

IN THE SUPREME COURT OF OHIO

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

CASE NO. 2006-2056

Relators)

vs.)

CITY OF CLEVELAND, et al.)

Respondents)

ORIGINAL ACTION IN MANDAMUS

SUPPLEMENTAL EVIDENCE

SUBMITTED BY

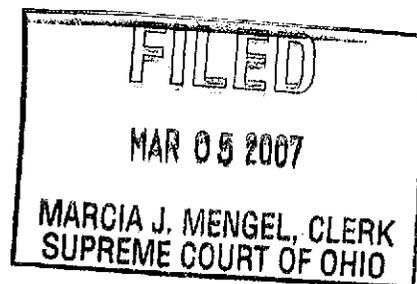
THE MUNICIPAL CONSTRUCTION EQUIPMENT OPERATORS'
LABOR COUNCIL AND THE INDIVIDUALLY-NAMED RELATORS

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COUNSEL FOR RESPONDENTS



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LIST OF SUPPLEMENT EVIDENCE

- O. Letter dated August 9, 1994 from Attorney William Fadel, counsel for International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO, addressed to Jeffrey K. Patterson, Labor Relations Director, City of Cleveland.
- P. Copy of a Motion for an Order to Show Cause Why Appellees Should Not be Held in Contempt filed with the Court of Appeals on January 20, 1998 in Case NO. 57729 *State of Ohio, Ex Rel. International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO, Relator-Appellant, v. City of Cleveland, et al, Appellees.*
- Q. Cover page and pages 34 through 44 and pages 55 through 58 of the Transcript of proceedings in Court of Appeals of Ohio, Case No. 57729, *State of Ohio, Ex Rel. International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO, Relator-Appellant, v. City of Cleveland, et al, Appellees*, held on March 30, 1990
- R. Supplemental Affidavit of Frank P. Madonia dated March 2, 2007.

EXHIBIT "O"

Letter dated August 9, 1994 from Attorney William Fadel, counsel for International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO, addressed to Jeffrey K. Patterson, Labor Relations Director, City of Cleveland.

FADEL & BEYER
THE BROWNELL BUILDING
1340 SUMNER COURT
CLEVELAND, OHIO 44115

RECEIVED
AUG 12 1994
Div. of Labor Relations

(216) 781-7777
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LES A. CHAMBERS

August 9, 1994

Certified Mail

Jeffrey K. Patterson
Labor Relations Director
City of Cleveland
601 Lakeside Avenue
Room 121
Cleveland, Ohio 44114

Dear Mr. Patterson:

The purpose of this notice is to place the City of Cleveland on notice that they are presently in contempt of the Supreme Court of Ohio's mandate of February 12, 1992 allowing Local 18's Writ of Mandamus directing the city to comply with Charter Section 191 requiring the City to pay its operating engineers prevailing wage rates.

The prevailing rates were determined by adding together the hourly wage rates and hourly fringes rates for operating engineers employed under the Construction Employers Association Building Agreement. This process was used to calculate the amount of court ordered back wages paid to the operating engineers. Your attention is directed to the enclosed April 15, 1992 letter to Franzetta Turner, the Assistant Director of Law memorializing the wage rates and the manner of calculation. All the back wages, in excess of Seven Hundred Thousand Dollars (\$700,000.00), were paid utilizing those rates. Page two of that letter describes the mechanics for calculating the prevailing rate for overtime hours. Although self authenticated, verification of this process can be made with Mr. Eric Mack of the City Internal Audit Department.

In November 1993, your predecessor, Dan Hauenstein, sought some relief with regard to overtime pay and Dudley E. Snell, President of Local 18 authorized the procedure contained in the enclosed November 15, 1993 letter. Although a departure from the mandate, Snell attempted to be responsive to the city's economic needs.

Apparently a good deed seldom goes unpunished. The city has been refusing to pay either the mandated prevailing wage or the Snell modified rate on all overtime hours. Contrary to State ex. rel. Local 18 v. Cleveland, 62 Ohio St. 3d 537 (1992) and Pinzone.

