

COLLECTIVE BARGAINING CLARIFICATION LETTER

NO. 10-09-11

To: All Labor Relations Officers and Personnel Officers
From: Michael Duco, Deputy Director
Date: September 23, 2010
Subject: **Signature and Review Requirements for the Execution of Valid Settlement Agreements, MOUs, Amendments and Agreements; All Contracts**

This clarification letter replaces clarification letter No. 10-08-05. The following clarifies the signature and review requirements for the execution of valid settlement agreements under all collective bargaining agreements. The updates to this letter clarify and expand the general settlement parameters.

I. SIGNATURE REQUIREMENTS

A. Settlements Not Requiring Signature by an Office of Collective Bargaining (OCB) Agent

The following settlements do not require the signature of an agent of OCB, but must adhere to the parameters outlined in Sections II, III and IV of this letter:

Grievance Settlements Prior to an Arbitration/Mediation or Step 4 Request

1. All disciplinary grievances, other than removals (Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO (OCSEA) & SEIU/District 1199 (District 1199), which are settled prior to the receipt at OCB of a demand for mediation or arbitration from a union, or those for which OCSEA does not request OCB to conduct a Step 4 meeting or from District 1199 to conduct at Step 2 meeting, do not require the signature of an agent of OCB. These grievances must be settled on a non-precedent setting basis.
2. All grievances concerning matters of contract interpretation may be settled at the agency level on a non-precedent setting basis only. A copy of the settlement must be submitted to OCB by the agency entering into the settlement; however, such settlements do not require a signature of an agent of OCB.

B. Settlements Requiring Signature by an OCB Agent

The following settlements require the signature of an agent of OCB and must adhere to the parameters outlined in Sections II, III and IV of this letter. Please note that all appropriate signatures should be obtained prior to sending the settlement to OCB for processing.

Grievance Settlements after an Arbitration/Mediation Request

All grievances settled after a demand for mediation or arbitration from a union has been received by OCB, or those settled after a request from OCSEA or for OCB to conduct a Step 4 meeting or from District 1199 to conduct a Step 2 meeting, require the signature of an agent of OCB.

Removal Grievance Settlements for OCSEA & District 1199

Because of the timelines imposed by the collective bargaining agreements, a Removal Grievance File (OCSEA & District 1199) is created at OCB when the agency forwards a copy at the time of the filing at Step 3. Therefore, all removal grievance settlements for OCSEA & District 1199 require a signature of an agent of OCB.

Precedent Setting Grievance Settlements/Memorandums of Understanding

All precedent setting grievance settlement agreements and all Memoranda of Understanding or Letters of Agreement must be signed by the Director of OCB or his/her designee.

Unfair Labor Practice Charges

All settlements that include provisions to settle an outstanding Unfair Labor Practice charge against the Employer must be signed by an agent of OCB.

Working Out of Class (WOOC) Grievances and/or Reclassifications

It is recommended that all WOOC grievances that the agency would ordinarily grant be resolved through a settlement agreement. This precludes the advancement of the grievance by the union on the basis that the employer did not grant the entire remedy as sought by the grievant. All settlements of WOOC grievances require the signature of the appropriate agent of the OCB.

WOOC grievances resulting in back pay and an order for the grievant to cease and desist the duties in contention should be processed by having all appropriate signatures before transmitting the settlement to the OCB for signature of the appropriate agent of OCB.

WOOC or other grievances resulting in a proposed reclassification of an employee **must** have the signature of the appropriate agent of OCSEA's Office of General Counsel verifying its agreement with the reclassification. A copy of the updated position description must be attached to the signed agreement which is forwarded to OCB. Such grievances **must** be signed by the Director of OCB or his/her designee.

II. REVIEW REQUIREMENTS

Inclusion of any of the below listed provisions in any agreement, including a non-precedent setting settlement agreement, require a review of the settlement by OCB to assure that the settlement can be properly processed. In order to expedite settlements you may call your assigned Labor Relations Specialist or any manager at OCB for verbal approval of these provisions.

1. Payments related to any of the public employee retirement systems, other than those included in appropriate deductions.
2. Claims regarding the Bureau of Workers' Compensation.

