**OCB AWARD NUMBER: 2095**

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| **SUBJECT:** | **ARB SUMMARY # 2095** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **33-00-20091202-0128-01-05** |
| **DEPARTMENT:** | Ohio Veteran’s Home Agency |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Donnia Pearson |
| **MANAGEMENT ADVOCATE:** | Jessie Keyes |
| **2ND CHAIR:** | Joe Trejo |
| **UNION ADVOCATE:** | Deborah Bailey |
| **ARBITRATION DATE:** | July 7, 2010; and, July 19, 2010 |
| **DECISION DATE:** | September 20, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 24 and Article 25 |
| **OCB RESEARCH CODES:** | 94.09—Arbitrability-Procedural; 93.01—Grievance  Procedure; 93.0700—Sufficiency of Grievance Claim;  93.4661—Timeliness of Grievances |
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**HOLDING: Grievance DENIED. The Arbitrator denied the grievance because the grievance was not arbitrable.**

The Grievant worked as a Custodian at the Ohio Veterans’ Home in Sandusky. On October 20, 2009, the Grievant’s supervisor saw the grievant in the on-site Union office. The on-site Union office was not part of the Grievant’s assigned work area. The Supervisor immediately questioned the Grievant and the Grievant responded that she was on approved Union release time. On November 3, 2010, the Supervisor asked the Grievant to submit a written statement explaining her whereabouts during her shift on October 20, 2009. On November 18, 2009, the Employer held the Grievant’s investigatory interview. On December 2, 2009, the Employer notified the Grievant that her pre-disciplinary hearing was scheduled for December 8, 2009. That same day, the Union filed this grievance on the Grievant’s behalf. On December 22, 2009 the Employer sent the Grievant a letter to notify her that the Employer removed her from her position and that December 5, 2009 was the removal’s effective date. On July 7, 2010, the parties met to arbitrate this grievance. During the Arbitration the Union requested a break. After the break, the Union presented the Arbitrator with a grievance dated December 23, 2009. The Employer explained to the Arbitrator that it had never seen the December 23, 2009 grievance. Thereafter, the parties agreed to suspend the hearing until July 19, 2010 to give the parties an opportunity to determine whether the Union actually filed the December 23, 2009 grievance.

The Employer argued that the December 2, 2009 grievance was not arbitrable because the Union filed the grievance before the Employer removed the Grievant. As such, the Employer urged the Arbitrator to deny the first grievance because it was not ripe. The Employer argued that the December 23, 2009 grievance was not arbitrable because the Union never actually filed the December 23, 2009 grievance.

The Union argued that the December 2, 2009 grievance was arbitrable because the Employer passed the grievance through the termination-grievance process without objecting to the grievance. The Union argued that the December 23, 2009 grievance is arbitrable because the Union did file the grievance. Specifically, the Union argued that the December 23, 2009 grievance was consolidated with the December 2, 2009 grievance.

The Arbitrator denied the grievance because the Arbitrator concluded that the grievance was not arbitrable. Specifically, the Arbitrator determined that the December 2, 2009 grievance was not abritrable because the Union filed the grievance before the issue ripened. The Arbitrator reasoned that the Union filed the grievance on December 2, 2009, but the Employer did not notify the Grievant of her removal until December 22, 2009. Further, the Arbitrator determined that the Employer notified the Union on June 30, 2010 about the Employer’s position that the grievance was prematurely filed. Additionally, the Arbitrator determined that the December 23, 2009 grievance was not arbitrable because the Union did not actually file the grievance.