

# Settlement Writing Handouts

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## Settlement Writing Checklist

### General

- Wherever possible, agencies should resolve grievances through settlement agreements rather than “granting a grievance”
  - Prevents confusion and further appeal of grievance on basis that the Employer did not grant the entire remedy sought by grievant
- All appropriate signatures must be obtained prior to sending the settlement to OCB for signature
- Agency must post money to the proper account prior to processing any settlement
- Where a settlement is unclear, a letter of intent must be signed by both union and agency representatives before the settlement will be processed
- Absent clarification, the default listed below will be applied

### Signature Authority

- Refer to OCB Settlement Signature Clarification Letter 12-09-06
- OCB signature **not** required for grievance if:
  - Settled prior to an Arbitration/Mediation or Step 4 Request (OCSEA) or Step 2 Request (SEIU)
- OCB signature **is** required for grievance if:
  - Removals (OCSEA & 1199)
  - Precedent setting settlements/MOUs/Letter of Agreement
  - Unfair Labor Practices
  - Working Out of Class
  - Reclassifications

### Resignation in Lieu of Terminations

- Refer to DAS Directive number HR-D-12 (formerly 08-12)
  - Code **TER NGS** Resigned - Not in good standing
    - Egregious, criminal or quasi-criminal, abuse or theft
  - Code **TER NRR** Resigned - Not recommended for rehire
    - Absenteeism or performance
    - Will appear to outside employers as a resignation
    - Indication to state agencies to do further check
- Obtain a signed resignation or state “Grievant’s signature on this settlement constitutes resignation”
- Specify effective date (e.g., date of termination)
  - **Sample:** The Employer agrees to allow the grievant to resign his position at the agency effective December 7, 1993. The Grievant's resignation is attached hereto and made a part of this settlement. The resignation will be coded TER NGS: Resigned - not in good standing."
  - **Default:** Neutral resignation if not specified on agreement and/or personnel action. DAS will contact agency for clarification if Personnel Action (PA) coding and settlement are inconsistent.

## Working Out of Class

- Must specify back pay and cease and desist
  - **Default:** Employee stays in current class.
  - **Sample Language:** Management will cease and desist.
    - Should there be any retroactive pay, parties should specify the number of days and that the grievant should be paid a lump sum of the difference between the two classifications
      - **Sample Language:** Grievant will receive a lump sum in the amount of the difference between the two classifications for hours worked from December 12, 2012 through June 13, 2013.

## Reclassifications -Known as a “Reassignment” –

Movement of employee from one classification to another

- Use sample reclassification form found on OCB website.
- Agreement must be signed by all parties including OCB and Union headquarters to be processed.
  - **Sample Language:** [Employee’s Name] will be reclassified from [Current Class Title (Current Class Number)], [Current Pay Range ##], [Current Step #], at [Current \$XX.XX/hr], to [Proposed Class Title (Proposed Class Number)], [Proposed Pay Range ##], [Proposed Step #], at [Proposed \$XX.XX/hr]. This reclassification will be effective the beginning of the pay period following the date the Office of Collective Bargaining designee signs this Agreement. This action does not constitute the creation or filling of a vacancy in accordance with Article 17.
    - Should there be any retroactive pay, parties should specify the number of days and that the grievant should be paid a **lump sum** of the difference between the two classifications
      - **Sample Language:** Grievant will receive a lump sum in the amount of the difference between the two classifications for hours worked from four days prior to filing the grievance until the effective date of the reclassification.

## Promotion grievance

- **Sample:** The position XXX shall be awarded to the grievant. The grievant shall be placed in pay range XX, step XX, effective (Date). Grievant will not serve any probationary period.
- **Default:** Approximately 3.5% increase (or amount stated in respective bargaining contract) effective the pay period after OCB signature with a probationary period (unless otherwise noted).

## Fine Calculations

- Refer to OCB Clarification Letter
- Use the dollar amount on the Fine Calculation Worksheet (DAS, Human Resources, Downloadable Forms)

- Specify “reimbursement of “x” day(s) of net pay” and divide the fine amount by the appropriate number of days to determine figure

### **Lump Sum Payments**

- Should be used sparingly, only when employee is not returning to work place
- Not processed through the payroll system - must be approved through OBM or fiscal as a vendor payment
  - Funding source must be identified prior to processing
  - Not considered to be wages or in lieu of salary (if you give a time period=WAGES)
  - Lump-sum awards that do not fully represent back wages are not considered earnable salary by OPERS; therefore, no retirement service for that period.
  - Should not exceed back pay liability
  - **Default:** No deductions
  - **Sample:** Grievant will be paid \$10,000.00 (ten thousand dollars). The lump sum payment will be paid from line item 50479.

