

**COPY**

IN THE OHIO COURT OF CLAIMS

FILED  
COURT OF CLAIMS  
OF OHIO

WILLIAM RUSSELL

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case Nos. 2013-00138 and  
2013-00139

2014 OCT -3 PM 3:00

Judge Patrick M. McGrath  
Magistrate Holly T. Shaver

**CLEVELAND STATE UNIVERSITY'S  
MEMORANDUM IN OPPOSITION TO  
WILLIAM RUSSELL'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

William Russell wants summary judgment on long-stale contract claims that have no basis in fact.<sup>1</sup> Those claims—which date back to 2000—are founded on his public collective bargaining agreement, some fragments of which he has appended to his motion. (The full agreement is online at <http://www.csuohio.edu/organizations/seiu1199/docs/SEIU2011-2014.pdf>.) As this Court has explained time and time again, though, it has no jurisdiction to enforce or even to interpret contract claims arising from collective bargaining agreements just like his.<sup>2</sup> In other words, Mr. Russell can prevail on his contract claims only if this Court first overrules an uninterrupted string of its own decisions and then ignores the Court of Claims Act's two-year statute of limitation.

<sup>1</sup> Sonali Wilson, Cleveland State's general counsel, explained all of this to Mr. Russell in the attached email she sent him while he and she were negotiating the terms of his layoff. The negotiations failed when Mr. Russell gave up Cleveland State's concessions in exchange for this age-discrimination lawsuit.

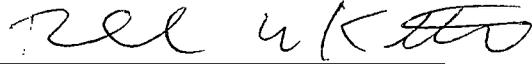
<sup>2</sup> See, e.g., *Archer v Cleveland State University*, Case No. 2012-08001 (Dec. 4, 2013), 2013 WL 6570844 at \*2-\*3; *Fischer v Kent State University*, Case No. 2011-07729 (2014), 2014 WL 4430409 at \*4-\*5; *The University of Toledo Chapter of AAUP v The University of Toledo*, Case No. 2012-01783 (2013), 2013 WL 1182152; *Ramsey v University of Akron*, Case No. 2013-00048 (2014), 2014 WL 902520 at \*3; *Hannahs v Edison State Community College*, Case No. 2006-03583 (2008), 2008 WL 4453468 at ¶¶10-16; *Berry v Kent State University*, 2004-Ohio-5915 at ¶16.

**ON COMPUTER**

Respectfully submitted,

**MICHAEL DE WINE**

*Ohio Attorney General*



**RANDALL W. KNUTTI (0022388)**

**AMY S. BROWN (0079650)**

**EMILY M. SIMMONS (0082519)**

*Assistant Attorneys General*

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**COUNSEL FOR DEFENDANT,  
CLEVELAND STATE UNIVERSITY**

CERTIFICATE OF SERVICE

On October 3, 2014, I sent a copy of this document via electronic mail to Plaintiff's Counsel: Mark Griffin ([mgriffin@tpgfirm.com](mailto:mgriffin@tpgfirm.com)) and Sara Verespej ([SVerespej@tpgfirm.com](mailto:SVerespej@tpgfirm.com)).

  
RANDALL W. KNUTTI (0022388)  
Principal Assistant Attorney General

**From:** Sonali B Wilson  
**Sent:** Wednesday, September 19, 2012 6:58 PM  
**To:** William H Russell/w.russell/CSUOHIO  
**Cc:** Steven W Vartorella  
**Subject:** Letter Agreement

Bill: Attached you will find the Letter Agreement reflecting the agreement to extend your employment to November 10, 2012 in exchange for the signed waiver and release forms attached thereto. Once you have signed two (2) originals of the attached waiver and release forms, and prepared a retirement notification letter as addressed in the Letter Agreement, please remit the same to Steve Vartorella in Human Resources. He will obtain the necessary union and University signatures and see that you get an original set for your records.

With respect to the two additional issues that you raised in our meeting, please be advised of the following:

1. It is my understanding that OPERS has a service credit start date for you of 10/23/2000, which comports with the University's records. I believe that you have been instructed to contact OPERS to independently confirm this service credit start date and to request an "Account Summary" from OPERS for documentation of your contributions. There is nothing further for the University to do with respect to this issue.