EXHIBIT "O"

Jeffrey K. Patterson
Labor Relations Director
City of Cleveland
August 9, 1994
Page 2 of 2

ex. rel. v. City of Cleveland, 34 Ohio St. 2d 26 (1973), the city unilaterally has decided to defy logic and court orders by reducing the prevailing rate on overtime hours by the amount of Local 18's fringe benefit package before calculating the overtime rate. In other words the hourly rate is changed before the city calculates the overtime rate.

Such callous disregard for the lawful order of the Supreme Court of Ohio and mandates of the City Charter cannot and will not be tolerated. This type of blatant disregard for the law resulted in a \$700,000.00 plus award to operators working in the city in 1992.

Any defense by you that you have acted on the advise of counsel is not well taken. See State ex. rel. Adkins v. Sabb, 39 Ohio St. 2d 55(1988).

If the city continues to fail to conform with the procedure for payment of overtime as outlined in my November 15, 1993 letter, the Snell modified option is now withdrawn, and adjust overtime back pay within 10 days of receipt of this letter, I will file a contempt of Court complaint against the city and you personally. Such needless litigation costs and expense can simply be avoided if the city merely follows the law and continues its agreement to do so.

Thank you for your anticipated cooperation.

Sincerely yours,



WILLIAM FADEL

WF/pzd
Enclosure
cc: Dudley E. Snell

EXHIBIT "P"

Copy of a Motion for an Order to Show Cause Why Appellees Should Not be Held in Contempt filed with the Court of Appeals on January 20, 1998 in Case NO. 57729 *State of Ohio, Ex Rel. International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO, Relator-Appellant, v. City of Cleveland, et al, Appellees.*

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WRIT

FILED
COURT OF APPEALS
JAN 20 1998
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

STATE INT. LAWYER

IN THE COURT OF APPEALS
EIGHTH APPELLATE JUDICIAL DISTRICT
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, EX REL.)
INTERNATIONAL UNION OF)
OPERATING ENGINEERS, LOCAL 18)
18A, 18B, 18C, 18RA, AFL-CIO,)
Relator-Appellant,)
vs.)
CITY OF CLEVELAND, ET AL.)
Appellees.)

CASE NO. 57729

JUDGE:

MOTION FOR AN ORDER TO SHOW
CAUSE WHY APPELLEES SHOULD
NOT BE HELD IN CONTEMPT

Now comes the Relator-Appellant, International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO and hereby moves this Court to issue an Order requiring the City of Cleveland, City of Cleveland Council and Mayor Michael R. White, hereinafter collectively [appellees] to appear before this Court and show cause why they should not be held in contempt for their willful and knowing violations of The Supreme Court of Ohio's mandate to this Court of February 12, 1992 which directed the appellees, by writ of mandamus, to pay future wages to the city's construction equipment operators and master mechanics in accordance with prevailing wage rates consistent with its opinion.

Relator-appellant requests an evidentiary hearing at the earliest practicable date to determine the extent of appellees contempt and the appropriate sanctions to be imposed upon them.

EXHIBIT "P"

The reasons for granting this Motion are set forth in the Brief in Support attached hereto.

Respectfully submitted,



WILLIAM FADEL, ESQ. (002783)
WULIGER, FADEL & BEYER
1340 Sumner Court
Cleveland, Ohio 44115
(216) 781-7777

Counsel for Appellant

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Motion For An Order To Show Cause Why Appellees Should Not Be Held In Contempt was mailed by regular U. S. Mail, postage prepaid, this 20th of January 1998 to:

Sylvester Summers, Jr.
Law Director
City of Cleveland
601 Lakeside Avenue
Room 106
Cleveland, Ohio 44114



WILLIAM FADEL

IN THE COURT OF APPEALS
EIGHTH APPELLATE JUDICIAL DISTRICT
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, EX REL.)
INTERNATIONAL UNION OF)
OPERATING ENGINEERS, LOCAL 18)
18A, 18B, 18C, 18RA, AFL-CIO,)

Relator-Appellant,)

vs.)

CITY OF CLEVELAND, ET AL.)

Appellees.)

