**OCB AWARD NUMBER: 2197**

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| **SUBJECT:** | **ARB SUMMARY # 2197** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-00-20120712-0066-05-02** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **FOP Unit 2** |
| **ARBITRATOR:** | **E. William Lewis** |
| **GRIEVANT NAME:** | **Steven Laird (class)** |
| **MANAGEMENT ADVOCATE:** | **Tyrone Reynolds** |
| **UNION ADVOCATE:** | **Paul Cox** |
| **ARBITRATION DATE:** | **12/6/2012** |
| **DECISION DATE:** | **02/18/2013** |
| **DECISION:** | **Granted** |
| **CONTRACT SECTIONS:** | **Article 22.02 – Posting of Work Schedules; Article 34 - Seniority** |
| **OCB RESEARCH CODES:** | **117.232 – Seniority Lists; 117.229 – Work Unit Seniority; 118.25 – Work Rules-Posting-Reasonableness** |

**HOLDING: Grievance granted. The Arbitrator held that the Agency violated the CBA by having police officers bid on shift assignments using total bargaining unit seniority within the agency instead of total bargaining unit seniority.**

The Grievant was a police officer and represented the class of police officers at the Alum Creek Facility who were negatively impacted when the Agency substituted a shift bidding list with bargaining unit seniority for a shift bidding list using agency seniority. Following the posting of the agency seniority list, Grievant filed a class-grievance stating that the Employer violated Articles 22.02 and 34 by using agency seniority instead of bargaining unit seniority.

The Agency argued that the plain language of the CBA required the Agency to only count bargaining unit seniority within the respective agency for shift assignment bidding. To hold otherwise would be “grammatical gymnastics” because the CBA’s plain language and intent was to protect officers who gained tenure at one agency. Highlighting the addition of the 1994-1997 “within the respective agency” language, the Agency intended to carve out agency seniority protections—a standard that had been clearly understood for eighteen years.

The Union argued that the Agency’s reading of the language was incorrect as 22.02 does not modify under Article 34. Specifically, the Union relied on a Union witness who testified that seniority referred to bargaining unit seniority. The witness went on to recount how the language that defined seniority as agency seniority was taken out many years ago. Moreover, since Article 34 provides the only definition for seniority (bargaining unit seniority), that definition must control.

The Arbitrator found that the language in Section 22.02 required the use of bargaining unit seniority. Because both parties agreed the issue was properly before the arbitrator, the Arbitrator had authority to interpret the “within the respective agency” language. The Arbitrator held the “within” language not to be read out of the CBA, rather the language used within the bargaining unit to identify when and how to apply bargaining unit seniority. This reading was supported by other provisions of the CBA which did not contain agency seniority—including Article 34 which defines seniority. Moreover, although most classifications were unique to an agency, police officers are employed in multiple agencies. This further supported the Union’s contention that the intent was for seniority to apply to the entire bargaining unit.