### **Neutral Recommendation**

- Dates of employment
- Classification held - job title
- Salary - rate of pay
- **Sample:** The Employer shall provide a neutral recommendation to include dates of employment, classification held and rate of pay.

### **Applicable Deductions Includes (should only be tied to back pay or arbitration awards, not lump sum settlements):**

- Taxes (Federal, State, City)
- Healthcare
- Medicare
- OPERS
- Union Dues
- Garnishments/Child support
- COBRA payments or refunds
- **Sample:** The grievant shall receive \$2,000 minus all applicable deductions.

### **Address all outstanding Issues**

- Unfair Labor Practice Charges
- EEO
- OCRC
- Court cases
  - **Default:** All other cases remain open if not specified in settlement otherwise
  - **Sample:** John Doe shall withdraw case number 9:99CV 999 in the United States District Court Northern District of Ohio and provide the employer with a copy of the motion to withdraw as soon as it is filed and recorded with the court. (Not later than May 20, 2005)

- **Sample:** Mr. Doe, the union, and its agent, agree to withdraw and not pursue any Unfair Labor Practice charges filed with the State Employee Relations Board as well as any charges in any other forum that relate to Mr. Doe and the issues surrounding this settlement.
- **Sample:** Pursuant to this settlement, the union and Mr. Doe agree the following grievances shall be considered settled and/or withdrawn and will not be pursued by either party; #99-99-20020809-9999-01-03 and #99-99-20020918-9999-01-06.

### **ADEA Waiver**

- Assess need for waiver

### **Discipline**

- Modify discipline for early removal
  - **Sample:** If there is no intervening discipline, the discipline shall be removed from Mr. Doe's record on February 28, 2014.

### **Last Chance Agreement**

- Terms
- Duration
  - **Sample:** 1) Grievant agrees to enter an approved, recognized alcohol rehabilitation program before July 15, 2012. On or before October 1, 2012, grievant must prove that he has been in this program and has been alcohol-free for a period of at least 60 days by presenting certified documentation to the [Agency] local office manager or designee. If grievant fails to comply, this document will serve as his resignation, effective December 22, 1992.
  - 2) If grievant does comply with # 1, [Agency] will reinstate him to his former position with no back pay. Reinstatement will also be conditional to grievant signing a fifteen (15) month last Chance Agreement commencing on the day of reinstatement. Grievant will also be subject to substance abuse testing in accordance with the Collective Bargaining Agreement.

### **Bad Language – Issues to Avoid**

- “Expunged”
  - Instead state “the discipline will be removed from the grievant’s file”
- “Make whole”
  - Instead use specific language indicating what the exact remedy will be
- “Confidential”
  - Note: the settlement agreement is a public document and cannot be kept confidential
- “Payment of attorney fees”

## **Reinstatement from Removal – Considerations:**

**Please note:** For all cases scheduled for arbitration, parties should argue the following considerations during case presentation and ask the arbitrator to address in the finding. Where the arbitration decision is silent, the agency will need to submit a written agreement signed by the union to ensure DAS can process.

### **Healthcare**

The agency may consider using one of the following three options for medical benefits:

- 1) Coverage retroactive to the date of termination
  - Settlement should specify which party is responsible for the employee premium share
  - A payment plan for the missed deductions must be submitted at the time of the ePar/Personnel Action is processed, otherwise the entire Retro Benefits deduction will be paid back with any earnings received as a result of the reinstatement and/or through subsequent earnings.
  - **Sample:** The grievant shall have health benefits restored to the date of termination. The grievant shall pay the employee share of the premiums out of the lump sum specified in #1 of the settlement.
- 2) Prospective coverage only (must effective the 1<sup>st</sup> day of month following physical return to work)
  - **Sample:** The grievant shall be reinstated on August 25, 2012. Health care will be prospective, effective September 1, 2012.
- 3) Prospective coverage (effective the 1<sup>st</sup> day of month following physical return to work) where the agency reimburses the employee for claims made during the period the employee was terminated out of agency funds.
  - **Sample:** The grievant shall be reinstated on November 15, 2012. Health care will be prospective, effective December 1, 2012. The grievant shall supply record of all medical costs incurred from date of removal, June 23, 2012, and date of reinstatement. The agency shall process reimbursement within three pay periods of receipt of all needed documentation.

If there is a period of time where there is no pay (i.e. the employee is returned to work with a 90-day suspension):

- 1) Employee may elect to begin coverage prospectively after the period of no pay.
  - The employee and agency will be responsible for their respective shares of the premiums from the point the coverage begins;
  - **Sample:** The employee will be reinstated to former position effective March 1, 2012. The removal shall be changed to a 30 day suspension. The grievant's healthcare will be effective the first day of the month following the reinstatement.

