

ORIGINAL

IN THE OHIO SUPREME COURT

State of Ohio ex rel. STEVE R. MADDIX¹,
c/o Nilges Draher LLC
4580 Stephen Circle, N.W.
Canton, Ohio

CASE NO. 14-1267

and

State of Ohio ex rel. ANTWAN L. SPARKS,
c/o Nilges Draher LLC
4580 Stephen Circle, N.W.
Canton, Ohio

ORIGINAL ACTION IN MANDAMUS

and

State of Ohio ex rel. VERNON JEFFERS
c/o Nilges Draher LLC
4580 Stephen Circle, N.W.
Canton, Ohio

AFFIDAVIT ATTACHED PURSUANT TO S. CT. PRACT. R. 10.4(B)

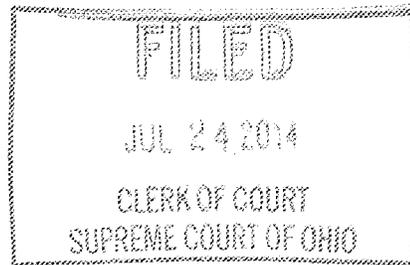
and

State of Ohio ex rel. MICHAEL LOWE
c/o Nilges Draher LLC
4580 Stephen Circle, N.W.
Canton, Ohio

JURY DEMAND ENDORSED HEREON

and

State of Ohio ex rel. AARON SMITH
c/o Nilges Draher LLC
4580 Stephen Circle, N.W.
Canton, Ohio



and

¹ Plaintiffs are all current or former police officers. Thus, their personal home addresses are not used.

State of Ohio ex rel. ONAM WILLIAMS :
c/o Nilges Draher LLC :
4580 Stephen Circle, N.W. :
Canton, Ohio :
and :

State of Ohio ex rel. ROGER :
REYNOLDS :
c/o Nilges Draher LLC :
4580 Stephen Circle, N.W. :
Canton, Ohio :

and :

State of Ohio ex rel. HENRY DAWKINS :
c/o Nilges Draher LLC :
4580 Stephen Circle, N.W. :
Canton, Ohio :

and :

State of Ohio ex rel. MONIQUA WHITE :
c/o Nilges Draher LLC :
4580 Stephen Circle, N.W. :
Canton, Ohio :

Relators, :

v. :

THE VILLAGE OF LINCOLN :
HEIGHTS, OHIO, :
1201 Steffen Avenue :
Lincoln Heights, Ohio 45215 :

and :

MAYOR LAVERNE MITCHELL, *in his* :
official capacity. :
1201 Steffen Avenue :
Lincoln Heights, Ohio 45215 :

and :

STEPHANIE SUMMEROW DUMAS,
VILLAGE ADMINISTRATOR, *in her
official capacity.*
1201 Steffen Avenue
Lincoln Heights, Ohio 45215

and

COUNCILWOMAN DEBORAH SEAY,
in her official capacity.
1201 Steffen Avenue
Lincoln Heights, Ohio 45215

and

COUNCILMAN HAROLD STEWART
in his official capacity.
1201 Steffen Avenue
Lincoln Heights, Ohio 45215

and

COUNCILWOMAN SHARON WILLIS,
in her official capacity.
1201 Steffen Avenue
Lincoln Heights, Ohio 45215

and

AYRICA RAGLIN, CLERK OF
COUNCIL, *in her official capacity.*
1201 Steffen Avenue
Lincoln Heights, Ohio 45215

and

COUNCILMAN RICHARD HEADON,
in his official capacity.
1201 Steffen Avenue
Lincoln Heights, Ohio 45215

and

COUNCILWOMAN JETTA-CHILES, *in* :
her official capacity. :
1201 Steffen Avenue :
Lincoln Heights, Ohio 45215 :

and :

COUNCILWOMAN STEVENSON *in her* :
official capacity. :
1201 Steffen Avenue :
Lincoln Heights, Ohio 45215 :

and :

