IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND,	:	**Case No. 2018-0097**
Appellee,	:	On Appeal from the Cuyahoga
	:	County Court of Appeals,
vs.	:	Eighth Appellate District
	:	
	:	Court of Appeals
STATE OF OHIO,	:	Case No. 105500
	:	
Appellant.	:	

MERIT BRIEF OF AMICUS CURIAE COLUMBUS CITY ATTORNEY, ZACH KLEIN, IN SUPPORT OF APPELLEE, CITY OF CLEVELAND

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THE CITY OF CLEVELAND

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STATEMENT OF INTEREST OF AMICUS CURIAE

> These requirements place an unnecessary burden on Ohio's construction and professional design companies which employ many in southwest Ohio….Our bill is simple: it's about lowering costs for Ohio's cities; and eliminating baseless stipulations some cities have placed on small businesses that would otherwise be willing to perform higher quality work at a lower cost.

Senator Joe Uecker (R-Miami Township), *Uecker Introduces Bill to Lower Costs and Eliminate Unfair Residency Requirements in Ohio Cities,* (April 28, 2015), https://www.ohiosenate.gov/senators/uecker/news/uecker-introduces-bill-to-lower-costs-and-eliminate-unfair-residency-requirements-in-ohio-cities (accessed August 14, 2018).

With these words the General Assembly began its assault on the home rule authority of cities to engage in meaningful contract negotiations on public works projects in the interests of its residents. Along the way, SB 152 gave way to HB 180 which resulted in the enactment of R.C. 9.75. Somewhere in its legislative journey, this "simple" bill designed to protect contractors and professional design companies from "baseless stipulations" became - to use the State's fanciful moniker - "the residency choice law." Appellant's Br. at 2, 3, 6-10, 15-21, 23-24, 28, 30-35. The legislative history of SB 152/HB 180 makes clear that its connection to "residency choice" was nothing more than a clever bit of messaging, designed to stave off a potential home rule challenge. In reality, the bill's passage had nothing to do with providing for the general welfare of employees and everything to do with protecting the interests of a vocal contractors' lobby. HB 180 did not actually have a name, but if it had, "The Contractors' Protection Act" would have been far more fitting.

Amicus the City of Columbus is the Capital of the State of Ohio and a Charter City, deriving its authority to exercise powers of local self-government directly from the Home Rule Amendment of the Ohio Constitution. Ohio Constitution, Article XVIII, Section 3. The 14th

largest city in the United States, Columbus has a population of roughly 879,000 and is in the midst of a "record setting construction season." Columbus Building Trades Council, *Billion Dollar Projects Should Lead to Record Setting Construction Season,* (January 9, 2018) http://columbusconstruction.org/billion-dollar-projects-lead-record-setting-construction-season/ (accessed August 20, 2018). A number of these projects are public works, funded in whole or in part by the City of Columbus.

Appellee, the City of Cleveland, enacted an ordinance in 2003 imposing modest local hiring requirements on public construction contracts over $100,000 by requiring a minimum of twenty percent of the total construction work hours be performed by Cleveland residents. *Cleveland v. State*, 2017-Ohio-8882, 90 N.E.3d 979, ¶2 (8th Dist.). The Fannie Lewis Law, as it was called, was designed to alleviate unemployment and poverty in Cleveland. *Id*. at ¶3. In 2012, the City of Columbus likewise undertook a re-writing of its various contracting ordinances but with an eye towards streamlining the bidding process and focusing on contractor responsibility prequalifications. Columbus City Ordinance 2813-2012.

In enacting R.C. 9.75, the General Assembly sought to prohibit public authorities such as Columbus and Cleveland from requiring contractors, as a condition of accepting contracts for public improvement projects, to employ a certain percentage of individuals who reside within a defined geographical area. In citing Article II, Section 34 of the Ohio Constitution directly in the bill, the General Assembly telegraphed to the courts its expectation that R.C. 9.75 would be found to provide for the comfort, health, safety and general welfare of all employees as a protection of the right of the individual employees working on public improvement projects to choose where to live. 2015 Ohio HB 180. But R.C. 9.75 does not protect the right of an individual employee to choose where to live: it does not provide for the general welfare of all

employees and, ultimately, it does not benefit workers. R.C. 9.75, by its plain language, is directed at the protection of contractors and it was enacted for their benefit at the expense of the contracting powers of cities like Cleveland and Columbus. R.C. 9.75 was enacted in violation of the Home Rule provision of the Ohio Constitution and the Eighth District Court of Appeals opinion striking it down must be upheld.

