**OCB AWARD NUMBER: 2210**

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| **SUBJECT:** | **ARB SUMMARY # 2210** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20111104-0119-04-01** |
| **DEPARTMENT:** | **Ohio Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Sarah Rudolph Cole** |
| **GRIEVANT NAME:** | **Megan E. Ferguson** |
| **MANAGEMENT ADVOCATE:** | **Sgt. Corey Pennington** |
| **UNION ADVOCATE:** | **Herschel Sigall** |
| **ARBITRATION DATE:** | **4-23-2013** |
| **DECISION DATE:** | **6-13-2013** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Article 46.01- Maximum Hours of Occupational Injury Leave, Article 46.05- Authority to Approve or Disapprove, Article 20.12-Alternative Dispute Resolution** |
| **OCB RESEARCH CODES:** | **Grievance Procedure 93.01 Occupational Injury Leave 116.445** |

**HOLDING: Grievance DENIED. The Arbitrator found that the Employer had not violated the settlement. The Arbitrator found that the Grievant was obligated to restore her leave balances after receiving OIL retroactively. The Arbitrator reasoned that since the settlement language was vague, extrinsic evidence was necessary. This evidence made it clear that both parties understood that the Grievant would have to “buy back” her leave.**

Grievant is an Ohio State Patrol Trooper that suffered an injury attempting to initiate a traffic stop on May 9, 2010. Grievant filed for occupational injury leave (OIL) and was granted OIL following the accident. Grievant drew that leave until July 23, 2010, when the Employer terminated her OIL because the Bureau of Workers’ Compensation (BWC) had denied the Grievant’s application. Consequently, as of July 23, 2012, Grievant began drawing payments from her own leave balances rather than OIL leave. Furthermore, Grievant appealed BWC’s denial of her claim and filed for temporary total disability from BWC. Grievant’s appeal of BWC’s denial was successful and she was granted temporary total disability on October 7, 2010. On December 6, 2010, the Employer granted OIL to the Grievant retroactively. However, the Employer does not grant OIL retroactively without discussion. The parties reached a settlement. In the settlement, the Employer approved Grievant’s OIL claim and required Grievant to repay BWC because employees are not entitled to receive both OIL and workers’ compensation for the same period. Grievant believed that the Employer was to issue her a separate check for the repayment of BWC and restore her leave balances. When the Employer stated that it would only act as such after a proportional deduction from the Grievant’s OIL hours, a grievance was filed.

The Employer claimed that the settlement agreement required the payment of OIL leave to Grievant and for the Grievant to pay back her own leave banks. Employer contended that this was the normal course of business when OIL is retroactively granted. The Employer argued that if the employee did not reimburse her leave banks, then the employee would be getting paid twice for the same time. Furthermore, the Employer asserted that it did not promise Grievant a lump sum check to pay BWC back. Therefore, the Employer argued that the Employer had not violated the settlement and the grievance should be denied.

The Union contended that the Employer misunderstood the terms of the settlement agreement. The Union argued that the settlement required the Employer to both pay Grievant for OIL leave and to restore her leave balances without deducting any amount from the payment of OIL to the Grievant. Additionally, the Union asserted that in negotiations leading up to the settlement, the Union took that position. Furthermore, the Union contended that the settlement language dictated that the Employer would reimburse the leave banks. Therefore, the Employer had violated the settlement and the grievance should be granted.

The Arbitrator found that the Employer had not violated the settlement and that the grievance should be denied. The sole issue in this arbitration was how to interpret the settlement language. Although the Grievant provided considerable background leading up to the settlement agreement as well as discussion of whether Grievant was to be provided a lump sum check to reimburse BWC, the only disputed issue, according to the Union’s post-hearing brief, is whether the Employer or the Grievant is to restore the leave balances exhausted during the time period when Grievant did not receive OIL. The Arbitrator found that the Grievant was obligated to repay the leave balance. Since the settlement language was vague, the Arbitrator used extrinsic evidence. This evidence made it clear that both parties understood that the Grievant would have to “buy back” her leave if she was to receive OIL for the relevant time period. Therefore, the grievance was denied.