COUNCILMAN WILLIS, *in his official* :
capacity. :
1201 Steffen Avenue :
Lincoln Heights, Ohio 45215 :

Respondents. :

**VERIFIED ORIGINAL ACTION COMPLAINT FOR WRIT OF MANDAMUS
WITH CLASS ACTION ALLEGATIONS**

Hans A. Nilges (0076017)
(COUNSEL OF RECORD)
Shannon M. Draher (0074304)
NILGES DRAHER LLC
4580 Stephen Circle, N.W.
Canton, Ohio 44718
Telephone: (330) 470-4428
Facsimile: (330) 754-1430
Email: hans@ohlaborlaw.com
sdraher@ohlaborlaw.com

Robert E. DeRose (0055214)
James Petroff, Esq. (00042476)
Robi J. Baishnab (0086195)
**BARKAN MEIZLISH HANDELMAN
GOODIN DEROSE WENTZ, LLP**
250 E. Broad St., 10th Floor
Columbus, Ohio 43215
Telephone: (614) 221-4221

Facsimile: (614) 744-2300
Email: bderose@barkanmeizlish.com
jpetroff@barkanmeizlish.com
rbaishnab@barkanmeizlish.com

Counsel for Relators

**VERIFIED ORIGINAL ACTION COMPLAINT FOR A WRIT OF MANDAMUS
WITH CLASS ACTION ALLEGATIONS**

Relators Steve R. Maddox, Antwan L. Sparks, Vernon Jeffers, Michael Lowe, Aaron Smith, Onam Williams, Roger Reynolds, Henry Dawkins and Moniqua White (collectively the “Relators”) seek, for themselves and all those similarly situated, a Writ of Mandamus compelling entity The Village of Lincoln Heights, Ohio (the “Village”) to comply with various statutes and ordinances. Relators seek to represent the following classes pursuant to Ohio Rule of Civil Procedure 23:

- All Village employees misclassified as independent contractors from May 4, 1993, to the present (the “Misclassification Class”);
- All Village employees who worked at least thirty (30) hours a week from February 10, 1997, through October 22, 2012, but were not provided fringe benefits (the “Fringe Benefits Class”);
- All Village employees from December 4, 1973, to present who were not provided sick leave benefits and rights pursuant to R.C. 124.38 and R.C. 124.39 (the “Sick Leave Class”); and,
- All Village employees from January 1, 1976 to present who were not provided holiday pay (the “Holiday Pay Class”).

JURISDICTION AND PARTIES

1. This Court has original jurisdiction to issue a Writ of Mandamus commanding the Village to take the requested actions pursuant Article IV, §2(B)(1)(b) of Ohio’s Constitution, Supreme Court Rule X and R.C. 2731.02.

2. Relators are persons currently or formerly employed by the Village who worked at least thirty (30) hours per week, but were not provided medical and other benefits, paid sick leave or holiday pay and for whom the Village did not remit contributions to OPERS.

3. Respondent Village is duly organized under the State of Ohio, and is located at 1201 Steffen Avenue, Lincoln Heights, Ohio 45215 (Hamilton County). The Village has adopted a municipal charter.

4. Respondent Laverne Mitchell is the Mayor of the Village of Lincoln Heights, Ohio, and a member of Council. As Mayor, Respondent Mitchell presides over the meetings of the Village of Lincoln Heights City Council (the "Council"). He is obligated to sign all legislation passed by Council. As a member of Council, he is, among other things, responsible for adopting: (1) a personnel pay plan; (2) the annual tax budget and annual appropriation ordinance; and, (3) authorizing the issuance of bonds.

5. Respondent Stephanie Summerow Dumas, is the Manager of the Village of Lincoln Heights, Ohio. Pursuant to the Charter of the Village of Lincoln Heights, Ohio (the "Charter"), she is the Chief Administrative Officer of the municipality and executes the laws and ordinances of the Village of Lincoln Heights, Ohio. She is also responsible for preparing and submitting the annual budget to the Council.