STATEMENT OF THE CASE AND FACTS

The City of Columbus adopts the Statement of the Case and Facts set forth in Appellee's Merit Brief.

ARGUMENT

Reply to State of Ohio's Proposition of Law No. 2:

> *R.C. 9.75 violates the Ohio Constitution by improperly attempting to infringe upon the City's Home Rule powers of local self-government, guaranteed to it and all other municipalities by Section 3, Article XVIII of the Ohio Constitution. The Charter City's right to make public improvements and to negotiate the terms of contracts to accomplish the same are proper exercises of the City's powers of local self-government.*

Municipalities derive their powers of self-government directly from Ohio's Home Rule Amendment. Ohio Constitution, Article XVIII, Section 3. To determine whether a state statute takes precedence over a local ordinance, a three-part test is used:

> A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.

Canton v. State, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9. The City of Columbus concurs with the well-reasoned arguments of Appellee, City of Cleveland, as articulated by the Eighth District Court of Appeals, that the Fannie Lewis Law is an exercise of local self-government, that R.C. 9.75 is not a general law and, thus, RC 9.75 is "an unconstitutional attempt to eliminate a local authority's powers of self-government." *Cleveland*

v. State at ¶ 44. *Amicus* Columbus fully adopts Appellee's arguments in support of same as set out in Appellee's Merit Brief.

Reply to State of Ohio's Proposition of Law No. 1:

R.C. 9.75 is not a valid exercise of authority pursuant to Article II, Section 34 of the Ohio Constitution, as it does not provide for the general welfare of employees. Instead, it benefits the contractor-employer's interests to the detriment of cities.

A. As a clear violation of the Home Rule provision of the Ohio Constitution, R.C. 9.75 can only survive constitutional challenge if demonstrated to be supported by Article II, Section 34.

Article II, Section 34 provides for the general welfare of employees. It states:

> Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

Ohio Constitution, Article II, Section 34 ("Art. II, Sec. 34"). While the reach of the final clause – "and no other provision of the constitution shall impair or limit this power" – has yet to be explored, this Court has made clear that a statute validly enacted pursuant to Art. II, Sec. 34 would prevail over an ordinance which would otherwise be protected by Art XVIII, Sec. 3 - the Home Rule provision. *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597, 909 N.E.2d 616, ¶15. As argued above, R.C. 9.75 constitutes a clear violation of the home rule provision; a determination of its ultimate constitutionality, then, rests solely upon the applicability of Art. II, Sec. 34.

B. Art. II, Sec. 34 is a Broad Grant of Legislative Authority, But it is Not Limitless.

Article II, Section 34 of the Ohio Constitution is a broad grant of authority to the legislature to provide for the general welfare of all working persons. Even so, it is not an unlimited grant of authority. *Cleveland v. State* at ¶23. Art. II, Sec. 34 gives the General Assembly authority to enact laws relating to (1) hours of labor, (2) minimum wage, and (3) the

comfort, health, safety, and general welfare of all employees. But as the dissent in *Lima* stated, there are limits to the subject matter the legislature may address under the rubric of "general welfare of all employees." *Lima* at ¶38 (Lanzinger, J., dissenting). The State concedes as much in its brief - "Ohio's employee-welfare power [under Art. II § 34 of the Ohio Constitution] is [not] unlimited" - but then goes on to suggest that Art. II, Sec. 34's grant of authority ends only where a state law has "no plausible connection to employee comfort, health, safety, or welfare." Appellant's Merit Br., 18.

In its Merit Brief, the State goes on to contend that the history of Sec. 34 during debates at Ohio's Constitutional Convention in 1912 supports its overly broad reading of Sec. 34. Appellant's Merit Br., 10-12. The State emphasizes that the amendment ultimately placed before Ohio voters following the Convention was relatively more expansive than at least one alternative considered during the Convention; yet, nothing in these debates supports the State's proposition that Art. II, Sec. 34 grants the General Assembly the power to invalidate municipal construction contracts. *See* 2 Proceedings and Debates of the Constitutional Convention of the State of Ohio 1328-38 (1912).