CASE NO. 57729

JUDGE:

BRIEF IN SUPPORT OF
RELATOR-APPELLANT'S MOTION
FOR AN ORDER TO SHOW CAUSE
WHY APPELLEES SHOULD NOT BE
HELD IN CONTEMPT

On May 15, 1989 Relator-Appellant, International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO, hereafter "Local 18" filed a petition in this Court seeking a writ of mandamus requiring the City of Cleveland, its council and its mayor to pay members of Local 18, construction equipment operators and master mechanics, back and future wages in accordance with prevailing wages paid in the private construction industry as required by Section 191 of the city's charter. The prevailing wages paid in the private construction industry were and continue to be established in conformity with the Construction Employers Association Building Agreement with Local 18. This Court, on July 25, 1990, denied the writ of mandamus finding that the City's failure to pay prevailing wages constituted an unfair labor practice under R.C. 4117, 11(A)(S). The case was then appealed as a matter of right to The Supreme Court

of Ohio.

On February 12, 1992, The Supreme Court of Ohio reversed the judgment of this Court and allowed the writ of mandamus directing appellees to comply with its City Charter, Section 191, by paying back and future wages to the City's construction equipment operators and master mechanics, members of the International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO, in accordance with prevailing wage rates. [See: The State ex rel. International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO v. City of Cleveland, et al., (1992) 62 Ohio St.3d 537, 584 N.E.2d 727; and The Supreme Court of Ohio's mandate to this Court attached and marked as Exhibits A & B.]

Pursuant to its custom and applicable law, Local 18 negotiated a new collective bargaining agreement with the Construction Employers Association effective May 1, 1994 to April 30, 1997 which agreement, by virtue of The Supreme Court of Ohio's opinion, constituted the prevailing wages for the city construction equipment operators for that period of time. [Attached and marked as Exhibit C]. When it came to Local 18's attention that appellees were not paying Local 18's members the new prevailing wage rate, Local 18's President, Dudley E. Snell, advised in writing the appellee's Labor Relations officer, Jeffrey K. Patterson, on January 27, 1995 and again on July 19, 1995 of the rates to be paid. [Attached Exhibits D & E]. Despite representations of its willingness to comply, the appellees continue to ignore The Supreme Court's mandate and its own charter provisions.

In order to ripen the issue and provide appellee with a chance to comply, counsel advised, on February 14, 1996, in writing, Patterson and Mayor Michael White of the city's noncompliance. [Attached and marked as Exhibit F].

On March 1, 1996, the city responded in writing through its recently appointed assistant law director, Thomas D. Corrigan, that the city was aware of its noncompliance and that

calculations of wages owed would be forthcoming from Patterson. [Attached and marked as Exhibit G].

No calculations were forthcoming and the city continues to date to be in violation of The Supreme Court's Order and this Court's mandate to pay Local 18's members the prevailing wage rate in compliance with the Supreme Court of Ohio's mandate.

LAW AND ARGUMENT

Contempt of Court is disobedience of a lawful Court Order. Ohio Revised Code Section 2705.02 provides in pertinent part as follows:

A person guilty of any of the following acts may be punished as for a Contempt:

(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a Court or officer.

...

State, ex rel. Celebrezze v. Court, (1983) 5 Ohio St.3d 1 promulgated this Court's authority that pursuant to R.C. 2731.16 this court is not limited in its power to only carry its order and judgment into execution but may punish any officer named therein for contempt or disobedience of its order or writs.

To establish contempt, the moving party need show only: (1) the existence of a valid court order; (2) knowledge of the court order; and (3) violation of the court order. Pugh v. Pugh, 15 Ohio St.3d 136, 472 N.E. 2d 1085 (1984). In civil contempt proceedings, intent to violate the court order need not be proved. If this court is satisfied that a breach of the order may have occurred, the burden shifts to appellees to appear and show that they did not violate The Supreme Court of Ohio order and this Courts' mandate and that they should not be held in contempt. See Arthur Young & Co., 68 Ohio App. 3d 287 (Franklin Cty. Ct. App. 1990).

A Court may also impose sanctions for civil contempt intended to coerce compliance

with the underlying order and to compensate the moving party for losses sustained by the breaching party's disobedience. Con Tex. Inc. v. Consolidated Technologies, Inc., 40 Ohio App. 3d 94, 531 N.E. 2d 1353 (Hamilton Cty. Ct. App. 1988). Punishment for contempt may be either: (1) remedial or compensatory in the form of a fine to compensate the moving party for the breaching party's disobedience; or (2) coercive and prospective, designed to force the breaching party into compliance with the Order by confinement which can only be terminated by the breaching party's adherence to the Court's Order. Brown v. Executive 200 Inc., 64 Ohio St.2d 250, 416 N.E. 2d 610 (1980).