6. Respondent Deborah Seay is a member of the Council of the Village of Lincoln Heights, Ohio. As a member of Council, she is, among other things, responsible for: (1) adopting a personnel pay plan; (2) adopting the annual tax budget and annual appropriation ordinance; and, (3) authorizing the issuance of bonds.

7. Respondent Harold Stewart is a member of the Council of the Village of Lincoln Heights, Ohio. As a member of Council, he is, among other things, responsible for: (1) adopting a personnel pay plan; (2) adopting the annual tax budget and annual appropriation ordinance; and, (3) authorizing the issuance of bonds.

8. Respondent Sharon Willis is the Director of Finance of the Village of Lincoln Heights, Ohio. Pursuant to the Charter, she shall control all disbursements authorized from the village treasury. She is required to countersign all bonds and notes issued by the village.

9. Respondent Ayrica Raglin is the Clerk of Council for the Village of Lincoln Heights, Ohio. As the Clerk of Council, she is the records custodian for the Village.

10. Respondent Richard Headon is, upon information and belief, the Vice-Mayor of the Village of Lincoln Heights, Ohio, and a member of Council. Pursuant to the Village's charter, he is responsible for performing the Mayor's duties when the Mayor is absent or incapacitated. As a member of Council, he is, among other things, responsible for: (1) adopting a personnel pay plan; (2) adopting the annual tax budget and annual appropriation ordinance; and, (3) authorizing the issuance of bonds.

11. Respondent Jetta-Chiles is a member of the Council of the Village of Lincoln Heights, Ohio. As a member of Council, she is, among other things, responsible for: (1) adopting a personnel pay plan; (2) adopting the annual tax budget and annual appropriation ordinance; and, (3) authorizing the issuance of bonds.

12. Respondent Stevenson is a member of the Council of the Village of Lincoln Heights, Ohio. As a member of Council, she is, among other things, responsible for: (1) adopting a personnel pay plan; (2) adopting the annual tax budget and annual appropriation ordinance; and, (3) authorizing the issuance of bonds.

13. Respondent Willis is a member of the Council of the Village of Lincoln Heights, Ohio. As a member of Council, he is, among other things, responsible for: (1) adopting a personnel pay plan; (2) adopting the annual tax budget and annual appropriation ordinance; and, (3) authorizing the issuance of bonds.

SPECIFIC FACTUAL ALLEGATIONS

The Village Misclassified Relators and Those Similarly Situated As Independent Contractors

14. Respondents misclassified the Relators, and those similarly situated, as “independent contractors” instead of bona fide employees. Respondents also referred to some of these “independent contractors” as “temporary employees”. Such employees, including without limitation the Relators, constitute the “Misclassification Class”.

15. Relators, and those similarly situated, were not independent contractors in that Respondents exercised significant control over Relators and others similarly situated. At all relevant times, they were under the direction and control of the Village and Respondents, used the Village’s tools and equipment, and were subject to the Village’s employment policies, among other things.

16. The Village failed to remit payments to Ohio Public Employment Retirement System (“OPERS”) benefits for the Misclassification Class.

17. The Village has failed to provide OPERS with information required by OPERS to enroll the Misclassification Class members into OPERS, including but not limited to complete PED-1ER forms.

18. The Village failed to remit applicable employment taxes to the federal Internal Revenue Service (“IRS”) for the Misclassification Class.

19. The Village failed to remit unemployment taxes to the State of Ohio for the Misclassification Class.

20. The Village failed to remit premium payments to the Ohio Bureau of Workers’ Compensation (“BWC”) for the Misclassification Class.

The Village Failed to Provide Fringe Benefits to Relators and Those Similarly Situated, Even Though They Worked Thirty Or More Hours Per Week

21. On or about February 10, 1997, Village Ordinance Nos. 33.03 and 37.21 became effective. The ordinances provided that all Village employees that worked at least thirty (30) hours a week “shall receive hospitalization, medical, dental, disability and death benefits”.

22. The Ordinances were amended, effective October 22, 2012, so that such benefits now only apply to employees who worked thirty-seven and a half (37.5) hours per week.

