

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

February 20, 2008

[Cite as *02/20/2008 Case Announcements*, 2008-Ohio-565.]

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## MERIT DECISIONS WITH OPINIONS

**2006-1608. State v. Schlee, Slip Opinion No. 2008-Ohio-545.**

Lake App. No. 2005-L-105, 2006-Ohio-3208. Certified question answered in the affirmative and judgment affirmed.

Moyer, C.J., and Pfeifer, O'Connor, O'Donnell, and Lanzinger, JJ., concur.  
Lundberg Stratton and Cupp, JJ., concur in judgment only.

**2006-2187. Hyle v. Porter, Slip Opinion No. 2008-Ohio-542.**

Hamilton App. No. C-050768, 170 Ohio App.3d 710, 2006-Ohio-5454. Certified question answered in the negative and judgment reversed.

Moyer, C.J., and Pfeifer, Lundberg Stratton, Lanzinger, and Cupp, JJ., concur.

O'Connor, J., concurs in judgment only.

O'Donnell, J., dissents.

## MERIT DECISIONS WITHOUT OPINIONS

**2007-2227. State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland.**

In Mandamus. This cause originated on the filing of a complaint for a writ of mandamus. On S.Ct.Prac. X(5) determination,

It is ordered that based on *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 114 Ohio St.3d 183, 2007-Ohio-3831, 870 N.E.2d 1174, and *State ex rel. Internatl. Union of Operating Engineers, Local 18 v. Cleveland* (1992), 62 Ohio St.3d 537, 584 N.E.2d 727, a writ of mandamus is granted to compel respondents to pay the city's construction-equipment operators

and master mechanics the difference between the prevailing-wage rates set forth in the Construction Employers Association Building Agreement between the International Union of Operating Engineers, Local 18 and its branches, and the Construction Employers Association, and the lower rates that they have been paid for the period beginning April 11, 2007.

It is further ordered that relators' request for an award of prejudgment interest and relators' motion to strike averments from respondents' answer are denied.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

**2007-2287. State ex rel. Wisecup v. Warren.**

In Mandamus. On motions to dismiss of Judge Richard Warren, Anthony J. Miller, and Douglas Degen and relators' motion to remove Judge Richard Warren and Prosecuting Attorney Anthony J. Miller. Motions to dismiss granted. Motion to remove denied. Cause dismissed.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, and Lanzinger, JJ., concur.

Cupp, J., not participating.

**2007-2353. State ex rel. McGee v. Croft.**

In Mandamus. On answer of respondent. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

**2007-2371. Eaton v. Smith.**

In Habeas Corpus. On petition for writ of habeas corpus of Todd M. Eaton. Sua sponte, cause dismissed as moot.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

**2008-0237. State ex rel. Robinson v. Carey.**

In Prohibition. On answer of respondent. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

**MOTION AND PROCEDURAL RULINGS**

**2007-0558. Wilborn v. Bank One Corp.**

Mahoning App. No. 04-MA-182, 2007-Ohio-596. On motion for admission pro hac vice of Seth R. Lesser by Michael S. Miller. Motion granted.

**2007-2429. State v. Clayton.**

Franklin App. No. 07AP-454. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Cupp, JJ., dissent.

**2007-2441. State v. Dawson.**

Montgomery App. No. 21768, 2007-Ohio-5172. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Lundberg Stratton, and Cupp, JJ., dissent.

**2007-2456. State v. Bibbs.**

Clark App. No. 06-CA-119, 2007-Ohio-5565. On motion for leave to file delayed appeal. Motion granted.

Lundberg Stratton and O'Connor, JJ., dissent.

**2008-0005. State v. Eison.**

Fairfield App. No. 06-CA-15, 2007-Ohio-4121. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2008-0016. State v. Tribble.**

Hamilton App. No. C-060638. On motion for leave to file delayed appeal. Motion denied.

**2008-0030. Moore v. Lorain Metro. Hous. Auth.**

Lorain App. No. 06CA008995, 2007-Ohio-5111. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' Journal Entry filed December 12, 2007:

“Whether operation of a public housing authority is a proprietary or a governmental function?”

The conflict cases are *Rhoades v. Cuyahoga Metro. Hous. Auth.*, Cuyahoga App. No. 84439, 2005-Ohio-505, *McCloud v. Nimmer* (1991), 72 Ohio App.3d 533, *Jones v. Lucas Metro. Hous. Auth.* (Aug. 29, 1997), Lucas App. No. L-96-212, and *Country Club Hills Homeowners Assn. v. Jefferson Metro. Hous. Auth.* (1981), 5 Ohio App.3d 77.

