

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL., MUNICIPAL)
CONSTRUCTION EQUIPMENT)
OPERATORS' LABOR COUNCIL, et al.,) Case No. 2006-2056
)
Relators)
)
-v-)
)
CITY OF CLEVELAND, et al.,)
)
Respondents.)

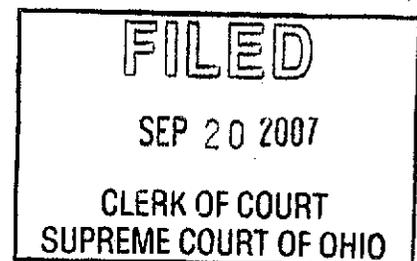
RESPONDENTS' MOTION FOR PROTECTIVE ORDER

Stewart D. Roll (0038004)
Persky, Shapiro & Arnoff Co., L.P.A.
Signature Square II
25101 Chagrin Boulevard, Suite 350
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(216) 360-3737
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COUNSEL FOR RELATORS

Robert J. Triozzi, Director of Law
Theodora Monegan (0039357), Chief Assistant Director of Law
William A. Sweeney (0041415), Assistant Director of Law
City of Cleveland Department of Law
601 Lakeside Avenue, Room 106
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(216) 664-2800
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COUNSEL FOR RESPONDENTS



Motion for Protective Order

Under Civil Rule 26(C), Respondents move that the Court order that (1) the depositions of Edwin Gabriel, Principal Clerk in the City's Division of Accounts; Richard Sensenbrenner, the City's Commissioner of Accounts; Douglas Divish, the City's Commissioner of Information Technology and Services; Algeron A. Walker, the City Treasurer; Sharon Dumas, the City's Director of Finance; and Robert J. Triozzi, the City's Director of Law, not be had. Respondents further move that the Request for Production of Documents not be allowed. The reasons for this Motion for Protective Order are stated in the following Brief.

BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

Facts

On September 14, 2007, Relators' counsel sent a Notice of Depositions to Respondents' counsel by facsimile. That Notice stated that Relators' counsel demanded to take the depositions of six City officials, all employees of Respondent City of Cleveland, on September 24, 2007.¹ The six City officials are Edwin Gabriel, Principal Clerk in the City's Division of Accounts; Richard Sensenbrenner, the City's Commissioner of Accounts; Douglas Divish, the City's Commissioner of Information Technology and Services; Algeron A. Walker, the City Treasurer; Sharon Dumas, the City's Director of Finance; and Robert J. Triozzi, the City's Director of Law.

¹ Notice of Depositions attached to Affidavit of Theodora M. Monegan attached as Exhibit A.

On September 14, 2007, Relators' counsel sent a Request for Production of Documents by facsimile to Respondents' counsel requesting three enumerated sets of documents.² The Request for Production of Documents asks for the following: (1) All payroll records for people who have worked as construction equipment operators or master mechanics from May 1, 1994 through February 14, 2005; (2) All forms of communication to the Respondent City's Law Department from Relators' counsel and all people who have worked as construction equipment operators or master mechanics from May 1, 1994 through February 14, 2005. The Law Department has received "Payment Instruction Memorandum" from 71 people claiming to be clients of Relators' counsel and claiming to have been employed by the City as construction equipment operators or master mechanics from May 1, 1994 through February 14, 2005; and (3) All forms of communication between City employees from August 15, 2007 and the present regarding money due to Relators under this Court's Judgment Entry.

On September 18, 2007, Respondents' counsel sent an e-mail to Relator's counsel stating Respondents' objections to the Notice of Depositions and the Request for Production of Documents.³ In that e-mail Respondents' counsel stated, "Because the City must gather payroll information and calculate wages due under the Supreme Court Judgment Entry, the City will provide that information to you when it has finished that task." Relators' counsel and

² Exhibit A.

³ Exhibit A.

Respondents' counsel discussed the depositions and request for documents in a telephone conversation September 18, 2007. Respondents' counsel made a reasonable effort to resolve this dispute during that conversation, by restating that the City is complying with the Supreme Court decision and that the City was not engaging in undue delay. Relators' counsel was unpersuaded and rejected the City's request to postpone or dismiss the depositions.

Statement of the Case

This Court decided this matter on August 15, 2007. The Court granted a writ of mandamus in part to compel the City to pay the individually named construction-equipment operator Relators and the individually named master mechanic Relators "the difference between the prevailing wage rates and the lower rates they were paid for the period from May 1, 1994, through February 14, 2005, less the collective-bargaining offset of \$2,500.00 for those employees who worked during the period from January 1, 2004, through January 31, 2005." Respondent City of Cleveland is currently complying with the Court's order by calculating the amount due to the individually named Relators and preparing to issue paychecks for the wage differences. On September 12, 2007, Relators filed Motions for Orders (1) to Require Respondents to Show Cause Why They Should not be Deemed to be Contemnors of this Court, and (2) for Sanctions Until Their Compliance with this Court's Judgment Entry and Writs of Mandamus. Respondents are opposing those Motions in a Brief filed contemporaneously with this Motion to for Protective Order. All of the post-judgment motions are

pending before this Court. There is no need or right to discovery at this point in the proceedings.

