

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

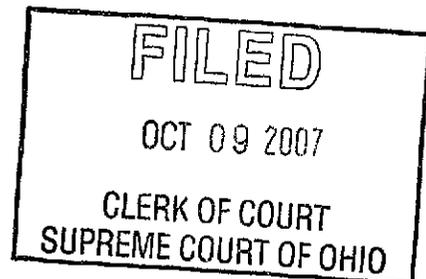
NOTICE OF SUBMISSION OF
SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF PENDING
MOTIONS FOR AN ORDER REQUIRING RESPONDENTS
TO SHOW CAUSE, AND FOR SANCTIONS

Stewart D. Roll (0038004)
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
sroll@perskylaw.com

COUNSEL FOR RELATORS

Robert J. Triozzi, Esq.
Director of Law City of Cleveland
Theodora M. Monegan, Esq.
Chief Assistant Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(216) 664-2800
Fax No. (216) 664-2663
tmonegan@city.cleveland.oh.us

COUNSEL FOR RESPONDENTS



Relators hereby submit to this Honorable Court the attached Affidavit of Stewart D. Roll in support of the Relators' pending motions for an Order requiring Respondents to show cause, and for sanctions, and providing Respondents with notice of this submission.

Respectfully submitted,



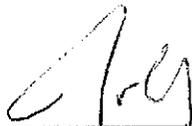
STEWART D. ROLL (Reg. #0038004)
*Representing Individual Relators and
the Municipal Construction Equipment
Operators' Labor Council*

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Submission of Supplemental Affidavit in Support of Pending Motions for an Order Requiring Respondents to Show Cause, and For Sanctions has been sent to the following via regular U.S. Mail on this 8th day of October, 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*

**AFFIDAVIT IN SUPPORT
OF PENDING MOTIONS TO
SHOW CAUSE AND FOR SANCTIONS**

STATE OF OHIO)
)
CUYAHOGA COUNTY) ss:

Stewart D. Roll, after being duly sworn, deposes and says:

1. He is the attorney for Respondents in this case, and makes this affidavit based upon his personal knowledge.
2. On October 4, 2007, Barbara Langhenry, Esq., chief counsel for Respondents, sent to him the email attached as Exhibit "A" to this affidavit. That email advises that Cleveland "will not have the paychecks ready by tomorrow ." That information is contrary to Respondents advice to the Court in their Opposition to Relator's pending motions to show cause and for sanctions, which suggested that Respondents intended to pay the individually named Relators by October 5, 2007. Ms. Langhenry's email says that Cleveland *should have* payments and interest for individually named Relators by Thursday, October 11, 2007 at the latest. There are 19 individually named Relators.
3. On October 4, 2007, the undersigned sent an email to Ms. Langhenry noting that this Court's August 15, 2007 Judgment Entry and Writs of Mandamus orders Respondents to pay *"the city's construction-equipment operators and master mechanics the difference between the prevailing wage rates and the lower rates they were paid for the period of May 1, 1994 through February 14, 2005 and not just the individually named Relators.* A true copy of that email is attached as Exhibit "B" to this Affidavit.
4. On September 18, 2007, the undersigned received an email from Theodora M. Monegan, Esq., Chief Assistant to the Director of Law for Respondents, which acknowledges receipt of instructions from 71 persons who were or are the city's construction-equipment operators during the period of May 1, 1994 - February 14, 2005, and are thus affected by the Court's judgment entry and writs of mandamus, about legal fees to be made from the payment ordered by this Court. A true copy of that email is attached as Exhibit "C" to this Affidavit. That email offers to deduct a percentage from each paycheck for issuance to the undersigned's law firm, upon receipt of the express permission of the affected employee. The undersigned has since collected and sent to Respondents' attorneys such express permission and new instructions from and for 72 individuals who were the city's construction-equipment operators during the period of May 1, 1994 - February 14, 2005.
5. On October 5, 2007, Ms. Langhenry sent to the undersigned an email that is attached as Exhibit "D" to this Affidavit. That email states without reservation that, "The City will only be paying those persons individually names as Relators in Supreme Court Case No.