Sua sponte, cause consolidated with 2007-2106, *Moore v. Lorain Metro. Hous. Auth.*, Lorain App. No. 06CA008995, 2007-Ohio-5111.

**2008-0054. State ex rel. Otten v. Wyler.**

In Procedendo. On motions to dismiss. An alternative writ is granted, and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within ten days of the date of this entry; relator shall file a brief within ten days of the filing of the evidence; respondent shall file a brief within ten days after the filing of relator's brief; and relator may file a reply brief within seven days after filing of respondent's brief.

Pfeifer, Lundberg Stratton, and O'Donnell, JJ., dissent and would grant the writ.

**2008-0065. State v. Baldwin.**

Stark App. No. 2006-CA-00292, 2007-Ohio-5812. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., and Pfeifer and Lundberg Stratton, JJ., dissent.

**2008-0066. State v. Banks.**

Wood App. Nos. WD-06-094 and WD-06-095, 2007-Ohio-5311. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., and Pfeifer, J., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2007-1842. State v. Winn.**

Montgomery App. No. 21710, 173 Ohio App.3d 202, 2007-Ohio-4327. Discretionary cross-appeal accepted on Proposition of Law Nos. I and II.

Lundberg Stratton, O'Connor, and Cupp, JJ., would also hold the cause for the decision in 2007-0595 and 2007-0651, *State v. Cabrales*, Hamilton App. No. C-050682, 2007-Ohio-857.

Lanzinger, J., would also accept the cross-appeal on Proposition of Law No. III.

Moyer, C.J., and Pfeifer and O'Donnell, JJ., dissent.

Discretionary appeal not accepted.

**2007-2094. Cincinnati Ins. Co. v. Robert W. Setterlin & Sons.**

Franklin App. No. 07AP-47, 2007-Ohio-5094.

Moyer, C.J., would accept the appeal on Proposition of Law No. I only.  
Pfeifer and Cupp, JJ., dissent.

**2007-2106. Moore v. Lorain Metro. Hous. Auth.**

Lorain App. No. 06CA008995, 2007-Ohio-5111. Discretionary appeal accepted and cause consolidated with 2008-0030, *Moore v. Lorain Metro. Hous. Auth.*, Lorain App. No. 06CA008995, 2007-Ohio-5111.

Moyer, C.J., would accept the appeal on Proposition of Law No. I only.  
Pfeifer, J., dissents.

**2007-2334. State v. Render.**

Hamilton App. No. C-060382, 2007-Ohio-1606. Discretionary appeal accepted on Proposition of Law No. I and cause held for the decision in 2007-0325, *State v. Davis*, Hamilton App. No. C-040665, 2006-Ohio-3171.

Pfeifer and O'Donnell, JJ., dissent.

**2007-2454. In re Kayla H.**

Lucas App. No. L-06-1376, 2007-Ohio-6128.

O'Connor, O'Donnell, and Lanzinger, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2007-1530. Serge v. Reconstructive Orthopaedics & Sports Medicine, Inc.**

Butler App. No. CA2006-04-081, 2007-Ohio-3354.

Pfeifer, J., dissents.

**2007-2004. State v. Fisher.**

Stark App. No. 2006CA00338, 2007-Ohio-4820.

O'Donnell, J., dissents.

**2007-2007. State v. Anello.**

Stark App. No. 2006CA00340, 2007-Ohio-4822.

O'Donnell, J., dissents.

**2007-2026. State v. Dobbins.**

Washington App. No. 07CA6, 2007-Ohio-4923.

**2007-2029. Cline v. Risner.**

Champaign App. No. 07CA14.

**2007-2037. State v. Wilson.**

Montgomery App. No. 21738, 2007-Ohio-4885.

**2007-2038. State v. Dunn.**

Montgomery App. No. 21766, 2007-Ohio-4890.

**2007-2040. Feagin v. Mansfield Corr. Inst.**

Franklin App. No. 07AP-182, 2007-Ohio-4862.

**2007-2042. State v. Sziva.**

Summit App. No. 23384, 2007-Ohio-5120.

**2007-2043. Risser v. Risser.**

Hardin App. No. 6-06-11, 173 Ohio App.3d 430, 2007-Ohio-4936.

