Thomas J. Nowel
Arbitrator and Mediator
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

In The Matter of a Controversy Between:	)	Grievance No.
	)	29-02-20100129-
Service Employees International Union,	)	0003-02-12
District 1199	)	
	)	ARBITRATION
and	)	OPINION AND
	)	AWARD
Ohio Rehabilitation Services Commission	)	
	)	DATE:
Re: Grievance of Todd Wellman	)	May 17, 2012

APPEARANCES:
Amanda Schulte, Advocate for SEIU District 1199; Bobby Johnson, Advocate for Ohio Rehabilitation Services Commission; and David Long for the Ohio Office of Collective Bargaining.

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the State of Ohio and the Service Employees International Union, District 1199. The parties are in disagreement regarding the interpretation of Article 21, Travel, Section 21.01, Time.

Union member, Todd Wellman, grieved the interpretation of Section 21.01 on January 28, 2010, and the grievance was denied by the Employer on March 25, 2010. The Union had notified the State of its intention to arbitrate the matter on February 12, 2010.

The Arbitrator was selected by the parties, pursuant to Article 7 of the collective bargaining agreement, to conduct a hearing and render a binding arbitration award. Hearing was held on March 21, 2012 at the offices of District 1199 in Columbus, Ohio. At the hearing, the parties were afforded the opportunity for examination and cross-examination of witnesses and for the introduction of exhibits. Witnesses were sworn by the Arbitrator.

ISSUES

The Employer states that the grievance is not timely filed and therefore challenges its arbitrability. In addition, the Union argues that the grievance is a "class grievance" as opposed to Mr. Wellman's individual complaint. The parties were unable to come to agreement regarding a stipulated issue on the merits of the case and deferred to the Arbitrator to make this determination as part of the award.

WITNESSES

TESTIFYING FOR THE UNION:
Josh Norris, District 1199 Public Division Director
Todd Wellman, Grievant
Roya Hood, Union Delegate

TESTIFYING FOR THE EMPLOYER:
Elaine Stewart, Labor Relations Officer
Michael Duco, Deputy Director, Office of Collective Bargaining
Marissa Walter, Interim HR Administrator
Brian Walton, Director of Labor Relations, BWC

RELEVANT PROVISIONS OF THE AGREEMENT

Article 7, Grievance Procedure

7.04 Grievance

A grievance under this procedure may be brought by any bargaining unit member who believes himself/herself to be aggrieved by a specific violation of the Agreement. When a group of bargaining unit employees desires to file a grievance involving an alleged violation that affects more than one (1) employee in the same way, the grievance may be filed by the Union. A grievance so initiated shall be called a Class Grievance. Class Grievances shall be filed by the Union within twenty (20) days of the date on which the grievant(s) knew or reasonably could have known of the event giving rise to the Class Grievance. Class Grievances shall be filed at Step One (1) and pursuant to the provisions of Article 7.06. The Union shall identify the class involved, including the names if necessary, if requested by the Agency head or designee.

7.06 Grievance Steps

Step 1

All complaints not resolved at the supervisory level shall be reduced to writing as a formal grievance within twenty (20) days of the date on which the grievant knew or reasonably should have had knowledge of the event. Grievances submitted beyond the twenty (20) day limit will not be honored. The grievance shall be submitted to the designee on the grievance form and in the manner consistent with the technology component of 7.01 (B). The designee shall indicate the date and time of receipt of the form. Prior to the grievance meeting with the Agency designee and at the request of either party, attempts may be made to resolve the grievance.

Article 21, Travel

21.01 Time

Travel time as required by the Agency is considered work time if the travel is between work sites or between the employee's place of residence and a work site other than the assigned work site before, during or after the regular work day. However, travel time from an employee of the Adult Parole Authority or a field employee's house to a work location, which is other than the normal report in location, shall not be paid for the first twenty (20) miles to and from such location or the distance from the employee's house to the normal report in location, whichever is less. Travel time after this exception shall be considered as work time with pay. For the purpose of this article, a field employee is defined as an 1199 employee who on a regular, routine, and predictable basis works eighty (80) percent or more hours on average in a travel status. All non-field employees shall follow the commuter offset requirement. Time spent in travelling from an employee's place of residence to and from his/her headquarters shall not be considered as travel time or hours worked. Overnight stay shall not be considered as travel time or hours worked. There shall be no standard travel time from place to place. Actual mileage shall be paid to field employees and employees of the APA, and there shall be no standard mileage from place to place.

