

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

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

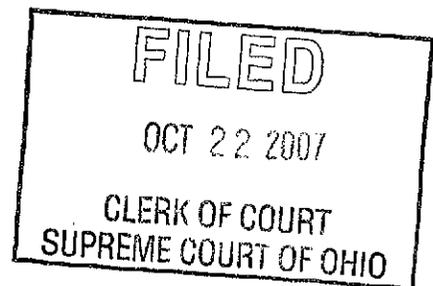
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Stewart D. Roll (0038004)  
Persky, Shapiro & Arnoff Co., L.P.A.  
Signature Square II  
25101 Chagrin Boulevard, Suite 350  
Beachwood, Ohio 44122  
(216) 360-3737  
Fax No. (216) 593-0921  
[sroll@perskylaw.com](mailto:sroll@perskylaw.com)

**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](mailto:tmonegan@city.cleveland.oh.us)

**COUNSEL FOR RESPONDENTS**



Relators hereby submit to this Honorable Court the attached Supplemental Affidavit of Frank P. Madonia in support of their pending motions for an Order requiring Respondents to show cause, and for sanctions, and providing Respondents with notice of this submission.

Respectfully submitted,



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**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 Fourth 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 19<sup>th</sup> 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



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

STATE OF OHIO                    )  
  )  
COUNTY OF CUYAHOGA         )

Comes now Frank P. Madonia, being competent to testify and first duly sworn, states as follows:

1. He makes this affidavit based upon his own personal knowledge, as President of Relator the Municipal Construction Equipment Operators' Labor Council (the "CEO Union"), and in support of Relators' Motions in the above noted case for Orders requiring Respondents to show cause why they should not be deemed contemnors of this Court and for sanctions.
2. Respondents have failed to comply with this Court's August 15, 2007 Judgment Entry and Writs of Mandamus because Respondents have failed to pay those persons employed by Cleveland, Ohio during the period of May 1, 1994 - February 14, 2005 as construction equipment operators and master mechanics, and who are not also individually named Relators. That Judgment Entry requires this payment.
3. He has personally viewed Cleveland's payroll records for those construction equipment operators and master mechanics employed by Cleveland, Ohio during the period of May 1, 1994 - December, 2003. Those records identify by name and hours worked those persons employed by Cleveland, Ohio during that period as construction equipment operators and master mechanics. He has also personally viewed Cleveland's records which identify those persons employed as construction equipment operators and master mechanics by Cleveland, Ohio during the period of December, 2003 - February 14, 2005. Based upon his own pay records, he knows that Cleveland has and can reproduce information for these employees about hours worked and pay received during that period of time.
4. He is not a lawyer, but can read and grasp the meaning of words written in the English language. He has read this Court's Opinion, Judgment Entry and Writs of Mandamus published in the above noted case. His understanding of that Entry and those Writs is that this Court's order to pay applies to all construction equipment operators and master mechanics employed by Cleveland, Ohio during the period of May 1, 1994 - February 14, 2005, not only the individually named Relators.
5. Based upon Respondents' October 18, 2007 Notice of Compliance, it is evident that Respondents' have failed to pay all construction equipment operators and master mechanics employed by Cleveland, Ohio during the period of May 1, 1994 - February 14, 2005, thus, resisting and defying this Court's lawful Entry and Writs. That Notice of Compliance also evidences Respondents' implementation of their

plan to pay only the individually named Relators, when this Court's order directs payment to all construction equipment operators and master mechanics employed by Cleveland, Ohio during the period of May 1, 1994 - February 14, 2005.

