

#1499

State of Ohio  
Ohio Department of Job and Family Services  
and  
SEIU/District 1199  
Labor Arbitration Proceeding

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In the Matter of the Arbitration Between:

State of Ohio, Ohio Department of Job and Family Services

and

SEIU/District 1199

Grievant: Diana Fisher

Grievance No.: 16-12-20000911-0027-02-12

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**Arbitrator's Opinion  
and Award**  
**Arbitrator: Dr. David M. Pincus**  
**Date: June 6, 2001**

**Appearances**

**For the Employer**

Sally Miller	LRO – ODJFS
Pamela Anderson	LRO – ODJFS
Daniel Santry	Systems Analyst 3 – DAS
Shirley Turrell	Acting Team Leader – OCB
Wayne Pat Mogan	Advocate

**For the Union**

Diana Fisher	Grievant
Dwayne Knowles	Delegate
Michael Robinson	Delegate
Lisa Hetrick	Advocate

**ARBITRATOR'S AWARD ON THE ARBITRABILITY ISSUES**

After an impartial review of relevant documents, pertinent contract provisions and the parties' arguments, it is this Arbitrator's opinion that the disputed matter is not substantively arbitrable. As such, the settlement agreement (Joint Exhibit 6), serves as the full and final settlement of the grievance under present review.

The settlement agreement (Joint Exhibit 6) in question is a contract that was signed by the grievant and other relevant and authorized agents of the Union and the Employer. The terms and conditions specified are clear and unambiguous and represent a compact reached by all concerned parties.

It specifically references accrued vacation at a particular rate of pay for a specified period of time, and other language dealing with the finality of the matter settled. There is, however, no reference to any OPERA benefit, and one can only surmise that this portion of the remedy request did not become part of the consideration agreed to by the parties to fashion a final settlement of the dispute.

The Union's ability to resurrect the OPERA benefit issue could have been accomplished another way. It could have pressed the Employer for specific language in the settlement allowing the Union to arbitrate the matter of OPERA benefits. This could have become a plausible settlement condition. Here, however, without this language, the disputed matter was totally resolved and finalized including the OPERA claim. No other plausible interpretation is reflected in the record.

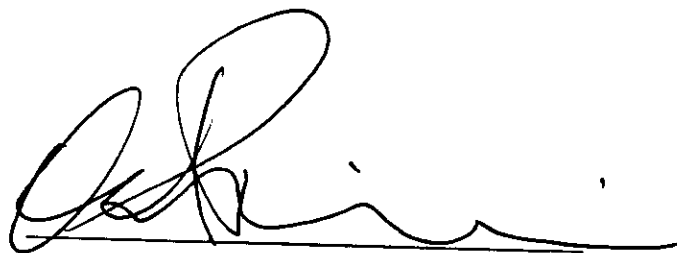
The terms and conditions bind the parties. Allowing the Union to re-assert a matter already considered and handled via a subsequent grievance would cause a contractual breach of a settlement agreement. A breach of this sort could jeopardize the possibility of future

settlement efforts and preclude settlements at other stages of the grievance procedure. It would unglue a relationship the parties have nurtured since 1986. If the parties cannot walk away from a settlement with a certainty that some finality exists, there is no motivation to settle disputed matters. Such a circumstance would stress an already tedious grievance handling infrastructure.

The Arbitrator, for the above mentioned reasons, has ruled the grievance has no substantive standing. If the timeliness procedural defect had solely been presented, without the associated terms and conditions contained in the settlement agreement (Joint Exhibit 6), I would have deemed the matter arbitrable. The following comments should be viewed as dicta and not as any formal ruling. Viewed under the previously described circumstances, the matter is a continuing grievance. It resurrects every time payment becomes due, and thus, is not totally confined to the time limits specified in the grievance procedure. But the timeliness matter cuts both ways. Deeming a matter arbitrable may also impact remedy computations. That is, the Union would be hard pressed if it agreed to the existence of a continuing grievance, and yet, expected full back pay for benefits accrued since the inception of the contractual breach.

June 6, 2001

Date  
Columbus, Ohio

A handwritten signature in black ink, appearing to read 'D. Pincus', written over a horizontal line.

Dr. David M. Pincus  
Arbitrator