2005 [sic 2006]-2006. If there were any doubt about whether Relators intended to ignore the clear words of this Court's August 15, 2007 Judgment Entry and Writs of Mandamus to pay all of those persons employed by Cleveland as construction-equipment operators and master mechanics during the period of May 1, 1994 - February 14, 2005, clarification is provided by the October 2, 2007 Motion to Vacate filed by Respondents in Cuyahoga County, Ohio Court of Common Pleas Case No. SD 07-076306. A true copy of that Motion is attached as Exhibit "E" to this Affidavit. On page 4, line 8 of the Law and Argument section of that Motion, Respondents make clear their claim that: "*The August 15, 2007 order of the Supreme Court required a calculation of back pay due to nineteen Relators and then a payment of the amount calculated.*"

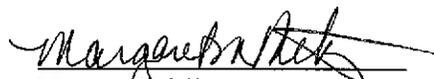
6. It is clear to the undersigned based upon contents of this Court's August 15, 2007 Judgment Entry and Writs of Mandamus, and the evidence filed by Relators in support of their pending Motion to Show Cause and for Sanctions, that Respondents are well aware that they are obligated to pay all of the persons employed by Cleveland as construction-equipment operators and master mechanics during the period of May 1, 1994 - February 14, 2005 and not just the individually named Relators.

Further Affiant sayeth naught.



Stewart D. Roll

Sworn to before me as true this 8th day of October 2007.


Notary Public

MARGARET A. METZINGER, AGENCY
11111 11111, City of Ohio
11111 11111 11111 11111 11111
Section 149.05 R.C.

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

From: "Langhenry, Barbara" <BLanghenry@city.cleveland.oh.us>
To: "Stewart D. Roll" <sdanl@msn.com>; "Langhenry, Barbara"
<BLanghenry@city.cleveland.oh.us>
Cc: "Triozzi, Robert" <RTriozzi@city.cleveland.oh.us>
Sent: Thursday, October 04, 2007 6:12 PM
Subject: RE: Cleveland's Payment Pursuant to Supreme Court Case No.
2006-2056

> Mr. Roll:

>
> Unfortunately, the City will not have the paychecks ready by
> tomorrow, October 5, 2007. As the City's Commissioner of Accounts,
> Richard
> Sensennbrenner, said in his affidavit , "Given no unforeseen difficulties,
> the City should be in a position to issues [sic] paychecks to the
> employees
> by October 5, 2007." The process of gathering information and making
> calculations has taken a few more days than expected. The City should
> have
> the paychecks and interest payments for the individually named Relators in
> Supreme Court Case No: 2006-2056 who are not deceased ready by Thursday,
> October 11, 2007 at the latest.

>
> As a courtesy to you and in accordance with the payment instructions
> that we have received, the City will be deducting forty percent of the
> gross
> wages from each paycheck and issuing a check to you for the total
> deductions. The interest checks will be payable to you and each of the
> individually named Relators. Additionally, will you be sending the
> original
> copies of these payment instruction memos to us? As to the two deceased
> Relators, we need proof of authority to receive the checks and to instruct
> the City to deduct forty percent.

>
> Someone from the Law Department will notify you when the checks are
> ready. They can be picked up directly from the Treasury Division in City
> Hall by the person to whom the check is issued with proper identification,
> or the City can mail them to the person to whom the check is issued. Let
> me
> know what you and your clients desire.

>
> I realize that you have called me a couple of times today. I have
> not been in my office for most of the day. I trust that this e-mail
> answers
> what you called about.

