime
- Recognition
- Duration

The Union initially proposed maintaining the language on all issues as drafted in the parties' "Tentative Agreement," which the Union sent to me on January 21, 2004. Again, on March 3, 2004, in an email, the Union reiterated that it was proposing the language of the "Tentative Agreement" as its positions at fact-finding. The Union did not submit a pre-hearing brief beyond its January 21, 2004, correspondence. On the eve of the day before the fact-finding hearing, the Union, in response to the City's pre-hearing brief, emailed the City and me changes to its original proposals on Craft Jurisdiction and Duration.

The City objects to the Union's "last minute" changes. The City argues that the parties had agreed to exchange the proposals to be argued at fact-finding by March 17, 2004, which the City did. The Union insisted from January 21, 2004, until the day before the hearing that its position was contained in the "Tentative Agreement" as written. The City argues that the Union should not be permitted to change its position at 6:15 PM of the night before the hearing.

I find it ironic that the Union believes it is OK to change its position at the last minute, when, in an email to me and the City's representative, dated March 3, 2004, the Union's representative insisted on knowing what the City intended to argue at fact-finding, "[u]nless Cleveland plans to keep its response to this inquiry secret until April 7, 2004. . . ." The Union had ample opportunity to reply and alter its position after receiving the City's proposals on March 17, 2004, yet chose to communicate its final proposal until late on April 6, 2004, the evening before the Fact-finding hearing.

Nonetheless, in making my recommendation, I will consider the Union's changes to its

originally proposed positions, even though it is beyond the deadline set by the parties. First, according to statute, the parties must submit their positions on unresolved issues prior to the day of the hearing. Technically, the Union submitted its changes to its positions prior to the day of the hearing, even though they were communicated at 6:15 PM of the evening before. Second, the City already expressed its intent to open these issues for discussion, and I doubt that the City's positions would have changed with more notice by the Union. Third, as to the issue of duration, the Union's original proposal to follow the expiration date as stated in tentative agreement was moot, because the expiration date of March 31, 2004, had already passed. It made no sense to propose that the agreement should expire on date long gone.

The issues on which the City and the Union still agree are listed as such at the end of this report and are incorporated therein.

ISSUES AT IMPASSE

I. Craft Jurisdiction

Union's Proposal

Cleveland agrees that those persons identified in the Recognition article of this collective bargaining agreement shall be employed by it to operate, maintain, repair and have exclusive jurisdiction over the following equipment: articulated loader, with any attachment; skid steer loader, with any attachments; basic tractor, with any attachments; trenchers; pavers and pavement finishing machines; rollers; track drive tractors, bulldozers, loader, backhoes and excavators; graders and grader tractors, with any attachment; pavement grinders and road planers; self loading tractors with conveyors; tractor mounted snow blowers; gradall or rubber tire excavators, backhoes, cranes or drag lines; all terrain forklifts. Except in cases of emergencies, all work with respect to the equipment described in this Article shall be performed by the CEO Union, and there shall be no interruption of work. The Union can file a grievance at Step 2 of the Grievance Procedure

for alleged violations of this Article.

The Union argues that the most appropriate description of the Craft Jurisdiction of the bargaining unit would be to list the equipment for which the bargaining unit has exclusive jurisdiction to operate, maintain, and repair. The Union argues that this would eliminate the need to reference the Building Agreement between the Operating Engineers and the Construction Employers Association, to which the City objected. The testimony of members of the bargaining unit demonstrates that these are the types of equipment that MCEO members operate, maintain and repair on a regular basis. Cleveland's Civil Service Commission's description of these employees' equipment is out of date, incomplete and does not accurately reflect what equipment these employees are tested on by the Civil Service and are required to use and repair on a daily basis. The Union seeks to avoid an agreement that allows the Civil Service Commission to make changes to this list of equipment.

The Union argues that the language proposed by the City is deficient because 1) it includes the Civil Service Commission's identification of what equipment these employees operate, repair and are tested on, which is inaccurate and incomplete, and 2) it will encourage the City to continue to use persons whom it employs but have not been subjected to competitive testing by the Civil Service Commission to operate or repair this equipment, contrary to the mandate of the City's charter.

City'S Proposal

The City agrees to abide by the City Civil Service Commission description of the work to be assigned to employees and will attempt not to assign work falling within their craft jurisdiction to other employees. Further, in cases of emergencies, overlapping, or ambiguous descriptions of work assigned to a particular craft or other City employees, there shall be no interruption of

work. The Union can file a grievance at Step 2 of the Grievance Procedure for alleged violations of this Article.

The City argues that it is without question that what the Union presented as a tentative agreement on Craft Jurisdiction was not what was proposed or agreed to by the City. Indeed, the Union's unilateral modification of this Article, in large part, led to the unraveling of the "Tentative Agreement." The City argues that the Union's modification was unacceptable because it imposed upon the City a recognition of the jurisdiction provision of the Construction Employers Association contract, a provision that has little application to these members and would greatly expand the jurisdiction of their work.

As presented at the hearing, the work of the City's construction equipment operators falls substantially within the jurisdiction description of the Highway Heavy Agreement. However, since the Union strenuously objected to referencing that Agreement in the parties' contract, the City has proposed a very employee-favorable article which captures the spirit of the true tentative agreement reached by the parties, referencing the Civil Service description for construction equipment operators and master mechanics.

Recommendation

The City agrees to abide by the City Civil Service Commission description of the work to be assigned to employees who are members of the CEO Union and will attempt not to assign work falling within their craft jurisdiction to other employees. Further, in cases of emergencies, overlapping, or ambiguous descriptions of work assigned to a particular craft or other City employees, there shall be no interruption of work. The Union can file a grievance at Step 2 of the Grievance Procedure for alleged violations of this Article.

The above recommended language is modeled on the "Tentative Agreement" reached by

the parties regarding Craft Jurisdiction, minus the last sentence which the City argued was never part of the deal. The omitted sentence states: "The City will give special weight to the description of work to be performed by a [sic] Operating Engineers, as described in the current Building Agreement between the Operating Engineers and the Construction Employers Association." I believe that the City would not have agreed to the inclusion of this sentence for several reasons. First, the CEA contract description of the work performed by the Operating Engineers does not precisely match the description of work performed by the City's Operating Engineers who are members of this bargaining unit. For example, the list of equipment that operating engineers under the CEA contract operate and repair does not match that given by the Union in their proposal. Only a small fraction of the equipment listed in the CEA contract is applicable to this bargaining unit. Such a blanket reference to the CEA contract would be overly inclusive and inaccurate.

Second, the Union and the City are currently litigating before the Ohio Supreme Court which contract, the CEA contract or the Highway Heavy contract, is more applicable to this bargaining unit in determining the appropriate prevailing wage rate to be used. The City would never have agreed to craft jurisdiction language that would have compromised its position in that lawsuit.

Consequently, I believe that the above passage is the closest to what the parties intended. The passage given to the Union by the City as a guide, the Trades Council Agreement, has a sentence similar to the one omitted above and in contention, but the sentence makes reference to unions affiliated with the Trades Council. Because this MCEO is not affiliated with the Trades Council, the Union substituted reference to the CEA Building Agreement. That could not have

been what the City had in mind. Omission of the sentence is more logical.

The Union's proposal on Craft Jurisdiction which lists equipment over which the bargaining unit would have exclusive jurisdiction is not recommended, because it seeks to secure a monopoly on the use of equipment that is shared by other bargaining units. The City cannot afford to be limited in that way.

II Wages and Benefits

City's Proposal

Employees will continue to earn their current wage rates with no increase provided. Wages shall be determined by this Agreement and not through reference to external contracts. This proposal also contemplates that for allowing employees to maintain their current wage rates, the contract will specifically state that the employees will not be entitled to other benefits, including but not limited to longevity, paid sick leave, holidays, vacation and employer-paid health and life insurance. Finally, the contract shall specify that this Agreement shall supercede the City Charter as it applies in any way to these employees. (Moreover, this proposal shall not be construed in any way as an admission or a reflection of the City's position regarding what the "prevailing wage" is as referenced under the City Charter).

The City argues that the members of the bargaining unit should not receive a wage increase. The City asserts that the employees have been over-paid for years, because they were paid the "prevailing rate" for construction employees, who do not perform the same kind of work as the bargaining unit. The work performed by this bargaining unit more closely resembles that of employees covered by the Highway Heavy Agreement, who are paid at a lower rate than the construction employees.

The City admits that they have paid this bargaining unit at the higher wage rate. But upon

reexamination of the job duties of the bargaining unit, the City believes that it should be paying them at the rates in the Highway Heavy Agreement. Although Union witnesses testified as to construction-like jobs they have performed over the years, that represents a minute fraction of the work they regularly perform. Employees spend nearly all of their time doing work described in the Highway Heavy Agreement, doing repair work to City streets or to address broken or worn pipelines.

Consequently, wage increases should not be granted. However, because this bargaining unit has not had an increase in the two or more years after the MCEO became the exclusive representative of the group, their wages are now below those stated in the Highway Heavy Agreement. Therefore, at most, their wages should be brought up to the level equaling those in the Highway Heavy Agreement.

Because of the serious financial difficulties that the City is facing, no other wage increases would be warranted. The City has had to implement massive budget cuts and layoff over 750 employees to compensate for a \$61 million debt.

The City also rejects that Union's proposal that employees be paid at 80% of the prevailing wage rate plus benefits. This offer was removed from the City's proposal when the Tentative Agreement fell through because of the Union's substantive changes to the original agreement. Therefore, the City propose that employees be paid their current wage rate (or 100% of the prevailing rate of the Highway Heavy Agreement) and no benefits. For years, the Union has opted for the full payment without benefits, and the City proposes that this practice be continued.

However, if benefits are provided, employees should receive 80% of the "wage" and

“health and welfare” line items of the Highway Heavy Agreement. The Union seeks the introduction of substantial benefits and an 80% multiplier which includes all of the monetary line items of the CEA contract, including credit for pension and others, such as apprenticeship and CISP. The Union seeks credit for the private-sector pension line item even though its members receive a 13.55% PERS contribution from the City toward their public sector pension benefits. The City has rightfully taken an offset for the PERS contributions since 1994 and this should not be eradicated by the Fact-finder.

