

**JOHN E. SANDS**  
**ARBITRATOR AND MEDIATOR**  
200 EXECUTIVE DRIVE - SUITE 100  
WEST ORANGE, NEW JERSEY 07052

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ATTORNEY AT LAW  
ADMITTED IN NEW  
YORK STATE ONLY

TEL 973-324-2224  
FAX 973-324-2228  
jesands@aol.com

Donald J. Munro, Esq.  
Goodwin Procter, LLP  
901 New York Avenue, NW  
Washington, DC 20001

Charles A. Collins, P.A.  
Labor & Professional Centre  
411 Main Street, Ste. 410  
St. Paul, MN 55102

Carmen Parcelli, Esq.  
Guerrieri, Edmond, Clayman & Bartos  
1625 Massachusetts Avenue, NW  
Suite 700  
Washington, DC 20036

Michael Wolly, Esq.  
Zwerdling, Paul, Kahn, Wolly, P.C.  
1025 Connecticut Avenue, NW  
Suite 712  
Washington, DC 20036

Re: Special Board of Adjustment  
(Substitution of Contractual Paid Leave for Unpaid FMLA Leave)  
JS Case No. 3750

Dear Colleagues:

We have received the carriers' December 19, 2008 request for interpretation of our December 2, 2008 Opinion and Award and the unions' December 23<sup>rd</sup> response. The carriers raise these two questions:

1. Does [our Award] mean that the carriers are permitted to require substitution of paid personal leave and/or single vacation days if they do so *before* those days are set?
2. Does the Award bar substitution of paid personal leave provided under the BLET national personal leave agreement?

We have considered both documents carefully and conducted an executive session by conference call on January 5, 2009 to discuss the parties' arguments as well as relevant portions of the record and of our Opinion and Award. Based on that consideration, we have reached the unanimous conclusion that the answer to the first request for interpretation is "no" and to the second is "yes."

Our December 2<sup>nd</sup> Award reads,

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The carriers' policies requiring employees to substitute paid vacation and/or paid personal leave for unpaid FMLA leave do violate the requirements of the national vacation and/or national personal leave agreements.

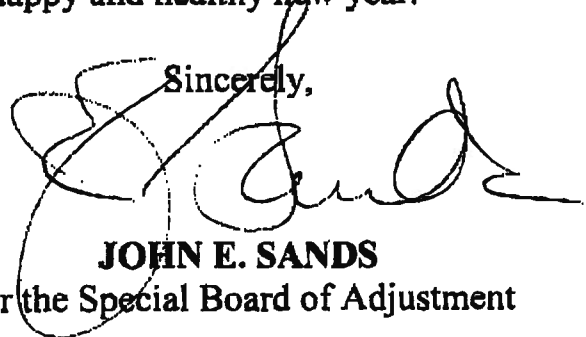
With respect to "unscheduled leave" like paid personal leave and individual vacation days, the cited portion of our Opinion on pages 28-29 makes clear our conclusion that, ". . . once such days are set, no unilateral employer changes may occur without meeting specified contractual standards." We unanimously agree that, just as no substitution of such days for FMLA leave may occur after such days are set, neither can it occur *before* those days are set. We see no legitimate distinction between the two. The carriers are therefore *not* permitted to require substitution of paid personal leave and/or single vacation days for FMLA leave before those days are set.

With respect to "personal leave" under the BLET national personal leave agreement, we similarly see no distinction that would vary the impact of our Award, which we intended to apply to that agreement's subject matter just as it does to all the others. Our Award therefore bars substitution of paid personal leave under the BLET national personal leave agreement.

With respect to Ms. Parcelli's December 30, 2008 letter concerning scheduling a follow-on hearing on remedy issues, all three of us have April 7<sup>th</sup> available. Please let us know if that date will be convenient for the parties.

We wish you all a happy and healthy new year.

Sincerely,



**JOHN E. SANDS**  
For the Special Board of Adjustment

JES:hcr

cc: William H. Holley, Jr., Esq.  
Jerome H. Ross, Esq.