**OCB AWARD NUMBER: 2146**

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| **SUBJECT:** | **ARB SUMMARY # 2146** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110329-0056-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Dwight Washington |
| **GRIEVANT NAME:** | Kamal Nelson |
| **MANAGEMENT ADVOCATE:** | Charles Linek |
| **2ND CHAIR:** | Marissa Walter |
| **UNION ADVOCATE:** | Herschel Sigall |
| **ARBITRATION DATE:** | September 30, 2011 |
| **DECISION DATE:** | November 3, 2011 |
| **DECISION:** | Grievance is Modified |
| **CONTRACT SECTIONS:** | Article 24—Discipline  |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.301—Progressive Discipline; 118.67—Disparate Treatment  |
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**HOLDING: Grievance is MODIFIED. The Arbitrator reduced removal to reinstatement with a 2-year Last Chance Agreement, a 15 day suspension, a percentage reduction in back pay and no other remedy except for continuous service for seniority purposes. This was because a similarly situated exempt employee had not been removed and the employer’s explanation for the disparate discipline failed to justify the difference in discipline.**

The Grievant had eleven years of service at the time of his removal, and had no discipline on his record. On October 21, 2009, the Grievant and another patrol officer responded to an accident. One of the witnesses was Lisa Myers. As part of the on-scene investigation, the Grievant obtained a witness statement and a cell phone number.

On December 29, 2010, Rodney Myers, Lisa’s Husband, alleged to Lt. C.A. Jones at the Marion Patrol Post that the Grievant and Lisa were involved in a relationship that occurred after the October 21, 2009 accident. The Grievant and Lisa claimed that they were only friends. The husband provided cell phone records that showed the Grievant called Lisa Myers three times while on duty.

The Employer initiated an administrative investigation. On January 3, 2011, the Grievant was given a direct order by Lt. C.A. Jones to have no further contact with Lisa Myers. During the fourth interview of the Grievant, he admitted to hugging and kissing Lisa while on duty; he estimated this occurred about twenty-five times. The Grievant was removed on March 24, 2011 for violating Ohio State Highway Patrol Rules and Regulations Rules, False Statements, Truthfulness, Conduct Unbecoming an Officer and Use of Equipment.

The Employer arguedthat the Grievant was involved in an improper on-duty association with Lisa Myers that brought discredit to the Division. He was dishonest when questioned about the incident and used Division equipment for non-work purposes. The Grievant admitted that he stayed in contact with Lisa Myers because he “liked her.” The employer argued that the expectations of the public require that troopers’ behavior be held to a standard that requires that untruthful and/or false statements alone are grounds for removal. The Grievant violated the public trust and removal was appropriate.

The Union arguedthat the Grievant was an exceptional trooper. There was no evidence that the Grievant violated the directive given by Lt. C.A. Jones. The evidence indicates that the Grievant’s actual on-duty contact time with Ms. Myers was minimal. The attraction to Ms. Myers was sparked, in part, by the Grievant’s marital difficulties. It also argued that exempt employees similarly situated as the Grievant had not been removed by the Employer. The Union asked for reinstatement with no more than a ten-day suspension.

The Arbitrator foundthat the Employer had just cause to discipline the Grievant. It was not disputed that the Grievant was involved in an improper relationship while on duty, used equipment for non-work related purposes on numerous occasions, and brought discredit to the Division. However, the Arbitrator held that the Employer treated the Grievant differently than other similarly situated employees. A Lieutenant who had carried on a 4 year romantic relationship with his secretary was demoted and given a reduction in pay but was allowed to remain employed. The Arbitrator held that the Employer failed to explain how the Grievant’s behavior justified removal when the behavior of the Lieutenant did not warrant such discipline.

 The grievance was granted in part. The Arbitrator ordered the Grievant reinstated subject to a two year Last Chance Agreement. The Grievant was also ordered suspended without pay for fifteen days. The Grievant’s back pay amount was ordered reduced by a like percentage as the similarly situated Lieutenant. Finally, it was ordered that the Grievant be entitled to no other remedy except for continuous service for seniority purposes consistent with Article 36 of the collective bargaining agreement.