

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

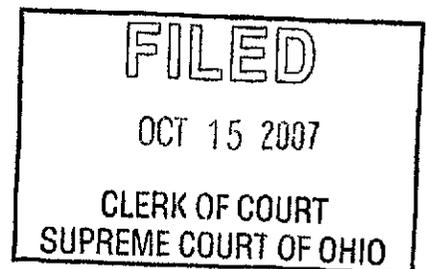
NOTICE OF SUBMISSION OF THIRD
SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF PENDING
MOTIONS FOR AN ORDER REQUIRING RESPONDENTS
TO SHOW CAUSE, AND FOR SANCTIONS

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)
PAUL R. ROSENBERGER (Reg. #0069440)
*Representing Individual Relators and
the Municipal Construction Equipment
Operators' Labor Council*

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Submission of Third 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 12th 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)
PAUL R. ROSENBERGER (Reg. #0069440)
*Representing Individual Relators and
the Municipal Construction Equipment
Operators' Labor Council*

AFFIDAVIT

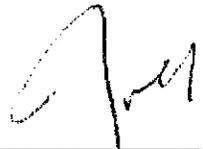
STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

ss:

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

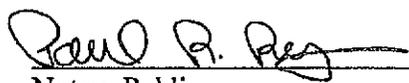
1. The Court's August 15, 2007 judgment and writs of mandamus issued in this case orders Respondents to pay those persons employed by Cleveland as construction-equipment operators and master mechanics during the period of May 1, 1994 - February 14, 2005 the difference in amount between the prevailing wage rate and the amount that Relators were paid, less a \$2,500 set-off for those persons so employed by Cleveland during the period of January 1, 2004 - January 31, 2005. A copy of that judgment and those writs are attached as Exhibit "A" to this Affidavit.
2. The undersigned has identified to Respondents and they are obligated to pay at least 72 persons employed by Cleveland as construction-equipment operators and master mechanics during the period of May 1, 1994 - February 14, 2005, pursuant to the attached judgment and writs of mandamus.
3. In keeping with their contempt of this Court's August 15, 2007 judgment and writs of mandamus, on October 11, 2007, Respondents paid 17 of those 72 employees, promised to pay 2 additional deceased employees upon receiving authority from their respective estates, and after making those 2 additional payments claim that they will have fully satisfied their duty to comply with that judgment and those writs.
4. On October 8, 2007 the undersigned sent to Barbara Langhenry, Esq. the email attached as Exhibit "B" to this Affidavit. Ms. Langhenry has identified herself as Respondents' chief counsel. A copy of that email was also sent to Robert Triozzi, Esq., Respondents' Director of Law. That email confirms that they and their clients will not comply with this Court's judgment entry and writs of mandamus absent a further order from this Court. Neither Ms. Langhenry nor Mr. Triozzi responded to the October 8, 2007 email attached as Exhibit "B" to this Affidavit.

FURTHER AFFIANT SAYETH NAUGHT.



Stewart D. Roll

Sworn to before me as true this 12th day of October, 2007.



Notary Public
Paul R. Rosenberger, Attorney
Notary Public - State of Ohio
My Commission has no expiration date
Section 147.03 O.R.C.

ON COMPUTER-VJC

The Supreme Court of Ohio

FILED

AUG 15 2007

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio ex rel. Municipal
Construction Equipment Operators' Labor
Council et al.

Case No. 06-2056

IN MANDAMUS

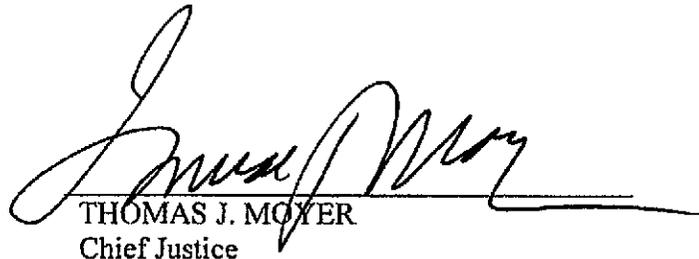
v.

JUDGMENT ENTRY

City of Cleveland et al.

This cause originated in this Court on the filing of a complaint for a writ of mandamus and was considered in a manner prescribed by law.

It is ordered by the Court that a writ of mandamus is granted in part to compel 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 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 writ is denied in all other respects, consistent with the opinion rendered herein.


THOMAS J. MOYER
Chief Justice

I HEREBY CERTIFY that this document is a true and accurate copy of the entry of the Supreme Court of Ohio filed Aug 15, 07 in Supreme Court case number 06-2056.

