**OCB AWARD NUMBER: 2154**

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| **SUBJECT:** | **ARB SUMMARY # 2154** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **30-04-20101115-0064-01-14** |
| **DEPARTMENT:** | Taxation |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Meeta Bass Lyons |
| **GRIEVANT NAME:** | John Anthony |
| **MANAGEMENT ADVOCATE:** | Gregory Siegfried |
| **2ND CHAIR:** | Ashley Hughes |
| **UNION ADVOCATE:** | Barbara Folman |
| **ARBITRATION DATE:** | October 4, 2011 |
| **DECISION DATE:** | January 3, 2012 |
| **DECISION:** | Granted |
| **CONTRACT SECTIONS:** | Article 3—Union Rights |
| **OCB RESEARCH CODES:** | 3.053—Office Space; 4.01—Interference with Union-In General; 54.652—Contract Interpretation-In General |
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**HOLDING: Grievance GRANTED. The Arbitrator found that the Employer unreasonably prevented the Union from holding a meeting at its facility by denying access to a retired employee who remained a Union chapter officer. The Arbitrator rejected the Employers argument that access denial to retired employees was required under Article 3.01 of the Collective Bargaining Agreement however, she agreed with the Employer that she cannot issue an award that provides for blanket access to the facilities for union representatives and meeting space as requested by the Union.**

A former employee of the Department of Taxation retired on June 30, 2010. The same day, she transmitted an email to a large number of Department employees’ state email accounts. The email contained her thanks but made disparaging remarks about some coworkers and the Department administration. This email became a focal point of discussion amongst some employees and disrupted the normal operations of the Department. A number of employees were upset about the email and approached Human Resources to express their concern.

The Union requested permission to hold a chapter meeting at the Department’s Northland Facility on November 9, 2010. The Employer and the Union previously entered into an agreement that allowed meetings to be held on-site. The retired employee who had transmitted the disruptive email upon her retirement is on the Executive Board of the Union chapter. Article 3.01 of the Collective Bargaining Agreement provides that non-employees who are Union officials may attend Union meetings held on site but may be accompanied by a Department representative when doing so. When some employees heard that the retired employee was going to be on the property, they objected and the Employer sent the Union an email stating that having her on the property would be disruptive. The Employer advised the Union that the meeting could take place but the retired employee could not attend. Since the retire employee is the Chapter Treasurer, The Union rescheduled the meeting and filed a grievance on November 15, 2010 alleging a violation of Articles 3.01, 3.04, and 44.02.

The Union arguedthat the Employer had a disingenuous motive to retaliate for the disruption caused by the retired employee in the workplace. The retired employee was essential to the quarterly meetings, and denying her access to the facility is banning the chapter from conducting its meeting. It also argued that the Employer used one employee’s complaint against the retired employee as a pretext to keep the Union from using its facility. The Union requested the grievance be sustained, and a cease and desist decision be issued to the Department.

The Employer arguedthat the Union failed to meet its burden to establish a violation of Article 3. The Employer did not deny the Union’s right to use its Northland facility; it only denied the retired employee’s access to the facility. It also contended that the Arbitrator cannot award the substantive remedy sought by the Union. The Employer requested the grievance be denied in its entirety.

The Arbitrator foundthat the Union met its burden to prove that Employer violated Article 3.01. The Arbitrator found that the retired employee’s email sent on June 30, 2010, caused significant disruption in the workplace, but did not warrant a refusal to allow her to attend a union meeting. Only one employee had objected to her participation in the meeting. The Arbitrator did agree with the employer that she did not have the authority to modify the language of the CBA, and therefore cannot issue an award that provides for blanket access to the facility for union representatives and meeting space.