

TO: Chapter Presidents
FROM: Patty Rich, Grievance Manager *PR*
RE: 2004-2005 Weather Emergency Decision
DATE: March 23, 2007

Attached is the arbitration decision for the December 2004-January 2005 weather emergency (class action) grievance.

As you recall, the grievance initially was heard at arbitration on December 9, 2005. At that time Arbitrator Pincus mandated the parties to send out a "Weather Emergency Form" asking for specific dates and a specific rationale for each affected employee to complete. If the forms were not completed or did not provide the specific information requested, then the individual would not be a part of the class action grievance. The Union sent this form out on three separate occasions to obtain the necessary information. Once we finalized a list from all forms received, the Union provided this list to the Office of Collective Bargaining for their review.

On March 20, 2007 the parties went back before Arbitrator Pincus for a final decision on this matter. The arbitrator declared in his decision that the state failed to declare an emergency on four days in December 2004 and January 2005. Those four days are: December 23 and 24, 2004 and January 6 and 7, 2005. The award states that anyone on the list who utilized vacation, personal, or compensatory time shall have such leave restored. Anyone that used sick leave will not have any leave time restored. Individuals that worked on these four dates will receive comp time at the rate of half an hour of comp time for every hour worked on those four days. The comp time will be added to the employees leave balance at the straight time rate. We are asking the chapter leadership to work with their Labor Relations to ensure that the individuals on the attached list be compensated as outlined in the arbitration decision. The decision states that chapter leadership and local employer representatives will work together to have this award implemented within 60 days of March 20, 2007.

If you have questions please contact your staff representative or Jessica Parker at 800-266-5615 ext. 4711.

cc: Staff Representatives
Board of Directors
OGC

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.

Date

3/20/07

Dr. David M. Pincus
Arbitrator

Tax

Vacation, Personal, or Comp Time

Date & code	chapter name	agency	agency comments
DN2 - 12/23/2004	200 BRESSON TODD	Allen	Taxation
JY5 - 1/6/2005	200 BRESSON TODD	Allen	Taxation
JN7 - 1/6/2005	200 DURAN GREGORY	Allen	Taxation
DN7 - 12/23/2004	200 DURAN GREGORY	Allen	Taxation
JN3-1/7/2005	200 KRAMER KAREN	Allen	Taxation
JY3, JY5 - 1/6/2005	200 STEVENS JANE	Allen	Taxation
DN2 - 12/23/2004	900 BROWN Gail	Butler-Preble Chapter	Taxation
DN2 - 12/23/2004	900 CAUDELL ANDREA	Butler-Preble Chapter	Taxation
DN2 - 12/23/2004	900 COURTER WILLIAM	Butler-Preble Chapter	Taxation
DN2 - 12/23/2004	2500 HIBBARD SARAH	Franklin	Taxation
DN7 - 12/23/2004	2545 Bricker Michelle	State Office Tower	Taxation
DN1 - 12/23/2004	2545 BROWN PRISCILLA	State Office Tower	Taxation
DN7 - 12/23/2004	2545 COOK SANDRA	State Office Tower	Taxation
DN2 - 12/23/2004	2545 DAVIS JANNA	State Office Tower	Taxation
DN1, DN2 - 12/23/2004	2545 HOCKENBERY BARBARA	State Office Tower	Taxation
DN2 - 12/23/2004	2545 JONES LISA	State Office Tower	Taxation
DN2, DN7 - 12/23/2004	2545 KITZMILLER BRANSON	State Office Tower	Taxation
DN5 - 12/23/2004	2545 MEEKS ANNA	State Office Tower	Taxation
DN2 - 12/23/2004	2545 Smart Avery	State Office Tower	Taxation
DN5 - 12/23/2004	2545 WALKER JUSTIN	State Office Tower	Taxation
DN5 - 12/23/2004	2595 BARNETT MARY	Taxation Chapter	Taxation
DY3 - 12/23/2004	2595 BAUER LEONA	Taxation Chapter	Taxation
DN5 - 12/23/2004	2595 BELL RANDALL	Taxation Chapter	Taxation
DN5 - 12/23/2004	2595 BROWN PATRICIA	Taxation Chapter	Taxation
DY3 - 12/23/2004	2595 BROWN MARGUERITE	Taxation Chapter	Taxation
DY3 - 12/23/2004	2595 BYERS LOUIS	Taxation Chapter	Taxation
DY5 - 12/23/2004	2595 CAIN JOAN	Taxation Chapter	Taxation
DY1 - 12/23/2004	2595 CAREY MARSHA	Taxation Chapter	Taxation
DY1 - 12/23/2004	2595 DAVIS DEEANNA	Taxation Chapter	Taxation
DN2 - 12/23/2004	2595 DERUSSY KENNETH	Taxation Chapter	Taxation
DN5 - 12/23/2004	2595 DONLEY ETHEL	Taxation Chapter	Taxation
DN2, DN5 - 12/23/2004	2595 DOYLE ANDREW	Taxation Chapter	Taxation
DN7 - 12/23/2004	2595 FIELDS LYNN	Taxation Chapter	Taxation
DN5 - 12/23/2004	2595 FLANNIGAN MICHAEL	Taxation Chapter	Taxation
DN5 - 12/23/2004	2595 GALLUCCI KATHLEEN	Taxation Chapter	Taxation
DN5 - 12/23/2004	2595 HANNAH LAURA	Taxation Chapter	Taxation
DN2 - 12/23/2004	2595 HARRIS LANNA	Taxation Chapter	Taxation
DY1 - 12/23/2004	2595 HARRISON JEAN	Taxation Chapter	Taxation
DN7 - 12/23/2004	2595 HERDMAN VICKI	Taxation Chapter	Taxation
DN2 - 12/23/2004	2595 HIBBARD SARAH	Taxation Chapter	Taxation
DN2 - 12/23/2004	2595 HINTON JANICE	Taxation Chapter	Taxation
DN5 - 12/23/2004	2595 HOMANN ALISA	Taxation Chapter	Taxation
DN7 - 12/23/2004	2595 HOUSER ROBIN	Taxation Chapter	Taxation

