**OCB AWARD NUMBER: 2144**

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| **SUBJECT:** | **ARB SUMMARY # 2144** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **23-10-20101124-0036-02-11** |
| **DEPARTMENT:** | Mental Health |
| **UNION:** | SEIU |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Jeffrey Bair |
| **MANAGEMENT ADVOCATE:** | Ann Thomson |
| **2ND CHAIR:** | Victor Dandridge |
| **UNION ADVOCATE:** |  |
| **ARBITRATION DATE:** | June 15, July 7, 11, 22, 2011 |
| **DECISION DATE:** | October 10, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 3—Management Rights; Article 6.01—Non-Discrimination; Article 8.02—Progressive Discipline; Article 8.04—Investigations; Article 45.03—Disciplinary Actions |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.311—Just Cause-Concept of; 118.6517—Falsification |
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**The Grievance was DENIED. The Arbitrator concluded the Grievant’s removal for violating work Rule 5.3 was for just cause. The Arbitrator pointed to the extremely offensive nature of the Grievant’s comments as well as his position as a supervisor as reasons why termination was warranted. The Arbitrator rejected the Grievant’s arguments that termination did not follow progressive discipline and that similarly situated employees were not terminated for similar conduct.**

The Grievant was employed as a Psychiatric Nurse with the state of Ohio since November 8, 1999. While working on July 14, 2010, the Grievant made highly offensive and racist comments to a therapeutic program worker who he was charged with supervising. As a result of the comments, the Grievant was removed for violating work rule 5.3 of the Ohio Department of Mental Health Work Rule Infractions.

The Employer argued that the seriousness of the comments, combined with the Grievant’s position as a supervisor, established just cause for the removal. The Employer pointed to the Grievant’s training history to show that he was aware of the Employer’s policy on harassment. The Employer rejected that the Grievant’s contention that similarly situated employees were not terminated for similar comments, arguing that the examples provided were not similarly situated.

The Grievant argued that the termination was not for just cause. Essentially, the Grievant argued that the Employer did not satisfy any of the seven-part test required to show just cause.

The Arbitrator denied the grievance, finding that the Employer had just cause to remove the Grievant. The Arbitrator found that the racist nature of the Grievant’s comments, combined with the fact that the comments were made to an employee over who the Grievant was a supervisor, made the rule violation particularly egregious. The Arbitrator also rejected the Grievant’s claim of disparate treatment because the Grievant was a supervisor and none of the examples provided by the Grievant involved charge nurses with supervisory authority.