OR

## **Reinstatement from Removal – Considerations:**

- 2) Employee may elect for coverage to be retroactive to the date of termination, but the employee will still be responsible for paying the employee's share of the premiums for the entire period, including the time where the employee did not receive pay.

If medical benefits are not addressed in the settlement agreement, the following default rule will apply:

### **Default:**

- Coverage will be made retroactive to the date of termination and employee and agency will be responsible for their respective shares of the premiums.
  - Coverage will be as if the employee had never been removed.
    - The employee may need to pursue appeal if health care dependents changed during time off from work.
  - The entire Retro Benefits deduction will be paid back with any earnings received as a result of the reinstatement. Where there are no earnings for the time period off, the system is programmed to collect all arrears as the employee receives wages. This will continue until all arrears are addressed.
    - A payment plan for the missed deductions must be submitted at the time of the ePar/Personnel Action is processed to avoid the system from taking the entire amount due.
- Exception if the employee shows proof of other coverage for time period off work
  - If proof is provided, employee will still be reinstated to health plan the first day of the month following physical return to work
- **Note:** If the agency does not want this default rule to apply to an arbitration award, any clarification must be in writing and signed by the agency and the union.

### **Leave Accruals**

- Must specify if leave accruals for period of time off will be restored (without cost to employee)
  - Employee may only have restoration of leave that would have otherwise been accrued
  - **Sample:** Grievant will be credited sick leave, vacation leave and personal leave accruals for period from date of removal to date of rehire (reinstatement) on Sept. 10, 2012.
  - **Default:** No retroactive accruals if not specified.

**Shift/Days Off:** Specify shift and days off (good days) where applicable.

### **Leave Conversions/Cash Out**

- Employee must buy back any time that was cashed out if they wish to have their leave balances restored
  - Employee may only have restoration of leave cashed out

## **Reinstatement from Removal – Considerations:**

- Agencies are discouraged from allowing the employee to buy back comp time (should be the exception rather than the rule)
- Payment plan must be established and submitted to DAS; DAS will enter it.
- **Default:** Employee will not buy back leave if not specified otherwise

### **Retirement**

- Employer and member contributions on the award of back wages or salary shall be paid in the same amount as would have been contributed if the member or retiree had been reported to OPERS during the period of reinstatement (not offset by other wages)
  - Lump-sum awards that do not fully represent back wages are not considered earnable salary by OPERS; therefore, no retirement service for that period.
  - However, if contributions equal what would have been paid on the earnable salary, the OPERS not concerned with the amount paid as back-pay
  - **Sample:** ODRC agrees to remit to employee back-pay in the amount of \$5,500 minus applicable taxes and required withholdings, with the exception of OPERS contributions. This represents back-pay to be paid to the employee's from August 18, 2009 to July 3, 2010. ODRC agrees to remit the employer's and employee's contributions to employee's OPERS account based upon earnable salary of \$52,4040.96 for period elapsed from August 30, 2009 to July 3, 2010. ODRC's payment of these OPERS contributions is subject to acceptance and approval by OPERS and this employer contribution shall not be deducted from the back-pay award.
  - **Default:** No contribution/service credit will be extended.

### **Back Pay Settlements**

- If there is a return to work with back wages, specify the amount of time and impact on leave accruals and OPERS
  - Must account for the full amount of time
    - Amount of time on suspension
    - Amount of time on administrative leave without pay
    - Amount of time worked with pay
  - **Default:** DAS will require a breakdown.

**SAMPLE**  
**GRIEVANCE SETTLEMENT AGREEMENT**  
**(OCSEA)**

This Agreement made September 20th, 2012; by and between the Department of Rehabilitation and Correction (Agency), the Ohio Civil Service Employees Association, Local 11, AFSCME (OCSEA), and Missy Lions (Employee), parties hereto.

Whereas, there is now pending, a grievance filed by the above named employee(s) and OCSEA against the (DRC) pursuant to the Collective Bargaining Agreement, identified as grievance number(s) 27-15-20110818-0097-01-03 based on the following allegations:

Violation of Section(s): Article 24

WHEREAS, the (DRC) denies any liability in connection with the alleged claim;

WHEREAS, all parties hereto wish to reach a full and final settlement of all matters and causes of action arising out of the claim set forth above;

Now therefore, all parties hereto, in consideration of their mutual covenants and agreements to be performed, as hereinafter set forth, agree as follows:

1. The grievant will be reinstated to position of Correction Officer at Madison Correctional Institution, effective July 15, 2012.
2. In lieu of removal, the grievant discipline will be modified to a five day working suspension and will remain on the grievant's record pursuant to Article 36.
3. The grievant will be restored to the same shift with the same good days (3<sup>rd</sup> shift, Thursday/Friday).
4. The grievant will have no break in state seniority from her initial date of hire.
5. The grievant shall receive \$23,583.20 minus applicable taxes and deductions. This award represents back-pay to be paid to the employee from August 18, 2011 to July 14, 2012. The agency agrees to remit the employer and employee's contributions to the grievant's OPERS account based upon the earnable salary of \$52,404.96 for the period elapsed from August 18, 2011 to July 14, 2012. The agency's payment of OPERS contributions is subject to acceptance and approval by OPERS and this employer contribution shall not be deducted from the back pay award
6. The parties agree that healthcare will be retroactive to the date of removal. The parties will pay their respective amounts. The employee shall make an additional \$100 payment toward health care arrears per pay until current.