In witness whereof I have hereunto subscribed my name and affixed the seal of the Supreme Court of Ohio on this 14th day of Sept., 2007

CLERK OF COURT
by Tom Imber, Deputy

**ELECTRONICALLY
JOURNALIZED**

EXHIBIT "A"

The Supreme Court of Ohio

2006-2056

State of Ohio ex rel. Municipal
Construction Equipment Operators' Labor
Council et al.

WRIT OF

v.

MANDAMUS

City of Cleveland et al.

STATE OF OHIO, CITY OF COLUMBUS

To: City of Cleveland,
601 Lakeside Ave.
Cleveland, Ohio 44114

You are hereby served with a copy of the following writ.

WHEREAS, a complaint for writ of mandamus was filed in the Supreme Court of Ohio, an order has been made by said Court allowing a writ of mandamus, a copy of which is attached hereto;

NOW, THEREFORE, in order that full and speedy justice should be done in the premises, we do command that, immediately upon the receipt of this writ, you comply with the order of the Court as stated.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court, on this 15th day of August, 2007.

SANDRA HUTH GOSKO INTERIM CLERK

Justin Kudela DEPUTY

The Supreme Court of Ohio

2006-2056

State of Ohio ex rel. Municipal
Construction Equipment Operators' Labor
Council et al.

WRIT OF

v.

MANDAMUS

City of Cleveland et al.

STATE OF OHIO, CITY OF COLUMBUS

To: Frank Jackson, Mayor
601 Lakeside Ave.
Cleveland, Ohio 44114

You are hereby served with a copy of the following writ.

WHEREAS, a complaint for writ of prohibition was filed in the Supreme Court of Ohio, an order has been made by said Court allowing a writ of prohibition, a copy of which is attached hereto;

NOW, THEREFORE, in order that full and speedy justice should be done in the premises, we do command that, immediately upon the receipt of this writ, you comply with the order of the Court as stated.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court, on this 15th day of August, 2007.

SANDRA HUTH GRSKO INTERIM CLERK

Justin Kudela DEPUTY

The Supreme Court of Ohio

2006-2056

State of Ohio ex rel. Municipal
Construction Equipment Operators' Labor
Council et al.

WRIT OF

v.

MANDAMUS

City of Cleveland et al.

STATE OF OHIO, CITY OF COLUMBUS

To: Cleveland City Council,
Emily Lipovan, Clerk
601 Lakeside Ave.
Cleveland, Ohio 44114

You are hereby served with a copy of the following writ.

WHEREAS, a complaint for writ of prohibition was filed in the Supreme Court of Ohio, an order has been made by said Court allowing a writ of prohibition, a copy of which is attached hereto;

NOW, THEREFORE, in order that full and speedy justice should be done in the premises, we do command that, immediately upon the receipt of this writ, you comply with the order of the Court as stated.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court, on this 15th day of August, 2007.

SANDRA HUTH GOSKO INTERIM CLERK

Justin Kudela DEPUTY

From: Stewart D. Roll [sdanl@msn.com]
Sent: Monday, October 08, 2007 5:15 PM
To: 'Langhenry, Barbara'
Cc: 'Eva Potter'; sdanl@msn.com; rtriozzi@city.cleveland.oh.us; 'Sweeney, William'
Subject: Cleveland's Payment Pursuant to Supreme Court Case No. 2006-2056

Dear Ms. Langhenry:

I understand from your below noted October 5, 2007 email that your clients intend to pay only 19 out of 72 construction equipment operators and master mechanics, notwithstanding the Supreme Court's clear instruction to pay all of those persons who served in that capacity and were employed by Cleveland during the period of May 1, 1994 – February 14, 2005. Evidence of that contempt has accordingly been provided to the Supreme Court. If Cleveland pays only those 19 people this week, I will understand that Cleveland will not comply with the Supreme Court's order to pay the unpaid 53 construction equipment operators and master mechanics that are also subject to and are affected by the Court's August 15, 2007 Judgment Entry and Writs of Mandamus absent the Supreme Court's further orders and issuance of a contempt sanction against Respondents and their attorneys. Please let me know by return email no later than 12:00 p.m. tomorrow if Cleveland will be paying *all* of those persons that it employed as construction equipment operators and master mechanics during the period of May 1, 1994 – February 14, 2005, as is required by the Court's August 15, 2007 Judgment Entry and Writs of Mandamus.

Sincerely,
Stewart D. Roll

From: Langhenry, Barbara [mailto: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

EXHIBIT "B"