Union’s Proposal

Cleveland recognizes that the CEO Union is the sole and exclusive representative of those persons who are employed by the City and its departments to operate and repair the construction equipment that is described in the Craft Jurisdiction section of this Collective Bargaining Agreement. Those Cleveland employees are divided into the following job classifications, which are all craft positions recognized by Cleveland’s Civil Service Commission.

- **Construction Equipment Operator A**
- **Construction Equipment Operator B**
- **Master Mechanic**

The persons in these job classifications employed by Cleveland shall be paid at the rate of eighty percent (80%) of the prevailing hourly wage rates which have been established by the most current version of the Construction Employers Association Building Agreement (the “Building Agreement”) between the Operating Engineers and the Construction Employers Association. The presently applicable Building Agreement is attached as Exhibit “A” to this Contract. The City of Cleveland and the CEO Union have agreed that the prevailing hourly wage rate shall be determined by adding the basic wage rate, plus a health and welfare component, plus a pension component, plus apprenticeship, plus CISP.

As of May 1, 2003, those hourly wage rates for Operating Engineer Group “A”, Group “B” and Master Mechanic respectively are: \$36.80, \$36.65 and \$37.30; 80% of those hourly wage rates respectively are: \$29.44; \$29.32 and \$29.84.

As of May 1, 2004, those hourly wage rates for Operating Engineer Group "A", Group "B" and Master Mechanic respectively are: \$38.00, \$37.85 and \$38.50; 80% of those hourly wage rates respectively are: \$30.40; \$30.28 and \$30.80.

As of May 1, 2005, those hourly wage rates for Operating Engineer Group "A", Group "B" and Master Mechanic respectively are: \$39.20, \$39.05 and \$39.70; 80% of those hourly wage rates respectively are: \$31.36; \$31.24 and \$31.76.

The Union asserts that the above passage was a part of the "Tentative Agreement" agreed to by the parties. It reflects the Union's agreement to accept 80% of the prevailing wage rate received by employees covered by the CEA Agreement, in exchange for health insurance, longevity pay, paid sick leave, holidays, vacation and other benefits. The 80% of the prevailing wage rate should not be calculated by deducting the City's contribution to PERS.

All other trade unions, including ironworkers, carpenters, cement finishers, and electricians receive 80% of the prevailing wage rate, without deductions for PERS or anything else, in exchange for the above benefits, and the Union is only asking to be treated likewise. The amount of the prevailing wage rate for these unions is established by the relevant contract that the Building Association has with Local 18, or other outside contractor, or is published by the Ohio Department of Commerce Wage and Hour Division. For years the City has used the prevailing wage set out in the Building Agreement of the Construction Employers' Association and Local 18 Operating Engineers. During current negotiations, the City agreed to pay bargaining unit members 80% of the prevailing wage of the CEA Agreement in exchange for benefits and without any deductions for PERS, Apprenticeship or CISP. The Union merely argues that the City should stand by its original agreement.

Recommendation

The persons in the job classifications covered by this Agreement and employed by Cleveland shall be paid at the rate of eighty percent (80%) of the prevailing hourly wage rates which have been established by the most current version of the Construction Employers Association Building Agreement (the "Building Agreement") between the Operating Engineers and the Construction Employers Association. The City of Cleveland and the CEO Union have agreed that the prevailing hourly wage rate shall be determined by adding the basic wage rate, plus a health and welfare component, plus a pension component, plus apprenticeship, plus CISP.

As of May 1, 2003, those hourly wage rates for Operating Engineer Group "A", Group "B" and Master Mechanic respectively are: \$36.80, \$36.65 and \$37.30; 80% of those hourly wage rates respectively are: \$29.44; \$29.32 and \$29.84.

As of May 1, 2004, those hourly wage rates for Operating Engineer Group "A", Group "B" and Master Mechanic respectively are: \$38.00, \$37.85 and \$38.50; 80% of those hourly wage rates respectively are: \$30.40; \$30.28 and \$30.80.

It is recommended that the Union's proposal, with a few modifications, be adopted. The Union's proposal is imbedded in the Recognition article of the Agreement. The above recommended language may be added to the Recognition clause or it may be a separate article unto itself. The matters contained in the Recognition portion of the Union's proposal that are at issue will be dealt with in a separate section of this report regarding Recognition. Also removed from the Union's proposal was the sentence requiring that the current CEA Agreement be attached to the parties' Agreement. In the City's January 19, 2004, letter to the Union regarding the Union's draft of the Tentative Agreement, the City objected to language requiring the attachment of the CEA Agreement to the parties' Agreement, and the Union agreed to make this deletion. Therefore, reference to the attached CEA agreement is not included in the recommended language here. Also deleted is the last paragraph referencing a wage rate for May

2005 which is beyond the recommended expiration date of the Agreement. (See Duration section below.)

Also, the recommendation that employees be paid 80% of the prevailing wage rate must come with the proviso that the City had originally put on their tentative agreement to this proposal, as reflected in the City's December 2, 2003, package proposal. The City's agreement that employees will be paid 80% of the prevailing wage from the Construction Employers Association Building Agreement is **"not to be construed in any way as an admission by the City as to what the 'prevailing wage' is."** If the parties do not have such an agreement in writing, then the proviso, as stated here, should be included in the language of the Agreement. The City's proviso is meant to preserve its position in the current litigation on the proper prevailing wage to pay these employees.

The City argues that the Union should be paid at the prevailing wage of those operating engineers covered by the Highway Heavy agreement, not the CEA agreement. It is my understanding that this issue is a subject of litigation between the parties. It appears to me that the Highway Heavy agreement is more applicable, but neither it nor the CEA agreement is a perfect match. However, because the matter is the subject of litigation, where more (and better¹) evidence will likely be presented, I am reluctant to change the longstanding practice of paying these employees at the rate established by the CEA Building Agreement based the information

¹The City presented as evidence of the proper contract to be used for comparison affidavits from Steven DeLong, Business Agent and District Representative of Local 18 of IUOE and William Fadel, the attorney who represented Local 18, who both stated that they believe the MCEO bargaining unit work more closely resembles the Highway Heavy work rather than the work in the CEA Agreement. However, neither of these individuals were available for questioning and I have only the limited information on the affidavit. At trial, the evidence would be more fully developed.

available to me. The City has admitted that it has paid these employees the prevailing wage rate established in the CEA Agreement. Although the City argues that it recently realized that it was paying these employees at the wrong wage rate, it seems more likely that the City has had its doubts as to the appropriate wage for years and has just now chosen to propose the lower wage rate. As of December 2, 2003, the City was still proposing employees be paid 80% of wage rate in the CEA Agreement.

The City's proposal to deny all benefits to these employees in exchange for 100% of the prevailing wage of the Highway Heavy seems like a punitive stance to take at this point. Although these employees have opted in the past to take the full wage rate in lieu of benefits, the Union has made it clear throughout the negotiations that it wanted to take advantage of the same option that other building trade employees have, i.e. benefits in exchange for less money. The City had agreed until the Tentative Agreement came unraveled at the 11th hour.

By recommending that employees receive 80% of the prevailing wage rate of the CEA Agreement, I am also recommending that employees receive the benefits that the parties originally agreed would be given in lieu of the cash. These benefits are reflected in the articles entitled Longevity, Maternity Leave, Sick Leave With Pay, Sick Leave Without Pay, Holidays, Life Insurance, Vacation and Health Coverage, as written in the Tentative Agreement drafted by the Union. The City had no problem with these articles as written.

It is also recommended that the prevailing wage rate not exclude deductions for pension or other matters, as proposed by the City. Again, the City's proposal of December 2, 2003, did not mention that the City would be taking these deductions. Rather, the City illustrates what the prevailing wage would be with an example: "(Ex. - for Group A Employees $\$36.80 \times .80 =$

\$29.44).” This calculation reflects 80% being take of the full prevailing wage of \$36.80, which the Union’s proposal cites as the Group A wage in 2003. No deductions were made before calculating the percentage. The City argues that it is entitled to take a deduction for its PERS contribution, but, again, the statute is not crystal clear on that issue, and it is a subject that is being litigated between the parties and should not be decided in this fact-finding.

After the close of the hearing, the City submitted a ruling by the Ohio Supreme Court which finds that the City is not in contempt of court in the suit filed by the Union regarding the payment of the prevailing wage. The City argues that this implies that the City was correct in deducting the PERS payment. The Union, of course, disagrees with this interpretation. I do not believe that it really affects my recommendation. If I had chosen to recommend the City’s position that it pay employees 100% of the prevailing wage rate, then maybe the PERS contribution could be deducted, because they would really be paying more than 100% of the prevailing wage rate, if the City’s interpretation is correct. However, the recommendation here is that the City pay less than 100% of the prevailing wage rate. The 80% portion is just a number that the City believed at one point was a fair reflection of cost to the City to provide the benefits listed. The City did not propose taking out the deductions for pension, apprenticeship and CISP. Therefore, it not recommended here. If indeed the City is correct, and it would cost the City more than 20% to cover the cost of all the benefits, including PERS, it can propose a different percentage of the prevailing wage rate as a rate of pay for these employees during the subsequent negotiations.

The City also argues that the employees should receive no wage increase, citing the City’s dire financial problems. However, this Union has had its wages on hold for the two or more

years since the MCEO has represented these employees. The dire financial problems do not impact these employees the same way as others. They perform work for propriety departments, such as the Water Division and Municipal Light and Power, which are revenue producing departments. None of these employees were subject to layoffs and most of the salaries are not heavily dependent on the General Fund, which is the fund that is suffering the most.

III. Insurance

City's Proposal

Those employees who wish to be covered under the City's insurance plans will have the option of purchasing one of the City's plans at the premium cost charged to the City by the carrier.