Lundberg Stratton and O'Connor, JJ., dissent.

**2007-2044. State v. Peterson.**

Columbiana App. No. 06 CO 50, 2007-Ohio-4979.

O'Connor, J., dissents.

**2007-2045. Genovese v. Reese.**

Hamilton App. No. C-060949.

**2007-2046. Union Local Assn. of Classroom Teachers OEA/NEA v. State Bd. of Edn.**

Belmont App. No. 06 BE 33, 2007-Ohio-5053.

Moyer, C.J., and Pfeifer, J., dissent.

**2007-2047. O'Brien v. Ohio State Univ.**

Franklin App. No. 06AP-946, 2007-Ohio-4833.

Lundberg Stratton and Lanzinger, JJ., dissent.

Motions for admission pro hac vice of Benjamin C. Mizer, Mark B. Rotenberg, William P. Donohue, and Tracy M. Smith by William P. Marshall granted.

**2007-2049. State v. Fain.**

Delaware App. No. 06CAA120094, 2007-Ohio-4854.

O'Donnell, J., dissents.

**2007-2050. State v. Valenti.**

Wood App. No. WD-07-004, 2007-Ohio-4911.

**2007-2051. State v. Hohvart.**

Mahoning App. No. 06 MA 43, 2007-Ohio-5349.

**2007-2052. State v. Irwin.**

Mahoning App. No. 06 MA 20, 2007-Ohio-4996.

**2007-2055. State v. Collins.**

Montgomery App. No. 21689, 2007-Ohio-5365.

**2007-2059. Cotton v. Oberdier.**

Franklin App. No. 07AP-639.

**2007-2061. In re Guardianship of Bess.**

Summit App. No. 23411, 2007-Ohio-5032.

**2007-2067. Conway v. Dravenstott.**

Crawford App. No. 3-07-05, 2007-Ohio-4933.

Cupp, J., not participating.

**2007-2069. McCall v. State Farm Mut. Auto. Ins. Co.**

Summit App. No. 23601, 2007-Ohio-5109.

Pfeifer, J., dissents.

**2007-2070. State v. Pitts.**

Allen App. No. 1-06-106, 2007-Ohio-5197.

**2007-2073. Dinsmore & Shohl, L.L.P. v. Zerbe.**

Hamilton App. No. C-060798.

**2007-2075. Corrova v. Tatman.**

Muskingum App. No. CT2006-0053, 2007-Ohio-5295.

**2007-2076. State v. Dovala.**

Lorain App. No. 05CA008767, 2007-Ohio-4914.

**2007-2079. Holzhauser v. State Med. Bd. of Ohio.**

Franklin App. No. 06AP-1031, 2007-Ohio-5003.

O'Donnell, J., dissents.

**2007-2080. State v. Thompson.**

Washington App. No. 06CA28, 2007-Ohio-5419.

**2007-2085. Coniglio v. State Med. Bd. of Ohio.**

Franklin App. No. 07AP-298, 2007-Ohio-5018.

**2007-2088. Mascarella v. Simon Property Group.**

Mahoning App. Nos. 06 MA 45 and 06 MA 62, 2007-Ohio-5351.

**2007-2090. State v. Gore.**

Hamilton App. Nos. C-060742 and C-060743.

**2007-2092. Columbus v. Repine.**

Franklin App. No. 07AP-250, 2007-Ohio-5015.

Pfeifer, J., dissents.

**2007-2093. State v. Carroll.**

Lucas App. No. L-07-1012, 2007-Ohio-5314.

**2007-2095. State v. Werfel.**

Lake App. No. 2006-L-163, 2007-Ohio-5198.

**2007-2097. State v. Bregen.**

Clermont App. No. CA2007-01-018.

**2007-2104. State v. Sweeney.**

Lake App. No. 2006-L-252, 2007-Ohio-5223.

**2007-2105. Omerza v. Bryant & Stratton.**

Lake App. No. 2006-L-092, 2007-Ohio-5215.

Moyer, C.J., and Lanzinger, J., dissent.

**2007-2107. Radcliff v. Steen Elec., Inc.**

Summit App. No. 23460, 2007-Ohio-5117. Discretionary appeal and cross-appeal not accepted.

O'Connor, J., would accept the cross-appeal on Proposition of Law Nos. I and III.

