**OCB AWARD NUMBER: 2167**

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| **SUBJECT:** | **ARB SUMMARY # 2167** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **29-02-20100129-0003-02-12** |
| **DEPARTMENT:** | Rehabilitation Services Commission |
| **UNION:** | SEIU |
| **ARBITRATOR:** | Thomas J. Nowel |
| **GRIEVANT NAME:** | Todd Wellman |
| **MANAGEMENT ADVOCATE:** | Bobby Johnson |
| **2ND CHAIR:** | David Long |
| **UNION ADVOCATE:** | Amanda Schulte |
| **ARBITRATION DATE:** | March 21, 2012 |
| **DECISION DATE:** | May 17, 2012 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Section 7.04—Grievance Procedure; Section 7.06—Grievance Steps; Section 21.01—Time |
| **OCB RESEARCH CODES:** | 54.652—Contract Interpretation-In General; 93.4661—Timeliness of Grievances; 115.221—Travel Time |
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**HOLDING: Grievance MODIFIED. The Arbitrator found the contract language unambiguous; requiring the Grievant to be compensated for all time spent driving from his home to a non-headquarters location as well as from a non-headquarters location to his home. The Employer’s procedural objection that the grievance was untimely was denied. The Arbitrator also refused to recognize the grievance as a class action and limited the remedy to the Grievant only.**

The Grievant, a Vocation Rehabilitation Counselor for the Rehabilitation Services Commission, filed a grievance on January 28, 2010 challenging the Employer’s interpretation of Section 21.01 of the CBA. Specifically, the Grievant disagreed with the Employer’s contention that non-field employees would not receive full reimbursement for time when travelling to and from non-headquarters work sites. While confusion over the interpretation had persisted for several months, the Employer’s Labor Relations Manager emailed Rehabilitation Services Commission employees on January 15, 2010 clarifying how the Employer viewed the extent of the limitation. The Employer email to employees stated that time reimbursement for travel from an employee’s home to a non-headquarters work site and from a non-headquarter worksite to the employee’s home would be offset by the employee’s normal commute time. Following this email by the Employer, the Grievant filed a grievance challenging this interpretation of Section 21.01.

The Union argued that the contract was clear on its face. The CBA only placed a limit on time reimbursement for travel from an employee’s house to a work location other than a normal work location for employees of the Adult Parole Authority or field employees. For those employees other than field employees and employees of the Adult Parole Authority, the Union argued that the contract clearly states “[t]ravel time as required by the Agency is considered work time if the travel is between work sites or between the employee’s place of residence and a work site other that then assigned work site.” While the contract does state that all non-field employees must follow the commuter offset requirement, the commuter offset requirement only limits mileage reimbursement.

The Employer argued that its bargaining position during negotiations, as well as the specific language included for employees of the Adult Parole Authority and field employees, clearly showed the intent of the Employer to limit time reimbursement for non-field employees. The Employer argued that the commuter offset requirement, which applies to non-field employees, was clearly intended to affect both mileage and time. The Employer pointed to testimony by negotiators for the Employer that the Union understood the Employer’s position during negotiations. The Employer also argued that the Union was further made aware of the Employer’s position during an August 2009 APC meeting. The fact that the Union did not grieve the issue at that time is a clear indication that the Union was in agreement with the Employer’s interpretation of Section 21.01.

The Arbitrator modified the grievance, but agreed with the Union’s interpretation of the contract section at issue. The modification related to the Union’s contention that the grievance was a class action. The arbitrator rejected the Union’s contention that the Grievant intended or was authorized to file a grievance for an entire class. For this reason, the Arbitrator limited the remedy solely to the Grievant for previously unreimbursed travel hours as well as any applicable travel hours in the future. As to the appropriate interpretation of Section 21.01, the Arbitrator found the contract language to be clear on its face. The first sentence of the Section specifically states that travel time “between the employee’s place of residence and a work site other that the assigned work site” is to considered work time. The only limitation on this sentence for non-field employees is that such employees must follow the commuter offset requirement. While a prior version of the commuter offset requirement would support the interpretation of the Section advocated by the Employer, the current version of the commuter offset requirement does not included the same example. Therefore, the Arbitrator concluded that the contact was clear in only limiting reimbursement for mileage. Arguments by the Employer that the Union understood the Employer continued to hold the same interpretation despite the same language being included were rejected by the Arbitrator as moot.