In fact, the thrust of the Convention debates supports Cleveland's position. The debate on whether to approve Sec. 34 centered on the wisdom of minimum-wage laws. *Id.* Mr. Farrell of Cuyahoga County, speaking in support of the employee-welfare amendment, discussed at length the wisdom of minimum-wage setting. *Id.* at 1328-32. In response, opponents opined on the effects upon employers: That "drastic laws . . . limiting the number of hours of work for each man" would "be very unjust to the employer." *Id.* at 1331-33. Other delegates focused on the employer's freedom to contract. *Id.* at 1335.

Two things emerge from this debate: First, in creating the employee-welfare amendment that became Art. II, Sec. 34, delegates focused on writing a provision which would allow the General Assembly to regulate the employer-employee relationship itself. *Id.* at 1328-38. Second, they drafted it in service to the creation of a statewide minimum wage and only later, with the realization that things other than wages can have a similar impact on worker quality of life, did they slightly expand the amendment's reach. *Id.* Critically, no one at the Convention suggested that they might be granting legislators the power to regulate things other than the employer-employee relationship. *Id.*

As a matter of history, R.C. 9.75 is out of step with Sec. 34's grant of legislative power. Legislation that peripherally or remotely affects employees cannot be said to pertain to the "general welfare of all employees" as such a "plausible" argument could be made tying most any enactment to a potential impact on employees. To allow for such a thoroughly expansive reading of Sec. 34 would be to accord the General Assembly unfettered legislative power in contravention of the constitutional separation of powers.

C. R.C. 9.75 Pertains to the Local Authority-Employer Relationship and Not to the General Welfare of Employees, Therefore it Was Not Validly Enacted Pursuant to Article II, Section 34 of the Ohio Constitution.

Justice Lanzinger's dissent in *Lima* warned that the General Assembly would seek to improperly expand the employee general welfare language in Art.II, Sec. 34 to a "limitless variety of situations to eviscerate municipal home rule." *Lima* at ¶27 (Lanzinger, J., dissenting). The dissent's warning has come to fruition: the General Assembly has passed a pro-contractor, anti-home rule law to limit the contracting powers of local authorities, cloaked its enactment in the "unassailable protections" of Art. II, Sec. 34, and packaged it as "employee welfare." *Cleveland v. State* at ¶26.

The impetus for the introduction of SB 152 in April of 2015 was the legislative belief that local hiring preference laws were expensive and burdensome not to employees, but to contractors. As proposed and ultimately enacted, R.C. 9.75 prohibits public authorities from requiring contractors, as a condition of accepting contracts for public improvement projects, to employ a certain number or percentage of individuals who reside within a defined geographic area. R.C. 9.75(B) states:

> (1) No public authority shall require a contractor, as part of a prequalification process or for the construction of a specific public improvement or the provision of professional design services for that public improvement, to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.
>
> (2) No public authority shall provide a bid award bonus or preference to a contractor as an incentive to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.

R.C. 9.75. The sponsor testimony of State Senator Joseph Uecker in June 2015, while referencing a citizen's right to choose where to live in his remarks, made clear that the purpose of the bill was to "seek[] to protect taxpayer dollars by prohibiting the state and local governments from imposing burdensome residency requirements on contractors and design professionals." The Ohio Legislature, 132nd General Assembly, *Senate Bill 152, Committee Documents*,https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA131-SB-152 (accessed August 14, 2018).

SB 152 received three hearing dates in the Senate with ten witnesses offering proponent testimony: all contractors, professional design groups, or business organizations, including *Amici* Ohio Contractors Association and the Int'l. Union of Oper. Engineers, Local 18.[1] *Id.*

[1] Proponent witnesses included: Ohio Contractor Association; Int. Union of Oper. Engineers, Local 18; Associated General Contractors of Ohio; American Council of Engineering Companies of Ohio(x2); Transportation Advocacy Group of NW Ohio; Ohio Chamber of Commerce; NFIB;

Opponent testimony came from six entities aligned with municipal development concerns.[2] *Id*. The bill received an additional six hearings in the House – with thirteen witnesses this time – all proponent testimony offered by contractors, professional design groups, and business organizations. *Id*. Of note, the fact that testimony was offered by AFSCME Ohio Council 8 in opposition. *Id*. The legislative history of parallel HB 180, which ultimately resulted in the enactment of RC 9.75, was no different – three hearings in the House, two in the Senate with twelve contractor/professional/business proponents and eleven opponents consisting primarily of cities. The Ohio Legislature, 132nd General Assembly, *House Bill 180, Committee Documents*, https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA131-HB-180 (accessed August 14, 2018).