23. Relators each worked an average of thirty (30) hours a week or more during the time period from February 10, 1997 and October 22, 2012.

24. Despite its clear legal obligation to do so, the Village failed to provide the Relators, and those similarly situated, with the fringe benefits required to be provided pursuant to Ordinance Nos. 33.03 and 37.21.

25. Relators and those similarly situated constitute the Fringe Benefits Class.

The Village Failed to Provide Relators and Those Similarly Situated Holiday Pay Pursuant to Ordinance No. 37.15

26. Village Ordinance No. 37.15 provides that, “[e]ffective January 1, 1976, all village employees shall...be granted a paid leave of absence” for ten recurring holidays, and, additionally, any day designated by the President of the United States, or the Governor of the State of Ohio as a holiday, day of mourning, or the like.

27. Per the ordinance, police officers receive a lump-sum payment for all holidays in December, but all other employees receive the pay in the pay period on which the holiday occurs.

28. The ten (10) recurring holidays are defined as: New Year’s Day; Martin Luther King Day; Lincoln Washington’s Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas.

29. Regardless of its clear obligation to do so, the Village failed to provide the Relators, and those similarly situated, with holiday pay pursuant to Ord. No. 37.15.

30. Relators and those similarly situated constitute the Holiday Pay Class.

The Village Failed to Provide Relators and Those Similarly Situated Sick Leave Benefits Pursuant to R.C. 128.38 and R.C. 128.39

31. R.C. 124.38 mandates that all Village employees shall be permitted to accumulate paid sick leave, without limit, at a rate of 4.6 hours for every eighty hours of work.

32. Such sick leave may be taken for “personal illness, pregnancy, injury, exposure to contagious disease that could be communicated to other employees, and illness, injury, or death in the employee's immediate family”.

33. When a Village employee transfers to another public agency, the Village is required by R.C. 124.38 to transfer all accumulated sick leave to that public entity.

34. Pursuant to R.C. 124.39, the Village is required to pay employees with at least ten (10) years of service in cash for one-fourth (1/4) the value of all accumulated, but unused, sick leave.

35. The Village has failed to provide sick leave benefits and corresponding rights including, but not limited to, use, transfer and retirement rights, to the Relators and those similarly situated.

36. Relators and those similarly situated constitute the Sick Leave Class.

Class Action Allegations

37. Relators bring this action as a class action pursuant to the Ohio Rules of Civil Procedure 23 as representatives of: the Misclassification Class; the Fringe Benefits Class; the Sick Leave Class; and, the Holiday Pay Class.

38. Upon information and belief, each Class includes more than forty (40) persons and, as such, is so numerous that joinder of all class members is impracticable.

39. Relators are members of each Class, and their claims are typical of the claims of the other Class members.

40. Relators have no interests that are antagonistic to or in conflict with the interests of other Class members.

41. Relators will fairly and adequately represent the Class members and their interests.

42. Relators have retained competent and experienced counsel who will effectively represent the interest of the Classes.

43. Questions of law and fact are common within each Class, including whether various statutes and ordinances obligated the Village to remit certain payments to the Relators and the Class members, or take certain actions on behalf of the Relators and the Class members.

COUNT I
(The Misclassification Class)

44. All previous paragraphs are incorporated as though fully set forth herein.

45. Relators and the members of the Misclassification Class were classified as independent contractors, when, in fact, they were employees.

46. As a result of this misclassification, the Respondents failed to make payments they were obligated to make to OPERS, the State of Ohio, the BWC, and the IRS.

47. Respondents have a clear legal duty to make these payments, but have failed to do so.

48. Likewise, Respondents have a clear legal duty to provide information to OPERS, including, but not limited to, complete PED-1ER, so that the Misclassification Class may participate in OPERS.

49. The Misclassification Class has no adequate legal remedy which would allow them to compel the Village to make the required payments to OPERS, the State of Ohio, the BWC and the IRS.

