**OCB AWARD NUMBER: 2145**

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| **SUBJECT:** | **ARB SUMMARY # 2145** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBERS:** | **27-19-20080915-0259-01-06**  **27-19-20090310-0047-01-06**  **27-19-20090303-0046-01-06**  **27-23-20090218-0006-01-03**  **27-31-20090319-0028-01-04** |
| **DEPARTMENT:** | Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | David Pincus |
| **GRIEVANTS:** | Sheri Oliver  James Adkins |
| **MANAGEMENT ADVOCATE:** | Aimee Szerbacki |
| **2ND CHAIR:** | Alan Lazaroff |
| **UNION ADVOCATE:** | Donald Conley |
| **ARBITRATION DATE:** | March 9, 2011 |
| **DECISION DATE:** | October 11, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 25.02—Grievance Steps |
| **OCB RESEARCH CODES:** | 24.111—Secondary Agreements; 94.091—Arbitration-Substantive; 2.01—Management Rights |
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**HOLDING: Grievance DENIED. Outstanding grievances were resolved through a settlement agreement between the parties. The Union agreed to Impact Bargaining on the effects of the DRC policy pertaining to a tobacco free workplace. The agreement cannot be considered by an Arbitrator except to enforce its terms and conditions. The Arbitrator found that the grievance lacked substantive arbitrability.**

On March 1, 2009, the Employer enacted a tobacco free workplace policy. This policy was grieved, and a hearing was held. The parties then agreed to settle the grievance. The settlement agreement provided that the tobacco free workplace policy of the Dept. of Rehabilitation and Corrections did not have to be bargained and that all outstanding grievances regarding that policy would be settled through the settlement agreement. The parties to the agreement also agreed to impact bargain the effects of the policy and to submit unresolved issues to an arbitrator for mediation. It was agreed that the Union would not submit unresolved issues for arbitration.

The Unionsought to have the reasonableness of the policy arbitrated as well as the unequal application of the policy in various locals within State service. The settlement agreement and the outcomes resulting from the bargaining process did not bar the Arbitrator from considering the merit of these and other related issues. It was never the Union’s intent to have all related smoking policy issues concluded and resolved by the terms and conditions mutually articulated in the settlement agreement.

The Employer arguedthat all the grievances lack substantive arbitrability, and do not fall within the Arbitrator’s jurisdiction. The Union tried to force a determination on whether the policy was a mandatory or permissive subject of bargaining under ORC 4117; however, under ORC 4117.11 provides SERB with jurisdiction. The Union should have filed an unfair labor practice claim.

The Arbitrator foundthat the grievances lack standing. The Union never alleged the terms of the settlement were somehow violated by the Employer. The settlement agreement was entered into without duress as the parties mutually agreed to the terms. Both parties agreed to resolve all issues through the agreement and to not introduce the agreement before an Arbitrator unless as necessary to enforce the terms and conditions of the agreement. The grievances are denied.