This was not a fight about worker's rights or their general welfare – it was a fight between contractors and local government over local contracting authority over public works contracts. The law that resulted was a reflection of that fight – R.C. 9.75's language focuses on the contractual relationship between local authorities and contractors, while Art. II, Sec. 34's language focuses on the relationship between employers and employees. R.C. 9.75 was not enacted to protect the general welfare of employees, it is in violation of the Ohio Home Rule amendment, and the Eighth District Court of Appeals opinion striking it down must be upheld.

D. R.C. 9.75 pertains to the Relationship Between Local Authorities and Employers, and Not With Employee Working Conditions Related to the General Welfare of Employees, Therefore it Was Not Validly Enacted Pursuant to Article II, Section 34 of the Ohio Constitution.

National Electric Contractors Association; Mechanical Contractors Association of Ohio (x2); and Allied Construction Industries.

[2] Opponent witnesses included: Cleveland Metropolitan School District; City of Akron; Commission on Economic Inclusion at the Greater Cleveland Partnership; Greater Cleveland Partnership; Construction Employers Association; and the City of Cleveland.

R.C. 9.75 requires that "[n]o public authority shall require a contractor" to meet local hiring preferences, or even "provide a bid award bonus or preference" to incentivize the employment of such labor at the job site. R.C. 9.75. On the other hand, Art. II, Sec. 34 of the Ohio Constitution allows for the General Assembly to pass laws "fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees." Ohio Const. Art. II, Sec. 34. This broad grant of authority enables the passage of laws which regulate the conditions of employment. *See, e.g., Am. Assn. of Univ. Professors v. Cent. State Univ.*, 87 Ohio St.3d 55, 1999-Ohio-248, 717 N.E.2d 286. However, R.C. 9.75 does not seek to regulate the employment conditions of the contractor employees vis-à-vis the contractor/employer, it seeks to regulate the contract terms between the city and the contractor.

In an attempt to shield R.C. 9.75 beneath the Art. II, Sec. 34 umbrella, the 131st General Assembly offered the justification that "it is a matter of statewide concern to generally allow employees working on Ohio's public improvement projects to choose where they live." 2015 Ohio HB 180 Sec. 3. As this Court has recognized, mandating the location of a worker's residence is a condition of employment. *Lima* at ¶13. However, the General Assembly performed a sleight of hand in suggesting that geographic hiring preferences on some of a construction contractor's projects would meaningfully impact where any given construction worker would choose to live. The City of Cleveland, for instance, requires that 20% of work-hours on many public-construction contracts be performed by Cleveland residents. Cleveland Codified Ordinances Chapter 188 ("C.C.O. 188"). These provisions of C.C.O. 188 do not require that any given worker relocate to Cleveland in order to be employed by the contractor: the contractor is free to staff 80% of the project hours with non-Cleveland residents and the

contractor is also free to employ the labor of non-resident employees at different job sites. As the City of Cleveland made clear, the number of individual Cleveland residents employed by a company is not a factor in awarding contracts. *Cleveland v. State,* Cuyahoga C.P. No. CV-16-868008 (Jan. 30, 2017), p.4. ("The City provided evidence at the preliminary injunction hearing that the number of residents working for a contractor has no bearing in awarding of the contract.").