Law and Argument

Discovery at this point in this case is an annoyance and would cause an undue burden and expense upon Respondents. Civil Rule 26(C) allows the Court to make an order that discovery not be had to protect Respondents "from annoyance, embarrassment, oppression, or undue burden or expense." The Respondents are diligently complying with the Court's Judgment Entry by calculating the amounts due to each of the individually named Relators to prepare to issue paychecks to those persons. The Court has not ruled on the Relators' pending motions to show cause and for sanctions, which Respondents are opposing. There is no need for discovery at this point in the proceedings and no right to discovery as nothing is pending before the Court that warrants discovery. The discovery is an annoyance and causes an undue burden as it takes Respondent City of Cleveland's employees away from the task of complying with this Court's Judgment Entry.

Causing four high-ranking City officials to submit to depositions only takes them away from their work and their efforts to comply with the Court's Judgment Entry. Furthermore, the Respondents have promised records in response to the first numbered Request for Production of Documents when it has completed its task of complying with the Court's Judgment Entry. The second numbered request merely requests items sent to the City by Relators' counsel or clients of

Relators' counsel. Clearly Relators' counsel has access to those documents because he or his clients generated them. The third numbered requests seeks all forms of communications between City employees from August 15, 2007 and the present regarding money due to Relators under this Court's Judgment Entry. Requiring Respondents to produce this information will not further the Respondents' efforts to comply with the Court's Judgment Entry and will cause an undue burden on Respondents and take them away from the task of complying with the Court's Judgment Entry.

Conclusion

For the reasons stated above, Respondents respectfully request the Court to grant it a protective order stating that the depositions and request for production of documents "not be had."

Respectfully submitted,

ROBERT J. TRIOZZI
Director of Law

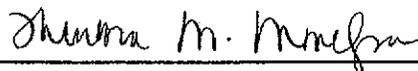
By: *Theodora M. Monagan*
Theodora M. Monagan (0039357)
Chief Assistant Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(216) 664-2800
(216) 664-2663 facsimile
tmonegan@city.cleveland.oh.us

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

Respondents mailed a copy of this Motion for Protective Order on the 19th day of September, 2007 to the attorney for Relators at the following address:

Stewart D. Roll
Persky, Shapiro & Arnoff Col., L.P.A.
Signature Square II
25101 Chagrin Blvd., Suite 350
Cleveland, Ohio 44122-5687



Theodora M. Monegan

AFFIDAVIT OF THEODORA M. MONEGAN

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

Theodora M. Monegan, being competent to testify and duly sworn, states as follows based on personal knowledge:

1. I am the Chief Assistant Director of Law for the Labor and Employment section in the City of Cleveland's Department of Law.
2. On September 14, 2007, I received a facsimile copy of "Relators' Notice of Depositions," attached and incorporated to this affidavit, to take the depositions of six City officials on Monday, September 24, 2007.
3. On September 14, 2007, by facsimile, I received "Relators' Request for Production of Documents" to be delivered to the office of Relators' attorney on October 12, 2007, attached and incorporated to this affidavit.
4. Since September 12, 2007, there has been email correspondence between the City lawyers and attorney Stewart D. Roll regarding his notice of depositions, request for production of documents, and the Motion for an Order to Examine Debtors. I responded to Mr. Roll regarding the City's intentions related to the September 24, 2007 depositions.
5. The attached email to me, received on September 19, 2007, at 7:12 a.m., from attorney Roll regarding the pending depositions he scheduled because of

Exhibit A

the Motion for an Order to Examine Debtors filed in the Cuyahoga County Court of Common Pleas, Case No. SD07 076306 is a true and accurate copy of the email message I sent to him, and his response on that date and at that time.

Theodora M. Monegan
Theodora M. Monegan

Sworn to and subscribed before me this 19th day of September 2007.



**YOLANDA C.
FLOR-PRUGAR**
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Cuyahoga Cty
My Comm. Exp. 1/13/08

Yolanda C. Flor-Prugar
Notary Public

IN THE SUPREME COURT OF OHIO

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

Relators

vs.

CITY OF CLEVELAND, et al.

Respondents

CASE NO. 2006-2056

**REQUEST FOR PRODUCTION
OF DOCUMENTS**

Pursuant to Rule X, Section 2 of the Supreme Court Practice Rules, and Rule 34 of the Ohio Rules of Civil Procedure, Respondents are requested to produce the following documents by hand delivery to the undersigned at the offices of Persky, Shapiro & Arnoff Co., LPA, 25101 Chagrin Blvd., Suite 350, Beachwood, Ohio on October 12, 2007.