GRIEVANCE

Todd Wellman filed a grievance on January 28, 2010 regarding the interpretation of Section 21.01 of the Agreement. The Statement of the Grievance is as follows:

> *Per an email sent by Bobby Johnson (HR Labor Relations Officer), all RSC 1199 staff members are being directed to act in a manner that is contrary to contract language. Specifically, 1199 members, when travelling to a location other than their headquarters are being directed to offset their paid time and*

mileage by the amount of time it would typically take them to drive to/from their headquarters. The contract states clearly and specifically that travel time from an employees home to or from a location other than their assigned work site is considered work time. Mr. Johnson's directive is not supported by any current law, rule or policy.

Resolution Requested: To be made whole in every way, including: 1) Clarify to all 1199 staff members that ALL travel time to/from any authorized location other than the employee's headquarters is paid time. 2) Provide appropriate overtime wages to employees who, in an effort to comply with Mr. Johnson's email procedure, inadvertently worked beyond 40 hours in any week.

The grievance was denied by the Employer, and it was then appealed to arbitration pursuant to the Agreement.

ARBITRABILITY

The Employer argues that the grievance of Todd Wellman is untimely filed and therefore is not arbitrable and should be dismissed by the Arbitrator. The grievance was filed on January 28, 2010, but the Union knew, as early as August 2009, the intent of the State in respect to the interpretation of Section 21.01 based on the recent contract negotiations between the parties. Brian Walton, BWC Director of Labor Relations, testified that in August 2009 the Union received notice of the policy (Emp. Exb. 1) and its interpretation.

During an APC meeting (labor-management meeting) conducted between the Union and management of the BWC on August 17, 2009, the travel time policy was again discussed (Emp. Exb. 2). Dave Ramos, Administrative Organizer for the Union, was in attendance, and the notes from the meeting state, "The Union disagrees with Management's interpretation of the new language and will seek clarification from the Office of Collective Bargaining." Later on August 17, 2009, Mr. Walton emailed Union Organizer, Dave Ramos, the position of the State regarding travel (Emp. Exb. 3). The Employer states that, at this point, a grievance should have been forth-coming if the Union disagreed with its interpretation. On August 18, 2009,

additional emails confirming the position of the State were sent to Union representatives (Emp. Exb. 4).

The Employer states that Section 7.04 of the Agreement is clear in that grievances, including class grievances, must be filed within twenty days of the date which the grievant(s) knew or reasonably should have known of the events giving rise to the dispute. Furthermore, Section 7.06 states, "Grievances submitted beyond the twenty (20) day limit will not be honored." The Union knew on August 17, 2009 that there was a dispute regarding the interpretation of Section 21.01 but did not file a grievance until January 28, 2010. The Union may argue that there was continued confusion between August and January 28, 2010, but this is clearly not the case based on the communications that continued between the parties.

The Employer states that Union's witness, Josh Norris, testified during the arbitration hearing that Union members were calling him in October 2009 to complain that travel time was being deducted based on the state's interpretation of 21.01. No grievance was filed in October. The Employer states in its post-hearing brief that, "Even with the most liberal view of these facts in order for the union to be in compliance with their own contract a grievance must have been filed no later than end of November, 2009."

The Union failed to file its grievance timely, and the Employer did not waive the obligation of the Union to file within the twenty day period. Arbitrators enforce grievance filing requirements in most cases. The Arbitrator in this case should not exceed his contractual authority. The Employer requests the Arbitrator to find the instant grievance to be procedurally defective and not arbitrable and to deny it in its entirety.

The Union states that the Wellman grievance was filed timely and is therefore arbitrable. It is true that Union Organizer Dan Ramos became aware of the policy in August 2009, but, at that time, there was nothing to grieve. The Union cannot be expected to instantly grieve over a policy issue which is the subject of a labor-management meeting (APC meeting, August 17, 2009).