6. He is personally familiar with and aware of the hourly rate used by Respondents to pay Relators for their work since May 1, 2007 through the present. That date is the first day of the month after the month in which the CEO Union's collective bargaining agreement with Cleveland expired. According to the April 2, 2007 letter from Jon Dileo, Esq., the parties' negotiations are at impasse. A true copy of that letter is attached as Exhibit "A" to this Affidavit. The parties are still at impasse, and have no collective bargaining agreement. Cleveland refused to extend the terms of the Agreement beyond May 1, 2007.
7. Pursuant to ¶49 of the opinion in this case, Relators are entitled to be paid at the prevailing wage rate when they are not being paid pursuant to a collective bargaining agreement. Notwithstanding that obligation, since May 1, 2007, Cleveland has ceased providing any employment benefits and has unilaterally changed these employees pay to the following rates:

|                  |                  |                         |
|------------------|------------------|-------------------------|
| <u>Group "A"</u> | <u>Group "B"</u> | <u>Master Mechanics</u> |
| \$34.69          | \$34.59          | \$34.94                 |

8. Pursuant to ¶4 of the opinion in this case, Cleveland should be paying Relators based upon the rates (the "Building Agreement Rate") set out in the Construction Employers Association Building Agreement. A true copy of the payment section of the current Building Agreement is attached as Exhibit "B" to this Affidavit. The Building Agreement Rate and ¶¶'s 51 and 52 of the opinion in this case do not allow and respectively prohibit Cleveland's current offsets or deductions from Relators wages for Cleveland's contribution for a portion of its share of its payments to the Public Employees Retirement System, or for health and welfare, apprenticeship and construction industry service program amounts. Respondents' payments to Relators since May 1, 2007 based upon the hourly rates described in paragraph 7 of this Affidavit shows the same defiance of this Court's judgment as is evidenced by Respondents' not paying all of these construction equipment operators and master mechanics.
9. Pursuant to the Building Agreement Rate, and this Court's August 15, 2007 Judgment Entry, Respondents should have been paying those persons employed by Cleveland as construction equipment operators and master mechanics at the following prevailing hourly wage since May 1, 2007 .

|                  |                  |                         |
|------------------|------------------|-------------------------|
| <u>Group "A"</u> | <u>Group "B"</u> | <u>Master Mechanics</u> |
| \$41.70          | \$41.55          | \$42.20                 |

For the period of May 1, 2007 through the present, Cleveland has paid its construction equipment operators and master mechanics the following amounts per hour less than their

prevailing wage rate, based upon the methodology announced by this Court's August 15, 2007 Judgment Entry in the above noted case.

Group "A"  
\$7.01

Group "B"  
\$6.96

Master Mechanics  
\$7.26

10. Relators' attorney's email to Respondents' attorney about this branch of her clients' contempt is attached as Exhibit "C" to this Affidavit. That email suggests that Respondents' refusal to correct these payment shortfalls, by refusing to pay the prevailing wage rate and intentionally paying the short fall amounts, is bad faith and evidences their malice toward Relators. He has seen no written response to these emails.
11. I received from Tony Washington, Cleveland's Labor Relations Manager, the August 22, 2007 correspondence attached as Exhibit "D" to this Affidavit. That correspondence describes Respondents' plan to comply with this Court's August 15, 2007 Opinion in Case No. 2006-2056, which requires Cleveland to provide its construction equipment operators and master mechanics with sick leave. Cleveland's recognition of that obligation for a period of time after February 14, 2005 is not consistent with its failure and refusal to pay the prevailing wage rate from May 1, 2007 and into the future, and continuing failure to provide this sick leave benefit.
12. For these reasons, he believes and suggests that this behavior evidences Respondents' contempt of this Court, its Judgment and Writs of Mandamus issued in the above noted case, and would justify the issuance of the orders and sanctions prayed for by Relators.

FURTHER AFFIANT SAYETH NAUGHT.



Frank P. Madonia

SWORN TO and subscribed in my presence this <sup>19th</sup> day of October, 2007.



Notary Public

STEWART D. ROLL, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date  
Section 147.02 R. C.

April 2, 2007

Jon M. Dileno  
Direct: 216.623.6059  
jdileno@littler.com

**VIA HAND DELIVERY**

Stewart D. Roll, Esq.  
PERSKY, SHAPIRO & ARNOFF CO., L.P.A.  
Signature Square II  
25101 Chagrin Boulevard, Suite 350  
Cleveland, OH 44122

Re: City of Cleveland and MCEO Negotiations

Dear Dan:

I am writing in response to your correspondence of March 29, 2007. In response to your efforts to label the City's March 23, 2007 written proposal as regressive, I will remind you that what has transpired in mediation is a series of off-the-record discussions couched in terms of possible "package" solutions. That means that the discussions did not involve formal proposals, and the suggestions from both sides were presented in an all-or-nothing framework. In other words, if an overall agreement did not flow from the mediation process, the parties' respective bargaining positions would not be prejudiced.

