**OCB AWARD NUMBER: 2162**

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| **SUBJECT:** | **ARB SUMMARY # 2162** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20111116-0123-04-01** |
| **DEPARTMENT:** | Public Safety |
| **UNION:** | OSTA |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Steven H. Walsh |
| **MANAGEMENT ADVOCATE:** | Kevin Miller |
| **2ND CHAIR:** | Marissa Walter |
| **UNION ADVOCATE:** | Elaine Silveira |
| **ARBITRATION DATE:** | January 27, 2012 |
| **DECISION DATE:** | April 16, 2012 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 4—Management Rights; Section 19.01—Standard; Section 19.05—Progressive Discipline; Section 21.01—Copies of Work Rules; Section 21.03—Application |
| **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 DENIED. Grievant’s removal for violation of work rule 4501:2-6-02(E)(1) False Statement, Truthfulness was upheld. Grievant was removed because he had incorrectly recorded six traffic stops as “warnings” when they were in fact “assists.” Grievant also failed to utilize his audio-video equipment on several occasions. The Arbitrator determined that it was implausible for the Grievant’s actions to be mistakes and that the fabrications implicated a lack of truthfulness and integrity that made removal appropriate.**

The Grievant, an Ohio State Trooper, had been employed since December 10, 2009. The Grievant’s performance and conduct were generally considered good until a change in post commander occurred in April 2011. From that point forward, the Grievant’s enforcement activity began to wane. An administrative investigation was initiated following the Grievant issuing only seven tickets over Labor Day 2011 weekend. The investigation found that the Grievant had recorded five interactions with motorists as “warnings’ when they were actually “assists,” and recorded one interaction as a “warning” that may not have occurred at all. The Grievant was subsequently removed for falsifying these interactions in violation of work rule 4501:2-6-02(E)(1).

 The Employer argued that given how motorist interactions are entered into the mobile computer terminal (MCT), it was impossible for the entries to have been made simply mistakes. The MCT screen contains seven disposition options per page, arranged alphabetically. The Grievant would have had to scroll through multiple pages to get from assist to warning. Moreover, there is a review prompt before information is transmitted. Accordingly, the Employer argued that it is not possible that the Grievant simply mis-entered the interactions, but instead intentionally entered the interactions as warnings in order to make it appear that he was engaging in more proactive stops. As the Grievant had had his patrol car privileges suspended, the Employer argued that these falsifications were an attempt to have his privileges restored.

 The Union acknowledged that the interactions were entered incorrectly, but argued that it was not shown that the Grievant did so intentionally. The Union argued that Grievant’s difficulty with his post commander was the result of the Grievant not writing enough tickets. Because the incorrectly entered interactions did not involve reporting stops as tickets, the Union argued the Grievant would not have gained anything. As such, there was no incentive for the mistaken entries to be intentional. The Union argued that removal was not appropriate. Instead, if the Grievant was not performing up to standards he should have been suspended and transferred.

 The Arbitrator concluded that the removal was for just cause. The Arbitrator determined that, based on the evidence, it was implausible that the entry errors were mistakes and not done intentionally. The Arbitrator relied on the Employer’s explanation of how the MCT functioned to make this conclusion. Having determined that the Grievant intentionally entered the motorist interactions as warnings, the Arbitrator concluded that the Grievant “failed in an essential and integral way.” The Arbitrator, in a footnote, explained that the Grievant’s violation of work rule 4501:2-6-02(Y)(2) was ancillary to the Falsification work rule violation and that the validity of the removal turned on violating work rule 4501:2-6-02(E)(1).