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**ARBITRATION PROCEEDING BEFORE
AMERICAN ARBITRATION ASSOCIATION**

PAUL VELIZ, et al.,

Claimants,

vs.

CINTAS CORPORATION, et al.,

Respondents.

Case No. 11 160 01323 04

**ORDER CLARIFYING
CLAUSE CONSTRUCTION
AWARD**

On July 27, 2006, the Clause Construction Award and Ruling on Scope of Arbitration (the "Award") was entered in this matter. Thereafter, Claimants filed a Motion for Reconsideration of Clause Construction Award; Respondent filed a Response, and Claimants filed a Reply. Telephonic oral argument was held on the motion on October 10, 2006. Claimants were represented by Altshuler, Berzon, Nussbaum, Rubin & Demain; Traber & Voorhees; and Lerach Coughlin Stoia Geller Rudman & Robbins LLP. Cintas Corp. ("Cintas") was represented by Squire, Sanders & Dempsey, L.L.P.

Although Claimants have requested that I reconsider my Award, I believe that a clarification is necessary, not a reconsideration. Thus, this Order clarifies several aspects of the Award. The doctrine of *functus officio* does not prohibit an arbitrator from clarifying a prior award. *Kyocera Corp. v. Prudential-Bache Trade Serv., Inc.*, 299 F.3d 769, 780 (9th Cir. 2002).

First, based on the discussion during the telephonic oral argument it appears there is a need to clarify the Award with respect to the meaning of Footnote 3. In Footnote 3 I attempted

1 to make it clear that my ruling interpreting the parties' arbitration agreements did not preclude
2 the possibility of a class arbitration (as distinguished from a collective arbitration under the Fair
3 Labor Standards Act). In the Award I found that the place-of-arbitration provision in the
4 arbitration agreements did not permit SSR's to opt in to a collective arbitration that was not in
5 the county where they currently or most recently worked. I did not explain fully in the Award
6 that because a class arbitration, in contrast to a collective arbitration under the Fair Labor
7 Standards Act (the "FLSA"), does not require class members to become a party to another
8 proceeding, there was nothing inconsistent between the place-of-arbitration provision and
9 participation in a class arbitration held in a locale other than the county where an SSR worked.

10 Second, I would like to clarify the reasoning of the Award regarding the issue of a
11 collective arbitration to enable the District Court to understand my thought process as it was
12 based in large part on my interpretation of the District Court's order of May 4, 2005. In that
13 order, the District Court held in part that as "long as a plaintiff can pursue the substantive
14 statutory rights through individual arbitration, a plaintiff's inability to proceed collectively or on
15 behalf of a class is legally irrelevant." Slip op. at 5. A proceeding is scheduled before the
16 District Court shortly where it is anticipated that the parties will seek to affirm and/or vacate my
17 ruling.

18 There is an inconsistency between two provisions of the arbitration agreements. On one
19 hand, the agreements require the arbitrations to be "held" in the county of residence of each SSR.
20 On the other hand, the agreements direct the arbitrator to apply relevant "federal" laws. Of
21 course, these laws include the FLSA which contains a provision permitting employees to become
22 a "party plaintiff" in a collective action, 29 U.S.C. § 216(b), which, of course, may be held in a
23 locale other than where the employee works for Cintas.


24 In its May 4, 2005 Order, the District Court ruled it would not be fundamentally unfair for
25 individual SSR's to be required to arbitrate their claims individually, rather than through a
26 collective action. I interpreted the District Court's statement to mean that the requirement in the
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1 arbitration agreements that an arbitrator apply relevant "federal" laws would therefore not require
2 an arbitrator to interpret the arbitration agreement to mean that the collective action provisions of
3 the FLSA must be followed. Thus, under this reading of the District Court's order, there is no
4 inconsistency between the place-of-arbitration provision and the obligation of an arbitrator to
5 apply federal law.

6 Claimants' counsel has suggested that the District Court's statement, made in the context
7 of a ruling on the issue of unconscionability, was not intended to deprive me of my role in
8 interpreting the arbitration agreement. For example, if the District Court's ruling on this point
9 does not deprive me of my role in interpreting the arbitration agreement to determine whether it
10 permits a collective arbitration, I would find that the arbitration agreements contain inconsistent
11 terms. One term, the place-of-arbitration provision, requires the arbitration to be held in the
12 county of the employee's residence. Another term, grants to a Cintas employee the right to have
13 federal law apply, to include, therefore, the right to be a party plaintiff in a collective arbitration,
14 which may be held elsewhere. Such an ambiguity would be construed against Cintas and
15 therefore my Award would have been different. Thus, the purpose of this Order is to clarify my
16 ruling so the parties, if they choose to do so, can receive feedback from the District Court on this
17 issue.

18 The stay granted in the Award (and thereafter continued) is extended for 30 days from the
19 date of this Order.

20 DATED this 13th day of October, 2006.

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22 Bruce E. Meyerson
23 Arbitrator

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