Therefore, for instance, although your proposal of March 29, 2007, regarding the critical issue of "craft jurisdiction" represents a digression from your representations made at the close of our most recent mediation session, it will be addressed as a formal counter proposal.

In that regard, the City rejects your proposal. As we have stated to you repeatedly at the bargaining table, the City is not willing to be saddled with the craft jurisdiction language that by its very nature creates more work for the MCEO's members at the expense of other City unions and which impedes the City's overall objective of operational efficiency. Further, although the City believes it has existing rights to privatize the work performed by the MCEO's, we must insist upon the incorporation of our privatization and management rights proposals -- that we are proposing to nearly all other civilian (non-safety department) unions, and which already exists in most of those contracts in similar form.

Finally, the City is not willing to provide compensation above the 2% per year increases reflected in its last proposal. The members of the MCEO Union are among the highest paid employees in the City, and the City's precarious fiscal condition does not justify wages or other forms of compensation beyond 2% per year. As a result, in the area of compensation, the City will not vary from its March 23, 2007 proposal.

Stewart D. Roll, Esq.  
April 2, 2007  
Page 2

It is the City's position that based on the Union's latest proposal, the parties have reached an impasse in these negotiations. However, since we had previously agreed to schedule today's mediation session and extend the terms of the contract to this point, the City will mediate in good faith in the hopes that we can overcome this apparent impasse.

Sincerely,



Jon M. Dileno

JMD/vs

cc: City of Cleveland

Cleve:336577.1 4580.2306



**CONSTRUCTION EMPLOYERS  
ASSOCIATION  
BUILDING AGREEMENT**

**EFFECTIVE  
May 1, 2006 through April 30, 2009**

**Between**

**INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
LOCAL 18 AND ITS BRANCHES  
(AFL-CIO)**



**And**

**CONSTRUCTION  
EMPLOYERS ASSOCIATION**



**EXHIBIT "B"**

**EXHIBIT "A"**  
**WAGE RATES AND FRINGE CONTRIBUTIONS**

ZONE 1A covering Cleveland and the following counties: Ashtabula, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain and Medina

Classification:

MASTER MECHANIC/EQUIPMENT FOREMAN

|                  | 05/01/06 | 05/01/07 | 05/01/08 |
|------------------|----------|----------|----------|
| Rate             | \$31.33  | \$32.38* | \$33.43* |
| H & W            | 5.51     | 5.51     | 5.51     |
| Pension          | 3.30     | 3.65     | 4.00     |
| Apprenticeship   | 0.50     | 0.50     | 0.50     |
| CISP (Cleveland) | 0.12     | 0.12     | 0.12     |
| E & S            | 0.04     | 0.04     | 0.04     |

\*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

(over)

Classification:  
GROUP A

|                  | 05/01/06 | 05/01/07 | 05/01/08 |
|------------------|----------|----------|----------|
| Rate             | \$30.83  | \$31.88* | \$32.93* |
| H & W            | 5.51     | 5.51     | 5.51     |
| Pension          | 3.30     | 3.65     | 4.00     |
| Apprenticeship   | 0.50     | 0.50     | 0.50     |
| CISP (Cleveland) | 0.12     | 0.12     | 0.12     |
| E & S            | 0.04     | 0.04     | 0.04     |

\*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

09

Operators of:

A-Frames  
Boiler Operators, Compressor Operators, Hydraulic Pumps & Power Pacs when mounted on a crane or regardless of where said equipment is mounted (piggy-back operation)  
Boom Trucks (all types)  
Cableways  
Cherry Pickers  
Combination Concrete Mixers & Towers  
Concrete Pumps