The City seeks the continuance of the status quo regarding insurance, as with other benefits. As noted, in the past, the bargaining unit had opted for 100% of the "prevailing wage rate" in exchange for not receiving benefits. This wage rate included a \$3.61 an hour component for health insurance. However, the City permitted these employees to purchase insurance at the City's cost. Currently, the City is proposing a maintenance of the 100% wage rate payment (in accordance with the Highway Heavy Agreement) and no benefits. Given that these members receive a monetary value for insurance coverage, they are not entitled to paid coverage. They will be permitted to purchase health care coverage at the premium cost charged to the City.

Union's Proposal

The Union proposes that employees receive the same health care insurance package as all other employees. In exchange, the Union will agreed to take 80% of the prevailing wage as stated in the CEA Agreement.

Recommendation

For all the reasons stated in the section on Wages and Benefits, it is recommended that the City provide health insurance to this bargaining unit in exchange for accepting 80% of the prevailing wage rate, as set forth above.

IV. Hours of Work and Overtime

City's Proposal

The normal work week for regular full-time employees shall be forty (40) hour per week. The City reserves the right, as operational needs and conditions require, to establish and change hours of work, shifts and schedules of hours.

Overtime shall be paid in accordance with the Fair Labor Standards Act.

The proposal of the Union would seriously hamper operations and create built-in overtime for equipment operators. Although the City proposed this language during negotiations, it realized later that the language created overtime due to the flex schedules routinely and historically worked by a significant number of equipment operators. As testified to by Commissioner Ciaccia, the Water Division runs a seven-day per week, 24-hour operation which requires coverage on the weekends and during off hours. A significant number of his equipment operators work regular schedules that encompass weekend and late-hour work at straight-time pay. The Union's proposal would require overtime payment for schedules that have been worked at straight-time for many years. The City's proposal, on the other hand, maintains the historical flexibility it has enjoyed. The City cannot effort significant overtime costs to be built into these Departments.

Union's Proposal

Hours of Work

The normal work week for regular full-time employees shall be forty (40) hours of work in five (5) eight (8) hour days, exclusive of time allotted for meals, during the period starting at 12:01 a.m. Monday to 12:00 midnight Friday. The normal workday may be any eight- (8) consecutive hours, Monday through Friday, between the hours of 7:00 a.m. and 4:30 p.m., with one-half (½) hour lunch.

- A. All employees who work a regular day shall be allowed no less than thirty (30) uninterrupted minutes for a scheduled lunch period, except for other mutually agreed upon schedules with the Union.
- B. There shall be two (2) fifteen (15) minute rest periods on each shift each workday. The rest periods, to the extent practicable, will be scheduled during the middle two (2) hours of each half shift, but they may not be scheduled immediately before or after the meal period or at the start or end of a shift.
- C. When an employee works beyond his regular quitting time, the employee shall receive a fifteen (15) minute rest period if the employee works two (2) hours, but less than four (4) hours for each four (4) hour period, and in addition, a thirty (30) minute meal period if the employee works four (4) hours or longer.
- D. The City will dock employees on the basis of one-tenth (or six (6) minutes per hour) of one hour (or six (6) minutes).

All regular full-time employees shall be on a compensation basis of two thousand-eighty (2080) hours per year.

For those bargaining unit employees on the normal eight (8) hour day, five (5) day per week work week, shifts are defined as follows:

- 1st shift The majority of his normal hours of work fall after 7:30 a.m. and before 3: 00 p.m.

- 2nd shift The majority of his normal hours of work fall after 3:00 p.m. and before 12:30 a.m. and an employee on such shift is to receive a shift premium of fifty cents (\$.50) per hour.

- 3rd shift The majority of his normal hours of work fall between 12:30 a.m. and 7:30 a.m. and an employee on such shift is to receive a shift premium of seventy-five cents (\$.75) per hour.

Employees equally rotating between all three shifts shall receive twenty-five cents (\$.25) per hour. All shift premiums are paid on an hours-paid basis only.

There shall be no pyramiding of overtime due to these shift premiums or for any other reason.

Shift premiums are available only to employees assigned to the 2nd and 3rd shifts and not to employees assigned to another shift who may work overtime that occurs during a shift that is subject to a (higher) shift differential.

Overtime Premium Pay

The City shall be the sole judge of the necessity for overtime. All employees shall receive time and one-half (1-1/2) their regular rate of pay for all hours worked in excess of eight (8) in one (1) day, or forty (40) hours in the normal workweek. Overtime is to be calculated in thirty (30) minute increments.

All employees shall receive time and one-half (1-1/2) their regular rate of pay for all hours worked on Saturdays and Sundays, outside the period of their workweek, in compliance with the Hours of Work section, if applicable.

All employees shall receive time and one-half (1-1/2) their regular rate of pay for all hours worked on holidays, in addition to their holiday pay.

All paid holiday hours, paid sick leave hours, and paid vacations hours shall be counted as hours worked for the purpose of computing overtime.

There shall be no pyramiding of overtime or other premium pay compensation, no overtime pay shall be computed on whatever total overtime hours are the greater for the week, either on a daily or a weekly basis, but not on both.

Overtime shall be distributed as equally as possible within each classification in each work unit on a continuing basis. The City shall credit employees for all overtime hours worked and/or for overtime hours offered for which employees have declined or failed to work for any reason.

Emergency overtime cannot be refused. An emergency is defined as an impairment to City services or operations which cannot be delayed until the beginning of the next regular workday. However, an employee shall be excused from emergency overtime provided the City can obtain a replacement in time to meet the emergency.

Overtime shall be equalized on a continuing basis. The City shall credit employees for all overtime hours worked and/or for overtime hours offered or which employees have declined or failed to work for any reason.

The City will use its best efforts to provide employees with twenty-four (24) hours notice for overtime, with the understanding that by its

nature, overtime that results from an “emergency” is not susceptible to such notice.

The Union argues that this language was proposed by the City during contract negotiations. Even employees in the Water Division work set Monday through Friday schedules. Those who work on the weekends as part of their regularly scheduled work week do not receive overtime on the weekends. Other trade union employees follow the above schedule, and this bargaining unit is merely asking for the same benefits. The City’s proposal would allow the City to change shifts at will and does not provide predictability for employees.

Recommendation

The above proposal is recommend as written by the Union. However, the Hours of Work and Premium Overtime provisions as written apply to employees who are not regularly scheduled to work on Saturdays or Sundays. In addition to the above proposal, it is recommended that the parties draft a provision or addendum that would address employees who work in departments that have 24/7 scheduling. Both parties agree that currently employees in the Water Division who work on Saturday or Sunday as a part of their regular work week do not receive overtime on the weekends. I do not believe that the City intended to build in automatic overtime for these employees. Therefore, a limited exception for these few employees must be written into the agreement to avoid the automatic overtime. The City’s proposal, as stated above, is too open and vague. It would place the City in a position to change schedules and shifts as it pleases, which would seriously disadvantage the employees who desire predictability in scheduling. The City’s proposal throws out all the above crafted language merely to avoid a situation for a few. The better idea is to keep the language, as written in the Union’s proposal above, and add a

modification to keep the practice as it has been for employees regularly scheduled on Saturdays and Sundays, thus avoiding automatic overtime.

V. Recognition

City's Proposal

The following job classification are recognized and are represented on a sole and exclusive basis by the CEO Union:

- **Construction Equipment Operator A**
- **Construction Equipment Operator B**
- **Master Mechanic**

As with its "hours of work" proposal, the City is attempting to keep the language for this first contract straightforward and simple. The City's proposal recognizes the MCEO Union as the sole and exclusive representative for the three job classifications which it represents.

This article represents another provision of the "Tentative Agreement" that was unilaterally changed by the Union in its draft. Again, the Union sought the inclusion of references to the CEA Agreement and also attempted to bind the City to the CEA contract for future increases that would occur beyond the expiration of this Agreement – items that were never proposed or agreed to by the City. The Union also unconventionally seeks the inclusion of wages in the Recognition article. Overall, the Union's proposal is nothing more than an effort to have a traditionally simple article serve as a vehicle to secure its position in the hotly-contested and litigated "prevailing rate" litigation.

The City's proposal is simple language traditionally seen in recognition clauses. Nothing more is needed.

Union's Proposal

Cleveland recognizes that the CEO Union is the sole and exclusive representative of those persons who are employed by the City and its departments to operate and repair the construction equipment that is described in the Craft Jurisdiction section of this Collective Bargaining Agreement. Those Cleveland employees are divided into the following job classifications, which are all craft positions recognized by Cleveland's Civil Service Commission.

- **Construction Equipment Operator A**
- **Construction Equipment Operator B**
- **Master Mechanic**

This is only a portion of the Union's proposal on Recognition. The entire proposal is stated in the section on Wages and Benefits. It seeks to recognize the job classifications of this bargaining unit as "craft positions," which require qualification by Cleveland Civil Service Commission. The City offered no evidence to dispute that testing requirement or "craft position" status. Nor did the City present evidence to dispute that the MCEO Union should be recognized as the sole and exclusive representatives of all person who operate and repair the construction equipment identified by Mr. Madonia, President of the MCEO Union. Mr. Richiutto, City's Director of Public service, testified that he had no problem with the concept that only the construction equipment operators employed by the City should operate and repair the construction equipment. Recognition of a job classification without an explanation of what equipment is operated by persons who hold that job classification is meaningless.

Recommendation

The following job classification are recognized and are represented on a sole and exclusive basis by the CEO Union:

- **Construction Equipment Operator A**
- **Construction Equipment Operator B**
- **Master Mechanic**

The City's proposal on Recognition is recommended. The Union's proposal on recognition references the equipment listed in the Craft Jurisdiction article, and the Union's version of that Article was not recommended. (See above.) The City's version is simple and closely tracks the language of the "Tentative Agreement."

In the "Tentative Agreement," the Recognition clause also contains information on wage rates. I have dealt with these issues separately, and they may be combined or put in separate sections. If combined, they will be nearly identical to the language in the "Tentative Agreement" minus the clauses with which the City took issue, i.e. attachment of the CEA Building Agreement, and tracking the wage rate increases as stated in the Building Agreement beyond the expiration of the Agreement. It is my understanding that the Union had originally agreed to remove these references prior to the Tentative Agreement coming unraveled.

