**OCB AWARD NUMBER: 2259**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2259** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20120510-0047-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Jack Buettner** |
| **GRIEVANT NAME:** | **Joseph Glascox** |
| **MANAGEMENT ADVOCATE:** | **Lt. Jacob Pyles** |
| **UNION ADVOCATE:** | **Hershel M. Sigall** |
| **ARBITRATION DATE:** | **9-9-2014** |
| **DECISION DATE:** | **10-27-2014** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Article 30** |
| **OCB RESEARCH CODES:** |  **Transfer—120.01** |

**HOLDING: Grievance DENIED. Arbitrator determined that the Employer had just cause to deny the Grievant’s transfer request. The Grievant did not meet the key criteria for the position. Grievant lived 51.16 miles from the report-in location and the position required the applicant to live within 50 miles of the report-in location. Arbitrator found that this requirement was consistently applied and not negated by a question asking about an applicant’s willingness to move.**

*Facts.* Grievant works for the Department of Public Safety. He applied for a posted K-9 position in a different district. When asked on the application whether he lived within the required 50-mile radius of the report-in location, Grievant stated that he lived “at the 50 mile radius.” Therefore, the Grievant was given an interview for the position. During the interview Grievant was asked again whether he lived within the required 50-mile radius of the report-in location, he answered that he lived 50.3 miles away. Using software allowed by Article 31.01, the Employer concluded that the Grievant lived 51.16 miles from the report-in location. Throughout the application process, Grievant’s house was for sale and he was planning to move, but still lived in his residence.

*Employer’s Position.* Grievant was not awarded the position because he did not meet the “key criteria” listed in the job posting. Grievant has applied for this position more than once and each time this requirement has remained consistent. The Grievant was given an interview because his application stated that he lived “at the 50 mile radius.” Upon learning that the Grievant actually lived 51.16 miles from the report-in location, he was eliminated from consideration for the K-9 position because he did not meet one of the key criteria for the job. Article 30 does not apply if the applicant does not meet the key criteria for the position.

*Union’s Position.* Grievant’s requested move to the canine position would have been lateral and therefore the Employer should only consider ability and seniority. The Grievant’s ability to perform the job was not in dispute and he was the most senior applicant. The distance from the report-in location should not disqualify the Grievant. The form used for applicants requesting a transfer also asks whether “the applicant would be willing to move to meet the 50 mile requirement?” Grievant stated his willingness to move closer and even planned to do so once the sale of his home was final. The inclusion of this question indicates that the answer should bear some significance on the Employer’s decision.

*Arbitrator’s Decision.* Arbitrator determined that the Grievant failed to meet the stipulated residential requirement and was therefore not unduly denied the K-9 position. The Employer has been consistent in applying this requirement. The residential requirement is included because a Criminal Patrol team member can only drive their state vehicle for commuting to work if they live within a 50-mile radius. A division canine can only be transported in the Canine Handler’s state vehicle. Therefore, it would be counterproductive to not enforce the residential requirement. The inclusion of a question regarding willingness to move does not negate the key criteria for the position. It also does not matter that the Grievant was planning to move because his residence is considered during the time he is applying. Due to the Grievant’s previous applications and the amount of times he was asked about where he lived, he should have known the residential requirement was a key criteria. The Union failed to prove that the Employer violated the contract and therefore the grievance is without merit and denied.