The Union states that, in the past, it has not been successful in pursuing grievances regarding Employer promulgate policies until a bargaining unit member has been negatively impacted. There was confusion between supervision and Union representatives regarding the interpretation of Section 21.01. Finally Bobby Johnson, the Labor Relations Officer for the Rehabilitation Services Commission, explained to employees, by email, the Employer's position regarding Section 21.01 and its relationship to OBM travel rules. This memo was dated January 15, 2010 (Jt. Exb. 4). Wellman's grievance was therefore filed timely on January 28, 2010.

The Union argues further that, in general, arbitrators hold that "continuing violations" allow for the filing of grievances each time an employee is aggrieved. The "clock" re-starts for the filing of a grievance each day that a potential violation occurs. In the event Wellman's grievance is not considered class action, he personally could have filed has own grievance twenty days from May 27, 2010 when he did not receive pay for time driving to a non-headquarters location.

The Union states that the Wellman grievance must be considered class action based on Section 7.04 of the Agreement. This provision allows the Union to file class action grievances for a group of bargaining unit members. The State argues that this cannot be considered a class action grievance because it contains the name of one Grievant, Todd Wellman, and does not say "class action." The Union argues to the contrary. The grievance was written to include all affected employees, and the remedy refers to all RSC employees. The Union notified the Employer during preliminary grievance procedure steps that this was a class action grievance.

If the failure to write "class action" on the grievance form is a defect, it is minor in nature. The Union cites past arbitration cases in which arbitrators overlooked such minor defects. In this case, the Employer knew that the grievance was meant to include all affected Union members.

The Union requests that the Arbitrator find that the grievance met timeliness requirements and is therefore arbitrable. In addition the Union asks that the Arbitrator find that the Wellman grievance be considered a "Class Grievance."

DISCUSSION:

It appears that there was confusion regarding the changes in Section 21.01 and its relationship to state policy. The Union disagrees with management's interpretation of the revised language in light of the revisions made to the companion state policy, and Union representatives of the APC stated that they would seek further clarification from the Office of Collective Bargaining. It is interesting that this information was made known at a Bureau of Workers Compensation APC meeting, but no such communication occurred with RSC non field employees or Union representatives at that agency until January, 2010. Nevertheless, by October 2009 union members were complaining to Josh Norris, Union Director, regarding the new policy and its impact. The Union had an opportunity, at this time, to file a "Union" or "Class Action" grievance. Other Union representatives continued to communicate via email regarding the issue in August 2009. As confusion and misinformation continued at the RSC, Mr. Johnson issued a clarification on January 15, 2010. Mr. Wellman then filed a grievance on January 28, 2010.

The Employer responded to the Wellman grievance on March 25, 2010 (Jt. Exb. 2). In his denial of the grievance, Mr. Johnson wrote that the grievance was filed in response to his January 15, 2010 email. He goes on to deny the grievance based on the Employer's interpretation of Section 21.01. He makes no reference to timeliness, the August APC meeting or the fact that the Union considered this to be a class action grievance. Under the heading "Procedural Issues," Mr. Johnson wrote, "No procedural errors raised by either party." It appears that neither party was really clear when the clock was to commence and when the twenty day filing period began and ended.

Mr. Wellman did not appear to be fully aware of the policy interpretation until January 15, 2010 and was not personally impacted by any change to Section 21.01 until 2010. "Many arbitrators have held that 'continuing' violations of the agreement (as opposed to a single isolated and completed transaction) give rise to 'continuing' grievances in the sense that the act complained of may be said to be repeated from day to day, with each day treated as a new 'occurrence.' These

arbitrators permit the filing of such grievances at any time, although any back pay would ordinarily accrue only from the date of filing. For example, where the agreement provided for filing 'within ten working days of the occurrence,' it was held that where employees were erroneously denied work, each day lost was to be considered an 'occurrence' and that a grievance presented within 10 working days of any such day lost would be timely." (Elkouri & Elkouri, How Arbitration Works, Sixth Edition, Alan Miles Ruben, Editor-in- Chief pg. 218 – 219)

The Arbitrator in the instant case notes that the Employer found no procedural defect of the grievance in its response to the Grievant and Union. Additionally, this Arbitrator agrees with the concept of "continuing violation." The grievance is timely and is therefore arbitrable. The dispute regarding the class action status of the grievance will be discussed later in the Award.