DY3 - 12/23/2004	2595	JACKSON	ANGIENETTE	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	JARVIS	ANNETTE	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	JOHNSON	Charles	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	JOHNSON	GWENDOLYN	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	KING	CRYSTAL	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	LAURENCE	CHARLES	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	MCDONALD	DONNA	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	MCDONALD	VICTORIA	Taxation Chapter	Taxation	
DN7 - 12/23/2004	2595	MCINTEE	CARMA	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	MCKENZIE	LINDA	Taxation Chapter	Taxation	
DN7 - 12/23/2004	2595	Pinkins	HAIDEE	Taxation Chapter	Taxation	
DN7 - 12/23/2004	2595	QUEEN	NAOMI	Taxation Chapter	Taxation	
DN1 - 12/23/2004	2595	QUINN	PAULA	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	ROBERTS	CHRISTINE	Taxation Chapter	Taxation	
DN2 - 12/23/2004	2595	ROSSETTI	MARK	Taxation Chapter	Taxation	
DN2, DN7 - 12/23/2004	2595	RUSSELL	STEVEN	Taxation Chapter	Taxation	
DN7 - 12/23/2004	2595	SHADE	LISA	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	Shipe	Patrick	Taxation Chapter	Taxation	
DN1 - 12/23/2004	2595	SMITH	DAPHNE	Taxation Chapter	Taxation	
DN7 - 12/23/2004	2595	Smith	Connie	Taxation Chapter	Taxation	
DN2 - 12/23/2004	2595	STOVER	MICHELLE	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	THOMAS	THEARESA	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	Thornton	Carmen	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	TORAN	Ruby	Taxation Chapter	Taxation	
DY3 - 12/23/2004	2595	WALKER	LEWIS	Taxation Chapter	Taxation	
DN2 - 12/23/2004	2595	WEAVER	CATHERINE	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	WHIGHTSEL	STEVEN	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	WILLIAMSON	Charlotte	Taxation Chapter	Taxation	
DY4 - 12/23/2004	2595	WITZEL	LEROY	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	YOUTZ	MARY	Taxation Chapter	Taxation	
DN5 - 12/23/2004	2595	ZACHARIAH	SWETA	Taxation Chapter	Taxation	
DN5 - 12/23/2004	3100	ANDERSON	JENNIFER	Hamilton-Clermont Chapter	Taxation	
DN5 - 12/23/2004	3100	BRANHAM	MORTON	Hamilton-Clermont Chapter	Taxation	
DN2 - 12/23/2004	3100	BROWN	STEPHEN	Hamilton-Clermont Chapter	Taxation	
DN5 - 12/23/2004	3100	BURCH	SETH	Hamilton-Clermont Chapter	Taxation	
DN4 - 12/23/2004	3100	CALDWELL	THOMAS	Hamilton-Clermont Chapter	Taxation	
DN5 - 12/23/2004	3100	CASTLEMAN	Michelle	Hamilton-Clermont Chapter	Taxation	
DN1 - 12/23/2004	3100	CHANEY	JOSHUA	Hamilton-Clermont Chapter	Taxation	
DN2 - 12/23/2004	3100	CREEK	RUSSELL	Hamilton-Clermont Chapter	Taxation	
DN2 - 12/23/2004	3100	FROEHLE	ELISA	Hamilton-Clermont Chapter	Taxation	
DN5 - 12/23/2004	3100	LATHAM	CHRISTOPHER	Hamilton-Clermont Chapter	Taxation	
DN2 - 12/23/2004	3100	Rehbock	Sherry	Hamilton-Clermont Chapter	Taxation	

