**OCB AWARD NUMBER: 2155**

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| **SUBJECT:** | **ARB SUMMARY # 2155** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-02-20100205-0027-01-03** |
| **DEPARTMENT:** | Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | David Pincus |
| **GRIEVANT NAME:** | Sick Leave Pay and Comp Time Grievances |
| **MANAGEMENT ADVOCATE:** | Kristen Rankin |
| **2ND CHAIR:** | Michael Duco |
| **UNION ADVOCATE:** | Patty Rich |
| **ARBITRATION DATE:** | April 27, 2011 |
| **DECISION DATE:** | January 15, 2012 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 13.10—Payment for Overtime; Article 26.02—Holiday Pay |
| **OCB RESEARCH CODES:** | 24.351—Past Practice-In General; 116.1032—Holidays-Work on a Holiday; 116.1031—Pay Eligibility for Unworked Holidays |
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**HOLDING: Grievance DENIED. CSD time is to be treated the same as sick leave per the contract language and the Letters of Agreement signed by both parties; neither is considered active pay status. Inconsistent practices do not override clear and unambiguous contract language and do not establish a past practice. An employee may convert overtime into comp time during the week of a holiday when the employee receives twelve hours of pay at time and 1/2.**

The dispute involved the application of Articles 13.10, 26.04, and a Letter of Agreement which became effective on September 1, 2009. The State of Ohio was in the middle of a budgetary crisis during the 2009 negotiations. The parties took extreme measures by devising Cost Saving Days (CSDs) to offset certain budgetary shortfalls and reduce projected layoffs. The dispute here involved Bargaining Units 3, 4, and 5. Other units realized CSDs which were operationalized as10 unpaid days off. Bargaining Units 3, 4, and 5 had CSDs defined as unpaid holidays. These bargaining outcomes were eventually modified via an agreement directed specifically toward units 3, 4, and 5 (3,4,5 Agreement).

The Union arguedthat a practice has been established by the parties which deal with the disputed matter. Employees have been paid fifty-two hours a week when an employee calls in sick during a week containing a holiday, and his/her good day falls on the holiday. Upon signing the CSD agreement, the Union claims it was advised taking a CSD would be equivalent to taking a sick day, and would not impact holiday pay. The Union also argued that Article 26 does not contain clear and unambiguous language. The parties through their custom and practice, have mutually agreed to apply an established practice in lieu of ambiguous contract language. Similarly, the 3,4,5, Agreement did not impact an employee’s ability to convert overtime to comp time during a holiday week. The Union argued that Article 13.10 does not bar the conversion of overtime accrued during a week of a holiday to comp time. Comp time has been handled this way for a considerable period of time.

The Employer arguedthat the rights and benefits desired by the Union were not agreed to by the Employer. Past practices, even if established, may not amend mutually agreed to contract language. Also, holiday premium pay cannot be converted to compensatory time. Articles 13.10 and 26 contain language which is clear and unambiguous; the Arbitrator would be exceeding his scope of authority if he agrees with the Union’s arguments. The Union failed to meet its burden of a binding past practice. Even if it did meet its burden, it still fails because the contract language is still clear and unambiguous. The Employer retains the inherit right to enforce the language without notice to the Union. The holiday premium pay cannot be converted to comp time. Such conversions were burdensome, and the Employer bears certain economic costs when these conversions take place.

The Arbitrator foundthat the Employer’s interpretation of the contract language and the Letter of Agreement on CSDs is proper and accurate. CSDs and Sick Leave are not “Active Pay Status” thus an employee who uses such leave during the week of a holiday is not entitled to overtime but is entitled to 8 hours of pay for the unworked holiday. Contrary practices at some facilities do not obligate the employer to consider CSD or Sick leave to be Active Pay Status.

Article 26.02 does not reference any entitlement to premium pay or conversion of these payments to compensatory time but Article 26.03 allows employees who work on a holiday to convert hours worked into compensatory time provided they have 12 hours of overtime pay available for conversion. An employee may convert any hours to comp time during a week of a holiday when an employee receives twelve hours of pay which pays at time and a half.

The grievance is denied except for the portion dealing with the conversion of overtime hours to compensatory time hours during a holiday week.