BACKGROUND (MERITS)

Negotiations for the 2009 – 2012 collective bargaining unit occurred at a time of recession and a significant deficit in the state budget. The Employer came to the bargaining table with concessionary proposals, wage freeze requests, suggestions regarding furloughs and other cost savings measures. The Union was not unaware of the financial cloud surrounding state finances and was willing to consider a contract renewal that included a number of cost savings measures including a three year wage freeze, cost savings days (furloughs) and other pay and benefit concessions. Mike Duco, chief negotiator for the state, was charged with negotiating $250 million in personnel savings. In this climate, the parties modified the travel provision of the Agreement by eliminating guaranteed mileage and time for certain categories of employees. The state Office of Budget and Management requested that all collective bargaining agreements reflect the same travel language in order to control costs and increase efficiencies. The culmination of negotiations regarding travel time is contained in Section 21.01 as follows.

21.01 Time

Travel time as required by the Agency is considered work time if the travel is between work sites or between the employee's place of residence and a work site other then the assigned work site before, during or after the regular work day. However, travel time from an employee of the Adult Parole Authority or a field employee's house to a work location, which is other than the normal report in location, shall not be paid for the first twenty (20) miles to and from such location or the distance from the employee's house to the normal report in location, whichever is less. Travel time after this exception shall be considered as work time with pay. For the purpose of this article, a field employee is defined as an 1199 employee who on a regular, routine, and predictable basis works eighty (80) percent or more hours on average in a travel status. All non-field employees shall follow the commuter offset requirement. Time spent in travelling from an employee's place of residence to and from his/her headquarters shall not be considered work time. Overnight stay shall not be considered as travel time or hours worked. There shall be no standard travel time from place to place. Actual mileage shall be paid to field employees and employees of the APA, and there shall be no standard mileage from place to place.

Following negotiations, BWC management and union representatives convened an APC meeting on August 17, 2009 (Emp. Exb. 2). During the meeting, management announced that the BWC Travel Policy (Memo 4.17) had been revised to coincide with changes negotiated in Section 21.01 of the collective bargaining agreement. The implication was that time travelling to a work location other than the normal headquarters would be paid at a reduced level for non-field staff. The Union offered its disagreement and indicated that it would contact the state Office of Collective Bargaining for clarification. Dan Ramos, the 1199 Administrative Organizer was in attendance.

Following the BWC APC meeting, a series of emails between management and Union highlighted the fact that there were varying interpretations of Section

21.01. No grievance(s) were forthcoming from the Union at this point. In October 2009, Josh Norris, the Union's Public Division Director and a participant in the contract negotiations, heard from a number of Union members that travel time was not being paid for travel between residence and a non-headquarters destination. He telephoned Mr. Duco and asked for an explanation. Mr. Duco stated that travel time had been modified during negotiations to limit payment for time spent in transit from residence to a non-headquarters location.

In late October 2009, Todd Wellman, Vocation Rehabilitation Counselor for the Rehabilitation Services Commissions, contacted his supervisor to inquire regarding the "commuter offset requirement" as stated in Section 21.01 (Un. Exb. 2). His supervisor provided him with the policy.

As confusion continued among 1199 bargaining unit members, Roya Hood, Union Delegate at RSC, emailed union members at that agency regarding Section 21.01 on December 16, 2009 (Un. Exb. 3). She stated that the "rule is towards reimbursement of mileage <u>not</u> time. If you leave from home and go to a site <u>other</u> than your assigned home office you may count <u>all</u> of the time it takes you to get there as work time."

Then on January 15, 2010, Bobby Johnson, The RSC Labor Relations Manager, emailed the RSC staff regarding the Employer's interpretation of Section 21.01 (Jt. Exb. 4). This memo states in part that "travel time must also be offset by the time used in an employee's normal commute to their authorized destination. If we use the above example; the employee takes fifteen minutes for his/her normal commute of ten miles to their authorized destination, then they would subtract the fifteen minutes from their overall calculation of travel time."

