**OCB AWARD NUMBER: 2209**

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| **SUBJECT:** | **ARB SUMMARY # 2209** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **19-00-20120511-0003-01-07** |
| **DEPARTMENT:** | **Ohio Department of Insurance** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Howard D. Silver** |
| **GRIEVANT NAME:** | **Larry N. Smith** |
| **MANAGEMENT ADVOCATE:** | **Joan W. Olivieri** |
| **UNION ADVOCATE:** | **Nancy Lynn Belcher** |
| **ARBITRATION DATE:** | **4-26-2013** |
| **DECISION DATE:** | **6-3-2013** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Article 17.04- Applications, Article 17.05- Selection, Article 17.06- Proficiency Instruments/Assessments** |
| **OCB RESEARCH CODES:** | **Proficiency Instruments- 119.02, Promotions- Ability & Qualifications 119.1221, Promotions-Selection in General 119.01** |

**HOLDING: Grievance DENIED. The Arbitrator found that the Employer did not violate Article 17 of the CBA when the Employer did not give the Grievant a promotion. The Grievant did not obtain a passing score on an interview/testing procedure. Although the Arbitrator reviewed how the test was applied to the Grievant and granted the Grievant additional points on the test, the Grievant still did not pass the test. Therefore, the Employer was not at fault when the Employer gave applicants outside of the department the Grievant’s desired promotional position.**

Grievant is an Insurance Complaint Analyst 1 working for the Ohio Department of Insurance. On March 23, 2012, the Ohio Department of Insurance posted a notice for two vacant Insurance Complaint Analyst 3 positions. Each position is paid at pay range 32. Grievant possesses over thirty years of experience in the insurance industry and has been employed by the Ohio Department of Insurance since May 14, 2007. Grievant timely filed an application with the Employer for a promotion to the posted Insurance Complaint Analyst 3 position. Soon after, Grievant participated in a testing and interview procedure. The Employer determined that a passing grade would be 98 out of 140. Grievant scored 93.5 out of 140, a non-passing grade. After Grievant was denied the promotion, Grievant filed a grievance, charging that the refusal to promote Grievant violated Article 17.04, 17.05, and 17.06 of the CBA. Additionally, Grievant alleged that the testing procedure contained vague questions that were too open to interpretation.

The Employer argued that it had the right to create and use a structured interview/test. Additionally, the test used by the Employer was sound and scored appropriately. The Employer contended that the interview panel scored the Grievant’s answers against benchmarks, discussed the answers thoroughly and then rechecked their scores against the other applicants. The Grievant was given ample time to fully answer each question. Furthermore, the Employer argued that four external applicants received a passing score. Two of those applicants were selected for Insurance Complaints Analyst 3 positions. Therefore, the Employer did not violate any sections of Article 17 and the grievance should be denied.

The Union argued that the questions posed in the interview and testing process were too vague and not objective. Additionally, the Union contended that the Grievant should have received additional points. The Union asserted that the interview questions did not determine one’s knowledge of the job. The Union believed that the Grievant should have received a passing score. Therefore, the Union contends that the Grievant should have received a promotion to the Insurance Analyst 3 position, since the other four applicants were not from the Ohio Department of Insurance. The Union claimed that the grievance should be granted.

The Arbitrator found that the Employer did not violate Article 17 of the CBA and that the grievance should be denied. The Arbitrator did not find the questions used by the Employer to have been arbitrary, capricious, or an abuse of discretion. Additionally, the Arbitrator did not find any basis to alter the testing process. However, the arbitrator did consider how the testing process was applied to the grievant. This consideration took place in order to determine whether or not any parts of the testing procedure were scored arbitrarily or in error. After reviewing the testing process and how it was applied to the Grievant, the Arbitrator determined that the Grievant should be granted an additional 3.5 points to his score. This gave the Grievant a score of 97, one point below a passing grade. Therefore, the Grievant did not pass the evaluation and the Employer did not violate Article 17. The Arbitrator found that the grievance should be denied.