

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

William Underwood,

*Appellant,*

v.

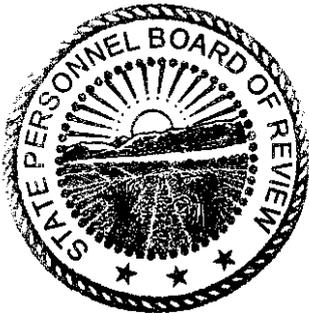
Case No. 09-REM-08-0387

Department of Rehabilitation and Correction,  
Toledo Correctional Institution,

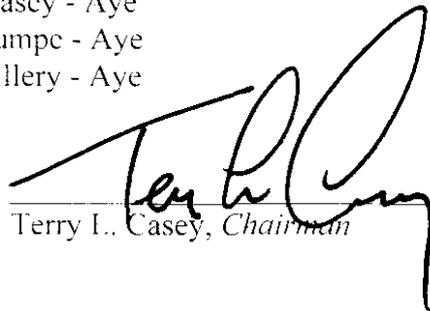
*Appellee*

**ORDER**

This matter came on for consideration on the motion of both parties that the Settlement Agreement attached hereto and incorporated herein by reference, be adopted. Being fully advised in the premises, the Board hereby orders that the attached settlement agreement be **ADOPTED**. Accordingly, the above-referenced appeal is hereby **DISMISSED**.



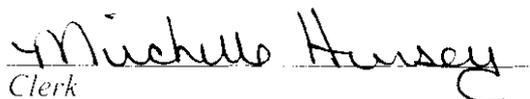
Casey - Aye  
Lumpc - Aye  
Tillery - Aye

  
Terry L. Casey, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, April 29, 2011.

  
*Clerk*

**BEFORE THE STATE PERSONNEL BOARD OF REVIEW**

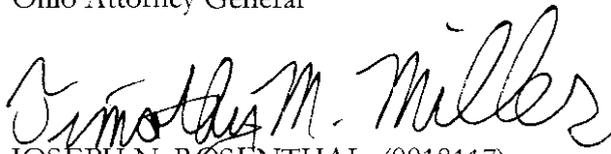
WILLIAM UNDERWOOD, :  
Appellant, : CASE NO. 09-REM-08-0387  
v. : JAMES R. SPRAGUE  
: *Administrative Law Judge*  
DEPARTMENT OF REHABILITATION & :  
CORRECTION, TOLEDO CORRECTIONAL :  
INSTITUTION, :  
Appellee. :

**NOTICE OF SETTLEMENT**

Appellee, Department of Rehabilitation and Correction, Toledo Correctional Institution, through the undersigned counsel, hereby provides notice to this Board that the parties in the above captioned matter have entered into a settlement agreement regarding the case at bar. Attached is a fully executed copy of the settlement agreement between the parties. Accordingly, as there is no longer a matter in controversy, there is no need to proceed with the record hearing, scheduled for April 22, 2011, and this appeal should be dismissed.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General



JOSEPH N. ROSENTHAL (0018117)  
Senior Assistant Attorney General

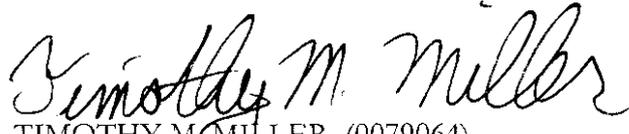
TIMOTHY M. MILLER (0079064)  
Assistant Attorney General

Employment Law Section  
30 East Broad Street, 23<sup>rd</sup> Floor  
Columbus, Ohio 43215  
(614) 644-7257 Telephone  
(614) 752-4677 Fax

4.12.11DM

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing *Notice of Settlement* was served upon Frank E. Pertz, 219 Farnsworth Rd., Waterville, OH 43566 by ordinary U.S. Mail, postage prepaid this 12<sup>th</sup> day of April, 2011.

  
TIMOTHY M. MILLER (0079064)  
Associate Assistant Attorney General

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is made and entered into by and between William Underwood ("Underwood" as defined below) and the Ohio Department of Rehabilitation and Correction, Toledo Correctional Institution ("ODRC" as defined below).

WHEREAS, Underwood filed Case No. 09-REM-08-0387 now pending before the State Personnel Board of Review ("SPBR"); and

WHEREAS, the Parties desire to resolve any and all disputes relating to Underwood's claims against ODRC including, but not limited to, those claims embodied in the above-mentioned appeal filed with the State Personnel Board of Review.

NOW THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

1. **Parties.** This Agreement is entered into on behalf of, and shall extend to "Underwood" which includes William Underwood, his immediate family, heirs, assigns, personal representative, executors, agents and administrators both past and present and to "ODRC" which includes the Ohio Department of Rehabilitation and Correction, its successors, assigns, officers, directors, employees and agents, both past and present.

2. **Intent.** Except as specifically set forth herein, Underwood and ODRC wish to bring a complete, final and irreversible end to any and all claims and/or disputes which arise or which could have arisen from Case No. 09-REM-08-0387 and to reach a full and final settlement of all matters and claims, of any nature whatsoever, as of the date of execution of this Agreement.

3. **Consideration.** In consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

A. **Reinstatement.** ODRC shall rescind Underwood's removal and reinstate him to the position of Correctional Warden Assistant 1 at Toledo Correctional Institution effective August 18, 2009.

B. **Resignation.** Underwood hereby agrees to voluntarily resign his position as Correctional Warden Assistant 1 effective July 3, 2010. With the execution of this Agreement ODRC hereby accepts Underwood's resignation.

