IN THE MATTER OF ARBITRATION

BETWEEN

OHIO STATE TROOPERS ASSOCIATION

AND

STATE OF OHIO
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF HIGHWAY PATROL

Before: Robert G. Stein, Arbitrator
CASE# 15-03-20110112-0020-04-01

Grievant: Tommy Alexander

Principal Advocate(s) for the EMPLOYER:

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ODPS/OSHP
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Principal Advocate(s) for the UNION:

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INTRODUCTION

This matter came on for hearing before the arbitrator pursuant to the collective bargaining agreement ("Agreement") (Joint Ex. 1) between the Ohio State Troopers Association, Inc., Units 1 and 15 ("Union") and The State of Ohio ("Employer" or "OSHP"). That Agreement is effective for calendar years 2009 through 2012 and includes the conduct which is the subject of this grievance.

Robert G. Stein was mutually selected by the parties to arbitrate this matter, having been chosen from the existing permanent panel of umpires identified in Article 20, Section 20.08 of the Agreement. A hearing was conduced on April 21, 2011, regarding the instant grievance, which has been recognized as case number 15-03-20110112-0020-04-01. The parties mutually agreed to that hearing date, and they were each provided with a full opportunity to present both oral testimony and documentary evidence supporting their respective positions. The hearing, which was not recorded via a fully-written transcript, was subsequently closed upon the parties' individual submissions of post-hearing briefs on May 31, 2011.

No issues of either procedural or jurisdictional arbitral authority have been raised, and the parties have stipulated that the matter is properly before the arbitrator for a determination on the merits. The parties have also stipulated to the statement of the issue to be resolved and to the submission of two (2) joint exhibits.

ISSUE

Was the Grievant terminated from his employment for just cause? If not, what shall the remedy be?

RELEVANT CONTRACTUAL PROVISIONS

Article 4—Management Rights
Article 18—Administrative Investigation
Article 19—Disciplinary Procedure
Article 20—Grievance Procedure

BACKGROUND

Tommy Alexander ("Alexander" or "Grievant") has been employed as a Trooper with the Ohio State Highway Patrol for eighteen (I8) years, most recently assigned to the Swanton Highway Patrol Post on the Ohio Turnpike near Exit 59.

On April 22, 2010, Ms. Jana Wentz ("Wentz'), a former live-in girlfriend of Alexander until December 2009, filed a complaint by telephone with Sergeant Terrell Campbell ("Campbell") at the Swanton Post following a series of events which had occurred that same day at the Turnpike Toll Gate 59 facility where Wentz serves as an Assistant Toll Gate Supervisor. Wentz reported to Campbell that she was on-duty as an employee of the Ohio Turnpike Commission and about to complete her shift when Alexander, who was then on duty officially as an OSHP officer, came to the toll gate facility to retrieve a Massachusetts transponder, used for electronic EZ pass toll transactions, and also an FOP medallion from the rear license plate of Wentz's vehicle. After retrieving those two (2) items, which were the actual property of the Grievant and his brother respectively, Alexander entered Wentz's actual work area. As part of her

complaint to Campbell, Wentz noted that Alexander "was at her work site too often, called her too often and had involved himself in a verbal 'altercation' with her when he sought to retrieve a medallion from her that he had previously placed on her car." (Union brief p. 2) "Ms. Wentz also alleged that Alexander stopped by her workplace on other occasions and his visits were bothering her." (Employer brief p. 2)

The very next day, Wentz again called the Swanton Post and reported virtually the same complaint to Lt. Michael Wiederman ("Wiederman"). During that latter conversation, Wentz also referred to various other incidents of alleged "harassment," which had purportedly occurred after the couple's break-up approximately four (4) months earlier. Due to the nature of those allegations, Alexander was placed on notice that an administrative investigation had been initiated, in compliance with Article 18 of the Agreement, and the Grievant was issued a direct order by Wiederman on April 24, 2010 "to have no contact, whatsoever, with subject named Jana Wentz . . . [and] no contact at Ohio Turnpike Exit 59 or any other gate that the aforementioned, Jana Wentz, is on duty unless your official duties as State Trooper take you to that location for a specific incident." (Employer Exh. 1, p.27)