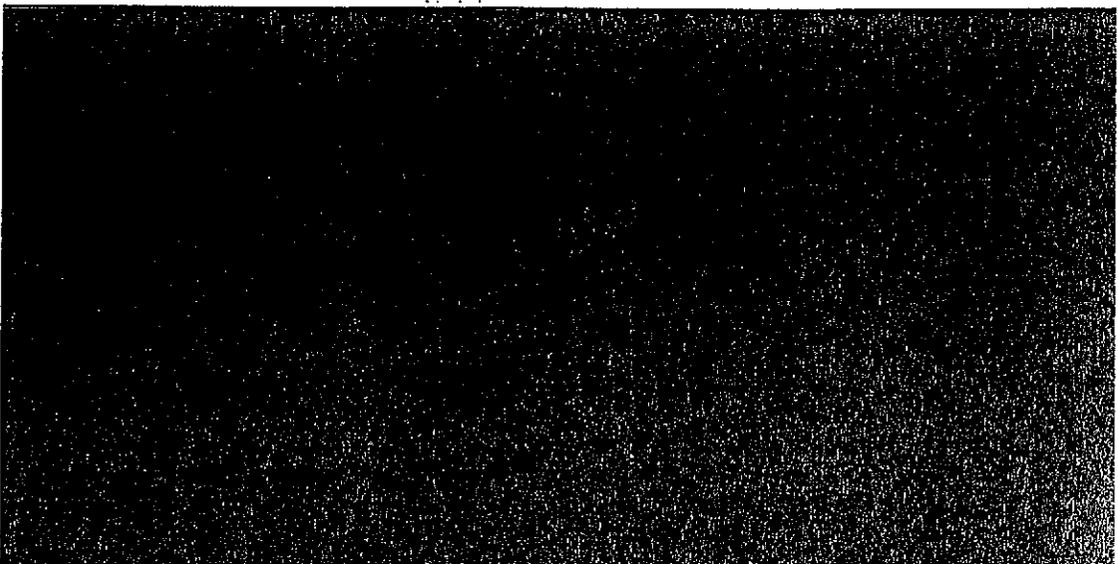
Cranes (all types)

(Boom & Jib 200' and over - \$31.58 effective 05/01/06)  
(Boom & Jib 300' and over - \$31.83 effective 05/01/06)  
(Boom & Jib 200' and over - \$32.63 effective 05/01/07)\*  
(Boom & Jib 300' and over - \$32.88 effective 05/01/07)\*  
(Boom & Jib 200' and over - \$33.68 effective 05/01/08)\*  
(Boom & Jib 300' and over - \$33.93 effective 05/01/08)\*  
Cranes — compact; track or rubber over 4000 lbs. capacity  
Cranes — self erecting; stationary, track or truck (all configurations)  
Derricks (all types)  
Draglines

Dredges (dipper, clam or suction), 3-man crew  
Elevating Graders or Euclid Loaders  
Floating Equipment  
Gradalls  
Helicopter Operators, hoisting building materials  
Helicopter Winch Operators, hoisting building materials  
Hoists (all types)  
Hoists (two or more drums)  
Lift Slab or Panel Jack Operators  
Locomotives (all types)  
Maintenance Engineers (Mechanic or Welder)  
Mixers, Paving (multiple drum)  
Mobile Concrete Pumps with Booms -

Panelboards (all types on site)  
Pile Drivers  
Power Shovels  
Robotics Equipment Operator/Mechanic  
Rotary Drills, (all), used on caisson work, wells (all types), Geothermal work and sub-structure work  
Rough Terrain Fork Lifts with Winch/Hoist (when used as a crane)  
Side Booms  
Slip Form Pavers  
Straddle Carriers (building construction on site)  
Trench Machines (over 24" wide)  
Tug Boats

51



Classification:  
GROUP B

|                  | 05/01/06 | 05/01/07 | 05/01/08 |
|------------------|----------|----------|----------|
| Rate             | \$30.88  | \$31.73* | \$32.78* |
| H & W            | 5.51     | 5.51     | 5.51     |
| Pension          | 3.30     | 3.65     | 4.00     |
| Apprenticeship   | 0.50     | 0.50     | 0.50     |
| CISP (Cleveland) | 0.12     | 0.12     | 0.12     |
| E & S            | 0.04     | 0.04     | 0.04     |

\*In the event that additional funds are needed for fringe benefits, they will be diverted from wages.

