**OCB AWARD NUMBER: 2128**

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| **SUBJECT:** | **ARB SUMMARY # 2128** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **35-04-20100318-0007-06-10** |
| **DEPARTMENT:** | DYS |
| **UNION:** | OEA |
| **ARBITRATOR:** | Robert G. Stein |
| **GRIEVANT NAME:** | Jenny Krase |
| **MANAGEMENT ADVOCATE:** | Pat Mogan |
| **2ND CHAIR:** |  |
| **UNION ADVOCATE:** | Mark E. Linder |
| **ARBITRATION DATE:** | April 18, 2011 |
| **DECISION DATE:** | July 1, 2011 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | Article 5—Grievance Procedure; Article 19—Probationary Period |
| **OCB RESEARCH CODES:** | 118.02—Discipline-During Probationary Period; 94.605—Evidence; 111.6001—Probationary Period  |
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**HOLDING: Grievance DENIED. The Arbitrator found there is no evidence that the Grievant detrimentally relied upon any personnel documentation maintained by the Employer, even though it contained numerous errors. Termination on March 9, 2010 occurred while Grievant was still on probation and therefore is not subject to review under Article 5 of the Grievance Procedure.**

**POST ARBITRATION: Union filed a motion to vacate the arbitration award under the Ohio Revised Code 2711.10 and 2711.11. Union contended that the arbitration award lacked a rational nexus to the Agreement, and was unlawful, arbitrary, and capricious. The court denied the motion to vacate. The court reasoned that the decision was subject to multiple reasonable interpretations. Further, the arbitrator’s interpretation was reasonable.**

The Grievant worked for the Employer from November 10, 2008 until her notice of probationary removal on March 9, 2010. The heart of the issue is the dates to see if the Grievant was on or was not on probation during the time of her termination. The Grievant had performance problems severe enough to warrant a detailed Improvement Plan on November 3, 2009. The Employer sent a letter to the Grievant admitting that it made an error eleven months earlier and indicated that the correct date for the start of the Grievant’s probationary period was April 12, 2009 and that she was not to be given any credit for previous time spent as an intermittent Teacher. The Grievant received this notification.

The Employer arguedthat the Grievant’s employment was the appropriate remedy to be imposed and is not subject to the grievance procedure under the provisions contained in Article 19 of the Agreement. The Employer argued that during the hearing it provided un-rebutted evidence to establish certain facts: The “CONSENT” document given to Grievant was specific to OCSEA bargaining unit members, and it was given to her in error; the Employer caught the mistake and provided the Grievant with a written rescission of the “CONSENT” document approximately one month prior to her removal; the Grievant did not file a grievance or raise a complaint with Employer after having received the rescission notice; and the Grievant did not present any evidence that she had relied on the “CONSENT” document to her detriment. Probationary removal is not a form of discipline and that said removal is not subject to review through the grievance procedure. Grievant was removed after 331 days of her 365 day probationary period. The grievance should be denied in its entirety.

The Union arguedthe facts in this case clearly demonstrated that the Grievant was not on probation at the time of her termination. The Grievant became a full-time “permanent” employee on December 22, 2008 and as a result completed her probation. Other evidence submitted supports the logic that the Grievant’s full-time starting date was February 17, 2009, causing her termination date of March 9, 2010 to fall outside of the one year, or 365 day probationary period. The Grievant received her step increase to show that she was a full-time employee. The grievance should be affirmed; the Grievant should be restored to her position and made whole.

The Arbitrator foundthat the Grievant was having performance problems severe enough to warrant an detailed Improvement Plan on November 3, 2009. The details of the Improvement Plan strongly suggested that the Employer did not believe that the Grievant’s one year probationary period was ending in approximately one month and nineteen (19) days as the Union asserts. The Employer admitted it made an error about Grievant’s start date and the Grievant received the notification from the Employer. The Grievant did not challenge the Employer’s position on its clarification of her starting date. By failing to challenge and grieve this long-standing contradiction in position by Employer, the Grievant accepted Employer’s correction/clarification of her employment terms, and her continued probationary status until April 11, 2010. There is no evidence that the Grievant detrimentally relied upon any personnel documentation maintained by the Employer, even though it contained numerous errors. Termination on March 9, 2010 occurred while Grievant was still on probation and therefore is not subject to review under Article 5 of the Grievance Procedure. The grievance is denied.

After the arbitration award was submitted, the Union filed a motion to vacate the arbitration award under the Ohio Revised Code §§ 2711.10 and 2711.11. Union contended that the arbitration award lacked a rational nexus to the Agreement, and was unlawful, arbitrary, and capricious. The court denied the motion to vacate. The court reasoned that the decision was subject to multiple reasonable interpretations. Further, the arbitrator’s interpretation was reasonable.