> Barbara
>
>

EXHIBIT "A"

From: Stewart D. Roll
To: Langhenry, Barbara
Cc: Triozzi, Robert
Sent: Thursday, October 04, 2007 8:18 PM
Subject: Re: Cleveland's Payment Pursuant to Supreme Court Case No. 2006-2056

Dear Ms. Langhenry:

Thank you for responding to my below noted October 3, 2007 email. I understand your response to mean that Cleveland **will not** be paying **all** of those persons employed by it as construction equipment operators and master mechanics during the period of May 1, 1994 - February 14, 2005, as required by the subject judgment and writs of mandamus. That understanding is based upon your advice that, "The City should have the paychecks and interest payments for the **individually named Relators** in Supreme Court Case No. 2006-2056 who are not deceased ready by Thursday, October 11, 2007 at the latest." If Cleveland intends to nonetheless pay **all** of those persons employed by it as construction equipment operators and master mechanics during the period of May 1, 1994 - February 14, 2005, you must advise me of that fact by email no later than Friday, October 5, 2007 at 11:00 a.m. Failure to provide that advice will result in me confirming that understanding in an evidentiary affidavit to be filed with the Ohio Supreme Court. **Failure to provide that advice will also require the persons identified in my September 14, 2007 email to you to appear for their scheduled depositions under penalty of being held in contempt of Judge McDonnell's order issued in Cuyahoga County, Ohio Special Docket Case No. Case: SD 07076306. A courtesy copy of that email appears below.**

Sincerely,
Stewart D. Roll

EXHIBIT "B"

Stewart D. Roll

From: Monegan, Theodora [TMonegan@city.cleveland.oh.us]
Sent: Tuesday, September 18, 2007 6:18 PM
To: 'Stewart D. Roll'
Subject: Payment instructions

*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:

The City received 71 "Payment Instruction Memorandum" forms over the last three weeks, completed by individuals claiming city employment sometime during the time between May 1, 1994 and February 14, 2005 (your form states 'February 15, 2005, but I assume that is a typographical error). The instructions state that the City is to make checks payable to the person and the law firm, Persky, Shapiro & Aronoff Co., L.P.A. I had asked that you provide the City with a completed W-9 for the firm, which you did.

In the decision, the Supreme Court ordered the respondents to pay the relators, construction equipment operators A, B, and master mechanics, the difference in the prevailing wage rates and the lower rates actually paid for the period May 1, 1994 through February 14, 2005 less the collective-bargaining offset of \$2,500 for those employees who worked during the period from January 1, 2004 through January 31, 2005.

The payments to the individual relators are "wages" and as such, the checks that will issue to these individuals are in their names only. Paychecks are issued to employees for wages earned. Paychecks are not issued to more than one person. Upon the express permission of the employee, the City could deduct a percentage from each paycheck and issue a check to your law firm for that accumulated amount. Or, with the express permission of the employees, the City could also give all of the paychecks to your office. We are certainly available to discuss any thoughts you may have on this matter.

Yours truly,

Theodora M. Monegan

EXHIBIT "C"

10/8/2007

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.

Stewart D. Roll

From: Langhenry, Barbara [BLanghenry@city.cleveland.oh.us]
Sent: Friday, October 05, 2007 5:14 PM
To: Stewart D. Roll
Cc: Triozzi, Robert; Sweeney, William
Subject: RE: Cleveland's Payment Pursuant to Supreme Court Case No. 2006-2056

Mr. Roll:

The City will be paying only those persons individually named as Relators in Supreme Court Case No. 2005-2056.

Additionally, no City officials will be appearing at your offices for depositions on Monday, October 8, 2007; Tuesday, October 9, 2007; or Wednesday, October 10, 2007. As you know, the City filed a motion with the Court regarding these depositions. Among other things, these depositions are not in compliance with the Ohio Revised Code because they are not scheduled to be before a judge or referee. It is my understanding that the Court will be holding a hearing on the City's motion later this month.