Admittedly, Columbus gives some degree of preference to contractors 15% of whose employees are City of Columbus residents, but the ordinance stops well short of requiring that construction companies hire any particular proportion of Columbus residents in order to be given preference[3]. Columbus City Code ("C.C.C.") §329.01(1)(w) defines a "local workforce" as one which employs at least 15% Columbus residents out of its Ohio-resident employees. C.C.C. §329.21(a)(1) then allows the finance and management director to allocate "points" toward qualification for various contractor "responsibility factors" of which having a local workforce is one, but not the only, such qualifier. C.C.C. §329.211(b)(1). As a result, Columbus' local hiring preference incentives have no necessary impact on the availability of work-hours for workers who reside outside of the City. Nonetheless, R.C. 9.75(B)(2) takes direct aim at Columbus' local-hiring preference by banning the provision of any "bid award bonus or preference to a contractor as an incentive to employ as laborers a certain number or percentage of individuals who reside within [a] defined geographic area." R.C. 9.75(B)(2). R.C. 9.75 was not enacted to

[3] As originally proposed, local workforces were defined as those entities with a workforce of at least 50% of full time employees for entities less than 100 employees or, for those with 100 or more employees, at least 50 of the entity's full time employees being from the City of Columbus, Franklin County or counties contiguous. Columbus City Ordinance 2813-2012, Section 329.01 In its current form, however, a local workforce is defined as "a workforce whereby at least fifteen percent of the business entity's full time equivalent employees in Ohio reside in the city of Columbus…" C.C.C. 329.01(w).

protect the general welfare of employees, it is in violation of the Ohio Home Rule amendment, and the Eighth District Court of Appeals opinion striking it down must be upheld.

E. R.C. 9.75 Pertains to the Relationship Between Local Authorities and Employers, and Not With the General Welfare of Employees as a Collective Group, Therefore it Was Not Validly Enacted Pursuant to Article II, Section 34 of the Ohio Constitution.

Laws that have either benefitted or burdened employees as a collective group have been upheld as validly enacted employee general welfare laws under Art. II, Sec. 34. This Court upheld a law requiring local pension funds to transfer their assets to state pension funds for the benefit of police and firefighters, as a collective group. *State ex rel. Bd. of Trustees of Police & Firemen's Pension Fund v. Bd. of Trustees of Police Relief & Pension Fund of Martins Ferry*, 12 Ohio St.2d 105, 233 N.E.2d 135 (1967). This Court upheld as constitutional the Ohio Public Employees' Collective Bargaining Act that mandated binding arbitration between a city and its safety forces, in the event of a collective-bargaining impasse, finding that the statute was "indisputably concerned with the 'general welfare' of employees." *Rocky River v. State Emp. Rels. Bd*., 43 Ohio St.3d 1, 13, 539 N.E.2d 103 (1989). A law that burdened college teaching faculty, as a collective group, by requiring them to devote more hours to teaching students was likewise upheld. *Am. Assn. of Univ. Professors, supra.* Finally support was also found for a law that worked to the detriment of all employees, as a collective group, by allowing employees to sue their employers for damages resulting from intentional torts only if the employer intentionally injured the employee. *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, 927 N.E.2d 1066.

In determining then whether or not a law addresses the "general welfare" of employees, this Court has looked to the law's impact – be it a law that bestows benefits or imposes burdens - upon employees as a *collective group*. In other words, R.C. 9.75 must either work to benefit *all*

Ohio construction employees, as a collective group, or burden *all* Ohio construction employees, as a collective group. R.C. 9.75, however, does not work either to benefit or burden Ohio construction employees collectively. Instead, the statute seeks to eliminate laws such as the Fannie Lewis Law that clearly were enacted to benefit local construction workers in an urban area impacted by high rates of unemployment and poverty. A law such as R.C. 9.75 that places one group of employees (local workers) at a disadvantage to another group (non-local workers) cannot be said to be a general welfare law.

Amicus Ohio Contractors Association has argued that laws such as Fannie Lewis "hurt Ohioans who are not residents of a particular municipality" and that they "undermine worker residency protections" which are designed to ensure uniformity in application across the state of Ohio. *Amicus* Ohio Contractors Assoc., Br. at 1. But the uniform application of a law only results in either a benefit or a burden to the general welfare of employees as a collective group where the underlying circumstances are the same or similar across the group. That is not the case in Cleveland and it is not the case, generally, in large cities where it is not uncommon to find both higher unemployment and more extensive public works projects than in non-urban areas. Under these conditions, uniformity in residency requirements cannot be said to be a benefit to all contract workers and, in fact, can be a burden to those who live in an area that, due to high rates of construction, is beset by teams of competing, non-resident contractors seeking to do business in their city.