C. **Backpay.** ODRC agrees to remit to Underwood back-pay in the amount of Five Thousand Five Hundred and 00/100 dollars (\$5,500.00) minus all applicable taxes and required withholdings, with the exception of deductions for Ohio Public Employees Retirement System (OPERS) contributions. This award represents back-pay to be paid to Underwood from August 18, 2009 to July 3, 2010. ODRC agrees to remit the employer's and the employee's contributions to Underwood's OPERS account based upon the carnable salary of \$52,404.96 for the period elapsed from August 30, 2009 to July 3, 2010. ODRC's payment of these OPERS contributions is subject to acceptance and approval by OPERS and this employer contribution shall not be deducted from the back pay award.

D. **Health Care Coverage.** ODRC and Underwood agree that no health care premiums will be deducted from the back pay award set forth in Paragraph 3(C) and that Underwood will not be entitled to health care coverage for the period of August 30, 2009 to July 3, 2010.

E. **Withdrawal of Claims.** Underwood agrees to dismiss with prejudice his appeal before SPBR, Case No. 09-REM-08-0387; and any other matters now pending against the State of Ohio, or any individuals in relation to the facts and circumstances surrounding Case No. 09-REM-08-0387.

F. **Waiver of Claims.** Underwood agrees to execute a complete release and waiver of any and all legal claims or causes of action as set forth in this Agreement that he may have against ODRC up to and including the date on which this Agreement is fully executed.

4. **Release of All Claims and Dismissal of All Charges and Legal Actions.** Underwood and his counsel do hereby fully, finally and forever release, hold harmless from and against, waive and forever discharge the State of Ohio, ODRC, its current, former and future officers, directors, employees, agents, and agencies, personally and in any other capacity, of or from any and all claims, actions and causes of actions, suits, debts, liability, costs, expenses, demands whatsoever, in law or in equity, and any and all other damages which Underwood ever had, may now have, or may hereafter have, whether known or unknown, against the State of Ohio or ODRC or its officers, directors, employees, agents, and agencies, on account of or in any way arising out of or by reason of any act, claim, matter or cause arising prior to the execution of this Agreement by him or his counsel, whether known or unknown to him or his counsel, including but not limited to any claims for past employment, back pay, leave, insurance or retirement contributions, workers compensation, and attorney fees or costs.

5. **Complete Dismissal.** Within seven (7) days upon receiving a copy of this Agreement that has been signed by all Parties, Underwood agrees to withdraw with prejudice all actions filed by him against ODRC including Case No. 09-REM-08-0387. Underwood also shall immediately dismiss any other action(s) which have been filed, are now pending, or which could have been filed against ODRC relating to any acts or omissions which have transpired at any time up to and including the date of execution of this Agreement in regard to Underwood's service with ODRC. Underwood further agrees to never file or re-file any action, claim or other lawsuit against ODRC, its officers, directors, agents or any other agency of the State of Ohio, relating to any acts or omissions, of Case No. 09-REM-08-0387, which have transpired at any time up to and including the date of the execution of this Agreement and acknowledges that this Agreement would bar any such action or proceeding.

6. **Non-Admission.** The terms set out in the Agreement are a compromise settlement of disputed claims, the validity, existence or occurrence of which is expressly denied by ODRC. Neither the terms nor the Agreement shall be deemed or construed as an admission by ODRC of any wrongful acts whatsoever by or against Underwood or any other person, nor does any arrangement(s) made with Underwood constitute an acknowledgement of the validity of any claim, charge, liability or cause of action asserted, it being expressly understood that all such claims are in all respects denied by ODRC.

7. **General Terms.** The Parties to this Agreement represent and affirm that the only consideration for their agreement and execution are the terms stated herein, that no other promise or agreement of any kind has been made to or with any of them by any persons or entity to cause either to execute this Agreement, and that no other compensation, benefits, or prerequisites other than those specified in the foregoing Agreement shall be involved or claimed. This Agreement shall not be interpreted to render Underwood a prevailing party for any purpose, including but not limited to an award of attorney fees under any applicable statute or otherwise. Each party fully understands the meaning and intent of this

Agreement, including but not limited to its final and binding effect. Each Party further acknowledges that before executing this Agreement that they have consulted counsel and that each Party has carefully read and fully understands all of the provisions of the Agreement, and that the execution of the Agreement is a knowing and voluntary act.

8. **Construction and Severability.** This Agreement shall be construed according to its fair meaning, and not strictly for or against any of the Parties. Should any provision of the Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be part of the Agreement.

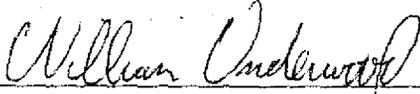
**WILLIAM UNDERWOOD PLEASE READ CAREFULLY BEFORE SIGNING:**

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. 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 (8<sup>TH</sup>) 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 ODRC SHALL BE EXCUSED FROM PERFORMANCE HEREUNDER.

This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior discussions, agreements, transmissions or understandings between the Parties or their representatives.

The undersigned Parties state that they have carefully read the foregoing and understand the contents thereof, and that they execute the same as their own free and voluntary act.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and date indicated below their respective signatures.

  
\_\_\_\_\_  
WILLIAM UNDERWOOD

2/16/11  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
Eric Moore, Director  
Ohio Department of Rehabilitation and Correction

3/8/11  
\_\_\_\_\_  
DATE