**OCB AWARD NUMBER: 2202**

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| **SUBJECT:** | **ARB SUMMARY # 2202** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **30-04-20111229-0141-05-02** |
| **DEPARTMENT:** | **Department of Taxation** |
| **UNION:** | **FOP** |
| **ARBITRATOR:** | **Susan Grody Ruben** |
| **GRIEVANT NAME:** | **Angela Teniente** |
| **MANAGEMENT ADVOCATE:** | **Charles L. Kumpar** |
| **UNION ADVOCATE:** | **Paul L. Cox** |
| **ARBITRATION DATE:** | **12/13/2012** |
| **DECISION DATE:** | **3/13/13** |
| **DECISION:** | **Modified** |
| **CONTRACT SECTIONS:** | **Article 19.05 – Progressive Discipline** |
| **OCB RESEARCH CODES:** | **118.301 – Progressive Discipline; 118.6561 – Work Rules; 118.08 - Suspension** |

**HOLDING: Grievance modified. The Arbitrator found that while Grievant’s tax preparer made the error in the initial tax filing, Grievant did not take sufficient steps to ensure that the preparer remedied the problem. Although Grievant, as an employee of the Department of Taxation, is held to a higher scrutiny when filing her taxes, Grievant’s actions did not constitute a “major” neglect of duty. A written warning was sufficient.**

Grievant was a Tax Enforcement Agent 2 with the Department of Taxation. As part of Grievant’s duties, she was responsible for dealing with taxes on a daily basis and sometimes testified in tax court. It came to the attention of the Employer that Grievant had failed to accurately report income on her 2009 tax returns. This error stemmed from a mistake by Grievant’s tax preparer who forgot to indicate unemployment compensation for Grievant’s husband.

The Employer argued that Grievant was in a position of public trust and failing to properly file a tax report could damage her credibility, especially when testifying in court. Grievant did not file an amended return within 60 days—the Department had to notify Grievant about the error four months after the Grievant had already been told by the IRS. The CBA and discipline grid allowed for more severe discipline; a one-day suspension if the lowest possible discipline Grievant could have received for her actions. The Union’s argument that the grid was not bargained for is not before this arbitrator. Further, the CBA gives the Employer to power to issue discipline and any challenge to the Employer’s power under R.C. 4117 is to be handled by SERB.

The Union countered that the tax forms were prepared by Grievant’s preparer who Grievant had used since 2004. At no point had there been any previous issues with the preparer, and as soon as Grievant found out about the error from the IRS, she told her preparer to file an amended return. Despite the error, no violation of the work rules occurred as Grievant timely filed her 2009 return. Employer’s policies allow for non-progressive discipline so the disciplinary grid should be ignored and Grievant should receive a verbal reprimand.

The Arbitrator found that Grievant believed her tax preparer had filed an amended return per her request. Although Grievant’s preparer had not exhibited any issues in the past, Grievant failed to take any affirmative action to confirm that her preparer filed the amended return. Reliance on a tax preparer is an incomplete defense. Although Grievant did not take sufficient steps to oversee the preparer’s performance, this did not constitute a major neglect of duty; rather, this failure falls under Rule 18 (Violation of Ohio or Department Policies). The Employer had just cause to discipline the Grievant for failing to oversee her 2009 tax returns, but her reasonable reliance mitigates the discipline from a one day suspension to a written warning.