**OCB AWARD NUMBER: 2173**

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| **SUBJECT:** | **ARB SUMMARY # 2173** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **34-21-20101103-0162-01-09** |
| **DEPARTMENT:** | State of Ohio Bureau of Workers Compensation |
| **UNION:** | OCSEA Local 11 |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Timothy McAllister |
| **MANAGEMENT ADVOCATE:** | Aimee Szczerbacki |
| **UNION ADVOCATE:** | Jennie Lewis |
| **ARBITRATION DATE:** | June 29, 2012 |
| **DECISION DATE:** | August 9, 2012 |
| **DECISION:** | GRANTED |
| **CONTRACT SECTIONS:** | Article 28.01 – Vacations – Rate of Accrual; Article 29.05 – Sick Leave – Carry-over and Conversion; Article 2 – Non-discrimination |
| **OCB RESEARCH CODES:** | 116.151 – Vacation; 120.01 – Transfer; 116.25 – Sick Leave |

**HOLDING: Grievance granted. The Arbitrator found that under the Collective Bargaining Agreement (the “CBA”), time worked at an Ohio retirement system qualified as state service for purposes of vacation time accrual. The Arbitrator relied heavily on R.C. 124.38 which allows employees transferring state agencies to transfer their sick leave. Further, because the CBA does not define state agency or political subdivision of the state, the Arbitrator relied on the “whole document” rule—since sick leave accrual for time worked at the state retirement systems could be credited, vacation time accrued must as well.**

The grievants were a class of three employees who worked with the Ohio Highway Retirement System (“OHRS”) and later transferred to the Bureau of Workers Compensation. Although the employees were allowed to transfer unused sick leave accruals from their employment with OHRS, they were denied credit for working at that retirement system for purposes of vacation accrual.

Management argues that the public retirement systems are not considered “the state” under R.C. 9.44. Furthermore, the structure of the retirement systems illustrates that they should not be considered a state agency as they do not act on behalf of the state or carryout a state governmental function. They cited an Ohio appellate case discussing how although a retirement system could be considered a *public* agency or instrumentality it did not provide a *state* service or exercise any governmental function.

Management did not consider the fact OHRS employees can pay into the retirement system dispositive; they can pay into the system because they are public employees, not because they are in the service of the state. Nor did it consider OHRS a “political subdivision of the state;” although the term is not defined in the CBA or R.C. 9.44, OHRS does not exercise a governmental function in a limited geographical area. Moreover, had Congress wanted these employees to be able to transfer sick leave accrual and vacation accrual, it would have clearly stated this intent.

The Union asserts that because the retirement systems were established by statute they should be considered state agencies for purposes of credit accrual. Citing a 1993 Ohio Attorney General advisory opinion where OHRS was considered an agency for purposes of the ADEA, they reason it should also qualify as a political subdivision. While recognizing that there are times when an entity can be considered a political subdivision for some purposes but not others, they contend that because grievants were allowed to transfer sick leave for time worked in OHRS they should also be allowed to credit vacation accrual.

The Arbitrator found that under the undisputed facts, time worked for OHRS is considered state service for purposes of Article 28.01 of the CBA. The Arbitrator relied on the “whole document” approach to contract interpretation and held that the CBA intended to allow credit towards vacation accrual because it allowed sick leave credit. Finding that management failed to provide evidence that the Union and Management had intended a different result in the CBA, Articles 28 (vacation) and 29 (sick leave) must be read consistently.