VI. Duration

City's Position

The City proposes that the Agreement expire on June 30, 2004. The parties had initially agreed to an expiration date of March 31, 2004. However, since the parties are now beyond that date without a contract, the City proposes the expiration date of June 30, 2004. The City had contracts with approximately thirty other unions. Every one of those agreements expires on March 31, 2004. It is the City's desire to get this Union on the same timetable as the City's other Union contracts. However, the incorporation into the contract of an expiration date that has already passed does not make sense. Likewise, it is not reasonable to allow this small group of

employees to set a wage pattern for the City's 7,000 unionized employees, which would happen if an expiration date of March 31, 2006 or 2007 were recommended. It is the City's intention to propose an expiration date of March 31, 2007 during its negotiation of a successor agreement with this Union, which will be occurring a couple of months. It should be noted, as well, that the Union's proposal was, until the evening before the fact-finding hearing, for the contract to expire on March 31, 2004. It was willing to accept a short time frame for the agreement, even back in December 2003.

Union's Proposal

The Union proposes that the Agreement begin on January 1, 2004 and expire on April 30, 2006. The City's proposed expiration date of June 30, 2004 is irrational. The parties will have, at best, an agreement which lasts 39 days.

The Union's proposed expiration date would coincide with CEA Building Agreement, which the City has stipulated has long been the basis for determining these employees' pay. The inception date of January 1, 2004, is based upon the date that the City promised it would start the benefits noted above. The City should be held to this start date. The Agreement must last longer than 39 days and the Union proposes it last until April 30, 2006.

Recommendation

It is recommended that the Agreement between the parties have a retroactive start date of January 1, 2004 and extend until March 31, 2005. I believe that it is absurd and a waste of precious resources for the City and the Union to be required to renegotiate this Agreement in 39 days. This has obviously been a very contentious negotiation. The parties should live with an Agreement longer than just 39 before having to start back into negotiations again. In March

2005, the City should have their negotiations with other unions finished and will have the pattern set by unions larger than the MCEO. At that time, the City and the MCEO can negotiate a contract with expires in 2007 to get this Union back on track with the expiration of other union employees. By March 2005, the parties also may have a resolution of the pending litigation which may be helpful in negotiating the appropriate prevailing wage rate to use.

The retroactive start date of January 1, 2004, is recommended. This is the date the City originally planned on starting the benefits before the negotiations soured. This Union has been without a pay raise for a couple of years. Although a retroactive date may not work for health care benefits, all the other benefits are monetary based can easily be effective retroactively to January 1, 2004.

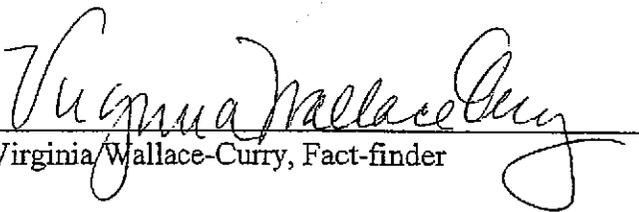
Tentative Agreements

The parties have agreed that the following Articles, which were part of the Union's draft of the Tentative Agreement, are still viable and should be incorporated into this fact-finding report as written in that document. They are:

- Purpose
- Management Rights
- Union Rights
- No Strike/No Lockout
- Limited Right to Strike
- Non-Discrimination
- Union Security and Check Off
- Union Representation
- Union Visitation
- Seniority
- Probationary Period
- Labor Management Committee
- Lay Off
- Recall
- Leave of Absence

- Military Leave
- Family Medical Leave
- Call In Pay
- Personnel Records
- Discipline
- Parking Ticket
- Grievance Procedure
- Voluntary Dispute Settlement Procedure
- Addendum B - Drug Testing
- Addendum C - Injury Pay Program

Submitted by:


Virginia Wallace-Curry, Fact-finder

May 10, 2004
Cuyahoga County, OH

CERTIFICATE OF SERVICE

Originals of this Fact-finding Report and Recommendations were served upon Jon M. Dileno, Esq., Duvin, Cahn & Hutton, Erieview Tower, 20th Floor, 1301 East Ninth Street, Cleveland, Ohio 44114, and upon Stewart D. Roll, Esq., Persky, Shapiro & Arnoff, Signature Square II, 25101 Chagrin Blvd., Suite 350, Cleveland, Ohio 44122-5687, by email and by express overnight mail, and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, by regular mail, this 10th day of May, 2004.

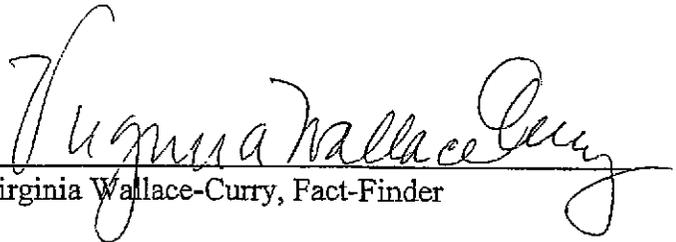

Virginia Wallace-Curry, Fact-Finder

EXHIBIT "L"

SERB Order dated August 25, 2005 in SERB Case No. 02-REP-06-0116

Directing an administrative hearing on the questions raised in State ex rel. Consolo v.

Cleveland (2004), 103 Ohio St. 3d 362.

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Municipal Construction Equipment Operators' Labor Council,

Petitioner,

and

International Union of Operating Engineers, Local 18,

Employee Organization,

and

City of Cleveland,

Employer.

Case No. 02-REP-06-0116

ORDER DIRECTING ADMINISTRATIVE HEARING

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich: August 25, 2005.

On April 11, 2005, the Municipal Construction Equipment Operators' Labor Council ("Petitioner") filed a Petition for Administrative Hearing with SERB, in which it requested that the Board appoint a hearing examiner to adjudicate certain issues that the Ohio Supreme Court had found to be within the agency's jurisdiction in *Consolo v. City of Cleveland* (2004), 103 Ohio St. 3d 361.

In that case, employees formerly represented by the International Union of Operating Engineers ("Employee Organization" or "Local 18")) and since January 30, 2003, represented by the Petitioner, had claimed that the City of Cleveland ("Employer") had unlawfully failed to pay them prevailing wages. The Court concluded that the employees' claims turned on a number of issues that were within SERB's jurisdiction to determine.

On May 2, 2005, Local 18 and the Employer filed a Joint Motion to Strike the Petitioner's Petition for Administrative Hearing and Brief in Opposition. The Petitioner responded by filing on May 11, 2005, an Opposition to Respondents' Motion to Strike Petition for Administrative Hearing.



We have considered the arguments raised by Local 18 and the Employer maintaining that the Board possesses no legal authority to conduct such a hearing outside the parameters of an unfair labor practice charge proceeding. However, in this particular matter, in which the Ohio Supreme Court has specifically identified issues that it says must first be addressed by SERB, we have decided to exercise our plenary jurisdiction to resolve them. We are cognizant of the mandate of Ohio Revised Code §4117.22, which charges SERB with construing Chapter 4117 liberally to promote orderly and constructive relationships between public employers and public employees.

It is our conclusion that holding the requested hearing and resolving underlying issues that have been specifically identified for us by the State's highest court will serve to promote orderly and constructive relationships among these parties.

Accordingly, we deny the Joint Motion to Strike the Petition, grant the Petition and order that testimony be taken before an Administrative Law Judge, upon notice to the Petitioner, the City, and Local 18, for the purpose of preparing recommendations to the Board on the following questions:

(1) Whether before April 1, 1984, Local 18 ever was the deemed certified representative of those persons employed by the City as construction equipment operators, who are now represented by Petitioner as their exclusive bargaining agent.

(2) If Question No. 1 is answered affirmatively, how long may a deemed certified representative retain that status if Local 18 never complied with the reporting requirements of Ohio Revised Code Section 4117.19?

(3) Was Local 18 the "exclusive representative" of those persons employed by the City as construction equipment operators anytime during the period of 1994 through 1998?

(4) Did Local 18 negotiate with the City a decrease in compensation of those persons employed by the City as construction equipment operators without their knowledge or consent?

(5) Did Local 18 falsely inform the City that those persons employed by the City as construction equipment operators had agreed to a decrease in compensation?

(6) Were the wages of the construction equipment operators who were appellees in the *Consolo* case the result of collective bargaining between Local 18 and the City?

(7) Did the City and Local 18 negotiate and implement a benefits package that provided the construction equipment operators described above in Paragraph (6) with equal or better benefits than are provided by the City Charter?

It is so ordered.

DRAKE, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member,
concur.



CAROL NOLAN DRAKE, CHAIRMAN

I certify that a copy of this document was served upon each party's
representative by regular U.S. Mail this 3/5th day of August,
2005



DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT

EXHIBIT "M"

**Sworn statements of Cleveland Chief of Personnel Management admitting that CEOs
are not given paid sick leave and do not receive benefits of employment**

RECEIVED
NOV 13 2001
BY: Docket

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

451905

SANTO CONSOLO, et al.)
)
Plaintiffs,)
)
vs.)
)
CITY OF CLEVELAND, OHIO, et al.)
)
Defendants.)

CASE NO. _____

JUDGE WILLIAM J. COYNE

RESPONSES TO
FIRST REQUEST FOR ADMISSIONS
DIRECTED TO DEFENDANT
CITY OF CLEVELAND

RECEIVED
NOV 14 2001

CITY OF CLEVELAND
DEPARTMENT OF LAW

Plaintiffs, by and through their undersigned counsel request, in accordance with the provisions of Civ. R. 36, that Defendant City of Cleveland (hereafter "Cleveland") shall admit or deny the following contentions to Stewart D. Roll, at Persky, Shapiro & Arnoff, L.P.A., 50 Public Square, 1410 Terminal Tower Cleveland, Ohio 44113-2204, within thirty-one (31) days from the date of mailing.

Failure to admit the genuineness of any documents or the truth of any matter as requested will result in an application to the Court for an order requiring payment of all expenses incurred in the proof thereof, including reasonable attorneys' fees, in accordance with Rule 37(C) of the Ohio Rules of Civil Procedure.

