

#1914

PRE-ARBITRATION DECISION

December 9, 2005

In the Matter of:

Ohio Civil Service Employees Association,
AFSCME Local 11

Case No. 02-10-20041230-0097-01-13
Statewide Weather Emergencies
Dec. 2004, Jan. 2005

And

State of Ohio

APPEARANCES

For the Union:

Herman S. Whitter, Assist. General Counsel & Dir. of Dispute Resolution
Kathy Stewart, OCSEA Statewide Secretary-Treasurer
Jennifer J. Neague, Law Clerk

For the State:

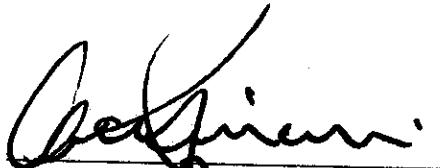
Mike P. Duco, Manager of Dispute Resolution and SERB Services

Arbitrator:

Dr. David M. Pincus

- 1) If there is no grievance or form filed with the Union as of December 9, 2005, then the grievance is considered withdrawn.
- 2) If the information on the grievance form or the form filed with the Union is insufficient, then the grievance is considered withdrawn.
- 3) The grievances should be separated by date, time, location and grouping when appropriate.
- 4) The Union shall present information to OCB on or about January 31, 2006. An extension may be requested by placing a phone call to this Arbitrator.
- 5) On or before March 1, 2006, OCB will have the information verified and will set a date for arbitration if necessary. An extension may be requested by placing a phone call to this Arbitrator.

- 6) Kathy Stewart will represent the class for the Union and may require release time as requested to work on this matter. Necessary release time will be worked out in advance by the parties.
- 7) All December 2004, and January 2005, weather related grievances are consolidated under the above captioned grievance number.
- 8) The parties agree to retain Arbitrator Pincus for issues dealing with the above captioned matter.



Arbitrator, David M. Pincus
Columbus, Ohio

12/9/05

Date

OPINION AND AWARD

In the Matter of the State of Ohio

And

The Ohio Civil Service Employees Association, Local 11

Grievant: Herman Whitter, class action

Grievance #: 02-10-(04-12-30)-0097-01-13

Arbitrator's Award and Opinion

Arbitrator: David M. Pincus

Date: March 20, 2007

Appearances:

For the Employer:

Mike Duco, OCB

Jessie Keyes, OCB

Manager of Dispute Resolution & SERB Services

Labor Relations Specialist

For the Union:

Patty Rich, OCSEA

John Porter, OCSEA

Grievance Manager

Associate General Counsel

INTRODUCTION

This disputed matter arose as a consequence of a class action grievance dealing with a series of weather-related grievances for the period December, 2004 and January, 2005. An initial hearing took place on December 9, 2005. In an attempt to gather appropriate information for future settlement attempts and/or a future arbitration hearing, the Arbitrator issued the following pre-arbitration order:

- 1) If there is no grievance or form filed by the Union as of December 9, 2005, then the grievance is considered withdrawn.
- 2) If the information on the grievance form or the form filed with the Union is insufficient, then the grievance is considered withdrawn.
- 3) The grievances should be separated by date, time, location and grouping, when appropriate.

- 4) The Union shall present information to OCB on or about January 31, 2006. An extension may be requested by placing a phone call to this Arbitrator.
- 5) On or before March 1, 2006, OCB will have the information verified and will set a date for arbitration, if necessary. An extension may be requested by placing a phone call to this Arbitrator.
- 6) All December 2004, and January 2005, weather related grievances are consolidated under the above captioned grievance number.

The parties requested a number of extensions for data gathering and analysis purposes. These extensions were properly tendered and agreed to by the Arbitrator.

The data gathering stage of the process resulted in a number of entries. Approximately 12,500 entries were received by the parties for the period December 22, 2004 to January 20, 2005.

Several settlement attempts were initiated by the parties. They proved, however, to be unsuccessful. As such, a formal Arbitration hearing was held on March 20, 2007. The parties agree that the disputed matter is properly before the Arbitrator.

AWARD

The particulars to be discussed below are non-precedent setting and are strictly limited to the facts and circumstances surrounding the disputed matter. This particular case shall not be cited in any future dispute involving Article 13.15 weather emergency.

The parties disagreed about the particular dates to be reviewed and considered by the Arbitrator. The Union, more specifically, wished the Arbitrator to consider a series of dates: nine (9) dates in December and fifteen (15) dates in January. The employer offered a more limited number of dates for review. The union also requested a full remedy in accordance with Article 13.15 of the 2003-2006 Collective Bargaining Agreement.

The Arbitrator has determined to focus on the following dates: December 23, 2004, and December 24, 2004, January 6, 2005, and January 7, 2005. The Union was unable to demonstrate a wide-spread emergency on the excluded dates. Review of the submitted data reflects heavy and wide-spread weather emergency activity on the four (4) dates selected by the Arbitrator.

The parties, however, need to recognize that the Award is rendered with one clear principle in mind. The State of Ohio abused its discretion when it failed to declare an emergency under the circumstances on the four (4) selected dates. For the purpose of this disputed matter, the Arbitrator has selected December 23, 2004, December 24, 2004, January 6, 2005 and January 7, 2005. The Union was able to persuade the Arbitrator that the State of Ohio abused its discretion on these dates.

The arbitrator is aware that the State of Ohio is able to declare an emergency under article 13.15, and is not attempting to add or subtract from the existing language in the Collective Bargaining Agreement. That is why this award is non precedent setting, and the full remedy requested by the Union is inappropriate for the dates selected by the Arbitrator.

Only those grievants who properly complied with the terms of the Arbitrator's order, for the four (4) dates selected by the Arbitrator, shall receive the restorative remedy determined by the Arbitrator. The Arbitrator's award contains the following particulars:

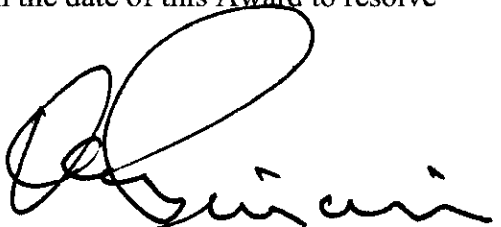
- 1) Any grievant that used sick leave on December 23, 2004, December 24, 2004, January 6, 2005, and January 7, 2005 shall not have such leave restored.
- 2) Only grievants that worked December 23, 2004, December 24, 2004, January 6, 2005, and January 7, 2005 shall be credited with one (1) hour compensatory time for every two (2) hours worked, at the straight time rate. If less than one (1) hour was worked by any grievant, he/she shall receive compensatory time at the rate of 50% of the time worked on these dates.

(e.g. If an employee worked 10 hours he/she shall receive 5 hours of compensatory time. If he/she worked ½ hour, he/she shall receive fifteen (15) minutes of compensatory time.)

- 3) Grievants who utilized leave other than sick leave on December 23, 2004, December 24, 2004, January 6, 2005, and January 7, 2005 shall have restored any personal leave, vacation and comp time, as long as it was not prescheduled.
- 4) The spread sheets submitted by the parties to the Arbitrator shall hereby be incorporated into the award.

Local Union leadership and local employer representatives shall work together to have this award implemented within sixty days of March 20, 2007. The arbitrator, moreover, shall retain jurisdiction for ninety days from the date of this Award to resolve any disputes.

3/20/07
Date


Dr. David M. Pincus
Arbitrator