**OCB AWARD NUMBER: 2126**

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| **SUBJECT:** | **ARB SUMMARY # 2126** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20101216-0166-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Susan Grody Ruben, Esq. |
| **GRIEVANT NAME:** | Matthew D. Kohus |
| **MANAGEMENT ADVOCATE:** | S/LT. Charles J. Linek |
| **2ND CHAIR:** | Marissa Hartley |
| **UNION ADVOCATE:** | Herschel M. Sigall, Esq. |
| **ARBITRATION DATE:** | February 18 and 25, 2011 |
| **DECISION DATE:** | June 23, 2011 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | Article 19.01; Article 19.05 |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.6481—Dishonesty-In General; 118.6515—Poor Judgment |
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**HOLDING: Grievance DENIED. The Arbitrator found that the Employer had just cause to remove the Grievant.**

On September 6, 2010, the Grievant, a State Trooper, was the first officer on the scene in a traffic stop involving two speeding cars. Ms. Cornelius (Driver) of the first vehicle was not responding to the Grievant’s orders. The Driver then reached back behind her and the Grievant grabbed her wrist and she began resisting. The Driver would not exit the vehicle, so Grievant pulled her out of the vehicle placing her on the ground in the median. The Grievant forcibly placed her in handcuffs. An administrative investigation ensued. The Grievant was charged with providing False Statement, Truthfulness; Use of Force and Firearms and Performance of Duty. The Grievant was removed from his position.

The Employer arguedit made no sense for the Grievant to remove handcuffs from his belt if he thought Ms. Cornelius was reaching for a weapon. A trooper trained in Red Handled Gun Exercises, as the Grievant had been, would have drawn his weapon, retreated for cover, and/or yelled verbal commands if he thought the suspect was reaching for a weapon. The Grievant did none of these. The Grievant never asked Ms. Cornelius if she had a gun or other weapon in the car. The dash-cam video contained no evidence that the Grievant thought Ms. Cornelius was reaching for a weapon. The only possible rationale for the arrest of Ms. Cornelius was that the Grievant was upset from the start of the traffic stop. The Employer requested the grievance be denied in its entirety.

The Union arguedthat the Grievant found it necessary to remove Ms. Cornelius from her car. The Grievant was denied procedural due process of knowing the specific charges he faced and this denial extended to his Pre-disciplinary hearing as well. The Grievant was never “untruthful” about anything related to this case. The Employer decided on a preemptive strike that it would fire him. The Grievant should be reinstated with full backpay and no loss of benefits.

The Arbitrator foundthat the first time the Grievant stated to anyone that he thought Ms. Cornelius might have a gun was in the written statement he made at the Post following the incident. If the Grievant thought Ms. Cornelius may have been reaching for a gun, the Grievant was trained to order her to show him her hands and the Grievant did not do so. If the Grievant thought Ms. Cornelius had a gun, he was trained to search her before putting her in his patrol car and the Grievant did not do so. The Grievant came up with the story about a possible gun and stuck with that untruth during the administrative investigation. Making a false statement is a terminable offense for a trooper. The Employer had just cause to remove the Grievant and the grievance was denied.