

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between:

STATE OF NEW YORK,

Employer,

-and-

NEW YORK STATE CORRECTIONAL
OFFICERS & POLICE BENEVOLENT
ASSOCIATION, INC. (Security Services Unit),

Employee Organization.

**CLARIFICATION TO THE
FINAL AND BINDING AWARD
OF TRIPARTITE PANEL**

PERB Case No. IA 2004-009

The Public Arbitration Panel Members are:

PUBLIC PANEL MEMBER & CHAIRMAN:

Thomas N. Rinaldo, Esq.

PUBLIC EMPLOYER PANEL MEMBER:

Walter J. Pellegrini, Esq.
Governor's Office of Employee
Relations

PUBLIC EMPLOYEE ORGANIZATION PANEL
MEMBER:

Natalie A. Carraway, Esq.
Sheehan Greene Carraway
Golderman & Jacques, LLP

On March 21, 2006, a Final and Binding Award of the Tripartite Panel ("Award") was issued pursuant to Section 209 of the Taylor Law resolving open issues between the State of New York ("State") and the New York State Correctional Officers Police Benevolent Association, Inc., ("NYSCOPBA"). Subsequently, a dispute has arisen between the State and NYSCOPBA with regard to the interpretation and implementation of Item number 9 of the Award relating to the required submission of medical documentation by covered members as a condition of obtaining pre-approved sick leave for absences of four hours or less.

Item number 9 of the Award provides:

[Added to Article 14.4] Effective July 1, 2006, employees shall be required consistent with current medical documentation policy, to provide adequate documentation from the medical provider for all pre-approved medical absences including those of four hours or less. Upon the second instance of failure to provide adequate documentation, the employee shall be subject to discipline. However, this in no way is intended to otherwise alter present medical documentation requirements.

The parties reconvened this Panel on August 27, 2010, and authorized the Panel to resolve the dispute by clarifying and/or interpreting its Award, with regard to the limited issue of what information, and in what form, the Award authorizes the Department of Correctional Services ("Department") to obtain from members as a condition of granting pre-approved sick leave of four hours or less. The parties were represented by counsel and were afforded the full opportunity to present oral and written evidence and arguments, and otherwise set forth their respective positions, arguments and proof. The documents and statements were taken into evidence by the Panel, and the parties' arguments and submissions have been considered by the Panel in executive session.

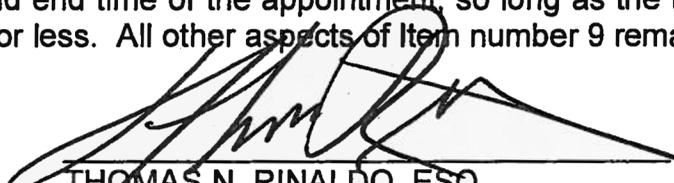
In arriving at this Clarification to the Final and Binding Award of the Tripartite Panel, the Panel has considered the statutory guidelines contained in Section 209(4) of the Taylor Law and the issue presented to the Panel for resolution. Consistent with the request of the parties and the provisions of the Taylor Law, the Panel hereby issues this Clarification of Award which, as the parties have expressly requested and agreed, is fully binding upon the parties to these proceedings.

It was the intention of this panel to resolve this longstanding dispute with the issuance of Item 9 of the March 21, 2006, Award. Unfortunately, the dispute has continued. Based on the evidence submitted by the parties, it is clear to the majority of the panel that the Department's needs can be satisfied by a limited inquiry into the covered members' medical appointment for four hours or less. It is also clear that the parties are requesting, and will greatly benefit from, clear and explicit clarification as to

the authority granted to the Department in both the March 21, 2006, Award and this clarification.

For that reason, the clarified language shall be incorporated into the Department's relevant directive, so that the instant dispute is resolved and the parties move forward. No greater or deeper inquiries with regard to pre-approved sick leave of four hours or less were intended by the March 21, 2006, Award, nor are any authorized by this clarification, beyond those set forth in the annexed policy language.

Accordingly, the Panel issues this Clarification to the Final and Binding Award of the Tripartite Panel and directs that "adequate medical documentation" as set forth in Item number 9 shall mean an original note signed by the doctor or designee that contains the location, start time, and end time of the appointment. The Panel further clarifies that adequate medical documentation will not be subject to review to determine if the length of the absence was warranted, based on the location of the appointment and the start and end time of the appointment, so long as the total time of the absence was four hours or less. All other aspects of Item number 9 remain unchanged.


THOMAS N. RINALDO, ESQ. 12/3/2010
DATE

Concur

Dissent


WALTER J. PELLEGRINI, ESQ. 12/15/10
DATE

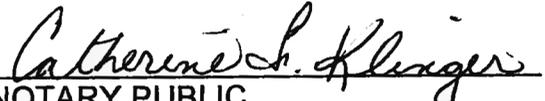
Concur

Dissent


NATALIE A. CARRAWAY, ESQ. 1/19/11
DATE

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

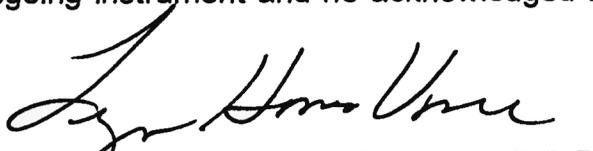
On the 3rd day of December, 2010, before me personally came and appeared THOMAS N. RINALDO, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.


NOTARY PUBLIC
CATHERINE F. KLINGER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 6/25/2011

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On the 15th day of December, 2010, before me personally came and appeared WALTER J. PELLEGRINI, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LYNN HOMES VANCE
Notary Public, State of New York
No. 02VA6114292
Qualified in Albany County
Commission Expires Aug. 9, 2012


NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On the 19th day of January, 2011, before me personally came and appeared NATALIE A. CARRAWAY, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.


NOTARY PUBLIC

DEBRA A. CZORNYJ
Notary Public, State Of New York
No. 01CZ4516332
Qualified in Rensselaer County
Commission Expires September 30, 2014

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