INSTRUCTIONS AS TO REQUEST FOR ADMISSIONS

1. The Defendant is to divulge all information which is in the Defendant's possession, custody or control or which can be ascertained upon reasonable investigation of areas within the Defendant's control and/or access.

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M

2. The knowledge of the Defendant's attorney is deemed to be the Defendant's knowledge so that, apart from privileged matters, if the Defendant's attorney has knowledge of the information sought to be elicited herein, then the knowledge must be incorporated into the Defendant's responses even if such information is unknown to the Defendant individually or personally.

3. An objection to a specific Request for Admission by Defendant's attorney must state the reason(s) for which the objection is made; a general objection is not sufficient and results in an Admission. If Defendant refuses to answer any Admission in whole or in part, it should describe the basis for its refusal to answer, including any claim of privilege, in sufficient detail so as to permit the court to adjudicate the validity of the refusal, and identify each document and oral communication for which a privilege is claimed.

4. The space for a response following each Admission is furnished in compliance with Civil Rule 36(C) and is not intended to limit the response in any way or to suggest the length of the answer that is desired. Full and complete answers are requested. If additional space is necessary to complete any answer, then Defendant should attach continuation sheets at the end of these Admissions and indicate on the continuation sheets the number of the admission being answered.

5. When used herein, "Construction Equipment Operator" means Construction Equipment Operator Group A, Construction Equipment Operator Group B, and Master Mechanics employed by Cleveland.

6. When used herein the "City of Cleveland" or "Cleveland" includes its employees, departments, divisions, directors, commissioners, officers, officials, branches of government, commission members, board members, agents and attorneys.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Each of the following Plaintiffs (identified by the prefix alphabetical letter) were or are employed by Cleveland as Construction Equipment Operators Group

A: Admitted for 1(a) to 1(s).

a. Charles E. Adkins

RESPONSE:

b. John L Jatsek

RESPONSE:

c. J.C. Blade

RESPONSE:

d. Rade Martin

RESPONSE:

e. Curtis Campbell

RESPONSE:

f. Frank Miklausich

RESPONSE:

g. Louis Cipriano

RESPONSE:

h. Rodney Perry

RESPONSE:

i. Roman Dowhaniuk

RESPONSE:

j. Dave Pollard

RESPONSE:

k. Leonard J. Duncan

RESPONSE:

l. Jeff J. Prebish

RESPONSE:

m. Michael W. Graley

RESPONSE:

n. Brady Reid

RESPONSE:

o. Daniel P. Ridzy

RESPONSE:

p. Michael D. Woods

RESPONSE:

q. Herman Weaver

RESPONSE:

r. Milton Wright

RESPONSE:

s. Reginald D. Weaver

RESPONSE:

REQUEST FOR ADMISSION NO. 2: The following Plaintiffs were or are employed by Cleveland as Construction Equipment Operators, Group B: Admitted for 2(a) to 2(n) and 2(p) to 2(q).

a. Robert Conley

RESPONSE:

b. William Leon Medlea

RESPONSE:

c. Santo Consolo

RESPONSE:

d. Phillip F. Montalbano

RESPONSE:

e. Lawrence C. Douglas

RESPONSE:

f. Jorge Morales

RESPONSE:

g. John Gentile

RESPONSE:

h. Timothy J. Ringgenberg

RESPONSE:

i. Willie Highsmith

RESPONSE:

j. Royce W. Robinson

RESPONSE:

k. Eugene Jackson

RESPONSE:

l. Anthony Sciarabba

RESPONSE:

m. Frank P. Madonia

RESPONSE:

n. Curtis S. Seggie

RESPONSE:

o. Marcelino Maldonado

RESPONSE: Denied. Employed as a master mechanic.

p. Samuel Thomas

RESPONSE:

q. Anthony S. Mangano

RESPONSE:

REQUEST FOR ADMISSION NO. 3: The following Plaintiffs were or are employed by Cleveland as Master Mechanics: Admitted for 3(a) and 3(b).

a. Marcelino Maldonado

RESPONSE:

b. Anthony F. Mangano

RESPONSE:

REQUEST FOR ADMISSION NO. 4: That Cleveland does not accrue, and has not, since 1992, accrued an entitlement to paid sick leave for Construction Equipment Operators Group A and Group B, nor Master Mechanic employees .

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 5: Cleveland pays Construction Equipment Operators and Master Mechanics for sick days only if the employee has accrued an entitlement to sick leave during service for Cleveland in some other employment classification.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 6: Admit that Cleveland does not and has not since 1992 provided any paid holidays for employees who are Construction Equipment Operators.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 7: That state law requires that Cleveland make payments to the Public Employees Retirement System in such amounts as certified by the public employees retirement board under R.C. Sec. 145.12.

No. 7 (continued)
RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 8: That no part of the amounts deposited in the public employees retirement system by Cleveland pursuant to R.C. Sec. 145.12 is vested in or credited to the individual account of any employee.

RESPONSE: The answering party cannot truthfully admit or deny this matter. The information sought is not known by answering party. It is not known how the public employment retirement system distributes or credits funds forwarded by the City of Cleveland.

REQUEST FOR ADMISSION NO. 9: That the City of Cleveland neither withholds nor deposits with the U.S. Government, on behalf of any Plaintiff, any tax on wages imposed by the Federal Insurance Contributions Act (social security).

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 10: That Cleveland has not at any time withheld nor deposited with the U.S. Government, on behalf of any Plaintiff any tax on wages imposed by the Federal Insurance contributions Act (social security).

No. 10 (continued)

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 11: That since May 12, 1998, Cleveland has not included a pension cost amount in the wage rate for Plaintiffs.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 12: That the City of Cleveland does not include and has never included an amount in the wage paid to Plaintiffs, with respect to their service for Cleveland as Construction Equipment Operators, any amount of the cost of an apprenticeship training program.

RESPONSE: Admitted that the City of Cleveland currently does not include an amount in the wage paid to CEOs any amount relative to cost of an apprenticeship training program. The respondent cannot truthfully admit or deny the City of Cleveland has never done so.

REQUEST FOR ADMISSION NO. 13: That the City of Cleveland does not provide Plaintiffs with any: Admitted for 13(A) to 13(H).

- A. paid vacation leave;
- B. paid personal leave;
- C. paid funeral leave;

- D. paid court leave;
- E. group term life insurance;
- F. longevity pay;
- G. clothing allowance;
- H. the opportunity to participate in a group dental insurance plan;
- I. medical and hospitalization insurance,

Denied. CEOs & Master Mechanics can purchase this insurance at City rate. with respect to their service as Construction Equipment Operators.

RESPONSE: Admitted for 13(A) to 13(H). See above for 13(I).

REQUEST FOR ADMISSION NO. 14: That the City of Cleveland does not make any payment or deposit into the Construction Industry Service Program ("CISP") fund on behalf of any of the Plaintiffs.

RESPONSE: Admitted.

OF COUNSEL:

PERSKY, SHAPIRO &
ARNOFF CO., L.P.A.



STEWART D. ROLL (Reg. #0038004)
PATRICIA M. RITZERT (Reg. #0009428)
PAUL R. ROSENBERGER (Reg. #0069440)
50 Public Square, 1410 Terminal Tower
Cleveland, Ohio 44113-2204
(216) 241-3737

Attorneys for Plaintiffs

VERIFICATION

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) SS:

CITY OF CLEVELAND CHIEF OF PERSONNEL MANAGEMENT BETSY McCAFFERTY,
being first duly sworn according to law, deposes and says that she has read the foregoing Responses to
First Request for Admissions to Defendant City of Cleveland, and they are true to the best of her
knowledge, information and belief.


BETSY McCAFFERTY

SWORN TO BEFORE ME AND SUBSCRIBED in my presence this 15th day of January 2002.


NOTARY PUBLIC
My commission does not expire

EXHIBIT "N"

Codified Ordinances of Cleveland, Sec. 171.31 "Sick Leave," effective October 29, 1980

This code section provides paid sick leave for all full-time hourly rate employees except craft employees paid at building trades prevailing rates.

Search Cleveland Codes

[Search](#) [Search Tips](#)**PART ONE — ADMINISTRATIVE CODE****Title XI — Employment And Compensation****Chapter 171 — Employment Provisions**

Complete to June 30, 2005

Note: The legislative history of this chapter, except where specifically noted at the end of a section, is as follows: Ordinance No. 63410-A, passed September 22, 1924.

CROSS REFERENCES

Workmen's compensation, O Const, Art II §35; RC Ch 4123

Officers required to take oath of office, O Const, Art XV §7; [Charter § 194](#)Civil Service, O Const, Art XV §10; [Charter § 124](#) et seq.Compensation of officers and employees, [Charter § 191](#); [CO Ch 173](#)Contract interest, [Charter § 195](#); [CO 615.10](#)Hours of labor, [Charter § 196](#)Minimum wage, [Charter § 198](#)

Validity of bond, RC 3.34, 733.71, 3929.14 et seq.

Deductions for municipal income tax, RC 9.42; [CO 191.1302](#)

Sick leave, RC 124.38

Public Employees Retirement System, RC Ch 145

Conduct and delinquent charges, RC 733.34 et seq.

Bond, RC 733.69 et seq.

Expenses for attendance at conference or convention, RC 733.79

Workmen's compensation actuarial services, [CO 127.10](#)**171.01 Oath of Office**

The members and the Clerk of Council, the Mayor, the directors of all departments, the commissioners or chiefs of all divisions, the City Treasurer and all cashiers in the City Treasury, the chiefs or heads of all bureaus or offices of record, the deputies of any of them, the members of all boards and commissions and clerks or other employees whose duties involve the handling of money belonging to the City, or the purchase or sale of anything in behalf of the City or the negotiation or making of contracts in behalf of the City, shall before entering upon the duties of such office or employment, take and subscribe to an oath or affirmation to be filed and recorded in the office of the Clerk of Council in substantially the following form:

"I, _____ do solemnly swear that I will support the constitution of the United States and the Constitution of the State of Ohio, and that I will faithfully, honestly, and impartially discharge the duties of the office of _____ of the City of Cleveland, State of Ohio, during my continuance in said office.