2. Regarding further reimbursement for being erroneously set-up for benefits eligibility as a part-time less than 30-hour employee, the University thoroughly reviewed your coverage, premiums, payroll deductions, as well as amounts that you would have paid for the family Kaiser medical and MMO dental coverage under the .75 part-time employee plan. It is my understanding that of your reimbursement claims of \$6,703.32, the University adjusted those claims based on substantiated documentation and paid the total adjusted amount of \$5,167.32. The University considers the claim resolved.

Please contact me if you have any questions regarding the attachment. I wish you all the best in your future endeavors.

*(See attached file: Russell Agreement.PDF)*

Sincerely,

*Sonali B. Wilson*

Sonali B. Wilson  
General Counsel  
Cleveland State University  
2121 Euclid Avenue

Administration Center, Suite 327  
Cleveland, OH 44115-2214  
Phone No.: 216/687-3543  
Fax No.: 216/687-3736  
Email: [s.b.wilson@csuohio.edu](mailto:s.b.wilson@csuohio.edu)

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# Cleveland State University

September 19, 2012

William Russell  
627 Mariner Village  
Huron, Ohio 44839

Dear Bill:

As you are aware, you received a layoff letter notifying you that your position of Coordinator, Greek Affairs is being eliminated effective October 5, 2012, under the Article 27 provisions of the collective bargaining agreement by and between Cleveland State University and the Service Employees International Union, District 1199.

You have requested the opportunity to extend your employment for a limited duration beyond October 5, 2012, and have indicated that you would resign/retire from the University effective November 10, 2012 (last actual employment date being November 9, 2012). As consideration for granting this request, you have agreed to a complete waiver and release of any and all claims you may have, and a final settlement of all claims, differences and causes of action arising out of your employment with the University.

With this letter, we will establish the terms of the end of your employment with the University. If you agree with the terms set forth below, please sign where indicated. This shall constitute our mutual understanding and agreement.

1. You will remain as an active employee through November 9, 2012 unless you engage in unprofessional or other inappropriate conduct between now and that date that would warrant disciplinary action. During the period from October 5 through November 9, 2012, you will not report to work but will use accrued sick time if you are sick or on medical leave, or, you will use accrued compensatory or vacation time.
2. At the time you sign and return this agreement, you will also submit a letter notifying the University that you will resign/retire from the University effective November 10, 2012. The letter of resignation/retirement will be deemed accepted upon receipt by the University. Following your resignation/retirement, any remaining accrued sick and vacation time will be paid out in accordance with applicable University policies.

Your signature below will indicate that you accept the terms set forth in this letter and in the two (2) pages that are attached to it.

Thank you for your service to Cleveland State University, and I wish you well in your future endeavors.

Sincerely,

James (Jim) Drnek, PhD  
Dean of Students &  
Vice Provost for Student Affairs

I acknowledge that I am receiving payments and benefits beyond which I would normally be entitled. For good and valuable consideration, on behalf of myself, my past, present, and future agents, representatives, assigns, heirs, administrators, executors, attorneys, predecessors, successors in interest, subrogees and insurers, and any other parties who may claim under or through me, or otherwise assert claims for them or on their behalf, jointly or separately, do hereby fully, finally and forever release, waive and irrevocably discharge the State of Ohio, Cleveland State University, its Board of Trustees as well as their past, present, and future officers, directors, employees, agents, representatives, attorneys, agencies, assigns, heirs, administrators, executors, predecessors, successors in interest, subrogees and insurers, and any other parties who may claim under or through them, or otherwise assert claims for them or on their behalf, jointly or separately (collectively, the "Released Parties") of or from any and all claims, actions and causes of action, suits, debts, liability, and any demands whatsoever, in law or in equity, whether known or unknown, vested or contingent, which I ever had, may now have, or may hereafter have, that arise from or relate to my employment with Cleveland State University prior to the date I executed this Agreement.

