

**OCB AWARD NUMBER: 2504**

<b>SUBJECT:</b>	<b>ARB SUMMARY #2504</b>
<b>TO:</b>	<b>ALL ADVOCATES</b>
<b>FROM:</b>	<b>MEGAN SCHENK</b>
<b>OCB GRIEVANCE NUMBER:</b>	<b>DPS-2015-01027-1</b>
<b>DEPARTMENT:</b>	<b>PUBLIC SAFETY</b>
<b>UNION:</b>	<b>OSTA</b>
<b>ARBITRATOR:</b>	<b>SHERI PASSMORE</b>
<b>GRIEVANT NAME:</b>	<b>TAMMY SOTO</b>
<b>MANAGEMENT ADVOCATE:</b>	<b>CASSANDRA BREWSTER</b>
<b>UNION ADVOCATE:</b>	<b>HERSCHEL SIGALL</b>
<b>ARBITRATION DATE:</b>	<b>AUGUST 31, 2015</b>
<b>DECISION DATE:</b>	<b>JULY 1, 2015</b>
<b>DECISION:</b>	<b>SUSTAINED</b>
<b>CONTRACT SECTIONS:</b>	<b>19, 19.01, 19.05</b>
<b>OCB RESEARCH CODES:</b>	<b>118.01 – Discipline in General; 118.6484 – Falsification of Records; 118.6517 – Inefficiency; 118.251 – Violation of Post Orders, Policies, or Procedures</b>

**HOLDING:** Grievance **MODIFIED**. The Employer did not have just cause to terminate Grievant because, while the Employer proved 2 of the 3 charges, the Employer did not prove that Grievant changing her mind as to which jurisdiction to file the OVI charge in constituted falsification.

**Facts:** Grievant was a Trooper with 11 years of service. The grievant had an active one (1) day suspension when she was terminated citing 3 work rules: Performance of Duty, Compliance to Orders, and False Statement. The charges arose from a traffic stop of a wrong way driver. Grievant was a longtime police officer in the same jurisdiction as Grievant's husband. Grievant directed the driver to sit in her cruiser and say nothing. An officer already on the scene said he had not observed the odor of alcohol on the driver. Grievant checked the registration on the driver's vehicle and moved the vehicle so it would not be facing oncoming traffic. Grievant spoke to the driver and noted some verbal indicators of alcohol consumption and the odor of alcohol on him. Grievant charged the Driver with OVI, initially for the Oberlin Municipal Court, which had jurisdiction where the Grievant conducted the stop. After speaking to the original 911 caller, the Grievant decided to file the charge in the Vermillion Court instead, as the 911 caller observed the wrong way driver in Vermillion. The Employer initiated a criminal investigation against Grievant for falsifying the traffic citation, for which the prosecutor declined prosecution.

**The Employer argued:** Grievant was terminated for just cause. Grievant was inefficient in conducting OVI investigation in failing to ask driver why he was driving the wrong way and in failing to conduct field sobriety tests after detecting signs of alcohol consumption. Grievant failed to follow policy and procedure during the traffic stop when she failed to conduct a pat down for weapons before placing the driver in her cruiser and by failing to use her audio/video recording equipment during the stop. Grievant falsified the citation by changing the court to which she cited the OVI in order to make the citation subject being thrown out due to a jurisdictional challenge by the driver.

**The Union argued:** Grievant was wrongfully terminated. It was cold outside and that could have interfered in detecting alcohol on the breath of a driver. The Grievant filed in Vermillion, as opposed to Oberlin, because the probable cause for the stop took place within the jurisdiction of the Vermillion Court as well as the Oberlin Court.

**The Arbitrator found:** The Arbitrator found that the Employer proved that Grievant violated the Performance of Duty work rule by failing to conduct necessary questioning and testing at the scene or a traffic stop and Compliance to Orders based on a failure to follow policy and procedure for conducting pat downs and using audio/video recording equipment, but did not violate the Employer's False Statement work rule when Grievant cited the court jurisdiction Vermillion to Oberlin. As such, termination was too harsh when Grievant only had a one (1) day suspension active on her record. The discipline was modified to a three (3) day suspension and Grievant was reinstated with full backpay, seniority, and benefits.