Local 18 is entitled to an order requiring appellees to appear and show cause why they should not be held in Contempt of The Supreme Court of Ohio's Judgment and this Court's mandate to pay Local 18's members the prevailing wages. The appellees cannot dispute their knowledge of the Order or of its terms since they were parties to the original Order and counsel's letter of March 1, 1996 included The Supreme Court of Ohio's decision and mandate. The appellees have admitted this noncompliance but wilfully and knowingly continue to violate the Order of this Court.

Respectfully submitted,



WILLIAM FADEL, ESQ. (002783)
WULIGER, FADEL & BEYER
1340 Sumner Court
Cleveland, Ohio 44115
(216) 781-7777

Counsel for Relator-Appellant

EXHIBIT "O"

Cover page and pages 34 through 44 and pages 55 through 58 of the Transcript of proceedings in Court of Appeals of Ohio, Case No. 57729, *State of Ohio, Ex Rel. International Union of Operating Engineers, Local 18, 18A, 18B, 18C, 18RA, AFL-CIO, Relator-Appellant, v. City of Cleveland, et al, Appellees*, held on March 30, 1990

1 COURT OF APPEALS OF OHIO
2 EIGHTH APPELLATE JUDICIAL DISTRICT
3 CUYAHOGA COUNTY, OHIO
4

5 THE STATE OF OHIO ON :
6 RELATION OF THE INTERNATIONAL :
7 UNION OF OPERATING ENGINEERS, :
8 LOCALS 18, 18A, 18B, 18C, 18RA, :
9 AFL-CIO, :

10 Petitioner, :

11 vs. :

12 CITY OF CLEVELAND, et al., :

13 Respondent. :

14 Case Number
15 57729

16 ---o0o---

17 Transcript of proceedings had before
18 Donald A. Johnson, a Registered Stenotype
19 Reporter and Notary Public within and for
20 the State of Ohio, on Friday, the 30th day
21 of March, 1990, commencing at 9:00 o'clock
22 a.m., at the law offices of WULIGER, FADEL
23 & BEYER, 1340 Sumner Court, The Brownell
24 Building, Cleveland, Ohio 44115.

25 BEFORE: JOHN B. GIBBONS, ESQ.
Commissioner
2000 Standard Building
1370 Ontario Avenue
Cleveland, Ohio 44113

---o0o---

EXHIBIT "Q"

1 APPEARANCES:

2 On behalf of the Petitioner:

3 WILLIAM I. FADEL, ESQ.
4 Wuliger, Fadel & Beyer
5 1340 Sumner Court
6 The Brownell Building
7 Cleveland, OH 44115

8 On behalf of the Respondent:

9 PETER KIRSANOW, ESQ.
10 Assistant Director of Law
11 601 Lakeside, #106
12 Cleveland, Ohio 44114

13 ---oOo---

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Kirsanow, do you have any questions?

MR. KIRSANOW: Just one or two.

---o0o---

CROSS EXAMINATION

BY MR. KIRSANOW:

Q Tony, to your knowledge, is the City of Cleveland signatory to this Plaintiff's Exhibit number 5, I believe, the Construction Employers Association Building Agreement effective May 1, '85 through April 30, 1988?

MR. FADEL: We will stipulate that they are not.

MR. KIRSANOW: Okay.

Q And are you familiar with -- strike that. No further questions.

MR. FADEL: Okay, thank you, Mr. Mangano.

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(Whereupon the witness was excused.)

---o0o---

MR. FADEL: Mr. Sharpless.

---o0o---

RONALD SHARPLESS,
being first duly sworn, was examined and

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testified as follows:

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DIRECT EXAMINATION

BY MR. FADEL:

Q Mr. Sharpless, would you state your full name and spell your last name?

A Ronald Sharpless, S-h-a-r-p-l-e-s-s.

Q Mr. Sharpless, are you a member of any labor organization?

A Yes, I am, I am a member of Operating Engineers Local 18.

Q How long have you been a member of Operating Engineers Local 18?

A Approximately 36 years.

