

Thomas J. Nowel  
Arbitrator and Mediator  
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO  
AGREEMENT OF THE PARTIES  
**EXPEDITED ARBITRATION**

In The Matter of a Controversy Between:	)	Grievance No.
	)	27-03-20110214-
The Ohio Civil Service Employees Association	)	0003-01-06
Local 11, AFSCME	)	
	)	ARBITRATION
and	)	OPINION AND
	)	AWARD
The Ohio Department of Rehabilitation	)	
and Correction	)	Date:
	)	June 13, 2012
Re: Grievance of Steve Parks, Jeff Herald,	)	
Merle Sayers and J. D. Hunt	)	

APPEARANCES:

Dave Justice, Staff Representative for OCSEA Local 11, AFSCME; Chris Lambert, Labor Relations Officer for Department of Rehabilitation and Correction; and Jackie Milson for the Ohio Office of Collective Bargaining.

## INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the Ohio Civil Service Employees Association Local 11, AFSCME and the Ohio Department of Rehabilitation and Correction. The parties are in disagreement regarding the terms of a "Grievance Settlement Agreement" which was executed on April 10, 2009 and which settled two grievances regarding hazard duty pay for work in certain asbestos containment areas of the Chillicothe Correctional Institution (CCI).

The instant grievance was filed by Steve Parks, Jeff Herald, Merle Sayers and J. D. Hunt, and makes the following statement. "On 8/26/2008 a grievance was filed concerning asbestos in the tunnels of CCI. The resolution to this was the plumbers at CCI receive retro pay from October 15, 2008 when the steam came on until April 15, 2009 when the steam was turned off. This was a supplemental hazard pay for having asbestos license (that is mandatory to carry) and was payed(sp.) to the plumbers at CCI every year during the steam season. CCI stopped paying the plumbers at CCI this hazard during the steam season of 2010/2011. Mr. Wittrup told the plumbers this was because there is no longer asbestos in the tunnels at CCI. There is still asbestos in the tunnels and therefore the plumbers should still be receiving the hazard pay. We are asking for our supplemental hazard pay (retro pay) be re-instated to include the 2010/2011 steam season at CCI as agreed between the CCI plumbers and the State of Ohio."

The arbitrator was selected pursuant to Section 25.10, Expedited Arbitration Procedure, of the Agreement between the parties to conduct a hearing and render a binding arbitration award. The parties were limited to the number of witnesses who testified at hearing based on Section 25.10 and there were no post hearing briefs. The decision will include a brief rationale. Hearing was held on June 8, 2012 at the Chillicothe Correctional Institution. 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.

#### ISSUE

The joint issue stipulation is as follows. "Did the Employer (Chillicothe Correctional Institution) end the hazard supplement for Steve Parks and Merle Sayer in accordance with the grievance settlement agreement entered into by the parties on April 10, 2009? If not, what shall the remedy be?"

#### WITNESSES

##### TESTIFYING FOR THE UNION:

Stephen Parks, Grievant  
Merrill Sayers, Grievant

##### TESTIFYING FOR THE EMPLOYER:

Brian Wittrup, Deputy Warden of Operations  
Bobby Johnson, Labor Relations Manager, RSC

## DISCUSSION

Grievants Stephen Parks and Merrill Sayers each individually filed grievances on August 26, 2008 claiming that they were each eligible for hazard duty pay following training which would allow them each to work in asbestos containment areas. As plumbers at CCI, the Grievants became certified to work in areas in which asbestos removal was taking place. The facility utilizes steam heat, and pipes, which carry hot water to all buildings at the prison, are contained in underground tunnels. These tunnels connect to all buildings at CCI, and the plumbers are responsible for maintaining the system including the repair of leaking pipes which occurs frequently during heating season. The Grievants were the only plumbers at the facility at the time of the filing of the original grievances.

It had been determined that the asbestos insulation surrounding the hot water pipes was becoming friable (airborne) and therefore required removal. The tunnels at CCI were therefore declared asbestos containment areas. The plumbers spend a majority of their time maintaining the system in the tunnels during the heating season and were required to continue this work during the time that the asbestos was being removed. In order to work in the "asbestos containment area," the plumbers were trained and certified. In addition, they were required to wear protective suits and respirators. The working conditions in the tunnels during heating season were difficult in any event as temperatures were in the 150-degree range.

The grievances were denied by the Employer, and the Union submitted them to arbitration. The parties then met in an attempt to resolve the dispute, and a

“Grievance Settlement Agreement” was achieved and signed which resolved both grievances. It was agreed that the Grievants would receive a 5% hazard duty pay supplement for all hours worked during the heating season and the same supplement during actual time spent working in asbestos containment areas during non-heating season. Again, the plumbers spend a majority of their working hours in the tunnels during heating season, October to April.

