

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

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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

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### 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.