Following this communication, Mr. Wellman, the Grievant, filed a grievance challenging the Employer's interpretation of the travel time provision of the Agreement.

POSITION OF THE UNION

The Union states that the Employer's interpretation of Section 21.01 of the Agreement is incorrect. This Section clearly states that an employee is on the clock when driving from one work site to another; when driving from home to a non-headquarters work site; and when driving from a non-headquarters work site to home. This provision is clear on its face. Section 21.01 contains an exception to this principle in that field employees and APA employees are not compensated in the same manner. The Grievant and District 1199 bargaining unit members in the RSC are not field employees and not part of the Adult Parole Authority.

The Union states that Section 21.01 indicates that non-field employees follow the commuter offset requirement which is contained in the Ohio Administrative Code and OBM travel policy. This policy directs employees to offset their mileage when travelling to a non-headquarters location. The Union states that there is nothing in Section 21.01 or the commuter offset policy that limits or modifies the first sentence of this provision of the Agreement. The Union reiterates that the first sentence is clear in that travel time is considered work time if the travel is between work sites or between the employee's residence and a work site other than the regular assigned work site.

The Union argues that the email memo sent by Mr. Johnson on January 15, 2010 is correct in stating that RSC employees must offset mileage reimbursement based on the OBM policy. His memo quotes language directly from the policy. But the memo also states that an employee must offset travel time between the residence and non-headquarters work site. Mr. Johnson uses words such as "minutes" and "travel time" in his memo, but these words are not contained in the actual policy because this document is about mileage reimbursement and not about travel time as paid time. The Union's brief states that "The jump from offsetting mileage to offsetting time took RSC's policy outside the scope of the OBM policy and contradicted the first line of Article 21.01; therefore violating the CBA."

The Union states that Employer witness, Mike Duco, testified at hearing that the OBM policy was not designed to specifically include paid work time, but since it is referenced in Section 21.01, it does in fact have an impact on paid time. The

Union argues that this is faulty logic as the language in the Agreement is clear and concise. The words time and mileage cannot be interchanged. The Union argues that, if the Employer meant to limit paid time by the language regarding the commuter offset, it was never communicated at the bargaining table. Additionally, Union bargaining committee members, Josh Norris and Roya Hood, testified at hearing that the Union never intended Section 21.01 to limit or offset time when traveling between home and non-headquarters locations. If this was the goal of the Employer during negotiations, its bargaining committee members should have stated clearly that this was their intention and interpretation, but there is no evidence that this occurred. The Union argues that, if the parties had agreed to limit travel time, as the Employer suggests, additional language, stating this, would have been added to Section 21.01

The Union asks the Arbitrator to grant the grievance and require the Employer to reimburse all RSC bargaining unit employees for time offset when travelling between home and non-headquarters work sites after January 15, 2010. This includes overtime pay where applicable. In addition the Union asks that, from this point forward, RSC employees be paid for travel time between home and non-headquarters sites.

POSITION OF THE EMPLOYER

The Employer argues that Section 21.01 limits travel time between home and non-headquarters sites. An employee would deduct the normal time it takes to travel to and from home to the regularly assigned headquarters from travel time to and from the non-headquarter location. Reducing both mileage and travel time expense was central to the Employer's negotiating strategy, and the Office of Budget and Management requested that all Unions agree to the same travel language in the renewed collective bargaining agreements. New language in Section 21.01 changed non-field employees mileage and travel time from the twenty (20) mile offset to actual time and mileage.

The Ohio Department of Administrative Services has authority based on Ohio Revised Code Section 124.18 and 125.02 for personnel costs. DAS determines

whether an employee is in active pay status when travelling. The absence to specific time directives in the OBM rule does not change the intent of Section 21.01 as the issue of paid time is governed by the Department of Administrative Services.

