**OCB AWARD NUMBER: 2249**

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| **SUBJECT:** | **ARB SUMMARY # 2249** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-23-20130228-0015-01-03**  |
| **DEPARTMENT:** | **Department of Rehabilitation and Correction** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Howard D. Silver** |
| **GRIEVANT NAME:** | **Christine Minney** |
| **MANAGEMENT ADVOCATE:** | **Sandy Hinton** |
| **UNION ADVOCATE:** | **David Justice** |
| **ARBITRATION DATE:** | **3-11-2014** |
| **DECISION DATE:** | **4-30-2014** |
| **DECISION:** | **DENIED**  |
| **CONTRACT SECTIONS:** | **Articles 7, 17.05 and 19.04**  |
| **OCB RESEARCH CODES:** |  **119.1223-Promotions—Minimum Qualifications**  |

**HOLDING: Grievance DENIED. The superior candidate was granted the promotion. The candidates’ scores were not similar enough to render them substantially equal. Seniority, thus, is not a dispositive factor.**

*Facts.* Mr. Vickers was given a newly vacated position temporarily. Later, the Employer opened competition for the position. The hiring process played out and Mr. Vickers was awarded the position permanently. As is customary, not everyone found this satisfactory. The Grievant felt that she should have gotten the job. After all, she had more seniority. She also challenged the way her test was graded. She believed that she should have received a higher score. Indeed, if she did, her marks would be close enough to Mr. Vickers’s that her seniority would trump Mr. Vickers’s other credentials. The position would be hers.

*The Employer’s Argument.* The superior candidate was granted the position. Mr. Vickers scored significantly higher than the Grievant on his evaluation. Seniority, thus, is not a dispositive factor. The process was fair as well. The fact that Mr. Vickers held the promotional position temporarily pre-evaluation was a nonfactor. All tests were administered equitably and graded accurately. The Employer fixed its previous mistake, recognizing that the Grievant met minimum qualifications. The Grievant went through the entire process under the same conditions as everyone else. She just did not score high enough to obtain the promotion.

*The Union’s Argument*. The Grievant should have been promoted. She is a 21 year employee with a variety of relevant experience that has been subjected to an unfair evaluation. The Grievant was given a different test than Mr. Vickers. And on top of that, her test was graded inaccurately. If that is not enough, notice that she was not properly instructed on how to answer a specific question. So she received a lower score than she should have. Since an accurate evaluation would have gotten her the position, for the sake of equity, she should be granted the promotion.

*Holding.* The superior candidate was granted the promotion. The candidates’ scores were not similar enough to render them substantially equal. Seniority, thus, is not a dispositive factor.