**OCB AWARD NUMBER: 2264**

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| **SUBJECT:** | **ARB SUMMARY # 2264** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **MEGAN SCHENK** |
| **OCB GRIEVANCE NUMBER:** | **27-08-20140321-0031-01-03** |
| **DEPARTMENT:** | **Department of Rehabilitation and Correction** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Craig A. Allen** |
| **GRIEVANT NAME:** | **David Stewart** |
| **MANAGEMENT ADVOCATE:** | **Rick Shutek** |
| **UNION ADVOCATE:** | **Kevin Birchfield** |
| **ARBITRATION DATE:** | **11-14-2014** |
| **DECISION DATE:** | **1-13-2015** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Articles 2.02, 24.01, 24.02** |
| **OCB RESEARCH CODES:** | **106.21—Agreement Rights**  **118.01—Discipline-In General** |

**HOLDING: Grievance DENIED. Grievant’s involvement with a Motorcycle Club, deemed a “criminal organization” by the Columbus Police Department, is rationally related to his ability to do his job in a way that does not discredit the Department of Rehabilitation and Correction.**

*Facts.* Grievant was a Correction’s Officer at the Franklin Medical Center. The grievant had no previous discipline prior to his removal. In 2012 he was involved in an incident at a bar. The Ohio State Highway Patrol arrived because of a possible shooting at the Phantom Motorcycle Club. Grievant was handcuffed due to possession of weapons, but then released because he had a CCW. The Grievant testified that he was a member of the Phantom Motorcycle Club from 2008 until 2012. He denied holding an official position in the Club and denied ever seeing the Club’s by-laws. The Phantom Motorcycle Club is considered a criminal organization and has been known to have been involved in assaults and murders. Testimony from the Columbus Police Department stated the Grievant was an “Enforcer” for the Club and that he followed many of the rules set out in the Club’s by-laws. Two members of the Club became inmates with DR&C and the Grievant did not report the relationships, as required. In 2014 the Columbus Police Department provided DR&C with a report regarding DR&C employees and involvement with a criminal organization. Grievant was placed on Administrative Leave for thirty days and subsequently removed.

*Employer’s Position.* The Grievant has damaged the Department’s relationship with the Columbus Police Department. The Employer believed the Grievant knew he was involved in a criminal gang and only disassociated himself when he believed his job was on the line. The Employer argues that the Grievant annually attended training concerning “Security Threat Groups” which included discussion of outlaw motorcycle gangs and therefore was put on notice that these organizations were criminal. The Employer does not believe that the Grievant has actually quit his involvement with the Phantoms because he continued to participate in rides with them in 2013 and has continued contact with the Vice President. The Employer stated that they “cannot have gang members as employee’s supervising incarcerated gang members.”

*Union’s Position.* The Union argues that there is not a rational relationship between the conduct in question and the employee’s ability to do his job. They argue that other employees were surprised to hear that Grievant was removed for his involvement with a Motorcycle Club because many of them were also members of such clubs. Grievant received above average performance evaluations and had no disciplinary record. Therefore, his involvement with the Club did not affect his ability to do his job. The annual STG training did not make clear that the Phantom Motorcycle Club was considered “criminal,” and Grievant had no knowledge of such a reputation. Grievant testifies that he only joined the club to have fun and ride. Though the Grievant did not file a nexus report regarding the inmates he knew, he also did not have any contact with those inmates while incarcerated. The Employer has unnecessarily delayed this discipline from 2012 until 2014.

*Arbitrator’s Decision.* Grievance denied. Whether the Grievant is still a member of the Club or not does not matter. He still maintains a relationship with Club members. His failure to file a Nexus Report is telling evidence. The Employer’s argument that the Grievant’s involvement with the Club has brought discredit to the Department is persuasive. Grievant should have been aware of the criminal nature of the Phantom Motorcycle Club. There is a rational relationship between the conduct in question and the employee’s ability to do his job.