7. The grievant will be credited sick leave, vacation leave and personal leave accruals for period from date of removal to date of rehire (re-instatement) on July 14, 2012.
8. The grievant will buy back vacation (59.6), sick (91.4) and personal leave (26.4) hours that were cashed out. The grievant will pay \$100 per pay until all balances are paid in full.

OCSEA agrees to waive any and all rights it may currently or subsequently possess to obtain any reparation, restitution or redress for its members as a result of the events which formed the basis of the aforementioned grievance, including the right to have the grievance resolved through arbitration, or through resort to administrative appeal or through the institution of legal action.

OCSEA agrees to withdraw the aforementioned grievance and to waive its right to pursue any and all claims that may arise as a result of the implementation of the terms of the Agreement.

All parties to this Agreement hereby acknowledge and agree that this Agreement is in no way precedent setting. This Agreement shall not be introduced, referred to, or in any other way utilized in any subsequent arbitration, litigation, or administrative hearing except as may be necessary to enforce its provisions and terms.

Ohio Department of Rehabilitation and Correction (DRC)	Date
Office of Collective Bargaining	Date
OCSEA, AFSCME Local 11 – Staff Representative	Date
OCSEA, AFSCME Local 11 –Chapter President	Date

(This settlement is valid without the Employee’s signature. The Employee’s signature is only needed to obtain waiver of individual rights).

Employee agrees:

To waive any and all right they may currently or subsequently possess to receive any reparation, restitution or redress for the events which formed the basis of the aforementioned grievance, including the right to resort to administrative appeal or through the institution of legal action. Employee specifically agrees to withdraw the following actions which are currently pending.

Grievant	Date
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**BLANK  
GRIEVANCE SETTLEMENT AGREEMENT  
(OCSEA)**

This Agreement made September 20th, 2012; by and between the [\_\_\_\_\_], the Ohio Civil Service Employees Association, Local 11, AFSCME (OCSEA), and (\_\_\_\_\_), parties hereto.

Whereas, there is now pending, a grievance filed by the above named employee(s) and OCSEA against the (\_\_\_\_\_) pursuant to the Collective Bargaining Agreement, identified as grievance number(s) \_\_\_\_\_ based on the following allegations:

Violation of Section(s):                      Article \_\_\_\_\_

WHEREAS, the (\_\_\_\_\_) denies any liability in connection with the alleged claim;

WHEREAS, all parties hereto wish to reach a full and final settlement of all matters and causes of action arising out of the claim set forth above;

Now therefore, all parties hereto, in consideration of their mutual covenants and agreements to be performed, as hereinafter set forth, agree as follows:

OCSEA agrees to waive any and all rights it may currently or subsequently possess to obtain any reparation, restitution or redress for its members as a result of the events which formed the basis of the aforementioned grievance, including the right to have the grievance resolved through arbitration, or through resort to administrative appeal or through the institution of legal action.

OCSEA agrees to withdraw the aforementioned grievance and to waive its right to pursue any and all claims that may arise as a result of the implementation of the terms of the Agreement.

All parties to this Agreement hereby acknowledge and agree that this Agreement is in no way precedent setting. This Agreement shall not be introduced, referred to, or in any other way utilized in any subsequent arbitration, litigation, or administrative hearing except as may be necessary to enforce its provisions and terms.

\_\_\_\_\_  
Ohio Department of Rehabilitation and Correction (DRC)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Office of Collective Bargaining

\_\_\_\_\_  
Date

\_\_\_\_\_  
OCSEA, AFSCME Local 11 – Staff Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
OCSEA, AFSCME Local 11 –Chapter President

\_\_\_\_\_  
Date

(This settlement is valid without the Employee’s signature. The Employee’s signature is only needed to obtain waiver of individual rights).

Employee agrees:

To waive any and all right they may currently or subsequently possess to receive any reparation, restitution or redress for the events which formed the basis of the aforementioned grievance, including the right to resort to administrative appeal or through the institution of legal action. Employee specifically agrees to withdraw the following actions which are currently pending.

\_\_\_\_\_  
Grievant

\_\_\_\_\_  
Date