50. Likewise, they have no legal remedy to compel the Village to provide the completed PED-1ER forms and other required information to OPERS.

51. Accordingly, the Misclassification Class is entitled to a Writ of Mandamus compelling the Village to comply with its legal obligations relating to OPERS, the IRS and the State of Ohio.

COUNT II
(The Fringe Benefits Class)

52. All previous paragraphs are incorporated as though fully set forth herein.

53. Respondents have a clear legal duty pursuant to Village Ordinance Nos. 33.03 and 37.21 to provide various fringe benefits to the Fringe Benefits Class from February 10, 1997, until October 22, 2012, but Respondents failed to do so.

54. The Fringe Benefits Class has no adequate legal remedy to recover damages resulting from the Respondents' failure to provide the benefits required pursuant to Ordinance Nos. 33.03 and 37.21.

55. The Ohio Supreme Court has recognized this fact and held that "[i]t is well-settled that a claim by a public employee for wages or benefits is actionable in mandamus." *State ex rel. Kabert v. Shaker Hts. City School Dist. Bd. of Edn.*, 78 Ohio St.3d 37 (1977).

56. Accordingly, the Fringe Benefits Class is entitled to a Writ of Mandamus compelling the Respondents to remit to the Fringe Benefits Class the value of the premiums that the employer would have paid had plaintiff continued working, as well as out-of-pocket medical expenses, and replacement premium payments.

COUNT III
(Holiday Pay Class)

57. All previous paragraphs are incorporated as though fully set forth herein.

58. The Respondents have a clear legal duty pursuant to Village Ordinance No. 37.15 to pay the Holiday Pay Class wages every year they were and are employed for ten (10) recurring holidays, and certain additional holidays, days of mourning, and the like, as determined by the President of the United States or the Governor of the State of Ohio.

59. Despite this clear legal duty, the Respondents have failed to provide this holiday pay.

60. The Holiday Pay Class has no adequate legal remedy to recover the owed holiday pay amounts. Accordingly, they are entitled to a Writ of Mandamus compelling the Respondents to remit all unpaid holiday pay to the Holiday Pay Class.

COUNT IV
(The Sick Leave Class)

61. All previous paragraphs are incorporated as though fully set forth herein.

62. The Respondents have a clear legal duty to provide the Sick Leave Class with the sick leave benefits and rights provided for in R.C. 124.38 and retirement cash out rights provided for in R.C. 124.39. Despite this clear legal duty, the Respondents have failed to provide such benefits and rights to the Sick Leave Class.

63. The Sick Leave class has no adequate legal remedy to obtain the rights and benefits provided for in R.C. 124.38 and R.C. 124.39. Thus, a Writ of Mandamus compelling the Respondents to provide such benefits and rights is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Relators, on behalf of themselves and all others similarly situated, respectfully request the Court issue a Writ of Mandamus and/or an alternative writ of mandamus commanding the Respondents take all necessary actions to:

1. Pay the Sick Leave Class for the sick leave to which they are or were entitled under R.C. 124.38, but were not paid for from December 4, 1973, to the present;
2. Account for the sick leave the Sick Leave Class had a right to accrue pursuant to R.C. 124.38 from December 4, 1973, to the present;
3. Provide the sick leave benefits required by R.C. 124.38, including accumulation rights, to all Sick Leave Class members currently employed by the Village;
4. For all Sick Leave Class members currently employed by other public entities, transfer accrued, but unused, sick leave benefits earned pursuant to R.C. 124.38 to such public entities;
5. For all Sick Leave Class members that retired from the Village from December 4, 1973, provide payment in cash one-fourth (1/4) of the value of their accumulated but unused sick leave, as provided in R.C. 124.39;
6. Pay all Fringe Benefits Class members who worked at least an average of thirty (30) hours from February 10, 1997 through October 22, 2012, the monetary value of the fringe benefits to which they were entitled pursuant to Ord. Nos. 33.03 and 37.21, but were not provided;
7. Reimburse all Fringe Benefits Class members who worked at least an average of thirty (30) hours from February 10, 1997 through October 22, 2012, for insurance premium payments and out of pocket medical, dental and vision expenses;
8. Remit the employer and employee's portion of contributions to OPERS from May 4, 1993, to the present;
9. Provide all information required by OPERS to enroll the Misclassification Class members into OPERS, including but not limited to complete PED-1ER forms;

