



## SIGNAL FIVE

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(OFFICIAL NEWSLETTER OF THE OHIO STATE TROOPERS ASSOCIATION)

January 27, 2006  
Columbus, Ohio  
For Immediate Distribution

### THE MOST RECENT McCLELLAN LETTER

On January 25, 2005, Colonel Paul D. McClellan had Captain Kevin D. Teaford of Human Resource Management hand deliver a letter to Trooper Dennis Gorski, President of the Ohio State Troopers Association. President Gorski was at the Midwest Hotel and Conference Center in Columbus, Ohio where the Combined Board of the Ohio Trooper Organizations was holding its quarterly meeting. Earlier that morning, Colonel McClellan had canceled his, and his senior staff's scheduled attendance, at this meeting to meet with our Board Members for an interactive exchange of information.

The Colonel's letter, was sent as well to all OHP facilities, contains substantial inaccuracies. Before those are addressed, here is a little background on the issue:

1. On Wednesday, December 28, 2005, Major Robert J. Young of HRM hand delivered a proposed Memorandum of Understanding (MOU) to the OSTA office. It is attached and identified as MOU #1. The proposed MOU constituted a proposal by the Employer to enlist the Union in an attempt by the Employer to seize compensation bargaining unit members have received and will receive as a result of class action litigation regarding the ballistic material "Zylon".
2. The proposed MOU additionally sought the repayment of the difference in purchase price paid from the \$800.00 negotiated stipend that is part of the 2003 – 2006 collective bargaining agreement that will expire on July 1, 2006.
3. The asserted justification for the MOU was that these monies would be pledged by the Employer to be used solely for the purchase of Officer Safety

Equipment such as safety improvements to the Crown Victoria Police Interceptor.

4. The proposed MOU was seen by the Union as over reaching as it would have permitted the Employer, which had played no positive or active role in pursuing the claims of defective vests, to profit from the work of bargaining unit members and the Union in prosecuting some of the suits and helping to shape the settlement terms of the others.
5. Herschel Sigall, OSTA General Counsel, rejected that MOU quite forcefully in a written letter to Major Young on December 30, 2005. That formal rejection is attached. On January 4, 2006, S/Lt. John Allard provided President Gorski, with a substantially revised proposed MOU that abandoned much of the unacceptable proposals of the earlier MOU while retaining a pledge to use future funding for Officer Safety purchases. It clearly established that the proposed provision limited only to excess stipend money would be "prospective" as opposed to "retroactive" That MOU is attached and identified as MOU #2.
6. On Thursday, January 5, 2006, President Gorski after some minor revision to the second MOU proposal signed the MOU on behalf of the Union and Major Young signed on behalf of the Employer. It is attached and identified as MOU #3. It provides for a reimbursement of the difference between the purchase price of a vest and the \$800 stipend for those stipends, which are issued after January 12, 2006. It is attached and identified as MOU #3

Memorandums of Understanding (MOU) amend the collective bargaining agreement and are clearly and always "prospective" unless otherwise noted. The January 12, 2006 was not retroactive as on its face it established the effective date of its terms to be January 12, 2006. Colonel McClellan was not present during the negotiations surrounding the execution of the MOU. However, in his January 25<sup>th</sup> letter, the Colonel indicates a belief that the that the MOU was in fact retroactive and was intended to provided justification for the Employer to capture monies rightfully the directed to our members. The Colonel's initial desire (MOU #1) most certainly was to capture money beyond portions of future stipends. By its terms it would have

authorized the Employer to reach back and capture portions of past stipends as well. That is what the Employer wanted and that is precisely what was, as you can see by the attachments, formally rejected by the Union immediately. It would similarly be rejected now and it would be rejected if ever proposed in the future.

We certainly don't know what the Colonel's staff told him what was accomplished in the negotiating process that resulted in MOU #3. It would appear that the Colonel might have been told that the rejected proposals of MOU #1 were in fact realized. The facts, however, disclose a final document highly limited in scope and clearly prospective in application.

