**OCB AWARD NUMBER: 2178**

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| **SUBJECT:** | **ARB SUMMARY # 2178** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **16-11-20110406-1027-01-09** |
| **DEPARTMENT:** | **Job and Family Services** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Susan Grody Ruben** |
| **GRIEVANT NAME:** | **Tobias Williams** |
| **MANAGEMENT ADVOCATE:** | **Tiffany Richardson** |
| **UNION ADVOCATE:** | **Rusty Burkepile** |
| **ARBITRATION DATE:** | **06/27/2012** |
| **DECISION DATE:** | **09/12/2012** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Article 2.01 – Non-Discrimination; Article 2.02 – Agreement Rights; Article 2.03 – Equal Employment Opportunity/Affirmative Action; Article 5 – Management Rights** |
| **OCB RESEARCH CODES:** | **2.01 – Management Rights; 24.907 - Employee Rights-Personal Rights; 106.01 – Discrimination-In General** |

**HOLDING: Grievance granted. The Arbitrator found that the Union carried its burden of proof showing that Management had not “initiate[d] some type of affirmative action…that clearly indicate[d]” acceptance of his tender of resignation. The grievant successfully rescinded his tender of resignation before it was accepted by Management. The Arbitrator found that the grievance should be fully reinstated to his former position.**

The grievant was a 6 year employee with the Department of Job and Family Services as an Infrastructure Specialist 2. As of March 16, 2011 the grievant, who had been out on voluntary cost savings days, had zero leave balances. He was put on leave without pay on March 17th and 18th. On March 18th, the grievant sent an email to his supervisor requesting his unpaid leave to extend to August 12th. If the request could not be granted, the grievant stated he would resign effect April 2nd. Following this email, there were several text messages between the grievant and his supervisor regarding the denial of his request for leave without pay and the proper avenues to submit his resignation. The grievant’s supervisor was not authorized to accept or acknowledge the grievant’s notice of resignation. This text exchange included the grievant’s supervisor stating that HR did not accept what the grievant had done to that date notifying Management of his resignation as an official way to submit his resignation, stating that Management needs an official resignation letter.

Labor Relations Officer 3 Nancy Jansco-Kocarek called the grievant, twice, on March 21st. The actual dialogue of these conversations are disputed by the grievant and LRO Kocarek. LRO Kocarek sent the grievant an email on that same day explaining that his unpaid leave request was denied and provided the grievant with a list of HR contacts (Payroll, FMLA, Disability, Benefits managers and coordinators). On March 25th, the grievant rescinded his resignation in an email sent to LRO Kocarek, explaining that he was going to seek medical help. The grievant received a separation letter dated March 28th from Management acknowledging his separation from JFS on March 18th. LRO Kocarek emailed the grievant on March 31st, explaining that the grievant’s resignation had been officially accepted on March 21st. LRO Kocarek said that she accepted his resignation verbally during their telephone conversation. A grievance was filed on April 6th.

The Union argues that the grievant offered a conditional resignation effective April 2nd and one week after he submitted his resignation but before the effective date, he rescinded his resignation. The grievant testified that LRO Kocarek told him that his resignation was not official until Management received a written, signed resignation letter. This follows what the grievant’s supervisor told him via text messages, saying that his text and email resignation was not official and that he needed to submit a written, signed letter. The Union argues that Management never officially accepted the grievant’s resignation. There was no act of affirmative acceptance of the resignation, written or verbal. Since the grievant rescinded his resignation before the effective date listed on the resignation notification, April 2nd, and since Management never formally accepted his resignation in any way, the grievant is entitled to remain in his position.

Management argues that the grievant submitted his resignation on March 18th, and it was verbally acknowledged and accepted on March 21st via telephone. Management states that the grievant’s text messages to his supervisor stating his resignation and the emails he sent to his supervisor and HR were acknowledged as being the grievant’s written letter of resignation. Management argues that they did engage in affirmative action to indicate to the grievant that his resignation was accepted by 1) Phone call to the grievant on March 21st, verbally informing him that his resignation was accepted; 2) Engaging in several conversations with the grievant via email and text message to coordinate the pick-up of State equipment in the grievant’s possession; 3) Management notifying payroll of his resignation and payroll processing his resignation; and lastly, given the fact that the grievant had depleted all of his leave balances, it was reasonable to believe he had resigned. Management argues that the grievant was aware of Management’s acceptance of his resignation due to text messages sent to his supervisor, after speaking with LRO Kocarek, discussing how to return State equipment. Management claims that the grievant made no attempt to come to work or call off at any point after the March 21st conversations with LRO Kocarek.

The Arbitrator finds that the Collective Bargaining Agreement is silent regarding submission of resignation. Both Union and Management cite *Davis v. Marion County Engineer*, 60 Ohio St.3d 53, 55 (1991), (Davis). Grievance Case No. 27-25-19961202-1169-01-09 is also cited defining valid acceptance of resignation, incorporating some type of affirmative action by the employer toward the employee regarding notification of the acceptance of resignation. According to the court case and grievance case, the Arbitrator finds that LRO Kocarek did not provide the grievant a clear indication that Management had accepted his resignation. Per the phone calls on March 21st, while it is disputed what was said, it is agreed that LRO Kocarek provided the grievant a fax number for sending in his signed, written resignation letter. If LRO Kocarek initiated some type of affirmative action that clearly indicated the acceptance of the grievant’s resignation, the fax number would not have been needed. Further, the Arbitrator states that since LRO Kocarek emailed the grievant contact information for various HR Coordinators and Managers for Benefits, Disability, FMLA, etc., there was no clear affirmative action again, stating that if there had been acceptance of the resignation, the grievant would not need access to FMLA or disability as a resigned employee does not have access to those benefits. Considering the separation letter sent by Management is dated march 28th, 3 days after the grievant rescinded his resignation via email, this cannot count as an affirmative action indicating the acceptance of resignation. Given the fact that there is no evidence to verify or corroborate LRO Kocarek’s claim that she did acknowledge the grievant’s resignation during their phone conversations, the Arbitrator finds this not convincing or worthy of constituting a formal acknowledgement of his resignation. The Arbitrator finds that the Union carried its burden of proof and granted the grievance. The grievant shall be reinstated to his former position. The grievant shall be treated as if he had been laid off and recalled during his absence, pending the resolution of this grievance.