Barbara

COPY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, EX REL., MUNICIPAL)
CONSTRUCTION EQUIPMENT)
OPERATORS' LABOR COUNCIL, et al.,)

Case No. SD 07 076306

Judge Nancy R. McDonnell

-v-

CITY OF CLEVELAND, et al.,)
)

**MOTION TO VACATE ORDER
OR, IN THE ALTERNATIVE,
FOR PROTECTIVE ORDER**

MOTION

The City of Cleveland, Mayor Frank Jackson, and Cleveland City Council (collectively referred to in this Motion and Brief as "City"), through their lawyers, move the Court to vacate its Order of September 12, 2007 to Examine them with respect to their assets signed on September 12, 2007. In the alternative, the City moves for a protective order stating that the depositions of various City officials scheduled for October 8, 9, and 10, 2007 not be had.

STATEMENT OF THE FACTS AND THE CASE

On August 15, 2007, the Ohio Supreme Court ordered a writ of mandamus to compel the City, the Respondents in the case before that Court, 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." The Judgment Entry and the Court's opinion

EXHIBIT "E"

require the City to calculate the wage difference for each of the individually named Relators. Neither the Judgment Entry nor the Court's opinion stated a sum certain due to any of the Relators.

On September 12, 2007, under Ohio Revised Code 1333.09, the Relators in the Supreme Court case, who also included the Municipal Construction Equipment Operators' Labor Council, (collectively referred to in this Motion and Brief as "MCEO), filed a Motion for an Order to Examine Debtors in Aid of Execution of Writs of Mandamus and Judgment Entry issued by the Ohio Supreme Court with this Court. The affidavit of the MCEO's attorney attached to the Motion merely states that the City has failed to comply with the Supreme Court's writs. The attorney's affidavit does not designate a judgment amount or further specify that the Supreme Court ordered the City to pay a sum certain.

This Court signed an Order and Judgment Entry the same day. On September 14, 2007, Relators' lawyer sent a schedule for three days' worth of depositions purportedly authorized by the Common Pleas Court's Order. Included among the deponents are the Mayor, the Council President and nine Councilmembers, the Council Clerk, the City's Finance Director, the Commissioner of Fiscal Control from the Public Utilities Department, the City Treasurer, the City Controller, and a budget manager in the Finance Department. See e-mail from MCEO's counsel attached as Exhibit A.

Also on September 12, 2007, the MCEOs filed with the Ohio Supreme Court 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. The City has opposed this Motion.

The MCEO counsel is also seeking discovery in the Supreme Court case, in which that Court has entered its final judgment. On September 14, 2007, the MCEO's counsel signed six Common Pleas Court Subpoenas bearing the Supreme Court Case number for the Director of Law, the Director of Finance, the Commissioner of Accounts, the Commissioner of the Division of Information Technology and Services, the City Treasurer, and a Clerk in the Division of Accounts. The City has filed a Motion to Quash those subpoenas with the Supreme Court. Again on September 14, 2007, the MCEO's counsel sent a Notice of Depositions under the Supreme Court case by facsimile to City's counsel setting the depositions of the same six City officials to whom the subpoenas were directed for Monday, September 24, 2007. Also on September 14, 2007, MCEO's counsel sent a Request for Production of Documents under the Supreme Court case by facsimile to City's counsel.

The City is complying with the Supreme Court's Judgment Entry. To comply, the City must issue paychecks to the individually named Relators. To do this, the Division of Accounts had to figure out the best way to determine the rate of pay and hours worked for each person for the relevant period, which starts in 1994, calculate the amount due to each person and generate paychecks for the wage deficiencies. The calculation involves determining the hours

worked by each person each year of the relevant eleven year period, determining whether the hours were regular or overtime, and determining the rate of pay for each hour. Once those determinations are made, the difference in the rate of pay must be determined and then multiplied. The steps that the Division of Accounts is taking to comply with the Judgment Entry are included in the copy of the Affidavit of the Commissioner of Accounts that was attached to the City's Brief in Opposition to the Show Cause and Sanctions Motions filed by the MCEOs.¹ Barring anything unforeseen, the Commissioner of Accounts estimates that the checks will be ready by October 5, 2007.