Q And are you presently employed?

A Yes, sir.

Q What is your capacity?

A I'm employed by the Local as District Representative.

Q Can you describe for me what a District Representative is who is employed by the Operating Engineers Local 18?

A We are basically in charge of the eight counties that comprise District One which starts with everything -- every county east of

1 Sandusky, continuing east over to the
2 Pennsylvania line including Ashtabula County
3 and south including Medina and eight
4 counties --

5 Q Yes?

6 A Lake, Geauga, Cuyahoga, Medina, Erie, Huron,
7 Medina, Cuyahoga, Geauga, Ashtabula, Lake and
8 Cuyahoga --

9 Q Okay. Mr. Sharpless, can you describe for me
10 the geographical jurisdiction of the
11 International Union of Operating Engineers?

12 A It comprises 85 of 88 counties in Ohio except
13 Trumbull, Columbiana and Mahoning and four
14 counties in Kentucky.

15 Q For administrative purposes, Local 18 is
16 divided into different areas?

17 A Right, it is divided into six different
18 districts.

19 Q And you indicated that you are in charge of
20 District One?

21 A Right.

22 Q Do you hold elective office?

23 A Vice President of Local 18.

24 Q Now could you just briefly describe for us
25 your duties and responsibilities as a District

1 Representative for the District One area and
2 the eight counties that you have described.

3 A Basically I negotiate, administer the
4 bargaining agreement in effect in the areas.
5 I help settle grievances, I organize nonunion
6 contractors. The business agents, I have four
7 business agents working under my direction. I
8 have an office staff of three. I administer
9 the Referral system, oversee and administer
10 the Referral system, basically.

11 Q As part of your duties and responsibilities as
12 District Representative in the Cleveland area,
13 did you have an occasion to enter into
14 negotiations with the City of Cleveland on
15 behalf of the Operating Engineers who were
16 members of Local 18 who were employed by the
17 City of Cleveland?

18 A Yes, I did.

19 Q How long have you been District
20 Representative?

21 A About five years.

22 Q And with whom did you enter into those
23 negotiations?

24 A The people?

25 Q Yes.

1 A Phil Haddad, Julius Ciaccia, Lori Torriero
2 representing the City and of course myself and
3 Tony Mangano -- were you there, John?

4 And yourself --

5 Q Can you describe to me generally when those
6 negotiations first began and how you entered
7 into those negotiations and where they are at
8 this point.

9 A Sometime in late 1986, the Building Trades
10 advised me they were going to enter into a
11 contract with the City of Cleveland as a --

12 Q What was this date?

13 A Sometime in '86, don't recall the exact date,
14 okay? At that time, I met with members there
15 and they indicated to me they didn't want to
16 -- weren't interested in entering into the
17 contract as provided by the Building Trades.
18 I informed the City that we would sit down and
19 negotiate on our own behalf, didn't want to be
20 a part of the negotiations individually.
21 Sometime around '87, early '87, sometime in
22 '87 I sat down with the City, met with them
23 twice and in late June, sometime around late
24 June or early July, we reached an impasse.
25 The City gave me a final proposal at that time

1 which was basically the Building Trades
2 agreement. It was a take it or leave it
3 proposition. I took that proposition back to
4 the membership on or about July 7th and the
5 proposal was turned down by approximately 33
6 to two. At that time I wrote Phil Haddad a
7 letter telling him what happened that the
8 membership had turned the proposal down and we
9 were willing to sit down and negotiate at his
10 earliest convenience. He notified me that
11 that was the end of the contract negotiations.

12 Q Do you have any agreement with the City of
13 Cleveland which specifies as to matters
14 concerning wages, hours, terms and conditions
15 of employment of the Operating Engineers
16 employed by the City of Cleveland?

17 A No, sir.

18 Q Do you have at this time any collective
19 bargaining agreement with the City of
20 Cleveland?

21 A No, sir.

22 Q Reflecting hours, wages, and conditions of
23 employment?

24 A No, none.

25 Q All right. Are you aware of any local

1 ordinances or law which relates to the payment
2 of wages on behalf of tradesmen employed by
3 the City of Cleveland?

