

January 27, 2011

Ms. Joy Hargons, Esq.  
Minnesota Management and Budget  
658 Cedar Street  
St. Paul, MN 55155

Mr. Tim Henderson  
AFSCME Council 5  
300 Hardman Ave. S.  
South St. Paul, MN 55075

RE: State of Minnesota and AFSCME Council 5 (James Hill Grievance)  
BMS Case No. 10PA1594  
Award Clarification

Dear Ms. Hargons and Mr. Henderson,

On December 29, 2010 I received a request from Ms. Hargons for clarification of the Award I issued in the above matter on December 10, 2010. Following receipt of her letter and an exchange of emails, a telephonic conference was scheduled for and held on January 26, 2010.

Specifically, the Department of Corrections believes I implied that Mr. Hill's right to bear arms would be restored automatically at the end of his criminal probation. That is not the case and I did not intend to imply otherwise. On page 13 of my award, I said that, "...*Grievant's criminal probation will end on March 10, 2010, ... At that time, Grievant's full civil rights, including the right to bear arms, can be completely restored. Minnesota Statutes Section 609.165.*" (Emphasis added). The word "can" and the statutory citation were used advisedly. Section 609.165, subd. 1d, requires the Grievant to make application to the sentencing court for restoration of his right to bear arms. The court, in its discretion, can approve or deny the application. The sentencing judge's attitude as demonstrated in his sentencing remarks and probation conditions would appear to foreshadow restoration. Nevertheless, it is not an absolute certainty.

In light of this, my award should have spelled out my position in the event the court does not restore Grievant's right to bear arms. In clarifying this point, I have in mind the hearing testimony indicating that the vast majority of correctional officer positions at the Oak Park Heights facility do not require the need for weapon qualifications. Consequently, I will amend my December 10, 2010 award to read as

follows:

### **AWARD**

*Based upon the entire record, the grievance is SUSTAINED IN PART. Within 10 business days of the receipt of this Award, the DOC shall reinstate the Grievant to his former employment without any back pay or fringe benefits from the period of his discharge to the date of reinstatement. As presently required by Federal law, Grievant shall be assigned to a position that does not require the use or possession of a firearm. If the Grievant is successful in restoring his civil right to bear arms following completion of his criminal probation, the DOC shall then return him to his pre-discharge position. If not, he shall be assigned to positions for which he is otherwise qualified that do not require the use or possession of firearms.*

Please contact me if you have any further questions.

Sincerely,

Richard A. Beens  
Arbitrator