3. Change within pay range, a step movement or any agreement with regard to compensation outside that which is required by contract or statute.
4. Any agreement with regard to benefits outside that which is required by contract or statute.
5. Placement of an employee into a vacancy, awarding a promotion and/or the reassignment/reclassification of an employee.
6. Changing the PN assigned to an employee.
7. Agreements to waive any challenge to payment of Unemployment Compensation benefits.
8. Supplemental premiums or additional overtime pay to be included in the settlement of a back pay award.
9. All payments for lump sum amounts may be only for other than back wages and must be approved by the Office of Budget and Management and such payments will not be processed through the payroll system.

III. SETTLEMENT FORMS

Only settlement forms that have been agreed to by the unions may be used. If you have other versions please destroy them and replace with proper forms. The unions may justifiably refuse to sign a form other than one which they have agreed to. If you have a doubt about accuracy of a form that you have been using please contact your agency labor relations administrator or your agency's labor relations specialist at OCB for assistance.

IV. GENERAL SETTLEMENT PARAMETERS

The following parameters should be adhered to when negotiating any settlement agreement:

1. Back pay should not exceed the calculated liability.
2. The term "removed from the personnel file" should always be used instead of the term "expunged" with regard to removal of records. This is due to our obligation to retain records for EEOC purposes and expungement indicates to the employee that the record has been destroyed when in fact that cannot be done.
3. All settlement agreements which provide for the payment of back wages must include language which provides for appropriate deductions and must include the time period the back wages are to cover in order for the retirement contribution to be processed correctly. Payment for other than back wages, sometimes referred to as "lump sum payments" must be approved by the Office of Budget and Management and such payments will not be processed through the payroll system.

4. The DAS directive concerning resignations must be adhered to.
5. For removal grievance settlements where the employee is returning to the workplace:
 - a. If service credit should be restored, it must be specified in the settlement agreement. Any restored service credit will count toward the year of continuous service for dental/vision benefits.
 - b. No leave will be restored to the employee unless it is specified in the agreement that the employee should receive the amount of leave he/she would have accrued.
 - c. If the employee cashed out accrued leave upon removal, the employee's only option for restoring that leave is to buy it back. If the employee wishes to buy back leave, specify the amount in the agreement and where the funds to purchase it will come from.
 - d. CSD deductions will not be taken out of backpay. The employee was equalized at the time of removal. CSD deductions will begin from the employee's new start date and the employee will receive a prorated amount of CSD hours. Any deviation from this must be specified and must be approved by the Office of Collective Bargaining.
 - e. An effective date for health insurance benefits should be stated in the agreement. In determining the effective date, agencies should consider whether the employee had any claims during the period of time the employee was not receiving benefits. If there were no claims, or if the claim amount is small, it may be more cost-effective for the agency and the employee to set the effective date for benefits to the date the employee will return to work and for the employee to pay any claims directly to the provider.
 - f. If the agreement specifies that health insurance will be continued from the date of the employee's removal, the employee will owe the employee portion of the premium. If there is a backpay award, the premiums will be deducted from that award. If there is no backpay award, specify in the settlement how the employee's share will be repaid. If a payment plan or other arrangement is not specified in the settlement, the entire amount will be deducted from the employee's first paycheck upon return.
 - g. If any of the time the employee was removed is being converted to a time-served suspension, it should be specified in the settlement agreement.
6. If a question of intent arises during the processing of the settlement agreement, DAS may require the parties to submit a letter of intent. Such letters must be signed by the Agency representative and a representative of the Union.

V. AMENDMENTS, MOUs, AGREEMENTS

An Amendment of the Collective Bargaining Agreement (CBA) is defined as any agreement that changes the explicit terms of the CBA for the term of the Agreement. All such Agreements ***must be signed by the Deputy Director of OCB*** and the appropriate Union designee as set forth in the CBA.

A Memorandum of Understanding (MOU) is defined as any agreement that is either an Amendment or an alteration of language which affects only a specific agency or group of employees, etc. All such Agreements ***must be signed by the Deputy Director of OCB*** and the appropriate Union designee as set forth in the CBA. It should be understood when titling an "agreement" using the term "MOU" that such title may require the agreement to be ratified in accordance with a specific union's constitution and By-Laws.

Agreements are defined as mutual understanding where the CBA authorizes such discretion. ***OCB must sign agreements*** which affect more than one agency or where the CBA requires OCB signatures. Agencies need not obtain OCB signature where the CBA specifically authorizes agency discretion.