The subsequent administrative investigation was conducted by Sergeant Darren Huggins ("Huggins") of the Employer's Administrative Investigations Unit. However, Huggins' actual interviews of the Grievant were delayed until October 20, 2010 because Alexander was seriously injured as a result of an on-duty traffic accident on April 29, 2010, and he did not return to light-duty work for approximately six (6) months. During that interim period, Huggins interviewed Wentz and other witnesses and gathered automatic vehicle locator ("AVL") data for the OSHP vehicle used by Alexander for

the period from January 1 through April 22, 2010. Huggins "established that Alexander, while on-duty, spent an excessive amount of time at Gate 59 for non-work-related reasons. He also established that Alexander drove his patrol car to Wentz's residence on three occasions for non-work-related reasons. Sergeant Huggins received additional information that Alexander had been warned, on at least three occasions, by Highway Patrol personnel about spending too much time at Wentz's place of employment." (Employer brief p. 2)

When Huggins' actual first interview with the Grievant occurred on October 20, 2010, the Grievant admitted to both making visits to Wentz's workplace for non-work-related reasons and driving by her residence while on duty at least once after the December 2009 break-up. Regarding his direct contact with Wentz after the no-contact order had been issued, the Grievant acknowledged only one contact, a text message in June originating from Wentz and inquiring about the status of some luggage. (Employer Exh. 7, lines 701, 703-05, 997-98)

When Huggins contacted Wentz to provide her with an update regarding his investigation, Wentz advised Huggins about the in-person and telephone contacts which Alexander had with her since the no-contact order had been issued. "She alleged that Alexander had been calling and texting her. She said this started near the middle of June after she contacted him regarding a suitcase she needed returned. She went on to explain that he showed up at a hotel in Michigan where she was staying with her daughter after a Justin Bieber concert. She also said that he had contacted her to go to the movies with him." (Employer brief p. 2)

When Huggins re-interviewed Alexander on October 27, 2010, the Grievant denied allegations regarding his failure to comply with the no-contact order. Based on the results of the administrative investigation, the following results were identified:

> Through Administrative Investigation 10-0298, if was found that Trooper Alexander had inappropriate on-duty relations with Ms. Jana Wentz for purposes other than the performance of his official duties and engaged in behavior that brought discredit to the Division. It was also found that he disobeyed a direct order from his Post Commander prohibiting any contact with Ms. Wentz. Additionally, he was untruthful in the administrative hearing investigation when questioned about his contact with her.

(Joint Exh. 2, p. 3[a]) As a result of those findings, Alexander was charged with violating the following Rules and Regulations of the OSHP:

> Rule 4501:2-6-02(I)(1)(3) Conduct Unbecoming an Officer
> Rule 4501:2-6-02(Y)(1) Compliance to Orders
> Rule 4501:2-6-02(E) False Statement, Untruthfulness

Via a letter dated December 20, 2010, Alexander was advised that his termination had been recommended and that a pre-disciplinary hearing was scheduled for December 28, 2010. (Joint Exh. 2, p. 3(b) Alexander received official notice of his immediate termination by letter dated January 4, 2011. (Joint Exh. 2, p. dd) A grievance was filed by the Union on January 12, 2011, asserting that the Employer had violated Sections 19.01 and 19.05 of the Agreement because "this discipline is without just cause and is not progressive in nature." (Joint Exh. 2) Because the matter remained unresolved after passing though the initial stages of the grievance procedure, as identified in Article 20, Section 20.09 of the Agreement, it has been submitted to this umpire for final and binding resolution.

SUMMARY OF THE EMPLOYER'S POSITION

As noted by the Employer in its post-hearing brief, "this case **centers on** Alexander violating a direct order given by his supervisor and subsequently lying about it during the administrative hearing, which was his fatal mistake." (Employer brief p. 3) Based on the results of its administrative investigation and testimony given at the arbitration hearing, the Employer makes the following contentions regarding the Grievant's conduct:

- While on duty, Alexander drove his patrol car to Wentz's place of employment and entered her workplace for a non-work-related reason. The appropriate course of action for Alexander should have been for him to take care of his personal business off-duty. His conduct was strictly personal and a violation of Highway Patrol Rules and Regulations. (Employer brief p. 5)

- Trooper Michelle Durliat ("Durliat") testified at the arbitration hearing that she was approached by Wentz during the months of January and February 2010 about Alexander bothering her with phone calls, text messages, and personal visits to her workplace and home. Trooper Durliat's hearing testimony indicated that there was an ongoing problem, contrary to Alexander's claims. Trooper Durliat's concerns were so strong that she asked Sergeant Stephen Babich ("Babich") to address the issue with Alexander. Babich's own testimony confirmed that Babich told Alexander in late February to stop spending so much time at Gate 59 and to conduct his personal business off-duty. (Employer brief pp. 5-6)

- The AVL reports indicated that Alexander did drive by Wentz's residence for non-work-related purposes. The investigation indicated that Alexander was near her home, approximately twenty (20) minutes from the Turnpike, on three (3) occasions and was in a "Not Assigned" status.

