**OCB AWARD NUMBER: 2252**

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| **SUBJECT:** | **ARB SUMMARY # 2252** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **34-12-121012-0052-01-09** |
| **DEPARTMENT:** | **Bureau of Workers’ Compensation** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Meeta A. Bass** |
| **GRIEVANT NAME:** | **Lois Bryant** |
| **MANAGEMENT ADVOCATE:** | **Ruth A. Rehak** |
| **UNION ADVOCATE:** | **Jennie Lewis and David Harper** |
| **ARBITRATION DATE:** | **5-14-2014** |
| **DECISION DATE:** | **7-07-2014** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Articles 13.07, 13.10, 27.04 and 28.03** |
| **OCB RESEARCH CODES:** | **115.501 – Overtime – In General****116.151 Vacation** |

**HOLDING: Grievance GRANTED. The Employer’s policy of denying requests for leave during an overtime opportunity required the Grievant to waive her contractual rights to personal leave. Requiring the Grievant to flex her schedule to avoid overtime is a violation of the collective bargaining agreement. Denying a request for personal leave due to participation in an overtime opportunity is an unreasonable denial under Article 27.04.**

*Facts.* In order to meet statutory mandates and agency goals during a busy week of the year, the Bureau of Workers’ Compensation approved eight hours of overtime for all field staff at the Garfield Heights office the week of August 27, 2012. The notice of the overtime opportunity also included a stipulation that any subsequent leave requests would be denied for those wishing to participate in the overtime opportunity. The Grievant notified her supervisor of her desire to participate in the overtime opportunity. On August 27, 2012 the Grievant requested that she be able to take the last two hours of her shift off as personal leave to deal with a family emergency. Her supervisor denied the personal leave request due to the stipulation in the email, but allowed the Grievant to take the time off and then flex it later in the week. Two days later, Grievant filed a request for leave for the two hours of personal leave and the request was denied. Grievant worked 46 hours that week and was paid 40 hours at her regular rate and 6 hours at the premium rate.

*The Employer’s Argument.* There were sound business reasons to deny the Grievant’s discretionary leave request. Employees were given advance notice that they would be required to flex their leave during the overtime week. These requests were denied due to the operational needs of the Employer during the overtime week. Employees were still allowed to take time off, but not to collect leave because they were earning overtime that week. There was no contractual violation and no harm resulted on the Grievant.

*The Union’s Argument*. The Employer violated Article 27.04 when it required the Grievant to flex her time instead of approving her request for personal leave. Under Article 13.07 the Employer may not change schedules to avoid paying overtime. Grievant should be awarded the two hours of overtime that she was denied.

*Holding.* The collective bargaining agreement states that requests for personal leave made short of forty-eight hours shall not be denied unreasonably. Approval of this leave is discretionary to the Employer, but denial must be justified. Here, the Grievant was required to circumvent the process set forth in Article 27.04 and rather flex the time she was requesting to be off. This policy required the Grievant to waive her contractual rights to personal leave to participate in the overtime opportunity. Because personal leave is considered “active pay status,” the Grievant was entitled to this leave and to be paid the extra two hours of overtime compensation. Employer cannot cause a change in work schedules to avoid the payment of overtime. Grievance is therefore, granted.