Both parties negotiated the commuter offset requirement, and they clearly knew that it meant both mileage and time. Mr. Duco testified that the Union bargaining team understood time and mileage were to be offset based on Section 21.01. The Employer agreed to the Union's proposal to "carve out" the Adult Parole Authority employees and field employees. In addition, the Union's bargaining team assisted in the drafting of the Section 21.01 language. The Employer states that the Union clearly understood the intent of the language. Employer witness, Marissa Wallace, was a member of the management bargaining team. She assisted with the drafting of the language. She testified at hearing that Union bargaining team members, Josh Norris and Lisa Hedrick, agreed to time and mileage limitations for non-field employees. Section 21.01 states that "All non-field employees shall follow the commuter offset requirement." The Employer states that Ms. Walters confirmed that revised language separated field from non-field staff. Only field employees continued to maintain a twenty (20) mile offset while non-field employees must now claim the time and mileage of their usual commute from travel to an alternate work location.

Ms. Walter's testified that the "legislative version" of Section 21.01 clearly illustrated that a non-field employee would be compensated based on the OBM offset rule. This document provided the example of offsetting both time and mileage for travel between home and a non-headquarters location based on the commute to the regularly assigned work location. The Employer states that the Union did not object to the validity of this document. In addition, BWC policy reflects the time and mileage offset for its department employees.

The Employer argues that the failure to grieve on the part of the Union following the August 2009 APC meeting indicates that it essentially agreed with the state's interpretation. Testimony also illustrates that Dan Ramos, Union Administrative Organizer for RSC, agreed with the commuter offset for non-field

employees. He previously discussed this matter with BWC management and took no action to grieve or appeal the interpretation.

The remedy suggested by the Union includes an exorbitant cost to the state. The Grievant is asking for an additional $2899.50 for his commute time based on the theory of the grievance. When all employees are factored in, the cost is enormous with employees receiving a windfall that was never negotiated.

It is not logical that the Union would carve out APA staff and field employees for a benefit that is less than non-field employees. The reality is that Section 21.01 provides for an offset of both mileage and time for non-field employees. Testimony clearly illustrates that the intent of the parties was to limit compensation for time and mileage for non-field employees of the RSC. The Union has isolated the first sentence of Section 21.01 without analyzing the entire provision. The Employer requests that the grievance be denied in its entirety.

DISCUSSION

Article 21 governs employee travel as bargained by the parties. Section 21.01 governs paid time in respect to travel to and from an employee's home and normal work site; between work sites; and between an employee's home and a site other than the regular work site. Based on evidence and testimony at hearing, it is clear that the parties discussed and bargained over this provision of the Agreement for the 2009 – 2012 collective bargaining agreement. The Employer's bargaining committee had a clear mandate to secure cost savings wherever possible. Section 21.01 outlines two categories of employees, "non field employees" and a combined grouping of Adult Parole Authority staff and field employees. The first sentence of this section states that travel time is paid work time "if the travel is between work sites or between the employee's place of residence and a work site other than the assigned work site…." Then there is an exception to the first sentence. Travel time for employees of the APA and field employees is not paid for the first twenty miles when going to and from their homes and a work location "which is other than the normal report in location…." Travel time is paid after the twenty mile exception for this category of employees. Then the parties have defined "field employee" as being

"an 1199 employee who on a regular, routine, and predictable basis works eighty (80) percent or more hours on average in a travel status." At this point the meaning and intent of this provision is clear and unambiguous. The Grievant is a non field employee of the RSC.

Following language, which outlines travel time for both categories of employees, Section 21.01 states, "All non field employees shall follow the commuter offset requirement." At hearing, two versions of the commuter offset requirement were presented. The 7/3/2008 version states as follows. "A state agent shall not be reimbursed for mileage commuting from his/her residence to his/her headquarters nor from his/her headquarters to his/her residence. For example, if a state agent's normal commute from his/her residence to his/her headquarters is ten miles, and a state agent commutes from his/her residence to his authorized destination is thirty miles, the state agent shall only be reimbursed for twenty miles."

The second and current version of the commuter offset provision is dated 9/21/2009. This version is essentially the same without the example as follows. "A state agent shall not be reimbursed for mileage commuting from his/her residence to his/her headquarters nor form his/her headquarters to his/her residence."

