

THE STATE OF OHIO AND  
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION,  
AFSCME, LOCAL 11  
LABOR ARBITRATION PROCEEDING

#918

In The Matter of the Arbitration Between:

The State of Ohio

-and-

Ohio Civil Service Employees Association,  
AFSCME, Local 11

**POWER OUTAGE CLASS ACTION GRIEVANCES**

Grievants:

Grievance Numbers:

Evelyn L. Janish	17-00-20030825-0015-01-09
Debra K. Grier	23-07-20030924-0027-01-04
James R. Meyer	23-18-20030925-0077-01-06
John A. Wolfe	23-18-20030924-0078-01-06
Robert Ellis	24-14-20030924-2713-01-04
Arnold Frye	27-17-20030909-1392-01-03
Daniel D. Sablack	27-14-20030827-2021-01-03
John P. Sammon	30-03-20030825-1279-01-14
Robert J. Means	34-16-20030909-0060-01-09

**Arbitrator's Opinion and Award**  
**Arbitrator: David M. Pincus**  
**Date: December 16, 2005**

Appearances

For the Union  
Herman S. Whitter

Assistant General Counsel and  
Director of Dispute Resolution

For the Employer  
Mike Duco

Manager of Dispute Resolution and  
SERB Services

INTRODUCTION

RECEIVED / REVIEWED

DEC 19 2005

OCSEA-OFFICE OF  
GENERAL COUNSEL

This is a proceeding under Article 25, entitled Grievance Procedure, Section 25.03 of the Agreement between the State of Ohio, hereinafter referred to as the "Employer," and the Ohio Civil Service Employee Association, AFSCME, Local 11, hereinafter referred to as the "Union," for the period of March 1, 2003 through February 28, 2006 (Joint Exhibit 1).

The arbitration hearing was held on December 16, 2005. The parties had selected David M. Pincus as the Arbitrator.

At the hearing, the parties were given the opportunity to present their respective position on the grievances, to offer evidence, to present witnesses and to cross-examine witnesses.

### **ISSUE**

Did the Employer violate Article 13, Sections .09 and .15 of the Collective Bargaining Agreement for events (Power Outage) occurring on, or around, August 14 and August 15 of 2003? If not what shall the remedy be?

### **Pertinent Contract Provisions**

#### **Article 13 – Work Week, Schedules and Overtime**

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#### **13.09 – Report Pay**

Employees who report to work as scheduled and are then informed that they are not needed will receive their full day's pay at regular rate.

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#### **13.15 – Emergency Leave**

Employees directed not to report to work or sent home due to weather conditions or another emergency shall be granted leave with pay at regular rate for their scheduled work hours during the duration of the emergency. Employees required to report to work or required to stay at work during such emergency shall

receive pay at time and one-half (1 ½) for hours worked during the emergency. Any overtime worked during an emergency shall be paid at double time.

An emergency shall be considered to exist when declared by the Employer, for the county, area of facility where an employee lives or works.

For the purpose of this Section, an emergency shall not be considered to be an occurrence which is normal or reasonable foreseeable to the place of employment and/or position description of the employee.

Essential employees shall be required to work during emergencies. Essential employees who do not report as required during an emergency must show cause that they were prevented from reporting because of the emergency.

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(Joint Exhibit, pg 18)

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The following provision reflects language in the District 1199, The Health Care and Social Services Union, SEIU.

### **Article 35 – Emergencies**

Employees directed not to report to work or sent home due to weather conditions or another emergency shall be granted leave with pay at regular rate for their scheduled work hours during the duration of the emergency. Employees required to report to work or required to stay at work during such emergency shall receive pay at time and one-half (1 ½) for hours worked during the emergency. Any overtime worked during an emergency shall be paid at double time.

An emergency shall be considered to exist when declared by the Employer, for the county, area of facility where an employee lives or works.

For the purpose of the Section, an emergency shall not be considered to be an occurrence which is normal or reasonable foreseeable to the place of employment and/or position description of the employee.

Essential employees shall be required to work during emergencies. Essential employees who do not report as required during an emergency must show cause that they were prevented from reporting because of the emergency.

### ANALYSIS AND AWARD

At the hearing, the Employer submitted for review a recent Award authored by Arbitrator Susan Grody Ruben (State of Ohio Department of Mental Health and District 1199, SEIU (Blackout Grievance) Case No. 23-07-20030918-0025-02-11). This ruling impacts the present dispute because it involves an identical issue and contract language, some similar locations, and similar circumstances. As such, this Arbitrator agrees with the essence of Arbitrator Ruben's award.

The Arbitrator, therefore, holds the August 14-15 blackout was reasonably foreseeable to facilities which provide back-up generators. If state employees in the Greater Cleveland Area (i.e. the areas where the blackout took place) fall within the following circumstances, they shall receive their full day's pay pursuant to Article 13.09-Report Pay, and for those who used leave they shall have their leave restored:

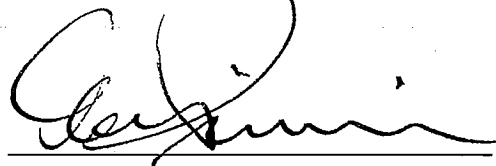
1. State employees who reported to work and were sent home by the Employer;
2. State employees who reported to work and were denied access to the premises by authorities; or
3. State employees who were instructed by an Employer's representative not to report to work

The Union shall provide the Employer with a list of employees who fall within the above circumstances within 90 days from this award. The Employer shall verify the information within 60 day of receipt of the Union list. Shortly thereafter, the Employer and the Union shall meet and arrive at an implementation agreement on this matter.

The Arbitrator retains jurisdiction over any unresolved disputes involving this matter.

12/16/05

Date



Dr. David M. Pincus, Arbitrator