**OCB AWARD NUMBER: 2115**

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| **SUBJECT:** | **ARB SUMMARY # 2115** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **27-23-20100114-0003-01-03** |
| **DEPARTMENT:** | Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Mal Corey |
| **MANAGEMENT ADVOCATE:** | Chris Lambert |
| **2ND CHAIR:** | Marissa Walter |
| **UNION ADVOCATE:** | Dave Justice |
| **ARBITRATION DATE:** | February 16, 2011 |
| **DECISION DATE:** | April 4, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 1—Recognition; Article 25—Grievance Procedure; Appendix Q—Agency Specific Agreements |
| **OCB RESEARCH CODES:** | 24.111—Secondary Agreements; 93.53—Mootness of Grievances; 117.3312—Pick-A-Post; |
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**HOLDING: Grievance DENIED. The Arbitrator found that the Union had negotiated and agreed to the Pick-a-Post agreement.**

The grievance arose out of a negotiated pick-a-post agreement between the Employer and the Union. In August 2009, RCI had is funding level reduced by the equivalent of 12 posts per day. A pick-a-post committee of both local management employees and local bargaining unit employees was created to determine which posts would be reduced. The Union suggested that the Count Office post be reduced and stated this proposal in writing. The Union’s written proposal acknowledged that other institutions were already using a supervisor to staff the Count Office and recommended RCI follow suit. The decisions of the local RCI pick-a-post committee were approved by the Statewide Oversight Pick-a-Post Committee and the required reductions went into effect on January 3, 2010. The Union filed a grievance on January 11, 2010, in which it argued that staffing the Count Office with a supervisor constituted a violation of Article 1.

The Union argued that the grievance was arbitrable and that staffing the Count Office with a Lieutenant was a violation of Article 1’s prohibition on increasing bargaining unit work by a supervisor. The Union argued that despite the fact that it recommended and approved the use of a supervisor for the Count Office, the Employer had an affirmative duty not to violate the CBA. Because the use of a supervisor to staff the Count Office constituted a violation of Article 1, the Union argued that the Employer should have rejected the Union’s proposal.

The Employer argued that the grievance was not arbitrable because the negotiated pick-a-post agreement was a contract. Once the agreement was reached, the Union could no longer grieve that the agreement conflicted with other provisions of the CBA. On the merits, the Employer argued that agreement represented a negotiated agreement. Any concerns about the nature of the agreement were addressed during negotiations and became moot once the parties agreed to, and signed, the agreement. The Employer argued that the Union should not be able to undo a bargained for agreement through the grievance process.

The Arbitrator found the grievance was substantively arbitrable, but denied the grievance. The Arbitrator found that the pick-a-post agreement was arbitrable because it derived from Appendix Q of the CBA. On the merits, the Arbitrator concluded that Union’s endorsement, both at the local and statewide level, of the pick-a-post agreement represented a resolution of the issue. The Arbitrator found that by agreeing to eliminate the Count Office post in the pick-a-post agreement, the Union waived the ability to argue that the elimination violated Article 1.