- Wentz also reported that Alexander made two (2) uninvited and unwelcome visits to her home while off-duty. When questioned by Huggins during the administrative investigation regarding those visits the Grievant denied their occurrence, once when he was purportedly intoxicated after bowling and the other resulting in Wentz's threat to call the sheriff if Alexander did not leave.

- Telephone records (Employer Ex. 8) indicate a total of thirty-eight (38) phone calls, initiated by the Grievant to Wentz, between June 19 and October 15, 2010 after the April 24 no-contact order was issued. Alexander had denied any other

contact with Wentz other than the "suitcase" text message in June 2010. (Employer Exh. 7, lines 997-998)

- Until his second interview with Huggins, Alexander denied traveling to Auburn Hills, Michigan on August 15, 2010 and visiting the Fairfield Inn where Wentz and her daughter stayed overnight after the Justin Bieber concert.

- Alexander initiated contact with Wentz by inviting her to see two (2) films at an area theater after the April 24th no-contact order.

- Alexander's own hearing testimony supported Wentz's claim that Alexander had met her at an area restaurant for lunch on October 1, 2010 and then went with her afterward to a nearby pet store. That testimony, however, was in direct conflict with the investigative interviews and Alexander's statement that he had only had text message contact with Wentz after April 24, 2010.

- In 2008, Alexander had been told by his supervisor(s) to stay away from Gate 59 of the turnpike based on a complaint from the Turnpike Commission that he was spending too much time there. (Employer brief p. 10) The Employer argues that Alexander's lack of memory regarding the subsequent warnings from Durliat and Babich "can only be deemed as a self-serving and deceptive attempt to salvage his lack of credibility." (Employer brief pp. 11)

- "Alexander's inability to remember that he had surprised Wentz with balloons and flowers [on Valentine's Day in 2010], and then stayed there from 12:08 p.m. until the end of the shift at 3:00 p.m. is simply not believable . . . and yet another instance of his dishonesty." (Employer brief p. 12)

The Employer contends: "Once Alexander lied during the investigation, the Employer had no other recourse than to terminate him from his employment. The Employer lost trust in Alexander after he displayed repeated evasive and deceptive behavior." (Employer brief p. 19) The Employer emphasizes that "there must be a public trust in law enforcement officers . . . [and] a greater degree of honesty placed upon him by the public . . . [because law enforcement officers are] required to testify before courts of law." (Employer brief p. 19)

The Employer further insists that the charges against Alexander identifying the Grievant's inappropriate and unacceptable conduct demonstrate that he had, in fact, violated the cited OSHP Rules and Regulations.

- "[W]hile on duty . . . he was not conducting business for the Employer, but was taking care of his personal agenda . . . His conduct was inappropriate, harassing, and justified the charge of **Conduct Unbecoming an Officer."**

- "The Highway Patrol is a paramilitary organization, which requires employees to follow orders and directives that have been established by superiors. Alexander's violation of the direct order is unacceptable and a violation of the **Compliance to Orders** rule."

- "As a result of his untruthfulness and conduct during the investigation, the Grievant has absolutely no credibility with the Highway Patrol. He rang the bell of untruthfulness and it cannot be silenced. Alexander had an obligation to be forthright and truthful during the investigation, and when he failed to do so, the Employer had no other course of action short of termination."

(Employer brief pp. 19-22)

Based on the above affirmations, the Employer requests that Alexander's termination be upheld and that the Union's grievance be denied.

SUMMARY OF THE UNION'S POSITION

The Union's major contention is that "the facts of this case do not support the discipline given to Trooper Tommy Alexander." (Union brief p. 1)

> What the Employer did in investigating Wentz's allegations about excessive time spent at her location was to turn again to the AVL readouts from Trooper Alexander's patrol vehicle. With the exception of an extended stay on Valentine's Day, the readout did not disclose anything overtly excessive. After all, the Post commander knew and encouraged his Troopers to maintain good relations with Turnpike employees and Troopers took breaks as well as ate their lunch at the Gate 59 location. Certainly, a fair examination of the records of Trooper Alexander's stationary time at Gate 59 disclosed nothing exceptional . . . Perhaps even more indicative of the quality of the investigation undertaken in this case, Sergeant Huggins did not run the AVL readouts on other Troopers to see

> how Trooper Alexander stacked up vis-à-vis other Troopers in time spent at the Gate 59 location.