Amicus International Union of Operating Engineers, Local 18 take a different approach to the call for uniformity, arguing that residency requirements penalize their members who would "otherwise be qualified for work under the hiring hall's existing policy." *Amicus* Int'l Union of Engineers, Br. at 2. Under the existing hiring hall policy, as described by *Amicus*, union

members "are equitably referred to work based on two essential criteria: 1) whether their self-reported qualifications meet the demands of the employer's work order; and 2) the length of time they have been registered [with the hiring hall] for work." *Id.* at 1. Imposing residency requirements, they argue, "upends industrial stability for these employees and potentially exposes the Union to a plethora of liability."[4] *Id*. at 7. And yet, there is nothing about allocating work based upon hiring hall seniority that is inherently more equitable than allocating work based upon residency within the city where the work is being done – both seek to confer an advantage in hiring based not upon skill but upon objective criteria important to the involved parties. Regardless of the policy considerations at issue, the mere fact that a residency preference might complicate the hiring hall process for some workers does not compel a finding that elimination of the preference is thereby in furtherance of the general welfare of contractor employees as a collective group.

In each case discussed above, this Court examined the applicability of Art. II, Sec. 34 to laws aimed at the employer-employee relationship itself. To support their argument that R.C. 9.75 is constitutional, the State and the *Amici* rely upon one such case more heavily than others - this Court's decision in *Lima.* In *Lima*, the General Assembly enacted a statute that prohibited cities from requiring its employees to live in the city as a condition of employment. *Id*. at ¶1.

[4] *Amicus* International Union of Operating Engineers express concern in their brief over the impact of residency requirements upon their collective bargaining agreements, claiming it would pose an undue hardship on operating engineers and violate the Union's merit-based referral system. *Amicus* Int'l Union of Engineers, Br. at 5. And yet, the City of St. Paul, MN, as an example, has had a residency requirement since 1979 and the Int'l Union of Operating Engineers has incorporated St. Paul resolution #273378 (See Attached, Exhibit 1) into its CBA with the City of St. Paul for years, most recently in 2017. City of St. Paul, *2016-2017 Labor Agreement between The City of Saint Paul and International Union of Operating Engineers Local 70, Article 12- Residency*, (June 2016), https://www.stpaul.gov/sites/default/files/Media%20Root/Human%20Resources/EG12-contract.pdf (accessed August 20, 2018)

The statute at issue in *Lima*, R.C. 9.481, states that "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." *Id.* This Court found R.C. 9.481 to be constitutional and that it was enacted pursuant to the authority granted in Art. II, Sec. 34. *Id*. at ¶14-15. Specifically, this Court found that R.C. 9.481 provides for the comfort and general welfare of employees by allowing city employees more freedom of choice in residency. *Id*. at ¶13.

Lima, however, does not apply here. Laws like the Fannie Lewis Law do not deprive employees of the freedom to choose where to live. The ordinances at issue in *Lima* required that all city workers reside in the city as a *condition* of their employment and the subsequently enacted state statute directly addressed the employer-employee relationship by banning the employer from setting such residency requirements, as a condition of employment, for all public employees as a collective group. *Id.* at ¶13. Unlike *Lima*, the Fannie Lewis Law does not require employees to live in Cleveland as a *condition* of employment. What the Fannie Lewis Law requires is for contractors to employ, on a given job, a set percentage of workers who *already live in the city*. The other employees hired by the contractor may or may not be non-city residents, as the contractor chooses. R.C. 9.75 was not enacted to protect the general welfare of employees, it is in violation of the Ohio Home Rule amendment, and the Eighth District Court of Appeals opinion striking it down must be upheld.

CONCLUSION

The Court should affirm the Eighth District's decision and find that R.C. 9.75 is unconstitutional as a violation of Ohio's Home Rule provision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Brief of Amicus Curiae Columbus City Attorney, Zach Klein, in support of Appellee, City of Cleveland has been served electronic e-mail, this 20th day of August, 2018.

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APPENDIX

PROCEEDINGS

OF THE

COUNCIL

OF THE

CITY OF ST. PAUL

RAMSEY COUNTY, MINNESOTA

1979

LEGAL LEDGER, INC.
St. Paul, Minn.
1979

proposed By-Laws of the District Heating Development Corporation; and, be it

Finally Resolved, That the Mayor, members of City Council, and all appropriate City staff will continue to work in close cooperation with the District Heating Development Corporation to provide assistanace where necessary to ensure successful operation of the corporation.

