

1 The State ex rel. Capitol Materials Company et al., Appellants, v. Ohio
2 Bureau of Workers' Compensation, Appellee.

3 [Cite as *State ex rel. Capitol Materials Co. v. Bur. of Workers' Comp.*
4 (1997), ____ Ohio St.3d _____.]

5 *Workers' compensation -- Mandamus to compel Bureau of Workers'*
6 *Compensation to waive application deadline for employer*
7 *inclusion in group rating program -- Writ denied, when -- Ohio*
8 *Adm.Code 4123-17-62(A), applied.*

9 (No. 95-595 -- Submitted February 18, 1997 -- Decided April 23,
10 1997.)

11 APPEAL from the Court of Appeals for Franklin County, No.
12 94APD02-138.

13 Appellants, Capitol Materials Company ("Capitol") and A&B Iron &
14 Metal Company, Inc. ("A&B"), are corporations authorized to do business
15 in Ohio and are fully amenable to Ohio workers' compensation laws. The
16 exact relationship between the two companies is unclear, but they
17 apparently are interrelated, sharing at least some personnel. One of these
18 employees was Grace Caperna, who was solely responsible for
19 administering the workers' compensation affairs of both employers. In

1 October 1992, Caperna went on a three-month leave of absence. Rather
2 than assign another employee to perform her duties or hire a temporary, the
3 employers-appellants left the desk unstaffed, assuming that Caperna could
4 catch up with her work when she returned in January.

5 In 1992, both employers participated in the Ohio Chamber of
6 Commerce Group Rating Program. The program allows individual
7 employers to band together and be treated as a single employing entity for
8 experience rating purposes. Ohio Adm. Code 4123-17-64(A). This
9 combined rating, in turn, affects premium rates, with the expectation that the
10 individual employers within the group would experience lower premium
11 payments. For example, for 1993, anticipated savings for Capitol and A&B
12 were estimated at over \$60,000.

13 Pursuant to Ohio Adm. Code 4123-17-62, the group's participation in
14 the program must be renewed annually. This, in turn, annually requires
15 each employer to prepare an "Employer Statement for Group Rating Plan."
16 These forms are submitted to the group representative who submits a single
17 application on the group's behalf to appellee, Bureau of Workers'

1 Compensation. For private employers, applications for group coverage
2 must be filed with the bureau by December 31.

3 The authorized representative for appellants' group was the Frank
4 Gates Service Company ("Frank Gates"). On November 21, 1992, Frank
5 Gates sent the following letter to both employers:

6 "We wish to thank you for your participation in the OHIO
7 CHAMBER OF COMMERCE Group Rating Program. The newly
8 published 1992 Ohio Chamber of Commerce Group Rates from the Bureau
9 of Workers' Compensation (BWC) show that you will realize substantial
10 savings in March and September, 1993, as a result of your 1992 Group
11 participation! It is now time for you to sign up for the 1993 Program. It is
12 mandatory that each employer sign a new 'Employer Statement for Group
13 Rating Plan' (AC-26) each year.

14 "The professional staff of Frank Gates Service Company's Group
15 Rating Department has completed its evaluation of your workers'
16 compensation account. Based on your account standing with the BWC,
17 your operations, claim history and our projected groupings, we estimate that
18 the Group Rating Program will save you * * * for the rate year beginning

1 July 1, 1993. Our projections are based on 100% participation. Your actual
2 savings will depend on your future payroll, the number of participants in the
3 Group and the total claims cost incurred through March 31, 1993, by it's
4 [sic] members. Please note that your savings are based on the payroll
5 reports you will file in January and July, 1994.

6 “* * *

7 “We have enclosed a summary of the Bureau of Workers’
8 Compensation’s Rules governing this program for your review. Your
9 company must be in full compliance with all BWC group rating Rules in
10 order for the BWC to accept you into the Group. Additionally, you must
11 remain a member of the Ohio Chamber of Commerce and abide by it’s [sic]
12 rules.

13 “In order to apply for the 1993 Group, please complete, sign and mail
14 the following items in the enclosed return envelope to the Frank Gates
15 Service Company (please note: we must receive this information by
16 December 9, 1992) * * *.”

