**OCB AWARD NUMBER: 2169**

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| **SUBJECT:** | **ARB SUMMARY # 2169** | | |
| **TO:** | **ALL ADVOCATES** | | |
| **FROM:** | **DAVID LONG** | | |
| **OCB GRIEVANCE NUMBER:** | **27-03-20110214-0003-01-06** | | |
| **DEPARTMENT:** | Department of Rehabilitation and Correction | | |
| **UNION:** | OCSEA | | |
| **ARBITRATOR:** | Thomas Nowel | | |
| **GRIEVANT NAME:** | Steve Parks, Jeff Herald, Merle Sayers and J.D. Hunt | | |
| **MANAGEMENT ADVOCATE:** | Chris Lambert | | |
| **2ND CHAIR:** | Jackie Milson | | |
| **UNION ADVOCATE:** | Dave Justice | | |
| **ARBITRATION DATE:** | June 8, 2012 | | |
| **DECISION DATE:** | June 13, 2012 | | |
| **DECISION:** | DENIED | | |
| **CONTRACT SECTIONS:** | Article 44.02 – Operations of Rules and Law | | |
| **OCB RESEARCH CODES:** | 118.6561—Work Rules-In General; 115.55—Hazard Pay; 93.49—Settlement of Grievances | | |
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**HOLDING: Grievance DENIED. The Arbitrator found that the settlement agreement was only intended to provide hazard pay as long as the heating tunnels were designated as asbestos containment areas. Although the settlement agreement was silent as to duration, the settlement agreement author as well as the additional tasks required of the employees when the tunnels were designated as asbestos containment areas provided substantial weight for the contention that the agreement was never intended to run indefinitely.**

Grievants worked as plumbers for the Chillicothe Correctional Institution (CCI), with primary responsibilities for the heating tunnels. Grievants were trained, certified, and required to wear protective suits and respirators while in the tunnels due to airborne asbestos from the abatement process. Following a grievance, the parties entered into a settlement agreement whereby Grievants would receive 5% hazard duty pay for all hours worked during the heating season as well as all hours worked in the tunnels during the non-heating season. On February 24, 2011 state contractors completed the asbestos abatement and shortly thereafter, the hazard pay was discontinued. Grievants argue that the hazard pay should continue beyond the abatement for any period in which they work with asbestos.

Employer argued that the asbestos hazard pay provision in the settlement agreement was limited to the heating tunnels during the abatement. They cite Paragraph 3 of the agreement which states that the pay supplement will “discontinue upon completion of the asbestos abatement of the identified containment areas of CCI.” Further, Bobby Johnson, author of the settlement agreement, testified that the pay supplement was solely limited to the plumbers’ work in the tunnels while the tunnels were asbestos containment areas. Employer was justified in ending the hazard pay because absent the settlement agreement, the collective bargaining agreement does not contain a provision for hazard duty pay.

The Union argued that the agreement was not limited solely to work in the tunnels because they received training and certification. Therefore, they argue the agreement should be interpreted to allow Grievants to receive hazard pay anytime they work with asbestos.

The Arbitrator concluded that the hazard pay only ran with the abatement of the heating tunnels even though there was no language providing a specific end date. The original grievance alluded to the fact that the hazard pay might be discontinued and Bobby Johnson’s testimony also supported this contention that the hazard pay was limited to Grievants’ work in the tunnels while it was an asbestos containment area. Further, there was no proof that the settlement agreement was intended to provide an ongoing and indefinite benefit. Therefore, the grievance must be denied.