25

Operators of:

Asphalt Pavers  
Bulldozers  
CMI-Type Equipment  
Endloaders  
Horizontal Directional Drill Locator  
Horizontal Directional Drill Operator  
Instrument Man\*\*  
Kolman-type Loaders (djrt loading)

Lead Greasemen  
Mucking Machines  
Power Graders  
Power Scoops  
Power Scrapers  
Push Cats  
Rotomills  
Saw (concrete vermeer-type)

\*\*The addition of this pay classification does not expand jurisdiction, but only establishes the pay classification if Operating Engineers are used.

#####

**Eva J. Potter**

---

**From:** Stewart D. Roll [sdanl@msn.com]  
**Sent:** Thursday, October 04, 2007 8:19 PM  
**To:** Langhenry, Barbara  
**Cc:** Triozzi, Robert  
**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

----- 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  
 > Sensenbrenner, 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

**EXHIBIT "C"**

10/5/2007

> 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

> -----Original Message-----

> From: Stewart D. Roll [mailto:sdanl@msn.com]  
 > Sent: Wednesday, October 03, 2007 7:44 PM  
 > To: blanghenry@city.cleveland.oh.us  
 > Cc: rtriozzi@city.cleveland.oh.us  
 > Subject: Cleveland's Payment Pursuant to Supreme Court Case No. 2006-2056

> Dear Ms. Langhenry:

> Please answer the following questions by close of business on October 4,  
 > 2007.

> 1. Will Cleveland be paying on October 5, 2007 all of the monies due to  
 > 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?

> 2. Does Cleveland intend to follow the payment instructions of those  
 > employees with respect to monies that they owe my law firm?

> 3. Does Cleveland intend to mail or distribute those payments by hand.

> Sincerely,  
 > Stewart D. Roll

> ----- Original Message -----

**From:** Stewart D. Roll  
**To:** 'Langhenry, Barbara'  
**Cc:** rtriozzi@city.cleveland.oh.us ; 'Stewart D. Roll' ; sdanl@msn.com ; 'Eva Potter'  
**Sent:** Friday, September 14, 2007 4:22 PM  
**Subject:** Pending Depositions - MCEOLC v. Cleveland, Frank Jackson and City Counsel - Case: SD 07076306

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**

9:00 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

10/5/2007

- 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**

- 9:00 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**

- 9:00 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.*

Persky, Shapiro & Arnoff Co., LPA

25101 Chagrin Blvd. - Suite 350

Beachwood, Ohio 44122

Tel. (216) 360-3737

Fax (216) 593-0921

Eva J. Potter

---

**From:** Stewart D. Roll [sdanl@msn.com]  
**Sent:** Thursday, October 04, 2007 8:20 PM  
**To:** Eva Potter  
**Subject:** Fw: Corrected Reply to Cleveland's failure to pay the prevailing wage rate to its CEO employees since April 1, 2007 email.

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

**From:** "Stewart D. Roll" <sdanl@msn.com>  
**To:** "Langhenry, Barbara" <BLanghenry@city.cleveland.oh.us>  
**Cc:** <rtriozzi@city.cleveland.oh.us>; "Eva Potter" <ejpotter@persskylaw.com>; "Stewart D. Roll" <sdanl@msn.com>  
**Sent:** Tuesday, October 02, 2007 8:30 PM  
**Subject:** Corrected Reply to Cleveland's failure to pay the prevailing wage rate to its CEO employees since April 1, 2007 email.

> FYI.

>

> ----- Original Message -----

> **From:** "Stewart D. Roll" <sdanl@msn.com>  
> **To:** "Langhenry, Barbara" <BLanghenry@city.cleveland.oh.us>  
> **Cc:** <rtriozzi@city.cleveland.oh.us>; "Eva Potter"  
> <ejpotter@persskylaw.com>; "Stewart D. Roll" <sdanl@msn.com>  
> **Sent:** Tuesday, October 02, 2007 8:16 PM  
> **Subject:** Re: Cleveland's failure to pay the prevailing wage rate to  
> its CEO employees since April 1, 2007.

