**OCB AWARD NUMBER: 2218**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2218** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **24-09-20101230-0087-05-02 and 24-09-20101230-0088-05-02** |
| **DEPARTMENT:** | **DoDD** |
| **UNION:** | **FOP** |
| **ARBITRATOR:** | **Nels E. Nelson** |
| **GRIEVANT NAME:** | **Rodney Fry** |
| **MANAGEMENT ADVOCATE:** | **Melinda Armstrong** |
| **UNION ADVOCATE:** | **Paul Cox** |
| **ARBITRATION DATE:** | **7-29-2011** |
| **DECISION DATE:** | **9-29-2011** |
| **DECISION:** | **Denied** |
| **CONTRACT SECTIONS:** | **Articles: 7; 7.01; 7.03;**  |
| **OCB RESEARCH CODES:** | **117.340 – Erosion of Bargaining Unit; 117.331 – Work Assignments in General** |

**HOLDING: The Arbitrator found that the Management did not violate Articles 7.01 and 7.03 respectively when it had certain tasks that fell within the realm of bargaining unit work done by non-bargaining unit members and; when management did not provide the Union notice of intent to fill a vacant position or that position’s change in the class plan. The Arbitrator denied both the grievances.**

The grievant is a Police Officer (PO) 2 at Mount Vernon Developmental Center (MVDC) with the Department of Developmental Disabilities (DoDD)**.** There were 2 PO positions at MVDC until one of the POs retired, leaving a vacant PO position and the grievant. Management utilized other non-bargaining unit positions to assist with duties that POs usually did. Management also did not fill or intend to the fill the vacant PO position.

Management’s position was that Management maintained the right to determine work assignments, under Article 6. Management showed that there was overlap of duties between bargaining unit and non-bargaining unit employees regarding maintaining and securing MVDC. Duties like conducting unusual incident investigations, safety training, fire drills and crowd and traffic control are essential functions of the facility. These duties are not solely specified to the PO position series and that other positions are trained and utilized for these duties. Management did not fill the vacant PO 2 position because it maintained its right, under Article 6, to determine the number of persons to be employed and to transfer work as needed. Management claimed that since no changes were made to the class plan, no notice was needed.

The Union argued that Management eroded the bargaining agreement by deliberately refusing to fill a bargaining unit position and by having non-bargaining unit positions continue the duties of a vacant bargaining unit position. The Union argued that when one of the POs retired from MVDC, it was assumed that the position would be filled. The Union argued that no agreement was made that the second PO position would *not* be filled. The Union argued that this deliberate erosion of the bargaining agreement is a clear violation of Article 7.

The Arbitrator found that while it seemed that many non-bargaining unit positions were doing bargaining unit work, further examination revealed that when reading the list of “Job Duties” for both the PO positions and several of the non-bargaining unit positions, it is found that many of the duties overlap. The Arbitrator found that Management was not obligated to fill the vacant PO position. The Arbitrator also found that Management did not make any changes to the class plan and therefor was not obligated to provide a notice to the Union. The Arbitrator denied both grievances in their entirety.