Such rights, claims, causes of action or liability shall include, but not be limited to, those arising or which might arise out of intentional infliction of emotional distress, harm or illness, intentional injury or intentional tort, or any other acts; the Equal Pay Acts; Title VII of the Civil Rights Act of 1964; the Civil Rights Acts of 1964 as amended; the Civil Rights Act of 1991 as amended; the United States Constitution; the Civil Rights Acts of 1866 or 1871 (42 U.S.C. Sections 1981, 1983, 1985, et seq.); the Americans with Disabilities Act; the Age Discrimination in Employment Act; The Older Workers Benefit Protection Act; Chapter 4112 of the Ohio Revised Code; Ohio Revised Code Chapter 124; tortious wrongful discharge claims under Ohio law; and any other Federal, State, City, County or other local law or ordinance concerning employment, or in any other manner regulating or otherwise concerning wages, hours or any other terms or conditions of employment, whether known or unknown, which, (a) have been filed, (b) are now pending, or (c) could have been filed, relating to any acts which have transpired in regard to my employment with Cleveland State University at any time up to and including the date of execution of this Agreement.

I understand and agree that the terms of this Agreement are to remain confidential between the parties to the maximum and fullest extent permitted by law, including but not limited to R.C. § 149.43. I will not, without written consent of Cleveland State University, or its authorized agent, publicize in or communicate to any newspaper, electronic media or other public or private forum, including but not limited to the Internet, the terms of this Agreement.

I state that I have and maintain full and absolute control of the disposition of all claims, actions and causes of actions, suits, debts, liability, and any demands released in this Agreement. I fully understand and agree that this Agreement may be used by any of the Released Parties as a complete defense to any and all claims asserted against them with respect to any claims, actions and causes of actions, suits, debts, liability, and any demands released in this Agreement.

**MR. RUSSELL EXPRESSLY ACKNOWLEDGES THAT HE HAS READ THIS AGREEMENT CAREFULLY BEFORE SIGNING, AND FURTHER ACKNOWLEDGES AND AGREES TO THE FOLLOWING STATEMENT:**

**PURSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S. § 621 ET SEQ., A WAIVER OF RIGHTS CANNOT APPLY TO AGE DISCRIMINATION CLAIMS ARISING IN THE FUTURE. I HAVE READ THE FOREGOING AGREEMENT AND RELEASE, AND FULLY UNDERSTAND IT. I ACKNOWLEDGE THAT I WAS GIVEN UP TO TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT, THAT I HAVE BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT, AND THAT I HAVE THE RIGHT TO REVOKE THIS AGREEMENT, IN WRITING, FOR A PERIOD NOT TO EXCEED SEVEN (7) DAYS AFTER THE DATE ON WHICH IT IS SIGNED BY ME. IF I WISH TO REVOKE THIS AGREEMENT, I MUST DO SO IN WRITING AND DELIVER ANY SUCH REVOCATION TO SONALI WILSON, GENERAL COUNSEL FOR CSU, 2121 EUCLID AVE., CLEVELAND, OH 44115.**

**I HEREBY ACKNOWLEDGE THAT IF I FAIL TO EXERCISE THIS RIGHT TO REVOKE, THIS AGREEMENT WILL BECOME A BINDING CONTRACT AS TO ITS TERMS ON THE EIGHTH (8TH) DAY AFTER I SIGN THIS AGREEMENT. I NOW VOLUNTARILY SIGN THIS AGREEMENT AND RELEASE ON THE DATE INDICATED. IF THIS AGREEMENT SHOULD BE REVOKED BY ME WITHIN THE TIME SET FORTH ABOVE, THIS AGREEMENT SHALL BE VOID AND CLEVELAND STATE UNIVERSITY SHALL BE EXCUSED FROM PERFORMANCE HEREUNDER.**

IN WITNESS WHEREOF, the parties have executed multiple copies of this Agreement, each of which constitutes an original, but all of which, when taken together, will constitute the same document.

**AGREED:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
William Russell

\_\_\_\_\_  
Date

SEIU District 1199

By \_\_\_\_\_

\_\_\_\_\_  
Date

Cleveland State University

By \_\_\_\_\_