>

>

>> Dear Ms. Langhenry:

>>

>> Your analysis of the Supreme Court's opinion in Case No. 2006-2056 is  
>> erroneous.

>>

>> Sincerely,

>> Stewart D. Roll

>>

>>

>> ----- Original Message -----

>> **From:** "Langhenry, Barbara" <BLanghenry@city.cleveland.oh.us>  
>> **To:** "Stewart D. Roll" <sdanl@msn.com>  
>> **Sent:** Tuesday, October 02, 2007 5:23 PM  
>> **Subject:** RE: Cleveland's failure to pay the prevailing wage rate to  
>> its CEO employees since April 1, 2007.

>>

>>

>>> Mr. Roll:

>>>

>>> We are continuing to look at the issues that you have raised. I  
>>> want to point out that the Supreme Court's August 15, 2007 opinion  
>>> does not address the City's obligations toward the CEO employees  
>>> past February 14, 2005.

>>>

>>> Barbara Langhenry

>>>

>>> -----Original Message-----

>>> **From:** Stewart D. Roll [mailto:sdanl@msn.com]  
>>> **Sent:** Monday, October 01, 2007 2:02 PM  
>>> **To:** blanghenry@city.cleveland.oh.us  
>>> **Cc:** rtriozzi@city.cleveland.oh.us  
>>> **Subject:** FW: Cleveland's failure to pay the prevailing wage rate to

>>> its CEO employees since April 1, 2007.

>>>

>>> Dear Ms. Langhenry:

>>>

>>> I trust and understand that you will be responding to this email to Ms.  
>>> Monegan, as noted in her 'auto reply: out of the office' email  
>>> response to the below noted message.

>>>

>>> Sincerely,

>>> Stewart D. Roll

>>>

>>> -----Original Message-----

>>> From: Stewart D. Roll [mailto:sdanl@msn.com]

>>> Sent: Monday, October 01, 2007 11:57 AM

>>> To: 'Monegan, Theodora'

>>> Cc: blanghenry@city.cleveland.oh.us; rtiozzi@city.cleveland.oh.us

>>> Subject: Cleveland's failure to pay the prevailing wage rate to its  
>>> CEO employees since April 1, 2007.

>>>

>>> Dear Ms. Monegan:

>>>

>>> You have not responded to my below noted September 20, 2007 email.

>>> Please

>>> respond by return email no later than close of business tomorrow.

>>> Please

>>> disclose whether Cleveland intends to continue making those  
>>> deductions for PERS and other miscellaneous amounts from the pay of  
>>> its CEO employees, and to continue to fail to reimburse its CEO  
>>> employees for those wrongful deductions since April 1, 2007. The  
>>> Ohio Supreme Court opinion in Case No.

>>> 2006-2056 specifically prohibits those deductions. Cleveland's  
>>> failure to commit to change its behavior, and to commit to this  
>>> reimbursement by a specific date this month by close of business  
>>> tomorrow will result in a supplemental motion to show cause and for  
>>> sanctions.

>>>

>>> Sincerely,

>>> Stewart D. Roll

>>>

>>>

>>>

>>> -----Original Message-----

>>> From: Stewart D. Roll [mailto:sdanl@msn.com]

>>> Sent: Thursday, September 20, 2007 5:23 AM

>>> To: Monegan, Theodora

>>> Cc: blanghenry@city.cleveland.oh.us; rtiozzi@city.cleveland.oh.us

>>> Subject: Cleveland's failure to pay the prevailing wage rate to its  
>>> CEO employees since April 1, 2007.

>>>

>>> Dear Ms. Monegan:

>>>

>>> When we talked on Tuesday, September 18, 2007 about this matter, you  
>>> told me

>>>

>>> that Cleveland recognized that it should not be deducting from the  
>>> pay of its CEO employees PERS and miscellaneous other payments. In  
>>> view of that advice, I suggest that Cleveland's continuing failure  
>>> to make those payments

>>>

>>> is intentional, and with knowledge that this action will harm these  
>>> employees. I understand current Ohio law to be that such action may  
>>> support

>>>

>>> an award of punitive damages. Please advise your client accordingly.  
>>> Please also convey my request that those payments should be included  
>>> in their next pay check, and all future checks.