Adopted by the Council July 24, 1979.
Approved July 26, 1979.
(August 4, 1979)

Council File No. 273376 — By Joanne Showalter—

Whereas, The State of Minnesota acting through the Minnesota Energy Agency (Agency) and pursuant to Minn. Stat. Section 116H.08(b) has tendered the City of Saint Paul (Grantee) a grant in the amount of $5,000 to be used to incorporate the District Heating Corporation and fund its first months of operation during which a proposal for design and construction of a district heating system will be prepared for a Federal Grant Application; and

Whereas, The District Heating Development Corporation is in the process of incorporating pursuant to the Minnesota Non-profit Corporations Act, Minn. Stat. Chapter 317, for operation exclusively for charitable purposes within the meaning of that term as used in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, to assist the Grantee in the provision of a public utility to users within the City of Saint Paul through the preparation of a proposal for design and construction of a new Hot Water District Heating System (System) for use in solicitation of public and private financing of such a system; and

Whereas, The acceptance of the Agency grant, the preparation of a proposal for design and construction of the System and solicitation of funding for its construction are necessary preliminary activities toward the provision of an essential public service by a public service corporation under permit issued by the City pursuant to Minn. Stat. Chapter 451 or by the City pursuant to Minn. Stat. Chapter 452, now therefore, be it

Resolved, By the Council of the City of Saint Paul that the Agreement between the State of Minnesota Energy Agency and the City of Saint Paul for a $5,000 grant to assist the District Heating Development Corporation in incorporating to prepare a proposal for the design and construction of the Hot Water District Heating System for Saint Paul, an essential public service and public activity is hereby approved for execution by the proper City officers.

Resolved Further, That the Director, Department of Finance and Management Services, is authorized to receive the State grant, to negotiate an agreement with the District Heating Development Corporation for use and disbursement of the grant funds, and to take all other necessary actions to carry out the purposes of this resolution.

Adopted by the Council July 24, 1979.
Approved July 26, 1979.
(August 4, 1979)

Council File No. 273378 — By Ron Maddox—

Resolved, That Section 5D of the St. Paul Personnel Rules is amended as follows:

"5D. RESIDENCE

Every employee holding a position in the Classified Service of the City shall be a bona fide resident of the State of Minnesota.

Since employees in the Fire Group and the Police Group are subject to recall in emergencies and must, therefore, be readily available, such employees shall be bona fide residents of an area which shall include the following:

Ramsey County, Washington County, Anoka County, Dakota County, that part of Hennepin County which lies east of Highway 101, and that part of Chisago County which lies south of Highway 95.

Applicants for original entry to a position in the classified service of the City of St. Paul who have been a resident of the City of St. Paul for at least one year immediately prior to the date of the examination for said position shall receive an additional five points on their examination score, provided that the applicant must attain a passing grade before the additional five points are added.

Every Unclassified employee appointed on or after July 1, 1979 must become a resident of the City of Saint Paul within six months of their appointment or within six months of the termination of their probation period, if one exists, and must remain a resident of the City for the duration of their employment.

Every Unclassified employee who is a member of a collective bargaining unit, or an attorney who is confidential under the Public Employees Labor Relations Act, and who was appointed after January 1, 1977 but before July 1, 1979, must become a resident of the City of Saint Paul within six months of their appointment or within six months of the termination of their probation period, if one exists, and must remain a resident of the City for the duration of their employment.

Every Unclassified employee who is a member of a collective bargaining unit, or an attorney who is confidential under the Public Employees Labor Relations Act, and who was appointed prior to January 1, 1977, will not be bound by any type of City residency regulation.

All other Unclassified employees who were appointed prior to July 1, 1979 will be bound by the following residency regulations. If the employee lived in the City at the time of the appointment, he or she must

remain a resident of the City for the duration of their employment. If the employee lived outside of the City at the time of appointment, they may remain there, but if they change their residence they must then move into the City and remain a City resident for the duration of their employment.

For those Bargaining Units which have provisions within their Labor Contracts that are contrary to the provisions of this Section, the provisions within their contracts shall prevail over the provisions contained in this Section.