The January 20, 2006 Signal Five upon which Col. McClellan is basing much of the anger evidenced in his letter was wholly factual in its assessment and evaluation of the current vest situation. The Signal Five addressed the Employer's current course of action of demanding that bargaining unit members pay back the difference between the purchase price of a vest and the negotiated \$800 stipend, which were all issued prior to January 12, 2006. The Signal Five was additionally an update on the progress of legal actions ongoing in four separate jurisdictions wherein the Union and its allies have been waging a successful fight for officer safety. These are arenas in which the Employer has been notably absent. The Signal Five was accurate and, based upon the response of the membership, was a welcomed update on the continuing legal battles.

The fundamentals of collective bargaining require each party to abide by the terms and conditions of the agreement. That is what the OSTA has done and it will continue to do so. We can only ask that the Employer do the same. If the Employer continues down this path of seeking monies to which it is not entitled to, it will not be abiding by the collective bargaining agreement negotiated between the parties, that become effective July 1, 2003. The January 12, 2006 MOU (#3) does alter the terms of the July 1, 2003 collective bargaining agreement, specifically Article 25.09 of Unit 1 and Article 25.08 of Unit 15 – Vest stipends issued after January 12, 2006 will be subject to the January 12<sup>th</sup> MOU and any money not spent on the purchase price of a vest will have to be remitted back to the Employer. That amendment ceases to be operative with the execution of the new collective bargaining agreement.

The Signal Five simply recited the facts of the situation. A grievance and an Unfair Labor Practice will be filed. The grievance remedy will seek the reimbursement of any monies paid back to the Employer in violation of the collective bargaining agreement. The Unfair Labor

Practice will allege that the Employer has failed to bargain in good faith and is attempting to restrain members from exercising their rights guaranteed by Ohio Revised Code 4117.

On January 26, 2006, the Combined Board of all the Ohio Trooper Organizations voted to support our membership administratively, legally, morally and financially if necessary should the Employer continue its current course of action. The Combined Board resolved that our membership deserves its support wholeheartedly and without reservation.

Memorandum of Understanding

This agreement is mutually entered into by the State of Ohio, Department of Public Safety, Division of Highway Patrol, (the Employer) and the Ohio State Troopers Association, representing Bargaining Units 1 and 15, (the Union).

Recently the parties worked together to resolve and ultimately replace protective vests in the interest of officer safety.

The Employer and Union agree that officer safety is paramount and as such now agree that no member of Bargaining Unit 1 and 15, the Union, or agent thereof should monetarily profit from the vest replacement process. To that end the Employer and Union agree to the following:

1. Any monies from the stipend or manufacturer's vest replacement warranty arising from the vest replacement which is not applied directly and exclusively to the purchase of a replacement vest, carrier covers for the vest, or trauma plates shall be remitted back to the Employer.
2. The Union recognizes that individual members of the bargaining units they represent are parties to a class action lawsuit which may result in a settlement between the vest material supplier, the manufacturer, and their members. The Union recognizes that this is not a condition of employment or otherwise covered by the collective bargaining agreement and as such will not intercede on behalf of a member of the bargaining unit in the enforcement of the provisions contained in the Ohio Attorney General's Opinion 2005OCA011, or the Employer's attempt to collect such monies.
3. When new vests are purchased, or have been purchased as a result of the current vest replacement policy, the stipend date for the purchase of another vest will be set 60 months from date of purchase of the replacement vest.

In the interest of officer safety, the Employer agrees to utilize the remitted funds to purchase officer safety equipment to be used by members of Bargaining Unit 1 and 15 in the performance of their official duties.

The parties further agree that:

1. Any grievance filed on issues related to the above provisions will not go past Step 2.
2. No Unfair Labor Practices (ULPs), will be filed. If an individual employee files a ULP, this agreement may be submitted as evidence by either party.
3. It is understood that this Letter of Understanding is not precedent setting and only applies to this vest replacement process, the manufacturer's replacement warranty, or other non-injury legal settlements arising from protective vests worn by Bargaining Unit 1 and 15 employees.

Expires June 30, 2006.