On February 24, 2011, the state contractor, which was responsible for the removal of asbestos in the tunnels, declared that its workers had abated all asbestos containing materials from the steam pipes in the tunnels (Jt. Exb. 4). The asbestos containment area in the tunnels was therefore discontinued. The Employer then discontinued the hazard duty pay supplement which had been paid to the plumbers since the execution of the settlement agreement.

CCI now employs four plumbers who filed the instant grievance contending that the “Grievance Settlement Agreement” had been violated and that the hazard duty pay supplement should continue to be paid when plumbers work in and around asbestos.

The Employer argues that the hazard duty pay supplement was paid specifically for work in the tunnels when they were designated as asbestos containment areas. This was the basis of the original grievances and therefore the reason for the settlement agreement. The Employer states that the parties had not intended that the pay supplement would continue beyond the tunnel scenario, and the collective bargaining agreement does not contain a provision for hazard duty pay.

The Union argues that the “Grievance Settlement Agreement” was not limited to work in the tunnels only. The plumbers have received training and certification and should receive the pay supplement when working with asbestos at any time.

The Employer is correct in that the Agreement between the parties does not contain a hazard duty pay provision. The Employer’s authority to enter into the settlement agreement arises from the Ohio administrative code. This provision of the code is permissive based on analysis and decision by the Employer.

The settlement agreement is not specific in respect to an end date, and it does not state specifically that the pay supplement will end when the asbestos in the tunnels is abated. But Paragraph 3 states that “This hazard pay supplement will be discontinued upon completion of asbestos abatement of the identified containment areas of CCI.” It is clear that the parties anticipated an end to the supplement based on this provision. If the parties meant for the pay supplement to be ongoing, Paragraph 3 either would not have been included in the settlement agreement, or it would have been worded differently. The original grievances also allude to the fact that the pay supplement may be discontinued. They state that the dispute is in relation “to work underneath the buildings of CCI.” The Grievants were trained and certified initially because the tunnels had been declared asbestos containment areas, and it was necessary that the plumbers continue to maintain and repair the hot water pipes during both the heating season and non-heating season.

The Union argues that the settlement agreement was meant to cover asbestos related work beyond the conditions in the tunnels, but the inclusion of Paragraph 3 provides for the discontinued payment of the supplement when

“identified containment areas of CCI” are abated. The grievances were filed when the plumbers were trained and certified to work in the tunnels which had been declared asbestos containment areas. Therefore it is reasonable to believe that the parties, in response to the existing conditions at the time of the initial grievances, negotiated the “Grievance Settlement Agreement” specifically for work in the tunnels.

Joint Stipulation No. 1, entered into prior to hearing, suggests that the initial grievances and settlement agreement were limited to work in the asbestos containment areas in the tunnels. It states the following. “The April 10, 2009 grievance settlement agreement (JX 2) was initiated by the abatement of asbestos in the tunnels beneath the Chillicothe Correctional institution and the designation of the those tunnels as asbestos containment areas.” Joint Stipulation 2 states that “The tunnels beneath the Chillicothe Correctional Institution are no longer designated as asbestos containment areas and have been abated of asbestos (per JX 4).”

In the absence of bargaining notes from either side regarding discussions and negotiations over the settlement agreement, the testimony of Bobby Johnson was compelling. As the author of the “Grievance Settlement Agreement,” he testified conclusively that the hazard pay supplement agreement was limited to the work of the plumbers in the tunnels for the period of time that they were designated as asbestos containment areas. Mr. Johnson’s testimony is given significant weight.

While it may be reasonable for the parties to develop an agreement regarding hazard duty pay, for the ongoing and future work of asbestos certified

plumbers at CCI, during asbestos removal, glove bagging and other tasks which involve exposure to this toxic element, and it is suggested that the parties do so, there is no proof that the 2009 "Grievance Settlement Agreement" was meant to provide an ongoing and indefinite benefit beyond the original scope of the grievances which was the underground tunnels which had been declared as asbestos containment areas. The Employer ended the hazard duty pay supplement for Steve Parks and Merle Sayer in accordance with the Grievance Settlement Agreement entered into by the parties on April 10, 2009. The grievance is therefore denied.

#### AWARD

The Employer ended the hazard duty pay supplement for Steve Parks and Merle Sayer in accordance with the Grievance Settlement Agreement entered into by the parties on April 10, 2009. The grievance is therefore denied.

Signed and dated this 13<sup>th</sup> Day of June, 2012 at Cleveland, Ohio.



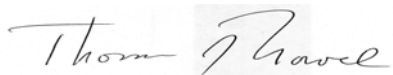
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Thomas J. Nowel  
Arbitrator



### CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> Day of June, a copy of the foregoing Award was served upon Dave Justice and Patty Rich, representing OCSEA Local 11, AFSCME; Chris Lambert, representing the Department of Rehabilitation and Correction; and Alicyn Carrel, representing the Ohio Office of Collective Bargaining, by way of electronic mail.

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

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Thomas J. Nowel  
Arbitrator