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CLARIFICATION OF REMEDY
ARBITRATION CASE NO. DRC-2022-05896-09, SCHWENDEMAN
July 3, 2023

The award at arbitration regarding the above noted case was issued on April 21, 2023.

The arbitrator was notified by email that the parties were requesting a clarification regarding the remedy on June 23, 2023. A brief mutually agreed upon meeting on Zoom was arranged on June 27, 2023. All involved parties were present on the call. The arbitrator informed the parties that jurisdiction, regarding remedy, was retained for sixty days from the date of the award which had expired on June 20, 2023. The parties mutually agreed that said jurisdiction be extended, and the arbitrator was in agreement but requested that it be submitted in writing. The written request was received by the arbitrator on June 30, 2023.

The parties agree to allow the arbitrator to extend jurisdiction for the purposes of addressing remedy of the grievance above, specifically the Grievant's right to buy vacation leave that was converted to cash upon the Grievant's termination of employment as outlined in Article 28 of the collective bargaining agreement.

The Grievant's employment had been terminated, and he was reinstated without back pay pursuant to the arbitration award. When terminated, the Grievant was paid his vacation leave balance. Upon his reinstatement, issues regarding his previous sick leave and personal

leave balances were resolved, but he was denied the ability to purchase what had been his vacation leave balance. This is the issue for clarification before the arbitrator. As part of his reinstatement based on the arbitration award, does the Grievant have the right to purchase back the vacation leave balance which was available prior to the termination of his employment but was paid upon separation?

Section 28.04 of the collective bargaining agreement states that “an employee or an employee’s estate will be paid for accrued vacation upon termination of State service at the time that the employee receives his/her pay check for the final period of work.” While the payment of the Grievant’s vacation balance may have been beneficial to him following termination of employment, this section of Article 28 requires the Employer to automatically make such payment upon separation. Conversely then, termination being a unilateral action of the Employer, as is payment of accrued vacation leave, a Grievant should have the ability to purchase back vacation leave if reinstated. The Grievant received payment for his vacation leave balance. Therefore, in order to have the leave balance reinstated, he must provide payment to the Employer for the balance or portion thereof which he wishes to have reinstated.

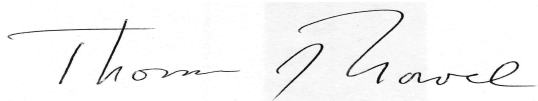
Pursuant to Section 28.04 and as part of the remedy for Arbitration Case No. DRC-2022-05896-09, the request of the Grievant is granted and ordered. The Grievant has asked to purchase his former vacation leave balance, which was in effect at the time of the termination of employment, at the amount which was paid out at the time of separation. The Grievant has asked to purchase the leave in eight hour increments each pay period, and will conclude making payments no later than the end of March 2024. Such amount, if made in one payment or in a

small number of increments, would be excessive. Therefore, the Grievant's request to make payments each pay period is reasonable and is made a part of this award.

The Grievant's ability to purchase the vacation leave balance, which was available at the time of his termination of employment and which was paid out by the Employer, is made a part of the remedy for Arbitration Case No. DRC-2022-05896-09 and is so ordered. The Grievant may purchase the leave at the amount at which it was paid out, and he may make eight hour incremental payments each pay period through the end of March 2024.

The jurisdiction of the arbitrator concerning Arbitration Case No. DRC-2022-05896-09 ends with the issuance of this clarification.

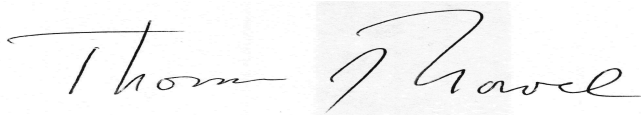
Signed and dated this 3rd day of July 2023 at Lakewood, Ohio.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel, NAA
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of July 2023, a copy of this clarification of Arbitration Case No. DRC-2022-05896-09 has been served by electronic mail upon James Adkins, Labor Relations Officer 3, for the Ohio Department of Correction and Rehabilitation, Noble Correctional Institution; Tim Watson, Staff Representative, for the Ohio Civil Service Employees Association, AFSCME Local 11; Kate Nicholson for the Ohio Office of Collective Bargaining; and Patty Rich for the Ohio Civil Service Employees Association, AFSCME Local 11.

A handwritten signature in black ink that reads "Thomas J. Nowel". The signature is written in a cursive style with a large, stylized 'T' and 'N'.

Thomas J. Nowel, NAA
Arbitrator