(Union brief p. 4) The Union contends that Wentz's initial complaint was false and should have been determined to have been unfounded. The Union further avers that the Employer failed to interview corroborating witnesses, Wentz's co-workers, her supervisor, her children, and the Post assistant commander to whom she initially made her complaint. The Union argues: "Having rested the entire investigation upon Jana Wentz, the Employer demonstrated its belief in her veracity as a witness by electing not to call her as a witness at the instant arbitration." (Union brief p. 5)

The Union also emphasizes that "it was Jana Wentz who continued to prime the pump of continued contact" with Alexander. (Union brief p 5) Despite her complaint about Alexander's on-going "harassment," the Union contends that the evidence does not reflect that Wentz experienced fear or felt threatened by contact with Alexander because it was she who initiated the first contact with the Grievant regarding the suitcase she needed, joined him for lunch and at least one movie, and voluntarily made him aware of when she would be traveling to Michigan to attend the concert and where she would be staying with her daughter.

The Union claims that Alexander has "serious memory lapses" and that his failure to remember "events that were exculpatory of his conduct in Michigan is not an indication of his lying but of a deficient memory." (Union brief p. 6) "He did not intentionally mislead the investigator in this case. The truth is that his is a very poor memory, whether the facts to be remembered are favorable or unfavorable to his position." (Union brief p. 8)

Based on the above assertions, the Union requests that its grievance be granted and that Alexander be restored to his prior position with no loss of pay, benefits, or seniority.

DISCUSSION

In an employee termination matter, an arbitrator must determine whether an employer has proved with substantial evidence that a discharged employee has committed an act warranting discipline and that the penalty of discharge is appropriate under the circumstances. *Hy-Vee Food Stores, Inc. and Local 747, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of Am.,* 102 LA 555 (Bergist 1994). In making this determination, the arbitrator may consider, among other circumstances, the nature of the Grievant's offense(s), the Grievant's previous work record, and whether the employer has acted consistently with respect to similar previous offenses. *Presource Distrib. Servs., Inc. and Teamsters Local 284,* FMCS No. 96-10624 (1997).

> Discharge from one's employment is management's most extreme penalty against an employee. Given its seriousness and finality, the burden of proof generally is held to be on the employer to prove guilt of a wrongdoing in a disciplinary discharge or to justify or show "good cause" for terminating an employee. This is especially true in cases, like this one, where the parties have agreed that the collective bargaining agreement requires "just cause" for disciplinary action, including discharge.

Int'l Assoc. of Machinists and Aerospace Workers Union, Dist. 160 and Intalco Aluminum Corp., 00-2 Lab. Arb. Awards (CCH) P 3608 (Nelson 2000).

Arbitrators do not lightly interfere with management's decisions in discipline and discharge matters, but that does not mean to suggest that they will sustain an action found to be unjust or unreasonable.

Article 19, Section 19.01 of the Agreement specifically provides: "No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause." When a collective bargaining agreement reserves to management the right to discharge for "just cause," but does not define what does constitute "just cause," it is proper for an arbitrator to look at employer policies, rules, statutes, and regulations to determine whether or not a discharge was actually warranted. *E. Associated Coal Corp. and United Mine Workers of Am., Dist. 17*, 139 Lab. Arb. Awards (CCH) P 10,604 (1998).

> "Just cause" is a contractual principle that regulates an employer's disciplinary authority. It is an amorphous standard, ordinarily open to arbitral interpretation on a case-by-case basis. Before an arbitrator will uphold a penalty, he ordinarily looks to the circumstances of the misconduct, any mitigating factors, and whether the aggrieved employee received his/her contractual and legal due process protections.

State of Iowa, Iowa State Penitentiary and Am. Fed'n of State, County, Mun. Employees, AFSCME State Council 61, Lab. Arb. Awards (CCH) P 3923 (Dworkin 2001). One arbitrator defined "just cause" as "that cause which, given the totality of circumstances, enables an impartial observer to determine that the adverse action taken against an employee is, in all respects, a reasonable assertion of authority designed to meet legitimate management objectives." *Gallatin Homes*, 81 LA 919 (Cerone 1985).

