**OCB AWARD NUMBER: 2212**

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| **SUBJECT:** | **ARB SUMMARY # 2212** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **35-04-20120523-0014-02-12** |
| **DEPARTMENT:** | **Ohio Department of Youth Services** |
| **UNION:** | **SEIU District 1199** |
| **ARBITRATOR:** | **Thomas J. Nowel** |
| **GRIEVANT NAME:** | **Jurldine Hicks** |
| **MANAGEMENT ADVOCATE:** | **Larry L. Blake** |
| **UNION ADVOCATE:** | **Casey Whitten** |
| **ARBITRATION DATE:** | **5-15-2013** |
| **DECISION DATE:** | **7-23-2013** |
| **DECISION:** | **DENIED**  |
| **CONTRACT SECTIONS:** | **Article 1- Purpose and Intent of the Agreement Article 7- Grievance Procedure Article 28- Seniority**  |
| **OCB RESEARCH CODES:** | **Arbitrability-Procedural 94.09, Promotions-Minimum Qualifications 119.1223** |

**HOLDING: Grievance DENIED. The Grievant did not meet the minimum qualifications for the position in question. Previous MOU’s dictated that the Employer could not require certain licensures for the Social Worker 3 position. However, these MOU’s were only effective until October of 2010.**

Grievant is a Social Worker 2 at the Indian River Juvenile Detention Facility with approximately twenty-nine years of experience. In June of 2010, a Social Worker 3 position at the Indian River Facility became available. Grievant applied for the position, and the facility initially accepted her application and indicated that the Grievant would be promoted to Social Worker 3. However, Central Office at the Department wished to upgrade the Social Worker 3 position by requiring a particular licensure set that the Grievant did not possess. The Grievant’s promotion was then denied. Management claimed that a promotion is not final until the Department of Administrative Services approves it. The Grievant filed a grievance but it was withdrawn. After these events, in April of 2012, the Employer posted notice for a Social Worker 3 job opening at the same facility, requiring the same set licensures. These licensures were different than the agreed upon licensures according to MOU’s that expired October of 2010. Although the Grievant did not possess these licensures, the Grievant applied for the position. The Employer denied the Grievant’s application and re-posted the position in May of 2012. Shortly after, a grievance was filed.

The Employer first claimed that the grievance was not timely filed and that the Union was precluded from arguing that the Employer violated Articles 6 and 30. The Union had not alleged such Article violations in the grievance until past the period allowed. Then, the Employer argued that the Grievant did not meet the minimum qualifications. Once the Union withdrew the 2010 grievance, the dispute involving the 2010 grievance became a moot issue. The MOU regarding the Social Worker position at DYS had expired by the time the second grievance was filed. Therefore, the Employer was no longer limited in respect to modifying or increasing qualifications for the Social Worker position. The Employer asked that the grievance be denied.

The Union argued that the grievance was filed in a timely manner since the Grievant did not file until she knew her application had been denied in May of 2012. Additionally, the Union asserted that the grievance filing process contained technical difficulties. Therefore, the Union should be able to allege Article 6 and 30 violations. Furthermore, the Union contended that the original 2010 grievance was withdrawn only because the Union believed that the Employer would leave the grieved position unfilled. By reposting this position, the Employer is reposting the same vacancy which should have been awarded to the Grievant. The Union argued that the Employer waited for the original grievance to be withdrawn before reposting the same position with a level of licensure not possessed by the Grievant. Furthermore, MOU’s between the Union and Employer, limiting the Employer’s ability to alter minimum qualifications for Social Workers, still controlled under this particular vacancy. Therefore, the Union asserted that the grievance should be granted.

The Arbitrator found that the Grievant filed a timely grievance since the Grievant did not receive a rejection letter until May of 2012. The Union could not allege Article 6 and 30 violations. The Union did not amend the grievance at Step One. Regarding the MOU’s on licensures at DYS, it is clear that it expired five years from its effective date. All referenced MOU’s are either the original MOU or addendums. The Arbitrator concluded that he could not make a ruling upon the withdrawn 2010 grievance despite any relevance it may have to the situation at hand. The 2010 grievance was withdrawn eight days after the April of 2012 job posting. If this grievance was related to the 2010 grievance, then the 2010 grievance should not have been withdrawn. Although the position number grieved in the 2010 grievance is the same as the 2012 grievance, there was no evidence that the same duties were involved. Therefore, the Employer was not bound to maintain the licensure qualifications of the previously discussed MOU’s. The Grievant did not meet minimum qualifications and the grievance was denied.