**OCB AWARD NUMBER: 2206**

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| **SUBJECT:** | **ARB SUMMARY # 2206** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **31-02-20120215-0002-01-07** |
| **DEPARTMENT:** | **Ohio Department of Transportation** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Mitchell B. Goldberg** |
| **GRIEVANT NAME:** | **Michael Danko** |
| **MANAGEMENT ADVOCATE:** | **Edward A. Flynn** |
| **UNION ADVOCATE:** | **James J. Hauenstein**  |
| **ARBITRATION DATE:** | **3-13-2013** |
| **DECISION DATE:** | **4-29-2013** |
| **DECISION:** | **GRANTED**  |
| **CONTRACT SECTIONS:** | **Article 1.05 – Bargaining Unit Work**  |
| **OCB RESEARCH CODES:** | **117.340 Erosion of Bargaining Unit 117.339 Supervisor Barred From Bargaining Unit Work**  |

**HOLDING: Grievance GRANTED. The Arbitrator found that Section 1.05 of the CBA had been violated by the Employer. The Employer cannot assign Safety Program Consultants any job duties of a Safety & Health Inspector under the current proportionality of work between the Safety Program Consultant and other supervisors. This is because the CBA requires that there be no alteration of the shared proportion of work between the Safety Program Consultant position and other supervisors. In effect, the Employer had eroded the Safety Inspector position through its practices.**

Grievant was a Health & Safety Inspector (SI). The Employer decided not to fill an SI position after it was vacated in District 2. Around the same time, that SI’s supervisor position, the Safety Program Consultant (SC) position, was also vacated but later filled. Some of the duties of the vacated SI position were delegated by the Employer to non-Safety Consultants. The remaining duties were previously shared duties between the SI and SC. After the new SC was hired, these shared duties remained with the SC. As a result, Grievant alleged that Section 1.05 had been violated by the Employer’s decision to not fill the vacant SI position and to disperse SI duties among the SC and non-Safety Inspectors.

The Employer acknowledged its decision to not fill the SI position. The Employer argued that this was based upon its operational need to promote efficiency and avoid duty redundancies. Additionally, it contended that class specifications are somewhat inapplicable, claiming that the listed duties for the SI position were not always the actual duties of an SI. The Employer argues that this decision was executed without any intention or plan to erode the SI position. Therefore, the Employer contends that the SI position was not eroded or assigned disproportionally to the SC. Furthermore, the Employer claims that the grievance should be denied.

The Union contends that the duties of the SI position still remain. The Employer has violated the CBA by dispersing these duties to various supervisors and non-inspectors. Additionally, the Union claims that the Employer intentionally and deliberately planned to erode the SI position by eliminating the unit members who perform SI duties. The Union argues that at one time, there were three Safety Inspectors in District 2. Over time, the Union claims that these duties were systematically taken away from inspectors and assigned to others to the point where SI employees no longer remained in District 2. Therefore, the Union argues that Section 1.05 of the CBA had been violated and the grievance should be granted.

The Arbitrator found that Section 1.05 of the CBA had been violated by the Employer. The Employer may eliminate the work duties of the SI position as long as the shared proportion of work that had previously existed between the SC and other supervisors remains proportional. The proportionality of work between the SC and other supervisors is determined by the proportionality in effect at the beginning date of the current CBA agreement. The Employer may delegate some of the SI duties to other positions other than the SC. However, in this situation, the Arbitrator concluded that the Employer had caused disproportionality between the SC and other supervisors by assigning SI duties to the SC, thereby violating Section 1.05. Therefore, the Arbitrator found that the grievance should be granted.