4 A Yes, I am.

5 Q What is your understanding of the requirements
6 of that ordinance and law taking into
7 consideration that you are not an attorney?
8 I'm not asking for a legal opinion, I'm asking
9 you for your understanding and then I have a
10 follow-up question to that.

11 A Uh hum. My understanding is in the absence of
12 a bargaining agreement, that the City Charter
13 prevails, that the City is required to pay
14 those prevailing wages which have been
15 negotiated by the local bargaining
16 Construction Employers Associations.

17 Q Now how are the wages negotiated with the
18 local construction building employers
19 memorialized as relates to the Operating
20 Engineers?

21 A How are they memorialized, don't understand.

22 Q Withdraw the question, it was -- I apologize,
23 it was convoluted.

24 Do you have collective bargaining
25 agreements negotiated with the local

1 construction, building construction employers
2 in the City of Cleveland?

3 A Yes, sir.

4 Q What is that known as?

5 A The Construction Employers Association
6 Agreement.

7 Q Handing you what we have marked for
8 identification as Plaintiff's Exhibits 5 and
9 6, are those the agreements that you are
10 referring to?

11 A Yes, uh hum.

12 Q Okay, and do these agreement contain hours,
13 wages, conditions of employment?

14 A Yes, they do.

15 Q Okay, and prior to May 1, 1987, can you tell
16 me how the wages of the Operating Engineers
17 were determined by the City of Cleveland to be
18 paid to those Operating Engineers?

19 A They were determined by the wages contained --
20 wages plus the fringes contained in these
21 local building agreements.

22 Q How do you know that?

23 A Because that is what they have been paying for
24 one thing, they always paid it and for another
25 thing, I heard Mr. Haddad himself say he also

1 checked with Mr. Pinzone to see what the wage
2 rates were negotiated and that is what he went
3 by.

4 Q Do you have a process to determine, to make
5 sure that the wages paid to the members of the
6 Operating Engineers employed by the City of
7 Cleveland were in fact those wages contained
8 in the Plaintiff's predecessor, Plaintiff's
9 Exhibits 5 and 6?

10 A They would usually contact me and I would mail
11 them a copy of the agreement.

12 Q And we heard Mr. Haddad testify and I want to
13 make sure that we are consistent.

14 How were the prevailing wages determined?
15 You indicated --

16 A Wage rates plus fringes.

17 Q What fringes?

18 A The fringes was health and welfare, the
19 pension and the apprenticeship program.

20 Q And we have entered into a stipulation that
21 the wages have not changed for the Operating
22 Engineers since May 1, 1987.

23 A Correct.

24 MR. FADEL: I have no further
25 questions, thank you.

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COMMISSIONER GIBBONS: Mr.

Kirsanow, do you have any questions of
the witness?

MR. KIRSANOW: I might have one
or two.

---oOo---

CROSS EXAMINATION

BY MR. KIRSANOW:

Q Mr. Sharpless, you indicated on direct
examination that your bargaining unit, that is
Local 18, the heavy equipment operators
employed by the City of Cleveland had
determined to negotiate separately from the
Construction Building Trades Council.

A Correct.

Q Okay, and would it be fair to say that your
intent in so doing was to strike a deal
differently than that contained or that
arrived at by the Construction Building Trades
Council?

A Not strike a deal, attempt to negotiate the
best contract possible on their behalf.

Q When the City presented you with a proposal,
that mirrored the proposal given to the
Construction Building Trades Council and

1 ratified by the Construction Building Trades
2 Council.

3 A The membership rejected that, correct.

4 MR. KIRSANOW: I don't have any
5 other questions.

6 MR. FADEL: I just have one
7 follow-up question.

8 ---o0o---

9 REDIRECT EXAMINATION

10 BY MR. FADEL:

11 Q Mr. Sharpless, as relates to wages, did you
12 have a position that you took with the City of
13 Cleveland?

14 A We had proposals. The City's position was a
15 take it or leave it proposal. I asked for
16 alternate -- suggested alternate proposals.
17 They wouldn't deviate.

