**OCB AWARD NUMBER: 2174**

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| **SUBJECT:** | **ARB SUMMARY # 2174** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **28-03-20120227-0003-02-12** |
| **DEPARTMENT:** | Department of Rehabilitation and Corrections |
| **UNION:** | SEIU/ District 1199 |
| **ARBITRATOR:** | Thomas J. Nowel |
| **GRIEVANT NAME:** | William Taraschke |
| **MANAGEMENT ADVOCATE:** | Andy Bower |
| **UNION ADVOCATE:** | Leah M. Davis |
| **ARBITRATION DATE:** | June 26, 2012 |
| **DECISION DATE:** | August 21, 2012 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 6.02 – Agreement Rights |
| **OCB RESEARCH CODES:** | 106.01 – Discrimination in General |

**Holding: Grievance denied. The grievant was bumped from his position following a statewide layoff of parole officers in 2011. The grievant filed multiple grievances regarding this issue along with multiple ULPs. The grievant feels that he was discriminated against and harassed by management because of these grievances. These grievances were consolidated into 28-03-20120227-0003-02-12.** **The Arbitrator found that Management acted within its rights listed in the collective bargaining agreement regarding the bumping procedure.**

The grievances filed that were regarded/consolidated into this case are:

**28-08-20111201-0008-02-12:** This grievance was filed after the grievant met with his new supervisor and that meeting became confrontational. The supervisor filed a report and the regional administrator, Steve Vukmer, issued an order that the grievant not have any contact with his unit supervisor, Sherry Clouser. This order restricted the grievant’s ability to carry out his duties and comply with policy. The resolution requested was for the grievant to be assigned his original caseload in Medina County where he would report to his original supervisor. The grievant was then assigned to the Elyria Office.

**28-03-20111205-0008-02-12:** After being assigned to the Elyria Office, the grievant was requested to complete a form when requesting a hearing. The grievant only used to send an email at his previous location. The grievant did not agree with the form and modified it. The supervisor did not approve of the form change and requested the grievant complete the form without changes. The grievant modified it again by making the font larger. The supervisor filed an incident report to her administrator stating the grievant intimidated and harassed her. The grievant received a corrective counseling due to the changes he made to the forms. The grievant filed this grievance because of the corrective counseling, claiming that the counseling was retaliatory for his previous grievances and ULPs. His resolution was to be relocated to the Medina County caseload and to not report to Supervisor Clouser or Administrator Vukmer.

**28-03-20111230-0009-02-12:** After the corrective counseling, the grievant altered another form. The hearing counselor completed an incident report. Administrator Vukmer requested an investigation into the grievant and revoked the grievant’s authorization to carry his fire arm. This prompted the grievant to file this grievance. Again, the grievant claimed this was for retaliatory purposes and his remedy was relocation to the Medina County caseload.

The grievant was placed on administrative leave pending the results of an independent medical evaluation. Investigation Administrator, Tyrone Reynolds, listed several concerns for requesting the IME, one of which was the several grievances and ULPs the grievant had filed. The IME recommended that the grievant take 3 months off. The grievant was suffering from stress and anxiety

**28-03-20120227-0003-02-12:**  After going out on disability to cover his leave of absences, the grievant filed this grievance claiming he was put on admin leave and disability as a retaliatory act. Again, his resolution was to be reassigned to the Medina County caseload.

**28-01-20120412-0002-02-12:** The grievant was released to return to work but the Employer withheld the authorization to carry a firearm. The grievant then filed this grievance. The doctor that conducted the IME stated that the grievant was emotionally stable and was able to carry a firearm. The grievant’s requested resolution was being allowed authorization to carry a firearm.

**28-01-20120412-0003-02-12:** The grievant had successfully canvassed to the Akron Region. Upon his return to work at his new location, (release after the IME), the grievant was assigned to an in-office position, due to his lack of authorization to carry a firearm. The grievant then filed this grievance regarding his assigned position stating that this was not the position he successfully canvassed for. He requested he be returned to field supervision.

The grievant re-applied for disability. While on sick leave, the grievant called in to the office daily to express his continuing concerns regarding his payroll taxes and prior work location of Medina County. The grievant was then placed on admin leave by management and requested to take another IME. The outcome of this IME stated that the grievant was capable of returning back to work and was capable of carrying a firearm. The grievant was returned to his field assignment that he originally canvassed for and his firearm was returned to him.

The Union contends that management retaliated and presented anti-union animus to the grievant. Each grievance was due to a direct retaliatory/discriminatory action taken by management. In the case of the first grievance listed above, the union argues that management directly retaliated against the grievant for expressing his discontent with the current bumping situation by verbally expressing it to his direct supervisor at the time and by filing multiple grievances and ULPs regarding this event. Each subsequent grievance filed by the grievant is addressed by the union as a necessary defense against management’s constant retaliatory practices.

Management argues that each situation that arose due to the grievant actions, was a standard progression of responses given each particular situation and that no discrimination or retaliation ever took place. Management says that the genesis of these grievances comes from the fact that the grievant was bumped from his Medina County caseload of which he was accustomed to working. 4 of the 6 grievances filed by the grievant suggest a resolution of returning the grievant back to the Medina case load. Management states that the state wide layoff procedure of parole officers in 2011 was within management’s rights based on Article 29 of the collective bargaining agreement and no wrongdoing occurred. Management was not aware of any supposed agreement the grievant had that would prevent him from being bumped.

The Arbitrator found that Management acted correctly and within the rights allowed it by the collective bargaining agreement. The grievant was clearly upset at being bumped from his Medina County caseload and the majority of the grievances requested the grievant be returned to his original case load. The Arbitrator found that in each grievance listed above, the Union failed to show evidence of any discrimination or harassment from Management towards the grievant. On the contrary, the Arbitrator found that the grievant was initiating most of the animus and acted in such a manner as to warrant 2 separate IMEs. The Arbitrator denied each grievance individually on its merits (or lack thereof) and denied the consolidated grievance as a whole, in its entirety.