**2007-2108. State v. Mitchell.**



Lucas App. No. L-07-1092, 2007-Ohio-5316.

**2007-2109. Krafty v. Firelands Community Hosp.**

Erie App. No. E-07-019, 2007-Ohio-5302.

O'Donnell and Lanzinger, JJ., dissent.

**2007-2112. State v. Morris.**

Pickaway App. No. 06CA28, 2007-Ohio-5291.

Lundberg Stratton, J., dissents and would accept the appeal and hold the cause for the decision in 2007-1415, *State v. Mosmeyer*, Hamilton App. No. C-060747.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. I and hold the cause for the decision in 2007-0052, *State v. Simpkins*, Cuyahoga App. No. 87692, 2006-Ohio-6028.

**2007-2114. In re T.S.**

Franklin App. No. 06AP-1163, 2007-Ohio-5085.

**2007-2117. State v. Smith.**

Summit App. No. 23542, 2007-Ohio-5119.

O'Connor, J., not participating.

**2007-2120. Adkins v. Atom Blasting & Finishing, Inc.**

Lorain App. No. 07CA009109, 2007-Ohio-5100.

**2007-2140. Walburn v. Dunlap.**

Vinton App. No. 06CA653.

Lundberg Stratton and O'Donnell, JJ., dissent.

**2007-2155. State v. Hayden.**

Montgomery App. No. 21764, 2007-Ohio-5572.

**2007-2156. Jr. Brock's Auto Works II, Inc. v. Brock.**

Hamilton App. Nos. C-060464, C-060467, and C-061070.

**2007-2164. State v. Stokes.**

Cuyahoga App. No. 88939, 2007-Ohio-5063.

**2007-2166. Homza v. Levin.**

Delaware App. No. 07CAH070037.

**2007-2167. Homza v. Levin.**

Delaware App. No. 07CAH070038.

**2007-2173. State v. Walton.**

Cuyahoga App. No. 88358, 2007-Ohio-5070.

**2007-2176. State v. Abercrombie.**

Cuyahoga App. No. 88625, 2007-Ohio-5071.

Pfeifer, J., dissents.

**2007-2195. State v. Wolf.**

Lake App. Nos. 2007-L-101 and 2007-L-102, 2007-Ohio-5502.

**2007-2196. State v. Long.**

Cuyahoga App. No. 88828, 2007-Ohio-5359.

**2007-2222. State v. Creasey.**

Cuyahoga App. No. 90027.

**2007-2241. State v. Walker.**

Cuyahoga App. No. 90521.

**2007-2405. State v. Starks.**

Lucas App. Nos. L-05-1417 and L-05-1419, 2007-Ohio-4897.

**RECONSIDERATION OF PRIOR DECISIONS**

**2006-0617. Bickers v. W. & S. Life Ins. Co.**

Reported at 116 Ohio St.3d 351, 2007-Ohio-6751, 879 N.E.2d 201. On motion for reconsideration. Motion denied.

Moyer, C.J., and Pfeifer, J., dissent.

**2007-0459. Bonham v. Hamilton.**

Butler App. No. CA2006-02-030, 2007-Ohio-349. Reported at 116 Ohio St.3d 1222, 2007-Ohio-6748, 879 N.E.2d 775. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

O'Donnell, J., not participating.

**2007-1640. State v. Roddy.**

Cuyahoga App. No. 88759, 2007-Ohio-4015. Reported at 116 Ohio St.3d 1457, 2007-Ohio-6803, 878 N.E.2d 34. On motion for reconsideration. Motion granted and discretionary appeal accepted.

Pfeifer, O'Donnell, and Cupp, JJ., dissent.

**2007-1707. State v. Duncan.**

Clark App. No. 2006CA109, 2007-Ohio-4079. Reported at 116 Ohio St.3d 1457, 2007-Ohio-6803, 878 N.E.2d 34. On motion for reconsideration. Motion denied.

**2007-1729. State v. El-Amim.**

Lucas App. No. L-05-1286, 2007-Ohio-3949. Reported at 116 Ohio St.3d 1458, 2007-Ohio-6803, 878 N.E.2d 35. On motion for reconsideration. Motion denied.

**2007-2152. State v. Chattams.**

Butler App. No. CA2006-06-146. Reported at 116 Ohio St.3d 1454, 2007-Ohio-6803, 878 N.E.2d 32. On motion for reconsideration. Motion denied.