**OCB AWARD NUMBER: 2160**

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| **SUBJECT:** | **ARB SUMMARY # 2160** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110930-0112-07-15** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Dwight A. Washington |
| **GRIEVANT NAME:** | Robert Jacks |
| **MANAGEMENT ADVOCATE:** | Kevin Miller |
| **2ND CHAIR:** | Marissa Walter |
| **UNION ADVOCATE:** | Herschel Sigall |
| **ARBITRATION DATE:** | January 24, 2012 |
| **DECISION DATE:** | March 30, 2012 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Article 19—Disciplinary Procedure; Section 19.01—Standard; Section 19.05 —Progressive Discipline |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.311—Just Cause-Concept of; 118.6481—Dishonesty-In General |
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**HOLDING: Grievance MODIFIED. Grievant’s removal was reduced to a demotion and ten day suspension without pay because it was found to not be commensurate with the Grievant’s violations. The Arbitrator determined that, while the Grievant’s position as a supervisor required that he be held to a higher standard, the Grievant’s unblemished record and twelve years of distinguished service needed to be considered as mitigating factors.**

The Grievant was employed by the Ohio State Patrol for twelve years at the Gallipolis Post in the Division’s Jackson District. He had been a Sergeant since 2006. The Captain of the Jackson District received a formal complaint on June 9, 2011 that made four allegations against the Grievant. The allegations were made by a former trooper, and asserted: that the Grievant used his patrol vehicle to travel to a gym in West Virginia; that the Grievant had attended a graduation ceremony while on duty; that the Grievant had attended church services while on duty; and that the Grievant had ordered a trooper to take a photo with a suspect and subsequently used that photo to embarrass the trooper. After the initial investigator was replaced because of charges that he was not impartial, the next investigator determined that the two allegations regarding the graduation ceremony and church services were founded, that the allegation regarding the gym was founded but not a violation of work rules, and that the allegation regarding the photo was unfounded. Because the Grievant was a supervisor, the Employer concluded that he needed to be held to a higher standard and terminated the Grievant on September 12, 2011.

The Employer argued that the Grievant was untruthful, evasive and unrepentant during the investigation. The Grievant attended his nephew’s graduation ceremony despite being denied leave for that exact purpose. The Employer pointed to the Grievant’s vehicle records and status with the dispatcher to show that his contention that he only attended the ceremony during his lunch hour was not supported by the evidence. In regards to the church services allegation, there was a dispute as to whether or not the Grievant’s involvement with a group called “Cops for Christ” was properly categorized as church services. The Employer argued that the religious aspect of the group, as well as the bible study and discussion of personal matters during the group meetings, proved it was a church service that should not have been attended while on duty. Moreover, the Employer disputed that the meetings could be considered a community event and pointed to the fact that the Grievant’s status while in the meetings and lack of documentation required for all community events.

The Union argued that the Grievant’s exemplary career and the testimony of his supervisor proved that there was no just cause for the removal. The Union argued that neither of the allegations that led to termination, the graduation and Cops for Christ attendance, were shown to be unpermitted conduct. The Union argued that the Employer’s reliance on the Grievant’s status while at these events was not dispositive. The Union pointed to testimony given by the Grievant and his supervisor during unemployment compensation hearings to argue that the graduation ceremony was attended while the Grievant was on lunch break and with approval. The Union also argued that any discrepancy between the Grievant’s allotted lunch period and the time spent at the ceremony was the result of him providing assistance to the local sheriff, which the Grievant supposedly reported the following day. The Union further argued that the classification of Cops for Christ as church services was manifestly incorrect. The Union argued that the group was multi-faceted and included intelligence sharing of criminal activity in addition to the spiritual aspects. In addition, the Grievant’s supervisor testified that the Grievant would have been granted permission to attend the meetings had permission been requested.

The Arbitrator concluded that discipline, just not removal, was warranted. The Arbitrator found that the Grievant and his supervisor were not credible with their statements about the graduation. Because their statements were not credible, the Arbitrator found that there was sufficient evidence to concluded that the Grievant violated work rule 4501:2-6-02(B)(1) by attending his nephew’s graduation. The Arbitrator also determined Cops for Christ meetings could not be considered church services and therefore the Grievant’s attendance of those meetings did not amount to a violation of work rule 4506:2-6-02(I)(3). The Arbitrator did find that the Grievant did not have express permission to attend the meetings and that he was evasive about his status while at the meetings to such an extent that the Grievant did violate the Performance Duty work rule. Given these work rule violations, the Grievant’s role as a supervisor, and the Grievant’s exemplary service and unblemished record, the Arbitrator found that removal was not commensurate with the nature of the violations. For this reason, the Arbitrator reinstated the Grievant, but demoted him from sergeant to trooper and gave him a ten day unpaid suspension. The Grievant had his pay reinstated, minus the ten days and any interim earnings, but at the rate of trooper and not sergeant.