An employee failing to meet the residency requirement shall be deemed to be insubordinate and guilty of misconduct and shall be subject to automatic forfeiture of employment. An employee terminated for failure to meet the residency requirement shall have the right to a hearing to determine whether the residency requirement was met.

For the purpose of this Section, a temporary summer residence outside of the City or above described area between the dates of May 15 and September 15 of any year will not be considered as being non-residency."

and, be it

Further Resolved, That the additional five points to original applicants test scores as set out above, shall commence with all position vacancies posted subsequent to the effective date of this resolution.

Adopted by the Council July 24, 1979.
Approved July 26, 1979.

(August 4, 1979)

Council File No. 273379 — By Ruby Hunt—

An Administrative Resolution approving the terms and conditions of the 1979-1980 Memorandum of Settlement between the City of St. Paul and the Twin City Iron Workers, Local 512.

Whereas, The Council pursuant to the provisions of Section 12.09 of the St. Paul City Charter and the Public Employees Labor Relations Act of 1971, as amended, recognizes the Twin City Iron Workers, Local 512, as exclusive representative for those classes of positions within the City of St. Paul certified by the Bureau of Mediation Services under Case No. 73-PR-507-A for the purpose of meeting and negotiating the terms and conditions of employment for all full-time personnel in the classes of positions as set forth in the Agreement between the City and the exclusive representative hereinabove refrenced; and

Whereas, The City, through designated representatives, and the exclusive representative have met in good faith and have negotiated the terms and conditions of employment for the period May 1, 1979, through April 30, 1981, for such personnel as are set forth in the Agreement between the City of St. Paul and the exclusive representative; now, therefore, be it

Resolved, That the Memorandum of Settlement, cited above, dated as of the effective date of this Resolution, between the City of St. Paul and the Twin City Iron Workers, Local 512, on file in the office of the City Clerk, is hereby approved, and the authorized administrative officials of the City are hereby authorized and directed to execute said Memorandum of Settlement on behalf of the City.

Adopted by the Council July 24, 1979.
Approved July 26, 1979.

(August 4, 1979)

Council File No. 273380 — By Ron Maddox—

Whereas, The Council of the City of Saint Paul, at a public hearing on July 18, 1979, did consider a request for the transfer of on-sale liquor license No. 9641 from Heine, Inc., to Engine House Associates, Ltd., a limited partnership, to do business at 498 Selby Avenue, St. Paul, Minnesota; and

Whereas, Notice of said transfer was tendered to area residents in writing via U.S. mail pursuant to ordinance and additional notice appeared in the newspapers of the St. Paul Dispatch and Pioneer Press; and

Whereas, The licensee, William C. Heine, appeared together with his attorney, John F. Bannigan, Jr., and the proposed transferee, Richard Henke of Engine House Associates, Ltd., together with his attorney, Bruce P. Candlin, also appeared; and

Whereas, Renee Heine and Roberta Heine, the children of Robert T. Heine, appeared opposing the license transfer and alleged an interest in the license and/or proceeds; and

Whereas, After discussion with the respective parties it was consented to and agreed to by the licensee and the transfer applicant that the Council would approve the aforementioned license transfer subject to the deposit in escrow of the balance of the selling price of said license, being the sum of Thirty Nine Thousand Dollars ($39,000.00) for a period not to exceed forty-five (45) days from the effective date of this Resolution in the trust account of the law firm of Lais, Bannigan & Ciresi.

Now, Therefore, Be It Resolved, By the Council of the City of Saint Paul that Applicataion Q9193 for the transfer of the on-sale liquor license No. 9641 expiring January 31, 1980, issued to Heine, Inc., formerly doing business at 488 St. Peter is hereby transferred to Engine House Associates, Ltd., to do business at 498 Selby Avenue, St. Paul, Minnesota, subject to the deposit in escrow of the balance of the sale price, being the sum of Thirty Nine Thousand Dollars ($39,000.00) for a period not to exceed forty-five (45) days from the effective date of this Resolution in the trust account of the law firm of Lais, Bannigan & Ciresi.

Be It Further Resolved, That if the County Attorney's Office notifies the License Inspector prior to the expiration of the aforementioned forty-five (45) day period that no criminal