

COLLECTIVE BARGAINING CLARIFICATION LETTER

NO. 10-08-04

To: All Labor Relations Officers and Personnel Officers
From: Michael Duco, Deputy Director
Date: August 24, 2010
Subject: **Arbitration Award Clarifying Section 25.09 of the contract with OCSEA/AFSCME Local 11**

This clarification letter replaces clarification letter No. 07-06-04.

This letter was originally issued to provide guidance in the application of Arbitration Award #1347 issued by Arbitrator Harry Graham on February 17, 1999. It was revised to provide guidance on language added during negotiations for the 2006-2009 Agreement. Please note that the language regarding Relevant Witnesses and Information was moved from §25.08 to §25.09 for the 2006-2009 Agreement. This letter has been reissued in 2010 to update the website information.

Background

On January 27, 1999 Arbitrator Graham heard arguments from the State and the Union on several issues regarding the proper application of Section 25.08 (currently §25.09) of the Collective Bargaining Agreement (CBA).

25.08 – Relevant Witnesses and Information

The Union may request specific documents, books, papers or witnesses reasonably available from the Employer and relevant to the grievance under consideration. Such requests shall not be unreasonably denied.

The specific issues in the case included these questions:

At what step of the grievance procedure does Section 25.08 of the CBA entitle the Union to access “specific documents, books, papers or witnesses reasonably available and relevant to the grievance under consideration?”

May the Employer charge a fee for copies provided to the Union pursuant to 25.08? If so, for what type of requests may such a fee be charged?

Is the Public Utilities Commission violating the CBA when charging the Union for copies of documents requested pursuant to Section 25.08 of the CBA?

Is the Rehabilitation Services Commission violating the CBA when charging the Union for copies of documents requested pursuant to Section 25.08 of the CBA?

Arbitrator Graham issued an award that provides guidance for both Management and the Union in interpreting the meaning of Section 25.08. The essence of his award is as follows:

Issue 1

The Employer has an obligation to provide specific documents, books, papers or witnesses that may be requested by the Union, beginning with Step One (1) of the grievance process. The Arbitrator holds that it is in the Employer's interest to provide more information to the Union, rather than less, in the grievance procedure.

Issue 2

On this issue, Arbitrator Graham held that the Employer is expected to provide copies of documents, books and papers without charge to the Union in the normal course of events. The Employer may charge the Union a rate of \$.10 per page for copy service when such requests require voluminous amounts or where the request will require more than 90 minutes of employee time to produce or copy. The Employer should not charge the Union for access to relevant material nor for document production or copying which takes less than 90 minutes to complete. The Employer should maintain accurate record of the employee time needed to retrieve archival documents, and the time it takes to copy documents which require redaction of names or other information. When the time totals to 90 minutes the Employer may then charge for the copying.

Issues 3 & 4

In consideration of these issues, the Arbitrator found that neither the Rehabilitation Services Commission nor the Public Utilities Commission are exempt from the requirement of Section 25.08. Provisions of State law and various policy memoranda do not have sufficient weight to allow these agencies to avoid the obligations imposed on the State by Section 25.08. Arbitrator Graham clearly stated that both agencies are to comply with the provisions of Section 25.08 in the same manner as all other State agencies.

Summary

The impact of this arbitration decision is broad in scope and provides clarity for the parties to the agreement. When the Union presents a reasonable request for information, pursuant to Section 25.09, the Employer must provide access to specific information for the purpose of grievance administration, beginning with the first step in the process. Requests that will likely require voluminous copying, such that more than 90 minutes of time will be spent to satisfy the copying request, may be subject to a \$.10 per page charge. Agencies are strongly encouraged to be consistent in the application of the "more than 90 minute" standard for imposing a charge for copying. This award clarifies the point that no agencies of State government can resist a reasonable request from the Union to provide access to specific information necessary for the administration of a grievance by charging any fee for copying requests that take less than 90 minutes to satisfy.

Stewards, Union staff representatives or other Union representatives should be provided access to all files and documents during the normal work hours of the employees responsible for the custody of the files or documents. One way in which an agency may appropriately deal with records is to provide the Union with access to the records, and then agree to copy only those records the Union determines to be relevant or necessary. In other words, where the request is for "all files" relating to a particular subject, it is appropriate to grant access to the files, albeit with appropriate oversight and supervision, and then require the Union to first locate and determine which documents really need to be copied.

Per §25.06 stewards shall be given reasonable time off without loss of pay during their working hours to investigate grievances.

It is not necessary to compile reports to comply only with a Union information request. If a report is standard, then the report itself is both a public record and a document available to the Union pursuant to §25.09. If a standard report does not exist to compile the data for the Union, the Employer is required only to give the Union access to the raw data, not to create a report. This does not preclude an agency from compiling a report, especially where the information might assist both parties in resolving the dispute.

2006-2009 Contract Language

In addition to moving the Relevant Witnesses and Information section to §25.09, language was added during the negotiations for the 2006-2009 Agreement regarding the availability of proficiency tests and assessments pursuant to §17.06. In §17.06, the parties agreed that “proficiency tests or other assessments” shall be released only to a Union designee who is not a state employee and that the Union’s review process must ensure the maintenance of security and integrity of the test. If the Union requests a copy of a proficiency test or assessment, please use the Information Sharing Agreement that is available on OCB’s website at: <http://www.das.ohio.gov/Divisions/CollectiveBargaining/OCBForms>. The Agreement sets forth that the Union will maintain the security of the instrument throughout its review process and will not make copies without the Employer’s written permission.

As always, please call your Labor Relations Specialist at OCB with any questions you may have regarding the interpretation of this or any other matter.

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