

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)

REPLY BRIEF TO RESPONDENTS' OPPOSITION TO
RELATORS' INVOICE FOR LEGAL SERVICES

Stewart D. Roll (0038004)
Climaco, Lefkowitz, Peca, Wilcox &
Garofoli Co., L.P.A.
55 Public Square, Suite 1950
Cleveland, Ohio 44113
(216) 621-8484
Fax No. (216) 771-1632
sdroll@climacolaw.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



On November 13, 2007 this Court published its procedural ruling on pending motions. That ruling included the Court's order granting Relators their attorney's fees "related to their motions." That ruling required and Relators submitted to the Court on November 21, 2007 for approval those fees within 10 days of the Court's order. Respondents have timely objected to those fees on December 3, 2007 within 10 days from the filing of those fees. This Brief addresses and responds to those objections.

ALLEGEDLY EXCESSIVE FEES

Efforts of 9/18/2007 - Respondents claim that Mr. Roll should not have charged for his preparation for and attendance of Respondent MCEOLC's Board meeting on that date. That claim is contrary to President Lincoln's advice that a lawyer's time and efforts is his stock in trade. Without evidence or explanation, Respondents claim that Mr. Roll should not have charged for this attendance, "given the succinct issues well-known to his client, the hours charged are excessive." The undersigned represents to this Court that his preparation for and attendance at that MCEOLC Board meeting was related to the motion practice that this Court addressed in its November 13, 2007 order. Respondents' motion practice and this Court's finding Respondents' in contempt evidences that at the time, Respondents believed that these issues were not clear. Respondents offer no evidence to support their claim and the 6.4 hours at issue was excessive. Undersigned counsel disputes that claim, and represents to this Court that he needed all of that time to conduct the described activities.

Efforts of 10/1/2007 – Respondents claim that 4.6 hours to prepare Mr. Madonia's affidavit was excessive, "in light of the result" referring to this Court's striking portions of his

affidavit. Rule 1.5 of the Rules of Ohio's Professional Conduct states that the results obtained are ½ of 1 of 8 factors to be considered in determining the reasonableness of a fee. Respondents offer no evidence to support their claim that the time involved to prepare this affidavit was excessive. In view of the overall result of this motion practice, as evidenced by this Court's November 13, 2007 order, and undersigned counsel's representation to the Court that he needed the time spent to prepare this affidavit, Relators pray that the Court will find the fee for that effort to be appropriate.

Efforts 10/8/05 – Without explanation or evidentiary support, Respondents claim that the 3.3 hours for the undersigned to prepare his own affidavit in support of Relators' positions was excessive. Undersigned counsel represents to this Court that he needed that time to prepare this affidavit, and that it was related to these motions. Relators pray that the Court will find the fee for that effort to be appropriate.

FEES ALLEGEDLY UNRELATED TO MOTIONS

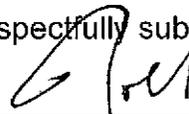
Section II on pages 3 -5 of Respondents Brief clam that they should not have to pay for Ms. Schleimer's time, because "Respondents have never stated or acted in any way that would give relators a reasonable belief that the City of Cleveland would not make the payments required by the Court's orders." This statement is not consistent with Respondents actions in this case, as evidenced by this Court's November 13, 2007 order. That order found Respondents in contempt for their failure to pay as ordered by this Court's August 15, 2007 Writs of Mandamus. Contrary to Respondents' claim to the contrary, that failure to pay gave Relators a reasonable belief that Cleveland had not paid pursuant to this Court's Writs of Mandamus.

Ms. Schleimer's efforts that are described in Respondents' brief were all made necessary by Respondents failure to pay as ordered by this Court, and are related to the motions. It is worthy of note that as of December 6, 2007, Respondents still have not made the payments required by this Court's August 15, 2007 Writs of Mandamus and November 13, 2007 Order.

However, Robert Triozzi, Esq. Cleveland's director of law has communicated to the undersigned that those payments will be made by December 7, 2007 absent unforeseen circumstances. That communication suggests to the undersigned that Respondents and Relators have a very different understanding of what this Court meant in its November 13, 2007 order by its words that Respondents were to "immediately comply" with this Court's August 15, 2007 Writs of Mandamus by making the payments described in that order and these Writs.

For these reasons, and those contained in Relators' November 21, 2007 submission of attorneys fees pursuant to this Court's November 13, 2007 order, Relators pray that all of those fees will be approved. Relators pray that the Court will thereafter issue an order to Respondents to "immediately comply" with this Court's November 13, 2007 order with respect to the payment of those fees and costs.

Respectfully submitted,



STEWART D. ROLL (Reg. #0038004)
Climaco, Lefkowitz, Peca, Wilcox &
Garofoli Co., L.P.A.

55 Public Square, Suite 1950

Cleveland, Ohio 44113

Telephone: (216) 621-8484

Fax: (216) 771-1632

***Representing Individual Relators and
the Municipal Construction Equipment
Operators' Labor Council***

CERTIFICATE OF SERVICE

A copy of the foregoing Reply Brief to Respondents' Opposition to Relators' Invoice for Legal Services was sent to the following via regular U.S. Mail on this 7th day of December, 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*