Sworn to before me and subscribed in my presence this _____ day of _____, A.D. 19 _____
/sig/

Notary Public."

The oath herein prescribed may be administered by the Mayor or the Clerk of Council, the director of any department, the commissioner or chief of any division or office or by any notary public authorized to administer oaths in the State.

171.02 Hours of Employment

In all departmental divisions having plants or functions that are required to be continuously operated twenty-four hours a day, the directors of the departments concerned may provide, within the limit of the number fixed by the Board of Control, for as many shifts and crews to man them as in their judgment shall best conduce to the successful and efficient operation of such plants or functions. Such director may also prescribe a schedule fixing the hours during which each shift shall work and the days each crew, and the employees in each crew, shall work. However, such schedule shall be so arranged that each employee in each crew shall be employed not less than 165 hours out of every 840 hours of such continuous operation.
(Ord. No. 104274. Passed 5-25-36)

171.03 Reserved

Note: Former Section 171.03 was repealed by Ord. No. 1294-77, passed 5-2-77, eff. 5-3-77.

171.04 Special Hazard Employment

Whenever it shall be necessary, as determined by the department head concerned, to assign one or more employees of the City to inspection duties in any tunnel or tunnelling operation being conducted by or for the City, and such assignment involves an unusual hazard to the lives or limbs of such employees by reason of the nature thereof, it shall be lawful for the Board of Control, by appropriate resolution duly adopted, to provide for extra compensation for such employees over

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and above the rates otherwise provided in the Salary and Compensation Schedule while they are so assigned and so engaged in such hazardous work. Such extra compensation so provided and authorized may be paid as consideration for the specially hazardous nature of such assignment and work.

(Ord. No. 748-54. Passed 3-15-54, eff. 3-17-54)

171.05 Overtime Work; Compensatory Time Off

(a) Employees of the City may be entitled to compensation in money at a rate not to exceed one and one-half times the regular rate established for the work performed by such employee for all hours worked on a holiday and for each hour worked in excess of eight hours per day, or in excess of forty hours during any work week. In lieu of the monetary compensation as herein provided, employees may be granted compensatory time off from the performance of duty during regular hours or work at a rate not to exceed one and one-half hour for each hour of overtime work.

(b) The inclusion or exclusion of employees to the benefits of this section shall be determined by resolution of the Board of Control.

(Ord. No. 1003-86. Passed 5-12-86, eff. 5-14-86)

171.06 Pay for Shift Differential

All regular full-time employees of the City may be paid a shift differential as follows:

(a) Twenty-five cents (\$.25) per hour to all those employees regularly assigned to, and working the majority of their hours on the afternoon shift between 2:00 p.m. and 12:00 midnight;

(b) Twenty-five cents (\$.25) per hour to all those employees regularly assigned to, and working the majority of their hours on the night shift between 12:00 midnight and 8:00 a.m.; and

(c) Twenty-five cents (\$.25) per hour to all those employees regularly assigned to rotating shifts.

(d) The shift differential authorized in this section may be paid notwithstanding maximum compensation schedules established by other ordinances relating to compensation.

The inclusion or exclusion of a group of employees to the benefits of this section shall be determined by the Board of Control upon the recommendation of the director of a department, the commissioner of a division or the Mayor for a board, commission or miscellaneous employee.

(Ord. No. 1506-89. Passed 6-12-89, eff. 6-19-89)

171.07 Longevity Pay

Beginning in 2001 and continuing each calendar year thereafter, all regular full-time employees of the City, when the agreement includes a longevity payment schedule, except employees covered by a collective bargaining agreement, where the agreement includes a longevity payment schedule, members of boards and commissions, members of the building trades paid on the basis of building trades' prevailing wages and employees whose longevity pay is established by other sections of the Codified Ordinances, shall receive longevity pay on or before March 31 of the current year in the amount set forth below, based upon the length of the person's service with the

City on or before March 1 of the current year, as follows:

Years	Annual Payment
5 through 9	\$300.00
10 through 14	\$475.00
15 through 19	\$575.00
20 through 24	\$700.00
Over 24	\$800.00

(Ord. No. 308-01. Passed 3-26-01, eff. 4-2-01)

171.071 Longevity Pay for Division of Police and Division of Fire

Beginning in 2001 and continuing each calendar year thereafter, all uniform members of the Division of Police and the Division of Fire shall receive longevity pay to reward length of City service, pursuant to the following schedule:

Years of Service	Annual Payment
5 through 9	\$300.00
10 through 14	\$475.00
15 through 19	\$575.00
20 through 24	\$700.00
Over 24	\$800.00

(Ord. No. 552-01. Passed 3-26-01, eff. 4-2-01)

171.08 Absence of Officials; Acting Officials

(a) Whenever any officer in the administrative service other than the Mayor is for any reason unable to attend to the performance of his official duties, or whenever he expects for any reason to be absent from the City on any day when his office is required to be kept open, he shall at once notify his immediate superior of such disability or absence. Such superior, if the nature of the office or its duties so requires, shall designate another officer or employee in the same department to perform the duties of such office, under the supervision of such superior officer, or such superior officer may himself perform such duties during such time as the absence or disability of the officer continues.

(b) In the case of a director who may be performing the duties of Mayor as Acting Mayor, he shall have power to designate one of the officers or employees of his department as acting director thereof. Such person so duly designated as an acting official shall have, while so acting, all the rights, privileges and powers which appertain to the office so filled by the acting official. When any person so designated to perform the duties of an officer who is absent or unable to perform his duties is required to sign any official document pertaining to such office, he shall sign it as acting director, acting commissioner or otherwise, using the word "acting" before the title of the officer

approval of the Director of Law as to legal form and sufficiency of the bond. However, the bond of the Director of Finance and of the Director of Law shall also be approved by the Mayor. The premiums on all such bonds shall be paid by the City from the appropriate funds provided for such purpose.

(Ord. No. 111-49. Passed 2-14-49)

171.15 Bond of Mayor

Before entering upon the duties of his office, the Mayor shall give bond of five thousand dollars (\$5,000) conditioned upon the faithful performance of the duties of his office during his incumbency thereof, including the duties as member and President of the Sinking Fund Commission, which Commission shall pay one-half of the premium on the bond.

(Ord. No. 381-A-42. Passed 6-8-42)

171.16 Bonds of Directors, President of Council, Commissioner of Accounts and City Treasurer

Before entering upon the duties of his office each of the following officers shall give bond in the sum set opposite his title, conditioned upon the faithful performance of his duties during the period concurrent with the term of the Mayor of the term for which elected, and shall give like bond for each subsequent term of appointment or election:

Director of Law, as such, and as member of the Sinking Fund Commission	\$10,000
Director of Finance, as such, and as member of the Sinking Fund Commission	50,000
President of Council, as such, and as member of the Sinking Fund Commission	5,000
Director of Public Utilities	25,000
Director of Port Control	25,000
Director of Public Service	10,000
Director of Parks, Recreation and Properties	10,000
Director of Public Health	10,000
Director of Public Safety	10,000
Director of Community Development	10,000
Commissioner of Accounts	50,000
City Treasurer	3,000,000
Income Tax Administrator	100,000

(Ord. No. 1830-92. Passed 10-5-92, eff. 10-9-92)

171.17 Bond of the Bailiff of Municipal Court

Before entering upon his duties as the Bailiff of Municipal Court, the Bailiff shall give bond of not less than ten thousand dollars (\$10,000) conditioned for the faithful performance of his duties.

(Ord. No. 2058-51. Passed 12-17-51, eff. 12-21-51)

171.18 Filing Bonds and Insurance; Record

All official bonds, all policies of insurance and all other instruments of indemnity or guaranty required under any provision of ordinance or law shall be filed with the Commissioner of Accounts who shall preserve and keep safe the same. No such instrument shall be surrendered from his custody except upon the order of the Director of Law. He shall maintain a record in which shall be entered under appropriate headings all such instruments and such record shall show the nature of the instrument, the amount thereof, the purpose for which issued, the principal and surety thereon, the department filing the same, the date of the approval and by whom approved, the expiration date thereof and other information as he may deem pertinent. The official concerned with the taking or approving of any such instrument shall file the same forthwith with the Commissioner for safe keeping and record.

(Ord. No. 2608-46. Passed 2-3-47)

171.19 Lists of Bonded Employees

The Mayor shall certify to the Civil Service Commission a list of positions and offices, the incumbents of which are required to be bonded by or pursuant to the terms of Section 171.14, together with the amount of the bond required in each case. He shall also certify such lists or parts of lists as include the positions in any administrative department to the director of such department and to the Director of Law. The Secretary of the Sinking Fund Commission shall certify a similar list covering the positions in the employ of the Sinking Fund Commission. The Director of Finance shall certify to the Civil Service Commission a statement of all bonds filed and recorded in his office as required by Section 171.14.

(Ord. No. 71981. Passed 12-28-25)

171.20 Appointing Officer Responsible for Bonding

Each appointing officer or authority shall see that every officer or employee appointed or subject to removal or suspension by him, and required to be bonded, shall give such required bond, effective at the time of appointment, or at the time when the requirement of such bond becomes effective. Any such appointing officer or authority who neglects or refuses to see that such bond is given shall be liable to the City for any loss which may accrue to the City by reason of the lack of such bond.

(Ord. No. 71981. Passed 12-28-25)

171.21 Appointments Not Effective until Bonding

No appointment to any office or position shall be deemed to be effective until the appointee thereto shall be covered by a valid bond, when such bond is required by the Mayor or by Section 171.14. The Civil Service Commission shall not certify the payroll or account of salary of any person in the classified service required by the Mayor or by Section 171.14 to be bonded, for any period when the certificate of the Director of Finance does not show such person to have been covered by a bond as required.