1. All payroll records for the persons who worked for Cleveland, Ohio as construction equipment operators and master mechanics during the period of May 1, 1994 - February 14, 2005. Those records shall include the name of the employee, the number of regular and overtime hours worked during that each day of that period during that employment with Cleveland and the amount of pay received for that work.

Response:

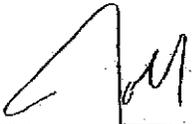
2. All letters, emails, faxes and other communication received by any member of Cleveland's Department of Law from the undersigned and the employees identified in Request No. 1 with respect to monies due and the payment of those monies pursuant to this Court's August 15, 2007 Judgment and Writs of Mandamus issued in this case.

Response:

3. All email, memoranda, and writings prepared, sent or received by any Cleveland employee during the period of August 15, 2007 and present, that does not seek or provide legal advice, with respect to to monies due and the payment of those monies pursuant to this Court's August 15, 2007 Judgment and Writs of Mandamus issued in this case, and all calculations made with respect to that Judgment.

Response:

**OF COUNSEL:
PERSKY, SHAPIRO &
ARNOFF CO., L.P.A.**



STEWART D. ROLL (Reg. #0038004)
25101 Chagrin Boulevard, Suite 350
Cleveland, Ohio 44122-5687
Telephone: (216) 360-3737
Fax: (216) 593-0921
*Representing Relator CEO Union and
Individual Relators*

CERTIFICATE OF SERVICE

A copy of the foregoing Request for Production of Documents has been sent by fax to counsel for Relators, and by U.S. mail to Ms. Williams, on this 14th day of September, 2007.

Lindsey Williams, Assistant Attorney General
Constitutional Office Section
30 E. Broad Street, 17th Floor
Columbus, OH 43215-3428

Robert J. Triozzi, Esq.
Theodora M. Monagan, Esq.
William Sweeney, Esq.
City of Cleveland, Department of Law
601 Lakeside Avenue, Room 106
Cleveland, OH 44114-1077



STEWART D. ROLL (Reg. #0038004)
*Representing Individual Relators and
the Municipal Construction Equipment
Operators' Labor Council*

LAW OFFICES

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

SIGNATURE SQUARE II
25101 CHAGRIN BOULEVARD, SUITE 350
CLEVELAND, OHIO 44122-5687
(216) 360-3737
(216) 593-0921 (Telecopier)

FACSIMILE TRANSMITTAL COVER SHEET

DATE: September 14, 2007 NUMBER OF PAGES: 4 pages
Including Cover Sheet

TO NAME: Robert J. Triozzi, Esq.
Theodora Monegan, Esq.
William Sweeney, Esq.

COMPANY: City of Cleveland

NUMBER: (216) 664-2663

FROM: Stewart D. Roll, Esq. OPERATOR: S. Jordonek

RE: Municipal Construction Equipment Operators' Labor Counsel, *et al.*
Supreme Court of Ohio; Case No. 2006-2056

COMMENTS:

Dear Counsel:

Attached please find the following with regard to the above mentioned matter:

- (1) Notice of Depositions.

Should you have any questions, please do not hesitate to contact Attorney Roll directly.

Should you experience any difficulties in obtaining this transmission, please contact Shannon Jordonek immediately at (216) 360-3737.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED OR CONFIDENTIAL.

If the reader of this message is not the intended recipient, please be advised that any dissemination, distribution, or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone, collect to the sender shown above. We also would appreciate your returning the original message to us at the above address via U.S. Mail. Thank you for your cooperation.

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO, ex rel., MUNICIPAL
 CONSTRUCTION EQUIPMENT
 OPERATORS' LABOR COUNCIL, et al.**)
)
Relators)
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 vs.)
)
CITY OF CLEVELAND, et al.)
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Respondents)

CASE NO. 2006-2056

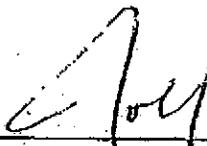
NOTICE OF DEPOSITIONS

Pursuant to Rule X, Section 2 of the Supreme Court Practice Rules, and Rule 30 of the Ohio Rules of Civil Procedure, the undersigned attorney for Relators shall take the depositions of the following Cleveland, Ohio employees on Monday, September 24, 2007 starting at 9:00 a.m. in the 25101 Chagrin Blvd., Suite 350, Beachwood, Ohio offices of Persky, Shapiro & Arnoff Co., LPA, and continuing one after each other from day to day until completed, all in support of Relators' pending motions for orders to require Respondents to show cause why they should not be deemed contemnors of this Court, and for sanctions until their compliance with this Court's August 15, 2007 Judgment Entry and Writs of Mandamus.