The existence of "just cause" is generally recognized as encompassing two basic elements. First, the Employer bears the burden of proof to show that the Grievant committed an offense or engaged in misconduct that warranted some form of disciplinary action. The second prong of "just cause" requires the Employer to demonstrate that the severity of the responsive action taken by the employer was commensurate with the degree of seriousness of the established offense(s). *City of Oklahoma City, Okla. and*

Am. Fed'n of State, County, and Mun. Employees, Local 2406, 02-1 Lab. Arb. Awards (CCH) P 3104 (Eisenmenger 2001). The proof must satisfy both the question of any actual wrongdoing charged against an employee and also the appropriateness of the punishment imposed.

Significantly in this matter, the parties have collectively bargained for and acknowledged the Employer's right to "discharge and discipline employees" and to "make any and all rules and regulations" in Article 4 of the Agreement, entitled "Management Rights." The Company has retained those specific management rights so long as its exercise of discretion in utilizing those specific rights is not unreasonable, arbitrary, capricious, or motivated by improper means. *Municipality of Anchorage (Alaska) and Int'l Ass'n of Fire Fighters, Local 1264*, 115 LA 190 (Landau 2001).

The burden of proof in a disciplinary matter such as this lies with the Employer to demonstrate through convincing evidence that there was ample justification for its decision to discipline the aggrieved employee. The arbitrator must undertake a full and fair consideration of all of the evidence presented and determine the weight to which he honestly believes the individual evidence is entitled. It is the role of an arbitrator to observe the witnesses and to determine who among them is telling the truth. *Givaudin Corp*., 80 LA 835, 839 (Deckerman 1983). In addition to determining the credibility of witnesses, the arbitrator must also determine the weight to be afforded to their testimony, as well as all of the other evidence submitted by the parties. *Minn. Teamsters Pub. and Law Enforcement Employees Union, Local No. 320 and City of Champlin, State of Minn*., 00-2 Lab. Arb. Awards (CCH) P 3499 (Berquist 1999). To do so, an arbitrator must consider whether conflicting statements do ring true, weigh each witness's demeanor

while he testifies, and use certain guidelines to determine credibility—the self-interest or bias of a witness, the presence or absence of corroboration, and the inherent probability of the specific testimony offered. *CLEO, Inc.(Memphis, Tenn.) and Paper, Allied Indus., Chem. and Energy Workers Int'l Union, Local 5-1766*, 177 LA 1479 (Curry 2002). Because not all of the conflicting testimony offered in this matter can be accurate, the arbitrator must carefully analyze all of the statements given at hearing in an attempt to resolve the recognized conflicts. In so doing, arbitrators and other triers of fact always attempt to keep in consideration the fact that a witness may be motivated to testify falsely due to some self-interest. Certainly, a witness who has been disciplined by an employer may have such an interest.

> An accused employee is presumed to have an incentive for not telling the truth, and when his testimony is contradicted by one who has nothing to gain or lose; the latter is to be believed.

United Parcel Serv., Inc. and Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., Local 89, 66-2 ARB 8703 (Dolson 1966). One arbitrator noted: "In determining credibility, the arbitrator may consider not only the demeanor of the witnesses, but the motivation of those witnesses, as well." *Teamsters Local 688 and Meridian Med. Techs*., 01-1 Lab. Arb. Awards (CCH) P 3815 (King, Jr. 2001). Arbitrator King also noted: "A grievant's continued job tenure is sufficient motivation, in and of itself, to lie." *Teamsters Local 688* "In resolving divergent claims, arbitrators are allowed to credit the testimony of disinterested witnesses over that of a grievant, absent a showing that witnesses called on behalf of the employer have a motive to lie." *Teamsters Local 688.* "Many arbitrators have also recognized that supervisors and

disinterested witnesses have a higher goal than attempting to sustain the disciplining of an employee. Thus, in resolving credibility, the arbitrator may consider not only the demeanor of the witnesses but the motivation of those witnesses as well." *Teamsters Local 688*

