**OCB AWARD NUMBER: 2217**

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| **SUBJECT:** | **ARB SUMMARY # 2217** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **01-00-20120319-0001-01-07** |
| **DEPARTMENT:** | **Adjutant General** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Craig A. Allen** |
| **GRIEVANT NAME:** | **John Klaus** |
| **MANAGEMENT ADVOCATE:** | **Robert Patchen** |
| **UNION ADVOCATE:** | **Thomas B. Cochrane** |
| **ARBITRATION DATE:** | **7-9-2013** |
| **DECISION DATE:** | **8-26-2013** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Articles: 44.04, 2.01, 28, 27, 30.02, 13.10, 44, 44.02** |
| **OCB RESEARCH CODES:** | **106.01- Discrimination- In General 115.501 Overtime- In General** |

**HOLDING: Grievance GRANTED. The Grievant was entitled to Military Leave for travel and rest with regard to National Guard training duty. This was determined by past practice. Past practice can establish how the parties interpret contract ambiguity. Ohio Law permits a CBA to grant greater benefits to an employee than what may be found in existing statutes.**

Grievant is a Firefighter. Prior to joining the Union and until March 9, 2012, Firefighters were paid Military Leave for travel to monthly National Guard training duties. Additionally, if these participants elected to take rest periods after training they were given Military Leave. In March of 2012, the Adjutant General’s Department announced that Military Leave for travel or rest time would no longer be paid. There are two issues in this case: (1) Is this matter substantively arbitrable?; (2) If it is, does the Adjutant General’s change in practice concerning paid military leave for travel and rest time violate the CBA?

The Employer contended that Military Leave was improperly administered. There were inconsistent requests for time, being that some employees asked for eight hours while others asked for twenty-four hours. Thereafter, the Employer decided that there would not be Military Leave payments for travel or rest time. The Employer asserted that Military Leave comes from Federal funds. Unauthorized payments may cause issues with the United States Property and Fiscal Officer, causing the payments to stop. An audit in May, June and July of 2012 produced inconclusive results, meaning that there could be up to a $345,000 cost to the State of Ohio. Additionally, the Employer argued that the arbitrator did not have jurisdiction over this case. To bolster their case, the Employer claimed that the contract was silent regarding Military Leave. Instead of interpreting the contract, the appropriate statute should apply. Therefore this was an issue of statutory interpretation, outside the four corners of the contract. Also, the Employer contended that the past practice of other agencies should be considered—in that past practice must be common to multiple states agencies. The Employer is entitled to modify past practice. The Employer stated that the grievance should be denied for the previous reasons mentioned.

The Union produced multiple Firefighters that testified that they were in the National Guard. During these Firefighters’ testimonials, they proclaimed that they have been paid travel time to attend National Guard Training. This policy was implemented before Firefighters joined the Union in 2003 and continued until March of 2012. Travel time is a separate entity from personal leave or vacation leave and has been treated as such during the time period previously mentioned. Past practice reveals how the parties interpret ambiguous contract language. Such an interpretation cannot be changed at a whim. Therefore, the Union claimed that the grievance should be granted.

The Arbitrator found that there was sufficient evidence to establish that the Grievant was entitled to Military Leave for travel and rest. Ohio law permits a CBA to grant greater benefits to an employee than may be found in existing statutes. The contract was not silent concerning the payment of military leave. Past practice can establish how the parties interpret contract ambiguity. Different interpretations by different agencies are irrelevant when these agencies differ in skills, hours of operation and sometimes the hazardous nature of the job, making the interpretation of ambiguous language—and therefore practice—unique to each agency.