(Ord. No. 71981. Passed 12-28-25)

171.22 Hospitalization Deduction

The Treasurer, pursuant to the authority of RC 1739.15 is hereby authorized to deduct from the salaries or wages of employees subscribing to any nonprofit hospital service plan, incorporated and operating under the provisions of RC 1739.01 et seq. such amounts monthly as have been stipulated by such employees in written authorization filed with the Treasurer requesting such deductions. The Treasurer is hereby authorized to make remittance to such nonprofit hospital service plans so incorporated and operating, of the aggregate amount of sums so authorized to be deducted and to transmit the same to such organizations on the fifteenth day of the month following the date of such deductions.

(Ord. No. 1163-39. Passed 7-24-39)

171.23 Voluntary Deductions for Public Employees Retirement System

The Treasurer is hereby authorized to deduct from the salary or wages due those officers and employees of the City who have filed with the Treasurer a written request authorizing such deduction, the amount specified in such authorization to be deducted at the time indicated in such authorization and to transmit the money so deducted to the Public Employees Retirement System for and on behalf of such officer or employee, as an agreed payment thereto permitted under the statutes of Ohio relating to withdrawal of exemption from membership in the System or for obtaining of pension credit for contributing service during such period as may be allowed thereunder.

(Ord. No. 86-A-52. Passed 2-18-52, eff. 2-19-52)

171.24 Voluntary Deductions for Employees Credit Unions

The Commissioner of Accounts is hereby authorized to deduct from the salary or wages due those officers and employees of the City who have filed with the Commissioner a written request authorizing such deduction, the amount specified in such authorization to be deducted at the time indicated in such authorization. The Treasurer shall transmit money so deducted to the Treasurer of the Civil Service Employees Association Credit Union, City of Cleveland Employees Credit Union, Inc., the Cleveland Police Credit Union or the Cleveland Firemen's Credit Union as indicated in the authorization, for and on behalf of the officer or employee for savings in the share account of such officer or employee in such credit union.

(Ord. No. 1469-68. Passed 7-15-68, eff. 7-17-68)

171.25 Voluntary Deductions for Payment of Group Life Insurance Premiums

The Commissioner of Accounts is hereby authorized to deduct from the salary or wages due those officers and employees of the City who have filed with the Commissioner a written request authorizing such deductions, the amount specified in such authorization to be deducted at the time indicated in such authorization. The Treasurer shall transmit money so deducted to an insurer, as indicated in the authorization, for and on behalf of the employee for the payment of life insurance premiums in accordance with the provisions and requirements of RC 3917.04.

(Ord. No. 1173-68. Passed 6-17-68, eff. 6-18-68)

171.26 Voluntary Deductions for Payment of Fire and Casualty Insurance Premiums

The Commissioner of Accounts is hereby authorized to deduct from the salary or wages due those officers and employees of the City who have filed with the Commissioner a written request authorizing such deductions, the amount specified in such authorization to be deducted at the time indicated in such authorization. The Treasurer shall transmit money so deducted to an insurer as indicated in the authorization, for and on behalf of the employee for the payment of fire and casualty insurance premiums, including, but not by way of limitation premiums for motor vehicle and homeowners insurance policies. The written request authorizing such deduction shall be made on a form approved by the Director of Law.

(Ord. No. 1154-72. Passed 12-18-72, eff. 12-26-72)

171.27 Purchase of Savings Bonds

(a) The Treasurer is hereby authorized to deduct from the salary or wages due those officers and employees of the City who have filed with the Treasurer a written request authorizing such deduction, the amount specified in such authorization, to be deducted at the times indicated in such authorization. The amount is to be credited and applied upon the purchase of United States Savings Bonds Series E, for the benefit of and in the name of the officer or employee authorizing the deduction.

(b) The Director of Finance is hereby authorized and directed to enter into an agreement with the Federal Reserve Bank of Cleveland in order to qualify the City as a designated agent for the sale and issuance of United States Savings Bonds Series E, and to obtain a stock of such bonds sufficient to meet the City requirements for sale of such bonds to officers and employees of the City.

(Ord. No. 1645-42. Passed 11-30-42)

171.28 Vacation Leave

(a) Each full-time City officer or employee, including full-time hourly rate employees, who has completed at least six months but less than twelve months of continuous service with the City on the first of January next following his date of employment, shall have earned and will be entitled upon the first of January next following his date of employment, one day of vacation leave for each month of service with the City, not to exceed ten days.

(b) Each full-time City officer or employee, including full-time hourly rate employees, shall have earned and will be due upon the first of January next following the employee's completion of one year of continuous service with the City, and annually thereafter, two weeks of vacation leave with full pay. A full-time City officer or employee with eight or more years of continuous service with the City as of January first of any year shall have earned and is entitled to three weeks of vacation leave with full pay. A full-time City officer or employee with twelve or more years of continuous service with the City as of January first of any year shall have earned and is entitled to four weeks of vacation leave with full pay. A full-time City officer or employee with twenty-two years of continuous service with the City as of January 1 of any year shall have earned and is entitled to five weeks of vacation leave with full pay.

(c) A former elected official of the City of Cleveland, who becomes a full-time officer or employee, including a full-time hourly rate employee, shall have earned and will be credited with the time served in such elected office for the purpose of determining such officer's or employee's

vacation time, as provided in subsection (a) and (b) of this section.

(d)(1) Upon separation from City service, an officer or employee shall be entitled to compensation at his then current rate of pay for vacation leave lawfully earned pursuant to subsections (a) and (b) hereof and unused as of the date of separation.

(2) Upon separation from City service, an officer or employee shall be entitled to compensation in lieu of vacation at his current rate of pay for each month of service in the year of separation, computed in accordance with the provisions (a) and (b) hereof.

(e) An officer's or employee's service with the City shall not be deemed interrupted by authorized leaves of absence or by periods of lay-off. However, no vacation leave shall be earned by any officer or employee during a leave of absence or lay-off period.

(f) The provisions of this section shall not apply to hourly rate craft employees paid on the basis of building trades prevailing wages.

(g) The provisions of this section shall not deprive any employee of any vacation rights to which he may be entitled under the terms of any memorandum of understanding between any union and the City approved by ordinance of Council.
(Ord. No. 306-85. Passed 4-29-85, eff. 5-1-85)

171.29 Unused Vacation Leave and Overtime Pay of Deceased Employee

In case of the death of any officer or employee of the City, the unused vacation and overtime pay to the credit of such officer or employee shall be paid as wages or personal earnings in accordance with RC 2113.04, or to his estate. The provisions of this section shall be effective from and after January 1, 1958.
(Ord. No. 787-57. Passed 2-25-58, eff. 2-28-58)

171.30 Holidays

(a) All full-time annual rate and hourly rate employees, except hourly rate craft employees paid on the basis of building trades prevailing wages, shall be exempted from work and be paid for the following named holidays:

New Year's Day (January 1)

Martin Luther King Day (Third Monday in January)

President's Day (Third Monday in February)

Good Friday (Friday before Easter)

Memorial Day (Fourth Monday in May)

Independence Day (July 4)

Labor Day (First Monday in September)

Thanksgiving Day (Fourth Thursday in November)

Christmas (December 25)

(b) In addition to the foregoing named holidays, such employees shall be exempted from work and be paid for two (2) personal holidays each calendar year. The scheduling of such personal holidays shall be subject to the approval of the appointing authority of each such employee.
(Ord. No. 142-86. Passed 1-13-86, eff. 1-14-86)



171.31 Sick Leave

(a) All full-time annual rate City employees and all full-time hourly rate employees, except hourly rate craft employees paid on the basis of building trades prevailing wages, shall be entitled to sick leave with pay.

(b) The Board of Control shall establish by resolution rules and regulations for those entitled to sick leave. Such resolution shall have regard to absence due to illness, exposure to contagious disease which could be communicated to other employees, death or serious illness in the employee's immediate family and any other equitable factor present in the absence of employees on account of illness. Such resolution may provide for cumulation of sick leave.
(Ord. No. 2294-80. Passed 10-27-80, eff. 10-29-80)

171.311 Establishing a Sick Time Contribution Program for Employees of City Council

(a) Notwithstanding the provisions of Section 171.131, the Clerk of Council may, at the Clerk's discretion, authorize any employee of the Council to contribute accumulated paid sick leave to another employee of the Council as follows:

(1) Contribution of sick leave must be based upon a catastrophic health condition of the receiving employee or a member of her or his immediate family.

(2) To be eligible to receive a contribution of sick leave, an employee must have first exhausted her or his own accumulated sick leave, vacation time, personal days, and compensatory time.

(3) A contributing employee may not be on the absence abuse list and must retain at least one hundred (100) hours of accumulated leave after any contribution.

(b) The Clerk of Council may adopt additional rules and regulations as the Clerk deems appropriate to implement the authority granted hereby.
(Ord. No. 632-95. Passed 4-10-95, eff. 4-14-95)

171.32 Group Term Life Insurance

(a) All regular full-time officers and employees of the City, including the Mayor and all members of Council and all regular full-time officers and employees of the Cleveland Municipal Court, except hourly rate craft employees paid on the basis of building trades prevailing wages, who have completed ninety (90) days of continuous service with the City shall be provided with ten

thousand dollars (\$10,000) of group term life insurance.

(b) The Director of Finance at City cost shall purchase and maintain the group term life insurance required by subsection (a) hereof.
(Ord. No. 752-86. Passed 4-14-86, eff. 4-21-86)

171.33 Hospitalization for Certain Employees

(a) All regular full-time employees of the City except sworn members of the Police and Fire Divisions, members of the building trades paid under Section 173.62, or ordinances or parts of ordinances relating to the same subject matter, employees of the Municipal Court whose compensation is fixed by the judges thereof and elected officials of the City, shall be entitled to an allowance for hospitalization protection. Eligible employees who do not have the same or better coverage provided free by their spouses' employers shall be entitled to full payment of employee and dependent Blue Cross and Medical Mutual coverage, or the equivalent, upon such terms and conditions as the Board of Control shall establish and in accordance with the rules and regulations established by the Office of Personnel Administration.

(b) "Regular full-time employee", as used in this section, shall not include temporary transitory employees or temporary emergency employees.