The arbitrator finds that the evidence submitted and reviewed herein demonstrates that the Employer did not abuse its discretion or act arbitrarily in imposing the challenged discipline against the Grievant. In addition to the testimony offered by multiple witnesses indicating that Alexander had, in fact, violated the directive to discontinue any communication or contact with Wentz, the technological evidence offered, which included non-biased AVL and telephone records, very objectively sustained the Employer's charge that the Grievant had repeatedly violated the clear directive issued to him to forego any contact with Wentz. How the circumstances arose that brought Alexander into personal, phone, and texting communication with Wentz raises questions regarding Wentz's culpability; however, it was his clear duty to avoid **all** contacts with her, whether or not she consensually agreed to talk to him, dine with him, or share her news about traveling to a specific location in Michigan. Alexander had the duty and responsibility to adhere to the Employer's directive until or unless the order was withdrawn or dropped by the Employer. The passage of time due to Alexander's serious injuries resulting from the vehicular accident precluded the Employer and its agent Huggins from more quickly interviewing Alexander and potentially clarifying any questions he may have had. But that delay did not excuse his disobedience of the directive or modify the limitations which had been imposed by the Employer.

Once a complaint was filed by Wentz, the Employer had a duty to investigate and clearly had a right to issue the "no contact" order until its investigation was completed. Although disobeying a direct order is serious misconduct and deserving of corrective action, some form of progressive discipline might reasonably have been viewed as an acceptable response or option, in light of Wentz's post complaint conduct, the Grievant's on-duty accident, his long-term service with the OSHP and his favorable deportment and disciplinary record, if his misconduct had been limited to only that type of violation. However, it is the Grievant's demonstrated "untruthfulness" and providing "false statements," as identified by the Employer as the Grievant's third violation, which undermine his appeal for the imposition of a less severe form of discipline.

> In order to function properly and carry out its mission, a police force must be well-disciplined and guided by rules and regulations that regulate its members. The police force must be a highly-regimented organization that cannot tolerate or allow individual members to circumvent its rules and regulations. The standards for compliance to operating procedures are much higher for police organizations than would be found in the general business community.

H.P.P.U., Local No. 109 and City of Houston, Tex., 95-2 Lab. Arb. Awards (CCH) P 5244 (Overstreet 1994). The Employer has a right to set high standards of professionalism for OSHP troopers. The troopers, like other law enforcement officers, have a high level of authority to exercise using the appropriate discretion and professional standards. Their individual credibility cannot be compromised in order for them individually to maintain integrity under cross-examination by defendants' legal counsel regarding citations issued by them. By engaging in deliberately evasive and dishonest conduct, the Grievant has undermined the very foundation of public trust upon which a law enforcement officer's position relies. His conduct has impaired his trustworthiness, his ability to give credible testimony in litigation, and future reliability

based upon his diminished capacity to hold a position of public trust. *Brady v. Maryland*, 373 U.S. 83 (1963).

The evidence here indicates that the Grievant demonstrated dishonesty in responding to multiple queries during the administrative investigation conducted by Huggins. "The Grievant, as a [law enforcement] officer in a paramilitary organization, is held to a higher standard of duty and conduct than those persons employed in the private sector." *In re Township of East Lampeter and East Lampeter Township Police Ass'n*, 105 LA 133, 139 (1995). Arbitrators are sensitive to a grievant's candor and veracity, or lack thereof. "Because the underlying charge is one of dishonesty, arbitrators have considered testimony that involves implausible explanations or obvious attempts to cover up as further evidence of the employee's untrustworthiness." *In re Township of East Lampeter*.

"While the concept of progressive discipline has application in many discipline cases, some forms of misconduct are so severe that summary discharge is warranted. Such offenses are such a breach of the basic assumptions underlying the employment relationship that the employee's further usefulness is irretrievably undermined." *City of Saginaw and Police Officers Ass'n of Mich.*, 00-1 Lab. Arb. Awards (CCH) P 3443 (Dobry 2000). "Courts have consistently upheld the terminations of peace officers who were charged with dishonesty, even long-term employees with good records . . . In labor arbitrations, a first offense of dishonesty is held to justify the discharge penalty in most cases. Peace officers are held to a higher standard of conduct than non-police, especially with respect to honesty." *City of Monterey Park and Joseph Sakatini*, 04-1 Lab. Arb.

Awards, (CCH) P 3715 (Kaufman 2003), citing to *Nicolini v. Toulumne*, 190 Cal. App.3d 619 (1987); *Paulino v. Civil Serv. Comm'n*, 175 Cal. App.3d 962 (1985).

Based on the evidence and arguments presented and reviewed, the arbitrator finds that the Employer did not violate the Agreement when it terminated the Grievant's employment.

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AWARD

The grievance is denied, and the Grievant's termination is upheld.