Law and Argument

Ohio Revised Code Section 2333.09 is designed to force a judgment debtor to submit to examination so that a judgment may be satisfied. Under O.R.C. 2333.09, "A judgment creditor shall be entitled to an order for the examination of a judgment debtor concerning his property, income, or other means of satisfying the judgment upon proof by affidavit that such judgment is unpaid in whole or in part."² The City is not yet a judgment debtor as contemplated by the Ohio Revised Code section. The August 15, 2007 order of the Supreme Court required a calculation of back pay due to nineteen Relators and then a payment of the amount calculated. The City is in the process of doing those calculations. There is no specific debt until those calculations are done. If MCEOs were to examine the City and identify funds, they would have

¹A copy of the Affidavit is attached to this Brief as Exhibit B.

² O.R.C. 2333.09.

no right to attach those funds at this time because they do not know what amount is due.

Additionally, Section 2333.09 requires that the examination be done before a judge or a referee of the Court. "Such order [order for the examination of a judgment debtor] shall be issued by. . .a judge of the court of common pleas. . .requiring such debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place within the county to be specified in the order."³ Neither the Order nor the MCEO's attorney's e-mail indicates that the depositions are before a judge or a referee. Because the depositions are scheduled to be at the MCEO's attorney's offices, the City assumes that no judge or referee is scheduled to be present. This is directly contrary to the statutory requirements.

MCEOs are seeking to depose many high-ranking officials from the City of Cleveland, including the mayor, the council president, several councilmembers, the council clerk, a department director, and several commissioner-level officials. High-ranking government officials are generally not subject to deposition unless those officials have direct personal knowledge. "In general, heads of agencies and other top government executives are normally not subject to depositions. . .The rationale pursuant to this policy is that such officials must be free to conduct their jobs without the constant interference of the discovery process. . .An exception to this general rule exists concerning top officials who have direct

³ O.R.C. 2333.09

personal factual information pertaining to material issues in an action.”⁴ In a case where a plaintiff was asking for more time than his allowed one hour deposition of Cleveland’s Mayor, the federal District Court stated, “In order for this Court to compel Mayor White to undergo further depositions, it is necessary for Plaintiff to show that the Mayor has some particular individualized knowledge that Plaintiff can only glean from the Mayor.”⁵

Ohio Revised Code 2333.09 states that a judgment creditor shall be entitled to examine a judgment debtor “concerning his property, income, or other means of satisfying the judgment. . . .”⁶ The Finance Director is the only person who has any particular individualized knowledge regarding the City’s ability to satisfy the Supreme Court judgment, once the City determines how much is owed. The Finance Director states in an affidavit attached to this Motion that, based on current estimates of what the City will owe to the individually named Relators in the Supreme Court case, the City will be able to satisfy the judgment out of the money in its current budget.⁷ With this affidavit, the MCEOs have no need to depose the Finance Director at this time. Additionally, the MCEOs have not shown that the other high-ranking City officials it seeks to depose have any particular individualized knowledge that may be gleaned only from them. Thus, the MCEOs should not be entitled to depose the other City officials.

⁴ *Church of Scientology of Boston v. I.R.S.*, 138 F.R.D. 9, 12 (D.Mass. 1990) (citations omitted.).

⁵ *Tower Press Bldg. Inc. v. White*, 165 F.R.D. 73, 75 (N.D.Ohio 1996).

⁶ O.R.C. 2333.09.

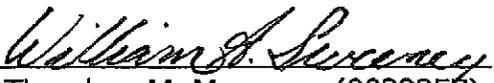
⁷ Affidavit of Cleveland Finance Director Sharon Dumas, attached as Exhibit C.