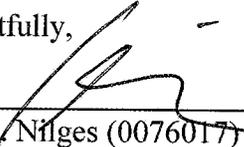
10. Report to the BWC that Misclassification Class members were employees and misclassified as independent contractors and remit all premiums due and owing to the Bureau of Workers' Compensation;
11. Report to the Ohio Department of Job and Family Services that the Misclassification Class members were employees and misclassified as independent contractors and remit all applicable tax payments due and owing to the State of Ohio;
12. Remit applicable payroll taxes the IRS due and owing as a result of the Village's misclassification of the Misclassification Class members as independent contractors; and,
13. Award Relators and said Class Members all other proper and appropriate relief including without limitation interest, costs and attorneys' fees (including without limitation payment from the common fund as appropriate) as may be provided by law and all else the Court deems just.

JURY DEMAND

Pursuant to R.C. 2731.11 Relators demand a trial by jury on all issues that may be so tried.

Dated: July 23, 2014

Respectfully,



Hans A. Nilges (0076017)
(COUNSEL OF RECORD)

Shannon M. Draher (0074304)

NILGES DRAHER LLC

4580 Stephen Circle, N.W.

Canton, Ohio 44718

Telephone: (330) 470-4428

Facsimile: (330) 754-1430

Email: hans@ohlaborlaw.com

sdraher@ohlaborlaw.com



Robert E. DeRose (0055214)

James Petroff, Esq. (00042476)

Robi J. Baishnab (0086195)

BARKAN MEIZLISH HANDELMAN

GOODIN DEROSE WENTZ, LLP

250 E. Broad St., 10th Floor

Columbus, Ohio 43215

Telephone: (614) 221-4221

Facsimile: (614) 744-2300

Email: bderose@barkanmeizlish.com

jpetroff@barkanmeizlish.com

rbaisnab@barkanmeizlish.com

Counsel for Relators

IN THE OHIO SUPREME COURT

State of Ohio ex rel. STEVE R.
MADDOX et al,

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v.

AFFIDAVIT OF ANTWAN SPARKS

THE VILLAGE OF LINCOLN
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STATE OF OHIO :

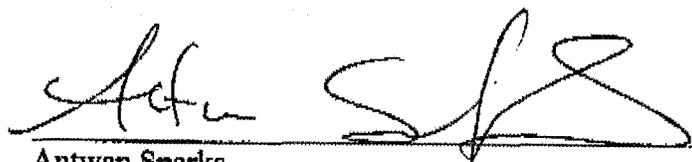
SS.

COUNTY OF HAMILTON :

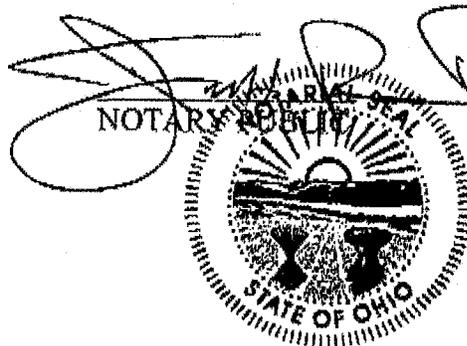
Antwan Sparks, being first duly sworn, deposes and states as follows:

1. That I have direct and personal knowledge of each and every fact stated herein.
2. That I am competent to testify to the matters contained herein.
3. I have read the Complaint for Writ of Mandamus filed in this matter. The factual allegations contained therein are true and accurate.

Affiant further sayeth naught.


Antwan Sparks

SWORN TO before me and signed in my presence this 22nd day of July 2014.


NOTARY PUBLIC
JOSEPH R POWELL
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
March 20, 2017
Recorded in
Hamilton County