

[Cite as *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 2016-Ohio-2625.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102961

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

RELATOR

vs.

CITY OF CLEVELAND

RESPONDENT

**JUDGMENT:
WRIT GRANTED**

Writ of Mandamus
Motion No. 485008
Order No. 494485

RELEASE DATE: April 20, 2016

FOR RELATOR

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LARRY A. JONES, SR., A.J.:

{¶1} The relator, the Municipal Construction Equipment Operators' Labor Council (the "Union"), on March 2, 2015, made an email public records request pursuant to R.C. 149.43 to the city of Cleveland "for all documents which evince Cleveland Water Pollution Control employees Ernest Gardner's and Daniel Tomko's operation or use of construction equipment such as but not limited to back hoes, loaders, excavators, and bull dozers from January 1, 2014, to the present." When Cleveland failed to produce any records, the Union commenced this mandamus action to compel production of those records.

{¶2} The parties then engaged in months of contentious litigation, during which the Union took the deposition of Daniel Tomko, a Cleveland superintendent in the Division of Water Pollution Control. It also became clear that there were three types of records that were responsive to the Union's request: (1) the temporary assignment forms, (2) payroll records, and (3) the crew daily work reports.¹ Cleveland produced over 300 pages of records.

{¶3} After reviewing the parties' court-ordered certifications, their briefs, and the deposition transcripts, only the crew daily works reports remain in dispute. Cleveland maintains that for the relevant period of time, January 1, 2014, to March 2, 2015, there are no crew daily work reports that relate to either Gardner's or Tomko's operation of

¹The parties also refer to these records as the "crew daily work sheets."

construction equipment; rather, during that time (July 27 through August 17, 2015) Tomko filled out the relevant information on another form, the barricade truck daily work reports, and those have been produced. In response, the Union cites to Tomko's deposition and the exhibits attached thereto. Tomko stated that he has been using the crew daily work reports since August 2013, and that they evince the use of construction equipment. He stores these records in his office, but after six months they are put into a storage facility.

{¶4} The Supreme Court of Ohio has consistently ruled that the Public Records Act, R.C. 149.43, be liberally construed in favor of broad access and that the courts are to resolve any doubt in favor of disclosure. *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 142 Ohio St.3d 509, 2015-Ohio-509, 33 N.E.2d 30; and *State ex rel. Rucker v. Guernsey Cty. Sheriff's Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, 932 N.E.2d 327. After reviewing all the evidence and arguments presented, this court is convinced that the crew daily work reports exist and come within the scope of the Union's public records request. Resolving any doubts in favor of disclosure, this court issues the writ of mandamus and orders the city of Cleveland forthwith to release to the Union the crew daily work reports for the relevant time period and relevant work group; this includes allowing the Union to inspect the crew daily work reports at the storage facility.

{¶5} The court further directs the Union to make any appropriate motion for attorney fees pursuant to R.C. 149.43(C) within two weeks of this entry. Cleveland then shall have two weeks to respond to the motion.

{¶6} Writ granted.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and
EILEEN T. GALLAGHER, J., CONCUR