>>>

>>> I also understand from our conversation that it will be necessary to  
>>> judicially resolve Cleveland's continuing failure to pay these  
>>> employees based upon the below described CEA building rate. Please  
>>> contact me if you would like to further discuss this email or  
>>> situation.

>>>  
>>> Sincerely,  
>>> Stewart D. Roll

>>>  
>>>  
>>>

>>> ----- Original Message -----

>>> From: "Stewart D. Roll" <sdanl@msn.com>  
>>> To: "'Langhenry, Barbara'" <BLanghenry@city.cleveland.oh.us>  
>>> Cc: <rtriozzi@city.cleveland.oh.us>; "'Monegan, Theodora'"  
>>> <TMonegan@city.cleveland.oh.us>; "'Stewart D. Roll'"  
>>> <sroll@persskylaw.com>;  
>>> <sdanl@msn.com>; "'Eva Potter'" <ejpotter@persskylaw.com>  
>>> Sent: Friday, September 14, 2007 5:06 PM  
>>> Subject: Cleveland's failure to pay the prevailing wage rate to its  
>>> CEO employees since April 1, 2007.

>>>  
>>>  
>>>>  
>>>>  
>>>> Dear Ms. Langhenry:  
>>>>  
>>>>  
>>>> Have a lovely weekend. We'll be following up on this matter next week.

>>>>  
>>>>  
>>>> Sincerely,  
>>>> :

>>>>  
>>>> Stewart D. Roll Esq.  
>>>> Persky, Shapiro & Arnoff Co., LPA  
>>>> 25101 Chagrin Blvd. - Suite 350  
>>>> Beachwood, Ohio 44122  
>>>> Tel. (216) 360-3737  
>>>> Fax (216) 593-0921

>>>>  
>>>>  
>>>>  
>>>>  
>>>> -----  
>>>> From: Stewart D. Roll [mailto:sdanl@msn.com]  
>>>> Sent: Tuesday, September 11, 2007 10:38 AM  
>>>> To: 'Langhenry, Barbara'  
>>>> Cc: 'rtriozzi@city.cleveland.oh.us'; 'Monegan, Theodora'; 'Stewart D.  
>>>> Roll';  
>>>> 'Eva Potter'; 'sdanl@msn.com'  
>>>> Subject: Cleveland's failure to pay the prevailing wage rate to its  
>>>> CEO employees since April 1, 2007.

>>>>  
>>>>



>>>> Dear Ms. Monegan:

>>>>  
>>>>  
>>>>

>>>> Please accept this email as my confirmation of what I understand we  
>>>> discussed during today's 2:00 p.m. meeting in your office. Please let  
>>>> me  
>>>> know immediately if this email does not accurately describe the essence  
>>>> of  
>>>> your advice and our conversation.

>>>>  
>>>>  
>>>>

>>>> (1) Cleveland will be promptly paying Relator MCEOLC's CEO members  
>>>> and  
>>>> individual Relators based upon the deficiency amounts identified in  
>>>> Exhibit  
>>>> "B" to the Complaint and the number of regular and overtime hours  
>>>> worked,  
>>>> all in accord with the then current CEA contracts, further to the  
>>>> mandamus  
>>>> order issued in the subject opinion.

>>>>

>>>> (2) Cleveland will promptly provide to me the detailed regular and  
>>>> overtime hours worked by these employees during the period of January  
>>>> 1,  
>>>> 2004 - February 15, 2005, to facilitate MCEOLC's computation of what  
>>>> Cleveland owes for this period.

>>>>

>>>> (3) My firm's W-9 will be sent to you this week to facilitate  
>>>> Cleveland's compliance with these employees' payment instructions.

>>>>

>>>> (4) You will let me know this week what is Cleveland's position as  
>>>> to  
>>>> whether it will pay current CEO's the hourly prevailing wage rate in  
>>>> accord  
>>>> with the extant CEA Agreement, a copy of which is attached to my August  
>>>> 28,  
>>>> 2007 letter to Mr. Triozzi.