17 Because the employers left their workers’ compensation desk
18 unstaffed, the letters were not discovered until January 4, 1993. By then,

1 Frank Gates had turned in the group application -- due December 31, 1992 -
2 - and because the two employers had not forwarded the appropriate
3 documents, their names had been omitted from the group roster and
4 application. On January 19, 1993, the employers submitted their individual
5 application materials directly to the bureau. Participation, however, was
6 denied.

7 The two employers appealed their denial to the bureau's Adjudicating
8 Committee. Their appeal was denied as follows:

9 "Ohio Administrative Code Rule 4123-17-62(A) requires a [*sic*]
10 employer to submit to the Bureau an individual application for group rating
11 and for that employer's name to appear on the final group roster by the
12 application deadline.

13 "In this case, the application deadline for group rating was December
14 31, 1992. The employer did not submit to the Bureau the individual
15 application until January 19, 1993, and the employer's name did not appear
16 on the group's final roster, nor has the employer offered any extenuating
17 circumstances to explain the omission. Therefore, this committee must

1 apply the clear language of the rule and deny the employer’s application
2 into the group rating.”

3 The Ohio Workers’ Compensation Board Subcommittee affirmed the order.

4 Appellants filed a complaint in mandamus in the Court of Appeals for
5 Franklin County, alleging that the bureau abused its discretion in denying
6 group participation. The appellate court disagreed and denied the writ.

7 This cause is now before this court upon an appeal as of right.

8

9 *Pickrel, Schaeffer & Ebeling Co., L.P.A., David C. Korte and Mary*

10 *M. Biagioli*, for appellants.

11 *Betty D. Montgomery*, Attorney General, and *Gerald H. Waterman*,

12 Assistant Attorney General, for appellee.

13

14 *Per Curiam.* Ohio Adm. Code 4123-17-62(A) through (C) read:

15 “(A) An application for group experience rating shall be made on a
16 form provided by the bureau and shall be completed in its entirety with all
17 documentation attached as required by the bureau. The absence of pertinent
18 information will result in the application being rejected. The application

1 shall be signed by an officer of the organization to which the members of
2 the group belong, *and each individual employer in the group shall be*
3 *identified in the application and shall individually sign a form provided by*
4 *the bureau indicating a desire to be a part of the group for rating purposes*
5 *and an acknowledgement of the criteria and rules for group rating.* The
6 bureau may request of individual employers or the group additional
7 information necessary for the bureau to rule upon the application for group
8 coverage. Failure or refusal of the group to provide the requested
9 information on the forms or computer formats provided by the bureau shall
10 be sufficient grounds for the bureau to reject the application and refuse the
11 group's participation in group experience rating. Individual employers who
12 are not included on both the final group roster and the individual employer
13 application by the application deadline will not be considered for the group
14 plan for that policy year; however, *the bureau may waive this requirement*
15 *for good cause shown due to clerical or administrative error, so long as no*
16 *employer is added to a group after the application deadline.* All rosters,
17 computer formats or typewritten, must be submitted by the application
18 deadline.

1 “(B) * * * For private employers, applications for group coverage
2 shall be filed on or before December 31 of the year preceding the July 1
3 beginning date for the rating year.

4 “(C) An application for group rating is applicable to only one policy
5 year. The group must reapply each year for group coverage. Continuation
6 of a plan for subsequent years is subject to timely filing of an application on
7 a yearly basis and the meeting of eligibility requirements each year;
8 however, an individual employer member of a continuing group who
9 initially satisfied the homogenous requirement of rule 4123-17-61(B)(3) of
10 the Administrative Code shall not be disqualified for participation in the
11 continuing group for failure to continue to satisfy such requirement.”

12 (Emphasis added.)

13 The two employers missed the deadline for inclusion in the group
14 rating program. Now demanding admittance, the employers cite the waiver
15 language contained in Ohio Adm. Code 4123-17-62(A). That waiver,
16 however, does not provide the relief that the employers seek. Again, the
17 relevant provision reads:

