**OCB AWARD NUMBER: 2107**

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| **SUBJECT:** | **ARB SUMMARY # 2107** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **24-07-20100824-0017-05-02** |
| **DEPARTMENT:** | Department of Developmental Disabilities |
| **UNION:** | Fraternal Order of Police |
| **ARBITRATOR:** | Marvin J. Feldman |
| **GRIEVANT NAME:** | Dennis Salisbury |
| **MANAGEMENT ADVOCATE:** | Laura Frazier |
| **2ND CHAIR:** | Marissa Hartley |
| **UNION ADVOCATE:** | Paul Cox |
| **ARBITRATION DATE:** | November 23, 2010 |
| **DECISION DATE:** | December 12, 2010 |
| **DECISION:** | Granted |
| **CONTRACT SECTIONS:** | Article 35.01—Reduction in the Work Force; Article 7.03—Bargaining Unit Work |
| **OCB RESEARCH CODES:** | Erosion of Bargaining Unit—117.340; Reassignment—119.121; Transfer—120.01; Reduction in force—117.101  |
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**HOLDING: Grievance GRANTED. The Employer laid off the Grievant claiming insufficient work due to a reduction in resident population. However, the Grievant’s work was redistributed to others, including exempt employees at the Center. The Arbitrator ruled that the Grievant should be transferred back to his prior assignment, paid mileage at the state rate for trips he made to his reassignment and time and a half for hours over 40, including travel time, during the improper transfer.**

On April 12, 2010, the Employer sent out a notice to the staff concerning a layoff in the Gallipolis facility. The reason for the abolishment of the Grievant’s position was because of a decrease in the resident census and some overlap of duties with supervisory staff, administrative services, and operational services. The Grievant was notified on July 16, 2010 of the Employer’s intention to conduct the layoff. The Grievant was able to take a position at the Columbus Ohio Developmental Center but incurred additional expenses in driving from his home to the Columbus facility.

The Union arguedthat the Grievant was laid off and his duties were redistributed to other staff outside of the bargaining unit. The Union contended that the Employer did not follow the O.R.C. 124.321 and O.A.C. 123:1-41-01.

The Employer arguedthat there was no contract violation with regards to the layoff process. The layoff was pursuant to the O.R.C. 124.321 and O.A.C. 123:1-41-01. The Employer also contended that the duties were redistributed to the remaining FOP Police Officers.

The Arbitrator foundthat the Employer’s use of others to accomplish the workload of the transferred Grievant was an attempt to erode the bargaining unit. The Employer redistributed the work to others at the facility and intended to use local police resources to supplement the remaining staff. Thus, it was not an abolishment of the Grievant’s position and duties. This action by the Employer violated the labor contract between the parties; agreeing not to erode the bargaining unit. The grievance is granted.