

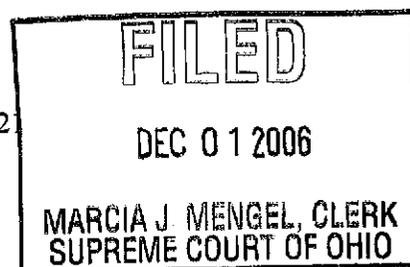
IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL., MUNICIPAL)	Ohio Supreme Court
CONSTRUCTION EQUIPMENT OPERATORS')	Case No. 06-2056
LABOR COUNCIL, et al.,)	
)	
Relators)	
)	Original Action in Mandamus
v.)	
)	
CITY OF CLEVELAND, et al.,)	
)	
Respondents)	

ANSWER TO ORIGINAL ACTION COMPLAINT FOR WRIT OF MANDAMUS

STEWART D. ROLL (#0038004)
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ATTORNEYS FOR RELATORS



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ATTORNEYS FOR RESPONDENTS

Now come Respondents City of Cleveland, Mayor Frank Jackson, and Clerk of Cleveland City Council Emily Lipovan, in her official capacity, by and through their attorneys, and, for their answer to Relators' Original Action Complaint for Writ of Mandamus, allege and aver, as follows:

1. The allegations contained in paragraph one of the Complaint are denied.
2. The allegations contained in paragraph two of the Complaint are admitted, except Relator CEO Union's status as a non-profit Ohio corporation is denied for want of knowledge.
3. The allegations contained in paragraph three of the Complaint is denied, except it is admitted the CEO Union is the collective bargaining representative of a bargaining unit of comprised of construction equipment operators and master mechanics currently employed by the City of Cleveland.
4. The allegations contained in paragraph four of the Complaint are admitted.
5. The allegations contained in paragraph five of the Complaint are admitted.
6. The allegations contained in paragraph six of the Complaint are denied.

COUNT I

7. The allegations contained in paragraph seven of the Complaint are admitted.
8. The allegations contained in paragraph eight of the Complaint are denied.
9. The allegations contained in paragraph nine of the Complaint are admitted.
10. The allegations contained in paragraph ten of the Complaint are denied.
11. The allegations contained in paragraph eleven of the Complaint are denied.
12. The allegations contained in paragraph twelve of the Complaint are admitted.
13. The allegations contained in paragraph thirteen of the Complaint are denied.

14. The allegations contained in paragraph fourteen of the Complaint are denied.

15. The allegations contained in paragraph fifteen of the Complaint are denied.

16. The allegations contained in paragraph sixteen of the Complaint are denied.

COUNT II

17. Answering paragraph seventeen of the complaint, all admissions, denials, and averments, set forth in paragraphs one through sixteen of this Answer, are hereby incorporated by reference as if fully rewritten.

18. The allegations contained in paragraph eighteen of the Complaint are admitted.

19. The allegations contained in paragraph nineteen of the Complaint are admitted.

20. The allegations contained in paragraph twenty of the complaint are denied.

21. The allegations contained in paragraph twenty-one of the complaint are denied

22. The allegations contained in paragraphs twenty-two of the complaint are denied.

23. The allegations contained in paragraphs twenty-three of the complaint are denied.

24. The allegations contained in the prayer for relief are denied, and each and every other allegation in Relators' pleadings not specifically admitted in this Answer is hereby denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted against Respondents.

2. This Court lacks subject matter jurisdiction to hear the Complaint.

3. Some or all of the claims set forth in the Complaint are barred by the statute of limitations.

4. Relators' have failed to exhaust adequate administrative remedies, including but not limited to remedies provided under Ohio's collective bargaining laws, Ohio Rev. Code Chapter 4117, et seq.

5. Relators' claims are barred by the doctrines of *res judicata* and collateral estoppel as a result of previous litigation and judgments, including but not limited to: *Santo Consolo, et al. v. City of Cleveland, et al.*, (2004), 103 Ohio St.3d 362; and *State of Ohio ex rel. Internatl. Union of Operating Engineers, et al. v. City of Cleveland, et al.* (April 28, 2004), Ohio Supreme Court Case No. 90-1780 (denial of Motion to Show Cause filed by Municipal Equipment Operators Labor Council).
6. Relators' Complaint is barred by the doctrine of waiver.
7. Relators' Complaint is barred by the doctrine of release.
8. Relators' Complaint is barred by the doctrine of estoppel.
9. Relators' Complaint is barred by the doctrine of laches.
10. Relators' Complaint is barred by the doctrine of accord and satisfaction.
11. Some or all of the claims set forth in the Complaint are moot.
12. Relators lack standing to raise some or all of the claims set forth in the Complaint.
13. Deceased Relators are not proper parties before this Court.
14. Emily Lipovan, Clerk of Cleveland City Council, and/or Cleveland City Council are not a proper party.
15. Relators have failed to join as parties one or more persons or entities needed for just adjudication.
16. Relators have failed to join indispensable and/or necessary parties and have failed to plead any reason for such non-joinder.
17. The City is entitled to and asserts all the defenses and immunities applicable to political subdivisions, as set forth in Ohio Revised Code Chapter 2744, and all other applicable state and federal laws and regulations.

WHEREFORE, having answered Relators' complaint, Respondents respectfully request this Honorable Court to dismiss the Original Action Complaint for Writ of Mandamus with prejudice, and award to Respondents such other relief as the Court deems just and equitable, including their costs, attorneys' fees, and other litigation expenses.

Respectfully submitted,

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Director of Law

By: 
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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Answer to Original Action Complaint for Writ of Mandamus was mailed by regular U.S. mail, postage prepaid, on this 1st day of December, 2006,
to:

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