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(EMPLOYER)

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(DATE)

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(UNION)

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(DATE)

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(OCB)

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(DATE)

# OHIO STATE TROOPERS ASSOCIATION

## OFFICE OF THE GENERAL COUNSEL

December 30, 2005

Major Robert J. Young  
Ohio State Highway Patrol  
1970 W. Broad St., 3<sup>rd</sup> Floor  
Columbus, Ohio 43218-2074

### RE: Proposed MOU Re: Vests

Dear Major Young:

I have been directed to respond in formal fashion to the MOU drafted by the Employer and submitted to the OSTA for review. It is unacceptable. Let me make the following observations:

1. I do not agree that an officer "not profit" from the "vest replacement process". If the "vest replacement process" is synonymous with "stipend", I specifically disagree. The \$800.00 stipend is a set figure that was bargained by and between the Employer and the Union. It was certainly understood that to meet the policy of the employer requiring a certified threat Level II A vest might not require the expenditure of \$800.00. The difference between the \$800.00 and an individual expenditure of \$600.00 to meet minimal policy requirements, was understood to belong to the officer. This is the position of the Ohio State Troopers Association, and clearly my understanding and belief as the chief spokesperson for the Union during bargaining.
2. I have no idea what logic supports the language proposed in Item #2 of the proposed MOU, and am honestly in doubt as to its author. True, members of the Union are also members of a class action suit against Second Chance and Toyobo. However the Union has a strong interest in protecting its members from having monies received as a result of a settlement of that case, being taken from them and sent instead to the Employer.
3. Union and the Employer have previously entered into a MOU that spoke to the situation created by the defective Ultima/Ultimax and Tri flex vests. That situation was resolved by virtue of the stipend date being moved up for bargaining unit members who had purchased the Ultima/Utimax and Tri Flex vests. That MOU, which settled a pending arbitration on the issue of officer safety, provided that the Employer would not be required to provide an additional stipend until 60 months following the receipt of the MOU stipend.

That MOU did not purport to treat any pending legal action against Toyobo or any other vest maker. It as well did not attempt to treat the pending claims of individual officers in the US Bankruptcy Court in Michigan. The Union has been active in both the Toyobo class action suit and in prosecuting the claims of individual officers as unsecured creditors in the pending Second Chance bankruptcy proceedings in Michigan.

There should be no doubt but that the Union will intercede as strongly as it possibly can intercede should Attorney General Jim Petro initiate or endorse an attempt to have portions of any negotiated stipend remitted to the Employer, and/or have settlement distribution remitted to the Employer. The Union will look with strong disfavor upon any undertaking of this nature endorsed or initiated by Attorney General Jim Petro.

4. Finally, the MOU entered into by the parties and referenced in #3 above established a new 60 month stipend date for the early stipends provided to owners of the Second Chance Ulitma/Ultimax and Tri flex vests. To the extent it spoke to the Armor Holdings vests to be replaced, we of course will bind ourselves to the MOU. Since we oppose the remitting of any funds the receipt of which were either bargained for, or received as the result a court ordered settlement, it is not necessary to address the MOU's proposal that remitted funds be spent by the Employer to procure "officer safety equipment".

The OSTA is always ready to discuss areas of mutual concern to the parties. The Union is always ready to reduce to MOU any area of amendment to the collective bargaining agreement that is in the best-balanced interests of the parties.

Sincerely,

Herschel M. Sigall

HMS:efb  
Copy: file, exec comm..

**Memorandum of Understanding**

This agreement is mutually entered into by the State of Ohio, Department of Public Safety, Division of Highway Patrol, (the Employer) and the Ohio State Troopers Association, representing Bargaining Units 1 and 15, (the Union).

The Employer and Union agree that officer safety is paramount and agree no party shall benefit financially from the language found in Section 25.09 of the Unit 1 labor agreement, or Section 25.08 of the Unit 15 labor agreement. These sections address the protective vest stipend. To further ensure that officer safety comes first, the parties agree any of the \$800.00 stipend not spent on the purchase of a protective vest will be returned to the Employer. Any funds returned to the Employer under this agreement will be utilized by the Employer to purchase officer safety equipment in accordance with sound management principles.

The parties further agree that:

1. Any grievance filed on issues related to the above provisions will not go past Step 2.
2. No Unfair Labor Practices (ULPs,) will be filed. If an individual employee files a ULP, this agreement may be submitted as evidence by either party.

Expires June 30, 2006

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EMPLOYER

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DATE

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UNION

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The parties further agree that this letter of understanding is in no way precedent setting. This letter of understanding 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.

The parties agree this will become effective upon signing.

Expires June 30, 2006

Maria R. Young  
EMPLOYER

01/12/06  
DATE

Dennis M. Hask  
UNION

1-12-06  
DATE

[Signature]  
OCB

1/23/06  
DATE