1. Mr. Edwin Gabriel, Principal Clerk, Department of Finance;
2. Mr. Richard Sensenbrenner, Commissioner, Division of Accounts, City of Cleveland, Ohio Department of Finance;
3. Mr. Douglas Divish; Commissioner, Division of Information Technology and Services, City of Cleveland, Ohio Department of Finance;

4. Mr. Algeron A. Walker, Treasurer, City of Cleveland, Ohio Department of Finance;
5. Ms. Sharon Dumas, City of Cleveland, Ohio Director Department of Finance.
6. Robert J. Triozzi, Esq., City of Cleveland, Ohio Director of Law. Mr. Triozzi will not be asked any questions that infringe upon any privilege. His examination will be limited to a review of documents sent to and by members of Cleveland, Ohio's Department of Law by and to the undersigned with respect to Cleveland's compliance with this Court's August 15, 2007 Judgment Entry and Writs of Mandamus issued in this case.

OF COUNSEL:
PERSKY, SHAPIRO &
ARNOFF CO., L.P.A.



STEWART D. ROLL (Reg. #0038004)
 25101 Chagrin Boulevard, Suite 350
 Cleveland, Ohio 44122-5687
 Telephone: (216) 360-3737
 Fax: (216) 593-0921
*Representing Relator CEO Union and
 Individual Relators*

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Depositions has been sent by fax to counsel for Relators, and by U.S. mail to Ms. Williams, on this 14th day of September, 2007.

Lindsey Williams, Assistant Attorney General
Constitutional Office Section
30 E. Broad Street, 17th Floor
Columbus, OH 43215-3428

Robert J. Triozzi, Esq.
Theodora M. Monegan, Esq.
William Sweeney, Esq.
City of Cleveland, Department of Law
601 Lakeside Avenue, Room 106
Cleveland, OH 44114-1077



STEWART D. ROLL (Reg. #0038004)
*Representing Individual Relators and
the Municipal Construction Equipment
Operators' Labor Council*

Monegan, Theodora

From: Stewart D. Roll [sdanl@msn.com]
Sent: Wednesday, September 19, 2007 7:12 AM
To: Monegan, Theodora
Cc: Stewart D. Roll; Eva Potter
Subject: Re: Notice of Depositions

Dear Ms. Monegan:

Your assurances of Cleveland's planned payment to my clients pursuant to the Ohio Supreme Court's 8/15/07 judgment and writs of mandamus is appreciated, but does not obviate the need for the scheduled depositions in this case. Respondents failure and refusal to commit to a definitive payment date, and failure to provide payroll records for the period of 1/1/04 - 2/14/05, 34 days after being ordered to pay evidences Respondents' noncompliance with and foot dragging in response to the Supreme Court's judgment and writs of mandamus.

For these and other reasons, the scheduled depositions are necessary and appropriate. When I telephoned you yesterday, we discussed these facts and I asked whether Respondents and its employees planned to comply with the notice of deposition and subpoenas that have been issued, served and filed. You declined to definitively respond to that inquiry. Please be advised that any failure to appear and participate in those depositions or failure to produce the requested documents will likely result in a supplement to my pending motions to show cause and for sanctions.

Please contact me if you have any questions.

Sincerely,
 Stewart D. Roll

----- Original Message -----

From: Monegan, Theodora
To: 'Stewart D. Roll'
Sent: Tuesday, September 18, 2007 3:44 PM
Subject: Notice of Depositions

*CITY OF CLEVELAND
 DEPARTMENT OF LAW*

*Theodora M. Monegan
 Chief Assistant Director of Law
 (216) 664-4507
 (216) 664-2663 facsimile
 601 Lakeside Avenue - Room 106
 Cleveland, OH 44114*

September 18, 2007

Dear Mr. Roll:

You sent a Notice of Depositions by facsimile on September 14, 2007 setting the depositions of six City employees in Supreme Court Case No. 2006-2056 for September 24, 2007. You also sent a Request for Production of Documents by facsimile in the same Supreme Court case. The Supreme Court has issued its judgment. As the Law Department has stated to you, the City is complying with

9/19/2007

the Supreme Court's order. The only item currently pending before the Court are your Motions for (1) an order to show cause why the City should not be held in contempt, and (2) sanctions until the City's compliance with the Court's order. The Supreme Court has not ruled on your Motions yet.

The City will be opposing these motions. As such, there is no reason for discovery at this point in the proceedings. Additionally, there is no need for such discovery because the City has assured you that it is complying with the Court's order. Because the City must gather payroll information and calculate wages due under the Supreme Court Judgment Entry, the City will provide that information to you when it has finished that task. Therefore, I cannot see the need or the right to conduct discovery at this time.

You may email me, or I am available to meet with you discuss this matter with you.

Yours truly,

Theadora M. Monagan

The information contained in this e-mail is attorney-client privilege and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. postal service.