

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL., MUNICIPAL)
CONSTRUCTION EQUIPMENT)
OPERATORS' LABOR COUNCIL, et al.,)
Relators)
-v-)
CITY OF CLEVELAND, et al.,)
Respondents.)

Case No. 2006-2056

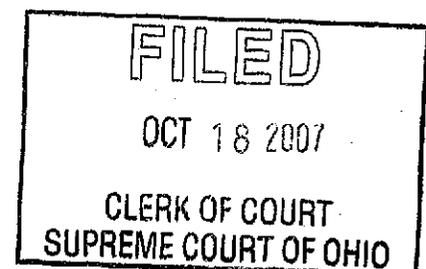
RESPONDENTS' MOTION TO STRIKE AFFIDAVITS

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MOTION TO STRIKE AFFIDAVITS

Respondents move to strike paragraphs 2, and 4 through 11 in the Affidavit of Frank P. Madonia filed with the Court on October 9, 2007. In addition, Respondents move to strike paragraph 6 of the Affidavit of Stewart D. Roll, also filed with the Court on October 9, 2007, because both affidavits contain information that is not based on personal knowledge, and information that is not relevant to the Court's order of August 15, 2007. Further, Respondents move to strike in its entirety the Affidavit of Stewart D. Roll filed with the Court on October 12, 2007, because the affidavit contains legal conclusions that are more properly within the purview of the Court.

LAW AND ARGUMENT

A. Affidavits not based on personal knowledge.

"Affidavits shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit."¹ Paragraph 5 of Frank P. Madonia's affidavit makes conclusions regarding Respondents' actions and asserts that those actions are "deliberate" and "implemented as part of a scheme to resist and defy this Court's lawful Entry and Writs." Mr. Madonia cannot have personal knowledge regarding the Respondents' motives. Paragraph 6 of Stewart D. Roll's affidavit asserts, "Respondents are well aware" of what he believes is obligated. Mr. Roll cannot have personal knowledge regarding what awareness the Respondents have.

¹ Sup.Ct.Prac.R. X(7).

B. Affidavits must contain facts admissible in evidence.

As stated above, Supreme Court Practice Rule X(7) requires that affidavits set forth “facts admissible in evidence.” Paragraphs 2, 3, 4, and 11 of Mr. Madonia’s affidavit contain legal conclusions regarding the meaning of the Court’s August 15, 2007 Order. These legal conclusions are not facts, which set forth evidence. Additionally, paragraphs 6, 7, 8, 9, and 10 of Mr. Madonia’s affidavit set forth information concerning pay rates for the City’s construction equipment operators and master mechanics since May 1, 2007. Those paragraphs do not contain facts admissible in evidence. “Evidence which is not relevant is not admissible.”² The Court’s August 15, 2007 Order requires the City to pay Relators certain back pay for a very specific period – May 1, 1994 through February 14, 2005. The Court’s opinion and Order contain no mandates for the period of May 1, 2007 to the present. Thus, paragraphs 6, 7, 8, 9, 10, and 11 are not relevant to this proceeding.

In his October 12, 2007 Affidavit, Stewart D. Roll in paragraph 2 states a legal conclusion, that Respondents are obligated to pay back wages to more than the 19 Respondents paid. His legal conclusion is not containing any facts admissible in evidence for the same reasons set forth above.

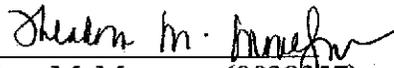
CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court to strike paragraphs 2 and 4 through 11 of the Affidavit of Frank P. Madonia and paragraph 6 of the Affidavit of Stewart D. Roll filed with the Court on October 9, 2007, and the entire Affidavit of Stewart D. Roll filed with the Court October 12, 2007.

² Evid.R.402.

Respectfully submitted,

ROBERT J. TRIOZZI
Director of Law

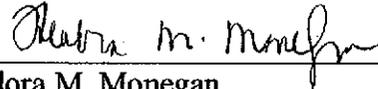
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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

Respondents mailed a copy of this Motion to Strike Affidavits on the 17th day of October 2007 to the attorney for Relators at the following address:

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