**OCB AWARD NUMBER: 2137**

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| **SUBJECT:** | **ARB SUMMARY # 2137** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **David Long** |
| **OCB GRIEVANCE NUMBER:** | **31-07-20100729-0008-01-07** |
| **DEPARTMENT:** | Transportation |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Frank Keenan |
| **GRIEVANT NAME:** | David Goffena |
| **MANAGEMENT ADVOCATE:** | Ed Flynn |
| **2ND CHAIR:** | Victor Dandridge |
| **UNION ADVOCATE:** | Michael Muenchen |
| **ARBITRATION DATE:** | February 16, 2011 |
| **DECISION DATE:** | June 24, 2011 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Article 24.01 – Standard Discipline  |
| **OCB RESEARCH CODES:** | 118.01—Disciple-In General |
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**HOLDING: Grievance modified. The Arbitrator found there was just cause for discipline, but modified the termination to a time served suspension. The grievant was reinstated without backpay.**

The grievant was a Store Keeper 2 with the Ohio Department of Transportation (ODOT). He was a 27 year employee at the time of his termination. The grievant was terminated on July 16, 2010. The grievant was discovered, through an Inspector General investigation, accepting an item of value from a vendor, soliciting quotes after a contract had been awarded, and using related vendors (familial relation operating out of the same location) to obtain quotes from “both” vendors. The grievant violated work rule (WR) 101, number 2(c) and 27.

The Union contended that the grievant did not violate any work rules. They held that the incidences in question happened several years ago when the purchasing rules and requirements were different. The Union stated that the grievant complied with all work rules and regulations and performed his job appropriately. The Union maintained that the grievant did not have adequate forewarning or foreknowledge that his actions would lead to his termination. Their justification behind this being that the grievant, as well as other purchasers, had been doing this practice for an established period of time (years) as this was the accepted practice. The Union argued that there was no evidence of price collusion between vendors or any type of favored treatment regarding bidding between the two related companies. The Union argued that the degree of discipline was not commensurate with the offense. For the reasons stated above and when applying ODOT’s discipline grid to the infraction listed, the Union argued that termination was not reasonable in nature and not progressive according to the grid.

Management’s position was that the grievant did know and was fully aware of his wrong doings when they occurred. Management argued that the grievant was aware of the connection between the two vendors when asking them both for bids and knew that he receive the same product regardless of which bid was better, thereby manipulating the bidding process which was a clear violation of ODOT’s work rules. Management also argued that the grievant lied when asked if he had received anything of value from a vendor. Bain, a third vendor, provided the grievant with a free round of golf. This was established as being around the same time that Bain’s business was utilized, which also clearly violated ODOT’s work rules.

The arbitrator found that some wrong doing was performed, but felt the current level of discipline was not commensurate with the offense. The arbitrator modified the discipline to a time served suspension. The grievant was reinstated to his former position with no back pay.