18 Q Did you also take the position during
19 negotiations that the wages had already been
20 set by Charter?

21 A Yes.

22 Q So that wasn't necessary to discuss.

23 A Right, yes.

24 MR. FADEL: Okay, no further
25 questions, thank you.

1 ---o0o---

2 RONALD SHARPLESS,

3 being previously first duly sworn, was
4 examined and testified as follows:

5 ---o0o---

6 DIRECT EXAMINATION (RESUMED)

7 BY MR. FADEL:

8 Q Mr. Sharpless, you have been handed what has
9 been marked for identification purposes as
10 Petitioner's Exhibit 9. I would like you to
11 review it before I ask you any questions. I
12 would like you to hand it to Mr. Kirsanow so
13 he can have an opportunity to read it too --

14 A (Handing)

15 MR. KIRSANOW: (Handing)

16 Q Mr. Sharpless, can you tell me what
17 Petitioner's Exhibit number 9 is?

18 A It's a letter to Commissioner Cedroni, City of
19 Cleveland Water Department, Water
20 Commissioner, from the Local Union whereby an
21 agreement was reached that the Water
22 Department agreed to pay double time on all
23 hours over eight hours and all hours over 40
24 hours.

25 Q When is that agreement dated?

1 A It's dated March 1st, 1983.

2 Q Okay, and Mr. Cedroni is the head of the
3 Utilities Department for the City of
4 Cleveland?

5 A I don't really know to tell you the truth.

6 Q Commissioner, give me the --

7 A At that time he was, don't know what he is
8 now.

9 Q At that time?

10 A At that time he was Cleveland Water Department
11 Commissioner.

12 Q And that is the other department where the
13 Operating Engineers are employed.

14 A Right.

15 Q Other than streets.

16 A Right.

17 Q And that is a copy of an agreement between the
18 City of Cleveland --

19 A Yes.

20 Q And the Water Department?

21 A And Local 18.

22 MR. FADEL: Okay, I have no
23 further questions.

24 COMMISSIONER GIBBONS: Mr.
25 Kirsanow?

1 MR. KIRSANOW: Can I see the
2 document one more time?

3 MR. FADEL: (Handing)

4 ---o0o---

5 (Pause)

6 ---o0o---

7 CROSS EXAMINATION

8 BY MR. KIRSANOW:

9 Q Mr. Sharpless, there are several signatures at
10 the bottom of what has been marked as
11 Petitioner's Exhibit 9. Are you familiar with
12 the signatures?

13 A Some of them I am, some I'm not.

14 Q Are these signatures, the ones that you are
15 familiar with, are they the signatures of
16 members of the bargaining unit or individual
17 members of the bargaining unit as of March,
18 1983?

19 A To the best of my knowledge, all of them are
20 except Mr. Cedroni's signature.

21 Q All right. Is this a -- would you typify this
22 as a memorandum of understanding?

23 A Yeah.

24 Q And did you typically interpret it as a
25 memorandum of understanding with the City of

1 Cleveland prior to 1984?

2 A Yes.

3 MR. KIRSANOW: No further
4 questions.

5 MR. FADEL: No further
6 questions.

7 COMMISSIONER GIBBONS: Thank
8 you.

9 ---o0o---
10 (Whereupon the witness was
11 excused.)

12 ---o0o---
13 COMMISSIONER GIBBONS: Is there
14 anything else that the Petitioner wishes
15 to bring to the attention of the
16 Commissioner regarding testimony or
17 evidence?

18 MR. FADEL: May we take a short
19 break?

20 ---o0o---
21 (Whereupon, a brief recess was
22 had and the hearing was
23 reconvened later the same day.)

24 ---o0o---
25 COMMISSIONER GIBBONS: The

EXHIBIT "R"

Supplemental Affidavit of Frank P. Madonia dated March 2, 2007

IN THE SUPREME COURT OF OHIO

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

CASE NO. 2006-2056

Relators)

vs.)

CITY OF CLEVELAND, et al.)