The Employer states that the parties knew, during the negotiations over Section 21.01, that the commuter offset requirement meant that non field employees must deduct both the time and mileage of travel to the normal headquarters when going to and from a non-headquarters location and their residence. But the Union expressed surprise over this announcement at the BWC APC meeting in August 2009. Josh Norris was a leader of the Union bargaining team, and he also expressed surprise when notified by employees in October 2009 that paid time was being deducted. Testimony indicated that Dan Ramos, Administrative Organizer for 1199, appeared to either be confused by management's position on the matter or possibly in support of it. Unfortunately Mr. Ramos was not called as a witness by either side. Therefore speculation about what Ramos may or may not have known is hearsay.

Testimony indicates that a joint sub-committee of Union and Employer bargaining team members assisted with the drafting of the Article 21 language

during negotiations. Marissa Wallace, an Employer member of the bargaining team, testified that the "legislative version" of Section 21.01, which she drafted following completion of the negotiations of this provision, clearly explained that non field employees were required to deduct travel time (Jt. Exb. 3, pg. 2). Ms. Wallace testified, under cross-examination, that she did not share her written explanation of Section 21.01 with the Union, and, although it was published on a web site, she was uncertain how far the document was distributed. The Employer's argument, that the Union understood management's interpretation because it did not object to this document is therefore invalid. Had the Union seen this document prior to the close of negotiations, it is probable that there would have been disagreement at the table over the Employer's interpretation of Section 21.01 as it pertained to non field employees.

The Employer argues that Memo 4.17, Travel, specifically states that employees deduct the commute time to the normal headquarters from time spent travelling to an other than normal assigned report-in location (Emp. Exb. 1). This argument lacks merit in that the memo is directed only to employees of the Bureau of Workers Compensation. The instant grievance is in respect to non field employees of the RSC, and the memo is not referenced in Section 21.01 of the Agreement.

The Union argues that Section 21.01 is specifically about paid time, and the commuter offset policy is about mileage reimbursement. The two are not the same, and to administer Section 21.01 as if they are the same is in violation of this provision. The Union argues further that Mr. Johnson's January 15, 2010 memo uses the words minutes and travel time, but these words do not appear in the commuter offset policy. These arguments have merit. It is true that Section 21.01 states that non field employees must follow the commuter offset requirement, but this policy refers only to deducting mileage expense when travelling between a residence and assigned headquarters. The parties may have placed this sentence in the section relating to paid time as a reminder that mileage is administered in a different manner, but there are no bargaining notes to confirm or deny this possibility. The 2009 version of the commuter offset does not contain language covering travel to

non-headquarters locations, and it is in a sub-section (C) (2) which speaks specifically to reimbursed mileage rates which are paid by the Employer (IRS rate, $.45 per mile, etc.).

The Employer may have felt that this language meant deduction of travel time by inference, but there is no proof that this is so, and it was not communicated to the Union. Exhibits at hearing did not include a tentative agreement on Section 21.01 nor bargaining notes or minutes taken at the time the provision was bargained. Therefore the clear and unambiguous wording must stand as written.

The Employer was under mandate to find cost savings wherever it was to be had during the 2009 negotiations. It may have intended to negotiate a limitation to travel time for non field employees, but the clear and unambiguous language of Section 21.01 does not reflect this. Further, the commuter offset requirement relates to reimbursable mileage and does not say anything about paid work time when traveling. The Arbitrator is bound to fashion an award and decision based on what is contained in the collective bargaining agreement. Clear and unambiguous contract language cannot be ignored. In Wolf Baking Co., Inc., 83 LA 24, Arbitrator Marlatt states the following. "No party to a Contract may evade the express terms of the Contract on the grounds that such terms are impracticable, unreasonable, or even absurd. The Contract is the Contract, and arbitrators are not free to vary its terms to achieve a more equitable or productive result….It is the arbitrator's responsibility to read the Contract and tell the parties how it applies to the dispute at hand, and this is the limit of his jurisdiction." This standard applies to the instant case. It may have been logical, in a concessionary negotiations cycle, to deduct both time and mileage, but this is not what Section 21.01 states.

