**OCB AWARD NUMBER: 2090**

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| **SUBJECT:** | **ARB SUMMARY # 2090** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **35-14-20090313-0193-02-12** |
| **DEPARTMENT:** | Ohio Department of Youth Services |
| **UNION:** | SEIU/1199 |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Teresa Fitts-Ardley, et al. |
| **MANAGEMENT ADVOCATE:** | Joan Olivieri |
| **2ND CHAIR:** | Victor Dandridge |
| **UNION ADVOCATE:** | Leah Davis  |
| **ARBITRATION DATE:** | August 16, 2010 |
| **DECISION DATE:** | September 1, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 2, Article 7, and Article 29  |
| **OCB RESEARCH CODES:** | 94.09—Arbitrability-Procedural; 117.101—Lay Offs/Reductions in Force; 93.01—Grievance Procedure; 93.4500—Steps in Grievance Procedure |
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**HOLDING: Grievance DENIED. The Arbitrator concluded that the grievance was filed prior to the Article 29 meeting between the state and the union. That meeting is required before any final layoff decision can be made by the employer. That meeting took place on March 24, 2010 and the grievance was filed on March 13, 2010. Thus, the layoff was not finalized at the time the grievance was filed and the grievance is not arbitrable.**

The Grievants are Human Service Program Consultants. On March 5, 2009, the Director for the Department of Youth Services (DYS) announced positions that would be affected by layoffs at a future, unspecified date, including Human Service Program Consultant Positions. On March 13, 2009, the Grievants filed a grievance alleging that the Employer abolished their positions after the Grievant’s filed a class-action grievance regarding job duties that were allegedly transferred to exempt employees. On March 25, 2009, the parties held a Step Three meeting. At the Step Three meeting the Employer introduced its argument that the grievance was not ripe. On April 15, 2009 the DYS Director wrote another letter that states, “The layoff of employees will be effective July 17, 2009.”

The Employer argued that the grievance was not arbitrable because the grievance was not ripe. The Grievants alleged that the grievance arose on March 5, 2009 when the Employer abolished their positions. However, the Employer did not abolish any positions on March 5, 2009. Rather, the Employer announced that there would be layoffs within the parole regions; no effective date was mentioned. As such, the Employer argued that the Arbitrator should deny the grievance because the events complained about had not occurred at the time that the grievance was filed.

The Union argued that the grievance was arbitrable because the Grievants filed the grievance after the Employer announced the eliminated positions. Accordingly, the Union argued that the grievance was ripe because the Grievants did not file the grievance until after they became aware of the events giving rise to the grievance. Additionally, the Union argued that the Employer waived its ripeness argument because the Employer waited until the Step Three meeting to raise its ripeness argument.

The Arbitrator concluded that the grievance was not arbitrable. The Arbitrator recognized that the contract prevented the Employer from making a final decision regarding a layoff until after meeting with the Union. At the time that the Grievants filed the grievance, the Employer and Union had not met to discuss the layoff. As such, the Arbitrator concluded that according to the contract, the grievance was not ripe at the time it was filed. Further, the Arbitrator noted that the Employer’s April 3rd Step Three response put the Union on notice of the Employer’s contention that the grievance was premature.