**OCB AWARD NUMBER: 2263**

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| **SUBJECT:** | **ARB SUMMARY # 2263** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **MEGAN SCHENK** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20120511-0049-04-01** |
| **DEPARTMENT:** | **Department of Public Safety, Division of Ohio State Highway Patrol**  |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Sherrie Passmore**  |
| **GRIEVANT NAME:** | **Christopher Ausse** |
| **MANAGEMENT ADVOCATE:** | **Lt. Cassandra Brewster** |
| **UNION ADVOCATE:** | **Elaine N. Silveira**  |
| **ARBITRATION DATE:** | **9-24-2014** |
| **DECISION DATE:** | **12-10-2014** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Article 30.01, 23.02** |
| **OCB RESEARCH CODES:** | **119.01—Promotions—Selections In General****120.01—Transfer**  |

**HOLDING: Grievance GRANTED. Article 30.01 provides that both seniority and ability are to be considered when determining the appropriateness of a transfer. And Article 23.02 identifies the criteria to be used in determining the ability required to be a K-9 Handler.** **Grievant was the most senior applicant, and eight years the senior to the successful applicant. The term ability under Article 23.02 has been subject to two previous arbitrations where both arbitrators determined that the appropriate question is whether or not the individual has the minimum ability to perform the job, not whether one individual has more ability than another. Using Article 23.02’s criteria, Grievant was determined to have the minimum ability to perform the job. As the most senior applicant, then, Grievant should have been granted the K-9 Handler position.**

*Facts.* Grievant is a Trooper with the Ohio State Highway Patrol. He applied for a K-9 Handler position, was interviewed, but was not selected for the position. Grievant then filed a grievance claiming that he should have been granted the position because he has the abilities required to do the job and he had the most seniority out of all the applicants.

*Employer’s Position.* Both seniority and ability are considered when selecting an employee for specialty positions like a K-9 Handler. Grievant was the most senior applicant, but he lacked the ability to receive the position. Grievant has a reputation for mismanaging his sick leave, being less productive than desired and not taking responsibility. K-9 Handlers have a tremendous amount of detailed documentation to complete, and because of his reputation and record, Employer felt that he did not have the ability to sufficiently and effectively complete the paper work involved. During his interview, moreover, Grievant did not seem to have a firm grasp on basic search and seizure law, which K-9 Handlers are supposed to be experts on.

*Union’s Position.* Grievant should have been granted the position. It is not a promotion; it is a lateral transfer, and since the position is a lateral transfer and qualifications are not an issue, the position should have been awarded based on abilities and seniority. Grievant had eight years more seniority than the successful candidate and Grievant met the minimum ability test required to do the job.

*Arbitrator’s Decision.* Grievance granted. Article 30.01 provides that both seniority and ability are to be considered when determining the appropriateness of a transfer. And Article 23.02 identifies the criteria to be used in determining the ability required to be a K-9 Handler. Grievant was the most senior applicant, and eight years the senior to the successful applicant. The term ability under Article 23.02 has been subject to two previous arbitrations where both arbitrators determined that the appropriate question is whether or not the individual has the minimum ability to perform the job, not whether one individual has more ability than another. Using Article 23.02’s criteria, Grievant was determined to have the minimum ability to perform the job. As the most senior applicant, then, Grievant should have been granted the K-9 Handler position.