The Union argues that the Wellman grievance is a "class action" grievance, and that it is filed in behalf of "all 1199 staff members" (Jt. Exb. 2). The Employer states, in response, that the grievance is filed solely in behalf of Todd Wellman, an individual grievant. The Union states that it rejected various offers of settlement because the Grievant was not satisfied that other 1199 members were not to be made whole. Settlement discussion, either at grievance mediation or other forums, cannot be considered at arbitration as they are off the record conversations that

officially never occurred. The Arbitrator must not give settlement discussions any relevance. Section 7.04 of the collective bargaining agreement states that a grievance "may be brought by any bargaining unit member who believes himself/herself to be aggrieved by a specific violation of this Agreement." This section then defines a class action grievance. "When a group of bargaining unit employees desires to file a grievance involving an alleged violation that affects more than one (1) employee in the same way, the grievance may be filed by the Union. A grievance so initiated shall be called a Class Grievance." This paragraph ends by stating that the "Union shall identify the class involved, including names if necessary, if requested by the Agency head or designee."

It is clear that the instant grievance is filed in behalf of Todd Wellman, an RSC employee. There is no evidence that Mr. Wellman was authorized to file a Class Grievance by any official of District 1199, and he is not a Union delegate or representative. Although the requested resolution asks that all 1199 members be included, any grievant is able to make this statement. In this case, there is no evidence that the Grievant acted in behalf of the Union or other employees. When the grievance was appealed to arbitration by the Union on February 12, 2010 (Jt. Exb. 2), it stated specifically that it was the grievance of Todd Wellman. Had the Union intended on bringing forward a class grievance regarding the paid time issue, it would have done so following the 2009 labor management meeting or following other discussions between the parties in late 2009. The Wellman grievance is not a Class Grievance.

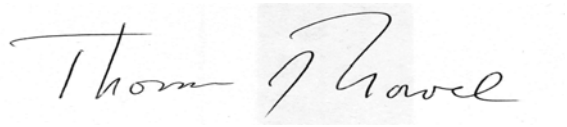
The Grievance is sustained in part and denied in part. The Employer violated Section 21.01 when the Grievant, Todd Wellman, was not compensated for all time he spent driving from his residence to non headquarters locations and for all time spent driving from a non headquarters location to his residence beginning from the time that grievance 29-02-20100129-0003-02-12 was filed. This may include overtime compensation for travel time which may have caused a work week in excess of forty hours pursuant to the Agreement. The Employer must reimburse the Grievant for this lost time and continue to pay for such travel time of the Grievant in the future based on the provisions of Section 21.01 of the Agreement. The

Grievance of Todd Wellman is not a Class Grievance, and the remedy affects only the Grievant and not other members of the bargaining unit. The Arbitrator retains jurisdiction for thirty (30) days only for purposes of remedy.

AWARD

The grievance is sustained in part and denied in part. The Employer violated Section 21.01 when the Grievant, Todd Wellman, was not compensated for all time he spent driving from his residence to non headquarters locations and for all time spent driving from a non headquarters location to his residence beginning from the time that grievance 29-02-20100129-0003-02-12 was filed. This may include overtime compensation for travel time which may have caused a work week in excess of forty hours pursuant to the Agreement. The Employer must reimburse the Grievant for this lost time and continue to pay for such travel time of the Grievant in the future based on the provisions of Section 21.01 of the Agreement. The Grievance of Todd Wellman is not a Class Grievance, and the remedy affects only the Grievant and not other members of the bargaining unit. The Arbitrator retains jurisdiction for thirty (30) days only for purposes of remedy.

Signed and dated this 17th Day of May, 2012 at Cleveland, Ohio



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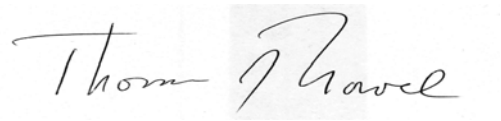
Thomas J. Nowel
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that on this 17th Day of May, 2012, a copy of the foregoing Award was served upon Bobby Johnson, representing the Ohio Rehabilitation Services Commission; Amanda M. Schulte, representing SEIU District 1199; and Alicyn Carrel, representing the Ohio Office of Collective Bargaining, by way of electronic mail.



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Thomas J. Nowel
Arbitrator