>>>>

>>>> (5) Cleveland continues to decline to provide the CEOs with the  
>>>> benefits  
>>>> at issue in Judge Gallagher's case, which are provided to all other  
>>>> Cleveland employees pursuant to ordinance, notwithstanding the Court's  
>>>> finding that it Cleveland did not pay these employees at the prevailing  
>>>> wage  
>>>> rate, as required by Cleveland's Charter. You understand that the CEO  
>>>> Union  
>>>> believes that Cleveland has also not paid the prevailing wage rate  
>>>> since  
>>>> April 1, 2007, because those payments are not based upon the CEA rate,  
>>>> AND  
>>>> Cleveland is wrongfully deducting a portion of its PERS and other  
>>>> payments  
>>>> from the heavy highway wage rate that is using. The subject opinion  
>>>> makes  
>>>> clear that the CEA Agreement establishes the prevailing wage rate.  
>>>> These  
>>>> ordinances make clear that if an employee is not paid at the prevailing  
>>>> wage  
>>>> rate, that the noted benefits must be provided. The ordinance with  
>>>> respect  
>>>> to health care insurance only excuses a failure to provide that  
>>>> insurance  
>>>> if  
>>>> wages are being paid at the prevailing wage rate pursuant to an  
>>>> ordinance

>>>> that was repealed. For that reason, all insurance payments should be  
>>>> refunded, and that insurance should be provided until Cleveland pays  
>>>> these  
>>>> employees as required by this ordinance.

>>>> (6) I suggested and you agreed that the CEO and Union and Cleveland  
>>>> should renew their CBA negotiations. You advise Mr. Jon Dileno  
>>>> accordingly.

>>>> With regard to the issues extant in the Gallagher case, I believe that  
>>>> Cleveland's continuing failure to provide benefits is bad faith, which  
>>>> justifies an award of punitive damages. I disagree with your  
>>>> suggestion  
>>>> that Cleveland's expected payment for 1994 - 2005 cures Cleveland's  
>>>> failure  
>>>> to provide these benefits during this period, because that argument  
>>>> ignores  
>>>> the time value of the cost of not receiving these benefits.

>>>> Sincerely,

>>>> Stewart D. Roll Esq.

>>>> Persky, Shapiro & Arnoff Co., LPA

>>>> 25101 Chagrin Blvd. - Suite 350

>>>> Beachwood, Ohio 44122

>>>> Tel. (216) 360-3737

>>>> Fax (216) 593-0921



**City of Cleveland**

Frank G. Jackson, Mayor

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Department of Personnel & Human Resources  
601 Lakeside Avenue, Room 121  
Cleveland, Ohio 44114-1015  
216/664-2493 • Fax: 216/664-3489  
www.cleveland-oh.gov

August 22, 2007

Mr. Frank Madonia, President  
Municipal Construction Equipment Operators (MCEOs)  
P. O. Box 22037  
Beachwood, Ohio 44122

Re: MCEO Mandamus Action

Dear Mr. Madonia:

The Department of Human Resources and Labor Relations is working on a process to credit all the affected MCEO bargaining unit employees with their sick leave, retroactive to May 1, 2007.

If you have any questions or concerns, please call me at (216) 664-2152.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Washington".

Tony Washington, Labor Relations Manager  
Department of Personnel & Human Resources

Cc: Trudy Hutchinson, Dir. Personnel & Human Resources  
Theodora Monegan, Chief Assistant Director of Law  
William Sweeney, Assistant Director of Law



Department of Personnel & Human Resources  
601 Lakeside Avenue, Room 121  
Cleveland, Ohio 44114  
Phone: 216-664-2493  
Fax: 216-664-3489

Date: 8/24/07

**FACSIMILE TRANSMITTAL SHEET**

TO: Frank Madonia

FROM: Tony Washington

Company: \_\_\_\_\_

Company: City of Cleveland/Personnel & HR

Fax Number: 216-593-0921

Fax Number: 216.664.3489

Phone Number: \_\_\_\_\_

Phone Number: 664-2152

Copy To: \_\_\_\_\_

Number of Pages (including cover): 2

Regarding: \_\_\_\_\_