CONCLUSION

Because the City is not yet a judgment debtor as contemplated by the Ohio Revised Code because the amount due is still unknown, because the depositions sought by the MCEOs are not scheduled before the Court, or a referee, as required in the Revised Code, and because the high ranking officials the MCEOs seek to depose should not be subject to deposition unless MCEOs show what particular individualized knowledge each of them has that makes the depositions necessary, the City respectfully requests the Court to vacate its Order of September 12, 2007, or in the alternative, to issue a protective order that the depositions scheduled by the MCEO lawyer for October 8, 9, and 10, 2007 not be had.

Respectfully submitted,

ROBERT J. TRIOZZI
Director of Law

By: 
Theodora M. Monegan (0039357)
Chief Assistant Director of Law
William A. Sweeney (0041415)
Assistant Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(216) 664-2800; fax: (216) 664-2663
tmonegan@city.cleveland.oh.us
wsweeney@city.cleveland.oh.us

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

City/Respondents mailed a copy of this Motion to Vacate Order or, in the alternative, for Protective Order on the 2nd day of October, 2007 to the attorney for MCEOs/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


One of the Attorneys for City/Respondents

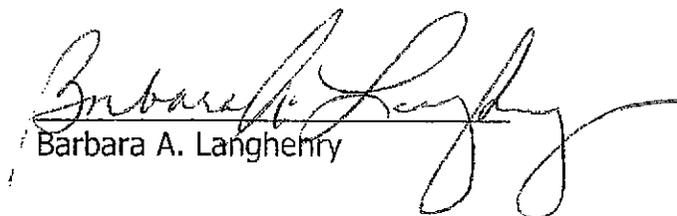
29230

AFFIDAVIT OF BARBARA A. LANGHENRY

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) ss:

I, Barbara A. Langhenry, being competent to testify and duly sworn, state as follows based on personal knowledge:

1. I am the Chief Counsel in the City of Cleveland's Law Department.
2. The attached e-mail to me from Stewart D. Roll dated September 14, 2007 at 4:23 p.m. regarding pending depositions he scheduled as a result of the Motion for an Order to Examine Debtors filed in Cuyahoga Common Pleas Court and assigned Case No. SD07 076306 is a true and accurate copy of the e-mail and attachment sent by Mr. Roll to me on that date and at that time.


Barbara A. Langhenry

Sworn to and subscribed before me this 2nd day of October, 2007.


Notary Public

RICHARD F. HORVATH, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

EXHIBIT A

Langhenry, Barbara

From: Stewart D. Roll [sdanl@msn.com]
Sent: Friday, September 14, 2007 4:23 PM
To: Langhenry, Barbara
Cc: Triozzi, Robert; 'Stewart D. Roll'; sdanl@msn.com; 'Eva Potter'
Subject: Pending Depositions - MCEOLC v. Cleveland, Frank Jackson and City Counsel - Case: SD 07076306
Attachments: _0914152411_001.pdf

Dear Ms. Langhenry:

Please find attached a courtesy copy of an Order and Judgment Entry signed and filed by the Honorable Nancy R. McDonnell, requiring noted depositions and production of documents. In that regard, I plan to depose the following persons on the dates and times indicated in this email. Please plan to produce the described documents in advance of the depositions. Please contact me if you have any questions. Please telephone me if you would like to discuss this email.

October 8, 2007

10:00 a.m. - City Council President and Finance Committee Chair Martin Sweeney.
 10:30 a.m. - Clerk of Council Emily Lipovan
 11:00 a.m. - Councilwoman Fannie Lewis
 1:00 p.m. - Mayor Frank Jackson
 2:00 p.m. - Commissioner, Dennis Nichols, Division of Public Utilities Fiscal Control, Department of Public Utilities

October 9, 2007

10:00 a.m. - Treasurer Algeron Walker
 11:00 a.m. - Operating Budget Manager Lee Carpenter, Department of Finance
 1:00 p.m. - Director Sharon Dumas, Department of Finance
 2:00 p.m. - City Controller James Gentile

