**OCB AWARD NUMBER: 2207**

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| **SUBJECT:** | **ARB SUMMARY # 2207** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **70-00-20120203-0001-01-14** |
| **DEPARTMENT:** | **The Office of the Ohio Public Defender** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Craig A. Allen** |
| **GRIEVANT NAME:** | **Jacqueline McClain** |
| **MANAGEMENT ADVOCATE:** | **Victor Dandridge** |
| **UNION ADVOCATE:** | **Dan Ely** |
| **ARBITRATION DATE:** | **4-17-2013** |
| **DECISION DATE:** | **5-8-2013** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Article 25.03-Arbitration Procedures Article 36.05- Classifications and Pay Range Assignments Article 11.09-Working Alone** |
| **OCB RESEARCH CODES:** | **Arbitrability-Substantive 94.091 Hazard Pay 115.55** |

**HOLDING: Grievance GRANTED. The Arbitrator found that when there are interpretative disputes involving the CBA, that interpretation may be subjected to the Arbitrator’s discretion, which in this case, allowed the Grievant three percent Hazard Supplemental Pay from the date of this decision under Article 36.05. The Arbitrator reasoned that the Grievant is the sole employee of this Agency assigned to the Corrections Reception Center in an area where there are many male Inmates and no CO solely dedicated to the Grievant for protection. Article 11.09 did not apply.**

Grievant is an Administrative Professional 3 working for the Public Defender. Grievant works at the Correction Reception Center in an Inmate Housing Unit. The Grievant walks through the Yard and the Inmate Housing Unit to her office without an escort daily. The Grievant wears a spider alarm that only works in the buildings. The Grievant interacts with the Inmates through the Inmate Orientation program and assists the Inmates with legal matters. Additionally, Grievant has witnessed many fights among the Inmates. Although there are two Correction Officers (CO) assigned to her Unit, these officers have other duties besides protecting the Grievant.

The Employer argues that the five percent Hazard Pay Supplement demand by the Grievant has no basis in the Contract. Therefore, the Employer asserts that Article 25.03 governs. The Employer claims that this dictates that the Arbitrator cannot modify any terms of the CBA. The Employer contends that this situation is solely covered by the OAC 123:1-37-04, which states that “hazard pay is subject to the approval of the director.” Furthermore, the Employer argues that Article 11.09 does not address Hazard Pay Supplement. Moreover, the Employer points out that Union’s subject matter expert testified that Article 36.05 did not mandate a Hazard Pay Supplement. Therefore, the grievance should be denied.

The Union contends that Arbitration is appropriate for this grievance. The Union reasons that Article 11.09 and Article 36.05 may be interpreted through the Contract or the OAC. The Union asserts that the Grievant worked alone and therefore Article 11.09 was violated. Furthermore, the Union argues that Article 36.05 allows the parties to review pay issues for a Classification series, a segment or positions of a class plan. Additionally, the Union claims that Article 36.05 does not render Arbitration inappropriate. Therefore, the grievance should be granted.

The Arbitrator found that Article 25.03 allowed for Arbitration in this situation since the grievance involved an interpretative dispute. Therefore, the Arbitrator could examine Article 36.05 and Article 11.09. The Arbitrator established that Article 11.09 does not apply since the Article does not address Hazard Pay Supplement. However, the Arbitrator concluded that Article 36.05 did not preclude Arbitration. The fact that the Grievant is the sole employee of this Employer, her office is located near many male Inmates, and there was no CO assigned solely for her protection, the Grievant was entitled to a three percent Supplemental Pay from the date of the decision.