(c) The inclusion or exclusion of any group of employees to the benefits of this section shall be determined by the Board of Control upon the recommendation of the director of a department, the commissioner of a division or the Mayor for any board, commission or miscellaneous employee.
(Ord. No. 936-A-78. Passed 8-22-78, eff. 8-24-78)

171.34 Hospitalization for Sworn Members of Police and Fire Divisions

Notwithstanding the provisions of Section 171.33 relating to the exclusion of sworn members of the Divisions of Police and Fire, effective February 15, 1974, all sworn members of the Divisions of Police and Fire shall be entitled to full payment of employee and dependent hospitalization allowance according to the provisions as set forth in the present plan covering members of the Divisions. A member shall be entitled to participate in either of the following two plans which are now in effect:

BC-MM No. CC 7
BC-MM Plan No. CC 7 FF
or
KAISER FOUNDATION PLAN
No. 730-C
with Following Riders:

- (a) No wait maternity.
- (b) D1 psychiatric.
- (c) D1 drug prescription.

(d) Dependent children to age 25.

(e) Handicapped for life.

(f) 100-day extended care.
(Ord. No. 2077-73. Passed over Mayor's veto 2-11-74, eff. 2-12-74)

171.35 Hospitalization for Mayor and All Elected Councilmen

Notwithstanding the provisions of Section 171.33, all elected officers of the City, the Mayor and all elected Councilmen and those appointed pursuant to Charter Section 24 and all judges of the Cleveland Municipal Court and those Court employees whose compensation is fixed by such judges shall be entitled to full payment of employee and dependent hospitalization allowance according to such plans as are available to other employees of the City, or as may be negotiated.
(Ord. No. 2799-75. Passed 12-15-75, eff. 12-16-75)

171.36 Prescription Drug Program

Effective September 1, 1975, in addition to the hospitalization benefits established pursuant to Section 171.33, employees in the following classifications shall be entitled to receive the Blue Cross two dollar (\$2.00) deductible prescription drug program or its Kaiser Community Health Foundation equivalent:

- Automobile Body Repairman
- Automobile Repair Foreman
- Automobile Repair Helper
- Automobile Repairman
- Garageman
- Machinist
- Machinist Helper
- Meter Maid
- Police Radio Dispatcher
- Tire Repairman
- Trimmer and Upholstery Repairman
- Tractor Driver
- Truck Driver
- Tow Truck Operator

(9) Heavy duty mechanic;

(10) Small equipment repairman.

(Ord. No. 1862-84. Passed 10-15-84, eff. 10-18-84)

171.60 Dental Care Insurance

(a) Effective December 1, 1981, all elected officers, full-time officers and regular full-time employees of the City and its Municipal Court, except members of the building trades paid on the basis of building trades' prevailing wages, are eligible to receive dental insurance benefits. An eligible employee or officer who does not have the same or better coverage provided free by his spouse's or parents' employer shall be provided with employee and dependent dental insurance coverage, subject to such administrative terms and conditions as the Board of Control establishes.

(b) The Director of Finance shall periodically contract for the issuance of a policy of dental insurance on a joint venture basis, which joint venture shall include at least one minority insurance agency, covering all employees and officers who are entitled to dental care benefits pursuant to subsection (a) hereof.

(c) As used in this section, "regular full-time employees" does not include temporary transitory employees or temporary emergency employees.
(Ord. No. 2317-81. Passed 10-5-81, eff. 10-7-81)

171.601 Dental Care Insurance Exception

Notwithstanding the provisions of Section 171.60 to the contrary, an officer holding the rank of sergeant, lieutenant, captain, deputy inspector or inspector, in the Division of Police, are not entitled to receive dental insurance benefits from the City.
(Ord. No. 2567-81. Passed 11-9-81, eff. 11-13-81)

171.61 City Employees Entitled to Benefits of Federally Administered Loan and Grant Programs for Home Loans and Grants

All city employees, except the Commissioner of the Division of Rehabilitation and Conservation, all employees of said Division, the Mayor and the Directors of all city departments, and members of Council, shall be entitled to apply for and receive loans and/or grants of federally city-administered funds under existing or future home-owner rehabilitation, repair or home purchasing or building programs, subject to the same laws, ordinances, rules and regulations that apply to non-city employees under any such program.
(Ord. No. 662-84. Passed 3-19-84. Effective without the signature of the Mayor, 3-27-84)

171.62 Benefits for Executive Assistants—Council Members

(a) All Executive Assistants for Council Members who are chosen by the Council of the City of Cleveland pursuant to Section 31 of the Charter of the City and are employed part-time shall be entitled to the benefits described in Sections 171.32, 171.33 and 171.60 of these Codified Ordinances.

(b) All Executive Assistants for Council Members who are chosen by the Council of the City of Cleveland pursuant to Section 31 of the Charter of the City and are employed part-time shall be entitled to the benefits described in Sections 171.28, 171.30(b) and 171.31 of these Codified Ordinances at the rate of eighty percent (80%) of the benefit provided to full-time employees in each of these Sections of the Codified Ordinances.

(c) All Executive Assistants for Council Members who are chosen by the Council of the City of Cleveland pursuant to Section 31 of the Charter of the City and are employed part-time may be entitled to the benefit described in Section 171.30(a).

(d) For purposes of this section, a "part-time employee" is one who works a minimum of thirty-two (32) hours per week and less than forty (40) hours per week.
(Ord. No. 1252-03. Passed 7-16-03, eff. 7-23-03)

171.621 Benefits for Council Employees

(a) All Council Employees who are chosen by the Council of the City pursuant to Section 31 of the Charter of the City and who are employed part-time shall be entitled to the benefits described in Sections 171.32, 171.33 and 171.60 of these Codified Ordinances.

(b) All Council Employees who are chosen by the Council of the City pursuant to Section 31 of the Charter of the City and who are employed part-time shall be entitled to the benefits described in Sections 171.28, 171.30(b) and 171.31 of these Codified Ordinances at the rate of eighty percent (80%) of the benefit provided to full-time employees in each of these Sections of the Codified Ordinances.

(c) All Council Employees who are chosen by the Council of the City pursuant to Section 31 of the Charter of the City and who are employed part-time may be entitled to the benefit described in Section 171.30(a).

(d) For purposes of this section, a "part-time employee" is one who works a minimum of thirty-two (32) hours per week and less than forty (40) hours per week.
(Ord. No. 1252-03. Passed 7-16-03, eff. 7-23-03)

171.63 Incentive Pay for Airport Emergency Medical Technicians

(a) Any full-time employee serving in the classification of Airport Safety Chief or Airport Safetyman who is, while so serving, first certified, under the requirements of RC 4731.82 through 4731.99, as having the following additional qualifications shall be entitled to receive incentive pay as follows:

(1) On certification as emergency medical technician-ambulance ("EMT-A") on or after January 1, 1983, a one-time payment of five hundred dollars (\$500.00).

(2) On certification as advanced emergency medical technician-ambulance ("ADV EMT-A") on or after January 1, 1983, a one-time payment of two hundred dollars (\$200.00).

(3) On certification as emergency medical technician-paramedic ("Paramedic") on or after January

1, 1983, a one-time payment of five hundred dollars (\$500.00).

(b) Effective January 1, 1984, any employee serving in a classification listed in division (a) above and certified as EMT-A, ADV EMT-A or Paramedic shall be entitled to receive while so serving and during the continuance of such certification, additional incentive pay for each paid hour worked, as follows:

(1) For certification as EMT-A: Airport Safetyman: Forty cents (\$.40) per hour; Airport Safety Chief: Fifty cents (\$.50) per hour;

(2) For certification as ADV EMT-A: Fifty cents (\$.50) per hour;

(3) For certification as Paramedic: One dollar (\$1.00) per hour.

(c) "Paid hour worked" as used in this section includes, in addition to hours actually worked, hours of paid time off such as vacation, sick leave, and holidays.

An employee having two or more of the above mentioned qualifications shall not be entitled to hourly incentive pay for more than one of such qualifications at one time.

An employee may be required to present written evidence proving initial and continuing certification of qualification in the categories used in division (a) of this section.

The incentive pay and additional incentive pay authorized in this section may be paid notwithstanding maximum compensation schedules established by either ordinances relating to compensation.

(Ord. No. 387-03. Passed 3-10-03, eff. 3-11-03)

171.64 Rehabilitation Contracts

(a) The Mayor, directors of departments, and such person as a board or commission may designate are hereby authorized to enter into contract with the Industrial Commission of Ohio, Rehabilitation Division for the reimbursement of all or a portion of an officer's or employee's wages, as contemplated by RC Chapter 4121.

(b) Any and all monies received pursuant to contract entered into under subsection (a) hereof as reimbursement for an officer's or employee's wages, shall be credited to the personnel and related expense character of the current appropriation measure of the department, division, office, board or commission employing such officer or employee.

(Ord. No. 2986-84. Passed 1-14-85, eff. 1-18-85)

171.99 Penalty

(a) Whoever violates any provision of Sections 171.38 or 171.39, in addition to any other penalty provided under the Charter, shall be fined not more than one thousand dollars (\$1,000), or imprisoned not more than six months, or both.

(b) Whoever violates the provisions of Section 171.46 shall be guilty of a misdemeanor, fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) or imprisoned not more

than ten days, or both. Any examination administered or the results thereof used contrary to the provisions of Section 171.46 constitutes a distinct and separate offense.

In addition to the penalties herein prescribed, any officer or employee of the City who violates any of the provisions of Section 171.46 shall be subject to immediate dismissal from City service.

(c) Whoever violates any of the provisions of Sections 171.49 to 171.51 shall be guilty of a misdemeanor of the fourth degree. However, no part of the fine provided for a misdemeanor of the fourth degree shall be waived or otherwise suspended by a judicial officer hearing and deciding the case, and each day a violation occurs constitutes a separate and distinct offense.

In addition to the penalties herein provided, whoever violates any of the provisions of Sections 171.49 to 171.51 shall be subject to disciplinary action, according to the Charter and these Codified Ordinances.

(Ord. No. 2160-76. Passed over Mayor's veto 10-4-76, eff. 10-5-76)