October 10, 2007

10:00 a.m. - Councilman and Vice Chair of the Finance Committee
 10:00 a.m. - Councilwoman Dona Brady and Member of the Finance Committee
 11:00 a.m. - Councilman Anthony Brancatelli and Member of the Finance Committee
 1:00 p.m. - Councilwoman Patricia Britt and Member of the Finance Committee
 1:45 p.m. - Councilman Roosevelt Coats and Member of the Finance Committee
 2:30 p.m. - Councilman Jay Westbrook and Member of the Finance Committee
 3:15 p.m. - Councilman Matt Zone and Member of the Finance Committee
 4:00 p.m. - Councilwoman, Majority Leader Sabra Scott and Member of the Finance Committee

Sincerely,

Stewart D. Roll Esq.
 Messersky, Shapiro & Arnoff Co., LPA
 5101 Chagrin Blvd. - Suite 350
 Beachwood, Ohio 44122
 Tel. (216) 360-3737
 Fax (216) 593-0921

10/2/2007

IN THE COURT OF COMMON PLEAS
FOR CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel.)
MUNICIPAL CONSTRUCTION)
EQUIPMENT OPERATORS')
LABOR COUNCIL, et al.)
)
vs.)
)
CITY OF CLEVELAND, OHIO)
MAYOR FRANK JACKSON)
CLEVELAND CITY COUNCIL)
)

CASE NO. *SD07076346*
JUDGE: *NANCY R. McDONNELL*

**ORDER AND
JUDGMENT ENTRY**

After due consideration of the Motion of Relators in Ohio Supreme Court Case No. 2006-2056, for an Order to examine the Respondents in that case, the City of Cleveland, Ohio, Mayor Frank Jackson, and Members of Cleveland, Ohio's City Council, with respect to their assets, and to require production of their records with respect to those assets, the Court finds that Motion to be well taken.

Accordingly, pursuant to Ohio Revised Code Section 2333.09, this Court orders the City of Cleveland, Ohio to produce employees identified by counsel for Relators in Ohio Supreme Court Case No. 2006-2056, Mayor Frank Jackson, and Members of Cleveland, Ohio's City Council, to appear in the offices of Stewart D. Roll at 25101 Chagrin Blvd., Suite 350, in Beachwood, Ohio on October 8, 9 and 10, 2007 in the order and at the times specified by him to be examined with respect to the amount owed pursuant to that Judgment and their assets, and to produce records of where they conduct their banking and maintain their savings, where they maintain and to produce information with respect to all of their financial accounts, the amount of money deposited in and withdrawn from

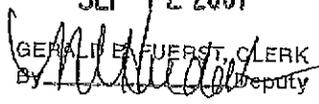
those accounts over the last 180 days, their receipts from their sale of water and power over the last 180 days, where those receipts are deposited, as well as a list of all assets, including but not limited to real property, computers, furniture and other items that might be sold to satisfy the Judgment and Writs of Mandamus issued by the Ohio Supreme Court in Case No. 2006-2056.

SO ORDERED this 12 day of September, 2007.


Judge

RECEIVED FOR FILING

SEP 12 2007

GERALD E. FUERST, CLERK
By  Deputy

AFFIDAVIT OF RICHARD SENSENBRENNER

STATE OF OHIO)
) **ss:**
COUNTY OF CUYAHOGA)

I, Richard Sensenbrenner, being competent to testify and duly sworn,
state as follows based on personal knowledge:

1. I am the Commissioner of Accounts for the City of Cleveland.
2. As the Commissioner of Accounts, I direct the Division of Accounts in the Department of Finance.
3. The Division of Accounts processes the payroll for City of Cleveland employees.
4. The City's Law Department gave me a copy of the Supreme Court opinion in the case *State ex rel. Municipal Construction Equipment Operators' Labor Council et al. v. City of Cleveland et al.*, Case No. 2006-2056 decided August 15, 2007.
5. I read the opinion and discussed its meaning with lawyers from the Law Department.
6. I sent the opinion to OPERS for review to determine pension applicability.
7. I gathered and coordinated the City personnel required to calculate the wages due under the opinion.

