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1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Common Pleas**

**MOTION TO...**  
**January 10, 2020 14:40**

By: JON M. DILENO 0040836

Confirmation Nbr. 1913144

CITY OF CLEVELAND

CV 18 908520

vs.

**Judge: MICHAEL J. RUSSO**

CLEVELAND ASSN OF RESCUE EMPLOYEES,  
LOCAL 175

**Pages Filed: 6**

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

CITY OF CLEVELAND,	)	CASE NO. CV 18 908520
	)	
Plaintiff,	)	JUDGE MICHAEL J. RUSSO
	)	
v.	)	
	)	
CLEVELAND ASSOCIATION OF	)	<b><u>THE CITY OF CLEVELAND'S</u></b>
RESCUE EMPLOYEES, LOCAL 1975	)	<b><u>MOTION TO STAY THE</u></b>
	)	<b><u>EXECUTION OF THE COURT'S</u></b>
	)	<b><u>DECEMBER 13, 2019 ORDER</u></b>
Defendant.	)	<b><u>PENDING APPEAL</u></b>

Plaintiff, the City of Cleveland ("Cleveland"), by and through counsel and pursuant to Ohio Civil Procedure Rule 62(B) and (C) and Ohio Appellate Rule 7, moves this Court to stay the execution of its December 13, 2019 Order pending resolution of Cleveland's appeal of this Court's December 13, 2019 order. Pursuant to Civ. R. 62(C), no bond, obligation, or other security is required to be posted by Cleveland because it is a political subdivision of the State, and this Court has no discretion to request that security be posted. A memorandum in support of this motion is attached with a proposed Order.

Respectfully submitted,

*/s/ Jon M. Dileno*

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City of Cleveland*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of *The City of Cleveland's Motion to Stay Execution of the Court's December 13, 2019 Order Pending Appeal* was served, via regular U.S. mail, postage pre-paid, and electronic mail on this 10th day of January 2020 upon:

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*/s/ Jon M. Dileno*

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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

CITY OF CLEVELAND,	)	CASE NO. CV 18 908520
	)	
Plaintiff,	)	JUDGE MICHAEL J. RUSSO
	)	
v.	)	
	)	
CLEVELAND ASSOCIATION OF	)	<b><u>THE CITY OF CLEVELAND'S</u></b>
RESCUE EMPLOYEES, LOCAL 1975	)	<b><u>BRIEF IN SUPPORT OF ITS</u></b>
	)	<b><u>MOTION TO STAY THE</u></b>
	)	<b><u>EXECUTION OF THE COURT'S</u></b>
Defendant.	)	<b><u>DECEMBER 13, 2019 ORDER</u></b>
	)	<b><u>PENDING APPEAL</u></b>

On January 10, 2020, Plaintiff, the City of Cleveland (“Cleveland”) appealed the Court’s December 13, 2019 order to the Eighth District Court of Appeals. Pursuant to O.R.C. 2711.15, the Court’s December 13<sup>th</sup> order denying Cleveland’s motion to vacate the arbitration award and granting Defendant Cleveland Association of Rescue Employees, Local 1979 (“CARE”)’s motion to confirm and enforce the arbitration award is a final, appealable order.

Under Ohio law, Cleveland is entitled to a stay of execution of the Court’s December 13, 2019 judgment in this case. Moreover, Ohio Rule of Appellate Procedure 7(A) requires that an appellant first seek a stay in the trial court. Ohio Civil Procedure Rule 62(B) provides that when an appeal is taken, “the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond”.

However, Civ. R. 62(C) provides that political subdivisions of the State are **not** required to post the supersedeas bond or other security. Civ. R. 62(C) provides:

When an appeal is taken by this state or political subdivision or administrative agency of either, or by any officer thereof acting in his representative capacity and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

The Ohio Supreme Court in *State ex rel. State Fire Marshall v. Curl*, 87 Ohio St.3d 568, 2000-Ohio-248, 722 N.E.2d 73 confirms that political subdivisions are to be given a stay pending an appeal of a judgment as a matter of right. The Court held, after construing Civ. R. 62(B) and (C) *in pari materia*, that appellants, including the State Fire Marshall, were “entitled to a stay of the judgment as a matter of right. The lone requirement of Civ. R. 62(B) is the giving of an adequate supersedeas bond. Civ. R. 62(C) makes this requirement unnecessary in this case, and [the court] has no discretion to deny the stay”. *Id* at 571 (quoting *State ex rel Ocasek v. Riley*, 54 Ohio St.2d 488, 377 N.E.2d 792 (1978))

This Court’s judgment issued on December 13, 2019 confirms and enforces the arbitration award and awards statutory interest on the compensation awarded to the members of CARE. The crux of Cleveland’s motion to vacate is that the arbitration award is invalid because the arbitrator (1) engaged in misbehavior by the rights of Cleveland were prejudiced and (2) exceeded his powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made. If a stay of the Court’s order confirming and enforcing the arbitration is not issued, Cleveland will be irreparably harmed by paying back wages to hundreds of employees and creating or modifying policies and practices, without opportunity for adequate appellate review of the Court’s December 13, 2019 Order. Indeed, the enforcement of this type of arbitration award affects the terms and conditions of several hundred Cleveland employees – many of which require Cleveland to adjust wages, policies, practices and other employment aspects affecting several hundred employees. Moreover, no irreparable harm will occur to Defendant or its members if status quo is maintained because if Cleveland is unsuccessful, members of the CARE bargaining unit will be made whole with backpay and statutory interest as awarded in the Court’s December 13, 2019 order.

Although the requested stay pending appeal is a matter of right under the Civil Rules, this Court further has “broad discretion incident to Civ. R. 62 to issue any order necessary to preserve the status quo while the stay is in effect”. *Hamilton* at 273-274 (citing *Dayton City Sch. Dist. Bd of Edn.*, at 760). Based on Cleveland’s appeal of the December 13, 2019 Order, it is necessary for this Court to issue an order to maintain status quo, and stay its order confirming the arbitration award pending resolution of the appeal. Otherwise, any appeal will not allow for an adequate remedy.

For the reasons more fully articulated above, Cleveland asks this Court to issue an order staying its December 13, 2019 order confirming the arbitration award and issue an order maintaining status quo pending appeal. A proposed order is attached.

Respectfully submitted,

/s/ Jon M. Dileno

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The undersigned hereby certifies that a true copy of the *The City of Cleveland's Brief in Support of Motion to Stay the Court's December 13, 2019 Order Pending Appeal* was served, via regular U.S. mail, postage pre-paid, and electronic mail on this 10th day of January 2020 upon:

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