DN2 - 12/23/2004	3100	SAYER	Paul	Hamilton-Clermont Chapter	Taxation	
DN5 - 12/23/2004	3100	Segrist	Shelia	Hamilton-Clermont Chapter	Taxation	
DN2 - 12/23/2004	3100	SHREVE	MARYDEE	Hamilton-Clermont Chapter	Taxation	
DN5 - 12/23/2004	3100	TAN	LIN	Hamilton-Clermont Chapter	Taxation	
DN5 - 12/23/2004	3100	THOMAS	ADRAIENNE	Hamilton-Clermont Chapter	Taxation	
DN2 - 12/23/2004	3100	Timmer	Stanley	Hamilton-Clermont Chapter	Taxation	
DN4 - 12/23/2004	3100	WATSON	GREGORY	Hamilton-Clermont Chapter	Taxation	
DN5 - 12/23/2004	5700	ALBRACHT	STEPHEN	Montgomery	Taxation	
DN5 - 12/23/2004	5700	COMBS	LILLARD	Montgomery	Taxation	
DN7 -12/23/2004	5700	COMBS	SHANNON	Montgomery	Taxation	
DN7 -12/23/2004	5700	DICKERSON	DARYL	Montgomery	Taxation	
DN7 -12/23/2004	5700	ERBAUGH	MELISSA	Montgomery	Taxation	
DN2 - 12/23/2004	5700	FRAZER	THOMAS	Montgomery	Taxation	
DN5 - 12/23/2004	5700	GORNELEH	GEORGE	Montgomery	Taxation	
DN5 - 12/23/2004	5700	HOLDERMAN	JOSEPH	Montgomery	Taxation	
DN7 -12/23/2004	5700	JONES	BOBBY	Montgomery	Taxation	
DN7 -12/23/2004	5700	THOMAS	DANIELLE	Montgomery	Taxation	

Comp Time for Hours worked (@ 1/2 time)

Date & code	chapter	Name			Agency	agency comments
JY7 - 1/7/2005	200	BRESSON	TODD	Allen	Taxation	
DY7 - 12/23/2004	2545	SHUMAKER	NANCY	State Office Tower	Taxation	
DY7 - 12/23/2004	2595	SUBER	WILLIAM	Taxation Chapter	Taxation	
DY7 - 12/23/2004	3100	DONOVAN	RYAN	Hamilton-Clermont Chapter	Taxation	
DY7 - 12/23/2004	3100	GORBY	BARBARA	Hamilton-Clermont Chapter	Taxation	
DY7 - 12/23/2004	3100	HEDRICK	WAYNE	Hamilton-Clermont Chapter	Taxation	
DY7 - 12/23/2004	3100	RACE	DALE	Hamilton-Clermont Chapter	Taxation	
DY7 - 12/23/2004	5700	GOINES	SHAWNA	Montgomery	Taxation	