8. I considered, with other City personnel, whether to calculate the wages manually using paper print outs of payroll data or whether to extract and calculate the data using the computer. I decided that the most efficient and reliable method would be to extract and calculate the data using the computer and then to verify the data with the paper print outs of payroll data.

9. One of the City personnel assigned to this task is an employee in the Division of Information Technology and Services. He was assigned to extract the data from the Ceridian Payroll System that holds the data from 1994 through 2003. He had to define the needs, which included job codes and pay codes; create new dictionary items to ensure that the data extracted was consistent from year-to-year; and try several times to overcome application limitations to capture the required data. Each year of data required about two hours worth of work to process and convert to Excel.

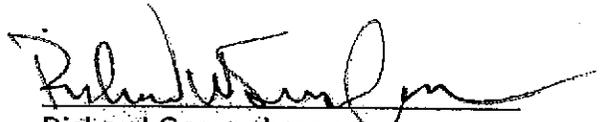
10. Another employee from the Division of Accounts extracted the required data from the ADP Payroll System that holds the data from 2004 through 2005.

11. Another employee calculated and confirmed the rates at which the employees were actually paid for each job classification during the relevant time period. He also determined whether the time was paid as regular time, overtime, or double overtime.

12. This employee is currently creating a worksheet for each employee and calculating the pay rate differences and balances due.

13. Once the tasks in paragraph 12 are completed, City personnel will compare the balance due to the paper reports of pay histories and estimates based on those histories; distribute the information to the payroll clerks for the divisions to which the various employees are or were assigned to review and approve the calculated information; forward the information to the appropriate commissioners and directors for approval; process the checks; perform special processing functions for those employees who are deceased; and calculate pensions and submit them to OPERS.

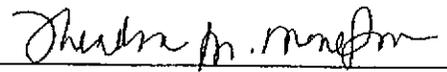
14. During the short work week beginning on Labor Day, September 3, 2007 and up to September 7, 2007, I was not able to estimate when this process would be finished. Now that the process is farther along, I am able to make a reasonable estimate. Given no unforeseen difficulties, the City should be in a position to issue paychecks to the employees by October 5, 2007. The City will also calculate the post judgment interest and issue checks for those amounts.


Richard Sensenbrenner

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



THEODORA M. MONEGAN
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.

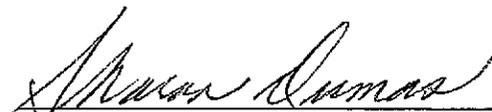

Notary Public

AFFIDAVIT OF SHARON DUMAS

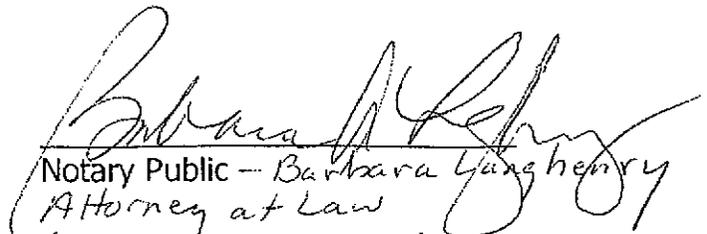
STATE OF OHIO)
) **ss:**
COUNTY OF CUYAHOGA)

I, Sharon Dumas, being competent to testify and duly sworn, state as follows based on personal knowledge:

1. I am the Director of Finance for the City of Cleveland.
2. I have been advised by the City's Law Department that an order has issued in Ohio Supreme Court Case Number 2006-2056, decided August 15, 2007, requiring the City to pay back pay to certain construction equipment operators and master mechanics.
3. Officials from the Department of Finance and other City departments have been working to determine what amounts are due to those employees.
4. Based on estimates given to me by those officials, there is enough money in the City's current budget to pay those amounts.


Sharon Dumas

Sworn to and subscribed before me this 2 day of October, 2007.


Notary Public -- Barbara Langhenry
Attorney at Law
My commission has no
expiration date. ORC 147.03