**OCB AWARD NUMBER: 2192**

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| **SUBJECT:** | **ARB SUMMARY # 2192** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **24-14-20120507-0006-02-01; and, 24-009-2012-0010-05-02** |
| **DEPARTMENT:** | **DODD** |
| **UNION:** | **FOP** |
| **ARBITRATOR:** | **Susan Grody Ruben** |
| **GRIEVANT NAME:** | **William Ferkan, Rodney Fry, et al.** |
| **MANAGEMENT ADVOCATE:** | **Melinda Armstrong** |
| **UNION ADVOCATE:** | **Paul Cox** |
| **ARBITRATION DATE:** | **10/23/2012** |
| **DECISION DATE:** | **01/24/2013** |
| **DECISION:** | **Granted** |
| **CONTRACT SECTIONS:** | **Article 6 – Management Rights; Article 7 –Union Recognition and Security;**  **Article 35 – Reduction in Force** |
| **OCB RESEARCH CODES:** | **8.661 – Bargaining Unit; 117.340 – Erosion of Bargaining Unit;**  **118.06 - Back Pay Awards; 2.01 – Management Rights-In General** |

**HOLDING: Grievance granted. The Arbitrator granted the grievance because the Agency improperly eroded the bargaining unit by abolishing the Police Officer 2 classification and transferring the classification’s remaining duties to non-bargaining unit personnel.**

On April 30, 2012, the Department of Developmental Disabilities (“the Agency”) filed a rationale seeking to abolish Police Officer 2 (“PO 2”) positions for “economy” reasons. The job abolishment affected twenty-six PO 2s. For a number of years, PO 2s spent much of their time investigating Major Unusual Incidents (“MUI”). Following the job abolishment, non-bargaining unit Program Administrators investigate MUIs.

The Agency argued that it did not erode the bargaining unit because it permanently abolished PO-specific duties. The remaining duties were overlapping and not PO-specific. As such, it was appropriate to allow the remaining classifications to fulfill those non-PO-specific duties such as MUI investigations. The Agency also argued that PO 2s are not necessary because crimes within the Agency’s facilities are very infrequent, with the exception of the Columbus location. Further, the Ohio Highway Patrol has exclusive jurisdiction to investigate any crimes that occur within the Agency’s facilities. The Agency conservatively estimated that the job abolishment would generate savings ranging from ~$875K to ~$1.46M in each of the next three years. Given the Agency’s 8.3% budget reduction, the job abolishment was a necessary cost savings measure.

The Union argued that the Agency improperly eroded the bargaining unit because the MUI investigations that were formerly performed by the PO 2s are now being performed by exempt Program Administrators. Further, the Union highlighted the Agency’s failure to present evidence that established a lack of work or funds.

The Arbitratior granted the grievance. The Arbitrator determined that the Agency eroded the bargaining unit by eliminating the PO 2 classification and transferring the remaining duties to exempt personnel. The Arbitrator explained that the language in Article 7.03 is mandatory. As such, the Agency “could have reworked the PO 2 job specifications to accurately reflect the fact that PO 2s were spending the majority of their time MUI investigations, rather than transferring those investigations to non-bargaining unit exempt Program Administrators.” Accordingly, the Arbitrator sustained the grievance and ordered the Agency to restore the PO 2 position and to make the affected employees whole.