

[Cite as *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 2010-Ohio-2108.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94226

**STATE OF OHIO, EX REL.
MUNICIPAL CONSTRUCTION EQUIPMENT
OPERATORS' LABOR COUNCIL**

RELATOR

vs.

THE CITY OF CLEVELAND

RESPONDENT

**JUDGMENT:
WRIT DISMISSED**

Writ of Mandamus
Motion No. 428590
Order No. 433152

RELEASE DATE: May 10, 2010

ATTORNEY FOR RELATOR

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KENNETH A. ROCCO, J.:

{¶ 1} On November 9, 2009, the relator, the Municipal Construction Equipment Operators' Labor Council (hereinafter the Union), through its attorney Stewart D. Roll, commenced this public records mandamus action pursuant to R.C. 149.43. The relator has certified to this court that the respondent, the City of Cleveland (hereinafter "Cleveland"), has satisfied the public records request. On March 29, 2010, the relator filed a motion for court costs and attorney's fees. On April 13, 2010, Cleveland filed its brief in opposition. For the following

reasons, this court dismisses the public records mandamus action as moot, and awards attorney's fees to the relator.

{¶ 2} On October 12, 2009, via e-mail, the Union made a public records request for all contracts and documents dated between January 1, 2005, to the present between Cleveland and any person or entity with respect to various services provided by four companies.¹ On October 13, 2009, Cleveland through one of its public records administrators replied via e-mail: "Acknowledging receipt and processing for a response." On October 28, the Union sent another e-mail to Cleveland stating that the public records request has not been addressed, and unless the records were produced by Friday, October 30, 2009, the Union would commence a mandamus action to obtain them. The Union filed the instant mandamus action on November 9, 2009. There is no evidence that Cleveland contacted the Union about the request during the time between October 13, 2009 to November 9, 2009.

{¶ 3} Nevertheless, Cleveland had been working on the request, trying to find the records. On November 10, 2009, Cleveland had located the requested contracts and notified the Union which picked them up on November 11, 2009. The next day this court issued an alternative writ ordering Cleveland to produce the records or show cause why they should not be produced. On November

¹ Although the Union is not mentioned in the e-mail, a copy of which is attached to the complaint and used by all parties in this case, the court finds that Stewart Roll was acting on behalf of his client at all times.

19, 2009, pursuant to R.C. 149.43(B)(2) Cleveland denied the rest of the request (the “all documents relating to the services rendered by the four companies” part of the request) as too ambiguous and overbroad. Cleveland also gave examples of the wide variety of records such a request could encompass. On November 30, 2009, the Union replied that Cleveland’s conduct was an unjustified refusal, but clarified that it wanted records stating what work was done by the four companies, where the work was done, and how much Cleveland paid for the work.

{¶ 4} During the first half of December, Cleveland worked to provide the requested records and released the records as they became available. On December 18, 2009, Cleveland notified the Union that the last of the requested records had been copied and were ready for inspection and pick-up. The Union retrieved these records on January 26, 2010. Subsequently, pursuant to this court’s order, the Union certified that its requests had been fulfilled. To resolve this case, this court directed the Union to file appropriate motions pursuant to R.C. 149.43(C).

{¶ 5} Subsection (C)(2)(b) of the Ohio Public Records Act permits reasonable attorney’s fees if the court renders a judgment that orders compliance with the Act. The same section requires reasonable attorney’s fees when the public office “failed to respond affirmatively or negatively to the public records request in accordance with the time allowed” under R.C. 149.43(B), which

provides that “all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours,” and that copies shall be made available within a reasonable period of time. The court may reduce attorney’s fees if the public office reasonably believed that its conduct did not constitute a failure to comply with the statute and that its conduct served underlying public policy.

{¶ 6} The court rules that an award of attorney’s fees is appropriate. This court issued an alternative writ ordering compliance with the statute. More importantly, the lapse of time from October 12, 2009 to November 10, 2009 was not reasonable to secure and release the requested contracts, especially as Cleveland did not communicate with the Union on the status of the request after October 13, 2009. Although the denial of the rest of the request was justified, it should have been done earlier.

{¶ 7} The Union requests attorney’s fees of \$6,492.50, as well as court costs and outside copying costs of \$23.56. The motion does not appear to state what the hourly fee rate is. However, adding the time spent results in a sum of 24.50 hours. Dividing \$6,492.50 by 24.50 hours results in a rate \$265.00 per hour which the court finds reasonable. The court finds that most of the time expended was justified; indeed, much of the time was spent following court instructions. However, the court reduces the amount of the award by the time spent on the Motion to Strike. Cleveland was acting reasonably at the time to

fulfill the revised request. Although the filing of the motion may have been zealous representation, it did not advance the merits of the case. The court also declines to award attorney's fees to David Neel for preparing an affidavit that Roll's fees were justified, because he did not explicitly state the hourly rate.

{¶ 8} Accordingly, this court grants the Union's motion for attorney's fees in the amount of \$5,763.75, plus copying costs of \$23.56, for a total of \$5,787.31.

The court, sua sponte, dismisses this public records mandamus action as moot, because the respondent fulfilled the records request in full after the commencement of the mandamus action. The court denies the respondent's motion to dismiss as moot. Respondent to pay court costs. The court directs the clerk to serve upon all parties notice of this judgment and its date of entry upon the journal pursuant to Civ.R. 58(B).

KENNETH A. ROCCO, PRESIDING JUDGE

ANN DYKE, J., and
JAMES J. SWEENEY, J., CONCUR