Respondents)

ORIGINAL ACTION IN MANDAMUS

SUPPLEMENTAL AFFIDAVIT OF FRANK P. MADONIA

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COUNSEL FOR RESPONDENTS

EXHIBIT "R"

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

Comes now Frank P. Madonia, who, being competent to testify and first duly sworn, states as follows in support of a Complaint for a Writ of Mandamus in the Ohio Supreme Court:

1. The statements contained herein are based upon my own personal knowledge.
2. I incorporate herein, reaffirm and ratify all of the statements made in my October 31, 2006 Affidavit that is attached as Exhibit "H" to the above described Complaint for a Writ.
3. I reviewed the February 3, 2004 Affidavit of William Fadel submitted on February 23, 2007 to this Court as part of Respondents' evidence. Mr. Fadel's affidavit is not made upon his own personal knowledge. Mr. Fadel's affidavit erroneously suggests that until January of 2003, Local 18 of the International Union of Operating Engineers ("Local 18") represented as collective bargaining agent those persons who are employed by Cleveland as Class A , B and master mechanic construction equipment operators. Mr. Fadel's suggestion in that regard is contrary to the finding of SERB in SERB Opinion 2006-008, which adopted in full the opinion of Administrative Law Judge Beth A. Jewell. On August 30, 2006 Mr. Fadel asked SERB on behalf of Local 18 to adopt all of Judge Jewell's findings. A copy of that Local 18 Motion is attached as Exhibit "E" to the Complaint for a Writ. A copy of that SERB Opinion is attached as Exhibit "C" to the Complaint for a Writ.
That SERB Opinion is also contrary to Mr. Fadel's affidavit suggestion that Local 18 negotiated with the knowledge or consent of these construction operators any PERS or other deduction from the prevailing wages to which they are entitled.
4. I reviewed the February 3, 2004 Affidavit of Steven DeLong submitted on

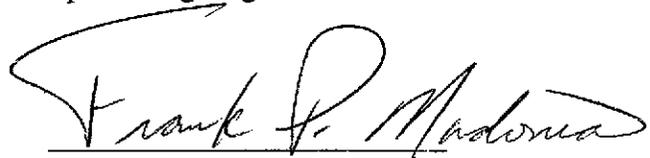
February 23, 2007 to this Court as part of Respondents' evidence. Mr. DeLong's affidavit is not made upon his own personal knowledge. Mr. DeLong's affidavit makes many of the same erroneous suggestions as are contained in Mr. Fadel's affidavit, which have been demonstrated to be false as evidenced by SERB opinion 2006-008.

5. I participated in the SERB fact finding with respect to the Municipal Construction Equipment Operators' Labor Council (the "CEO Union") and Cleveland which resulted in its Fact Finder's May 10, 2004 report, which is attached as Exhibit "K" to the Writ. That report refers at p. 14 to: "the long-standing practice of paying these employees at the rate established by the CEA Building Agreement..." Like the Fact Finder's determination at p. 15, I observed Cleveland's admission that it has paid these employees using the CEA prevailing wage rate for years, and was still making collective bargaining proposals to the CEO Union based upon that rate as of December 2, 2003. My analysis of the economics underlying the parties' then draft and now extant February 14, 2005 - March 31, 2007 collective bargaining agreement supports my recommendation to the CEO Union members for its ratification by concluding that its compensation and benefits exceeded the CEA Agreement prevailing wage rate.
6. I am personally familiar with the CEA Agreement and its jurisdictional description of work. Cleveland's construction equipment operators job duties are consistent with the jurisdictional description of work contained in the CEA Agreement. The supplemental evidence being submitted by the CEO Union in support of this Writ observes that Local 18 had the same view, at least until 1998. I note that Mr. Fadel and Mr. DeLong were never employed by Cleveland as construction equipment

operators. My employment as a Cleveland construction equipment operator began in 1986.

7. Based upon the Wage chart attached as Exhibit "B" to the Complaint for a Writ, it is clear that Cleveland's payments from 1994 - 2005 to its construction equipment operators have been grossly below the prevailing wage rate.

Further affiant sayeth naught.


Frank P. Madonia

Sworn to and subscribed in my presence this 2nd day of March, 2007.


Notary Public

STEWART D. ROLL, Attorney At Law
Notary Public - State of Ohio
→ commission has no expiration date
Section 147.03 R. G.

CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing "Supplemental Evidence Submitted by the Municipal Construction Equipment Operators' Labor Council and The Individually-Named Relators" has been served via regular U. S. Mail upon the following this 21 day of March, 2007:

Robert Threats, Esq.
Theodora Monegan, Esq.
William Sweeney, Esq.
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Respectfully submitted,



**OF COUNSEL:
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ARNOFF CO., L.P.A.**

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Operators' Labor Council*