**OCB AWARD NUMBER: 2176**

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| **SUBJECT:** | **ARB SUMMARY # 2176** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **07-00-20110817-0012-01-07** |
| **DEPARTMENT:** | **Department of Commerce** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Susan Grody Ruben** |
| **GRIEVANT NAME:** | **Anthony Castelvetere** |
| **MANAGEMENT ADVOCATE:** | **Andrew Shuman** |
| **UNION ADVOCATE:** | **Thomas Cochrane** |
| **ARBITRATION DATE:** | **05/10/2012 and 05/16/2012** |
| **DECISION DATE:** | **08/31/2012** |
| **DECISION:** | **DENIED** |
| **CONTRACT SECTIONS:** | **Article 24.01 – Standard Discipline; Article 24.02 – Progressive Discipline; Article 24.05 – Pre-Discipline; Article 24.06 – Imposition of Discipline** |
| **OCB RESEARCH CODES:** | **118.01 – Discipline in General; 118.301 – Progressive Discipline;**  |

**HOLDING: Grievance denied. The Arbitrator found that Management had just cause in the termination of the grievant. There was sufficient evidence shown that the grievant did indeed violate work rules: 1 – Neglect of Duty (Major) and 6 – Dishonesty. Due to the responsibility of the position held by the grievant, the grievant’s neglect of duty (and forging of records) failed to ensure public safety and potentially put lives in danger.**

The grievant was a Fire Safety Inspector (FSI), for the Code Enforcement Bureau (CEB), of the State Fire Marshall, Ohio Department of Commerce (DOC). The grievant held that position from 2003 until his termination in 2011. The grievant was on military leave from 2009-2010. During this time a different FSI performed the grievant’s inspections. The grievant was terminated for violating work rules 1 – neglect of duty (major) and 6 – dishonesty. The grievant was charged with violating work rule 1 for failing to properly complete instructions, inspection reports and follow-up inspections. He was charged with violating work rule 6 for improperly recording inspection times, failing to properly record his hours worked, and receiving pay for hours not worked.

An anonymous complaint of the grievant conducting personal business on State time to the Inspector General (IG), triggered an investigation. The IG referred the matter to the Highway Patrol (HP) for a criminal investigation. The HP released its investigation data to the DOC which began its own investigation. During the DOC’s investigation the grievant was indicted by the Richland County Prosecuter for three work-related felonies and four work-related misdemeanors. The grievant was put on administrative leave pending the outcome of these criminal charges. The grievant pled guilty to two misdemeanors (Dereliction of Duty and unauthorized use of a motor vehicle).

The State argues that there was just cause in terminating the grievant due to the evidence compiled by multiple investigations and various witnesses attesting to the grievant’s inspection activity (or lack thereof). Various reports and investigations revealed that coworkers performing the grievant’s duties while he was away on military leave found multiple code violations at facilities where the grievant had found none in previous inspections. Facility operators expressed discontent at the fact that they had never been cited for any violations under the grievant’s inspections. Testimony from the facility operators also incriminate the grievant further by stating that the grievant would perform his “inspection” in very little time, walking around briefly, opening a door or two and then leaving, without ever citing the facility for a violation. Other testimonies show that the grievant falsified reports regarding violations at each facility as well as his own time sheet reflecting hours worked when no work was done.

The Union’s position was that the State lacks cause on both procedural and substantive standpoints. The procedural standpoints are: 1) lack of adequate notice of removal; 2) using an out-of-date disciplinary grid; and 3) untimely discipline. The substantive issue raised by the Union addresses the discipline not being commensurate with the offense. The Union denies that the grievant neglected his duty in any way, arguing that he made the inspections correctly, the way he was trained to do. The Union also argues this point for the dishonesty violation, claiming that the grievant was not dishonest, saying that the grievant was able to account for each instance that was supposedly falsified. The Union argues that any inconsistencies or errors with the grievant’s reports was consistent among all CEB staff and the evidence shows that the grievant never acted with the intent to deceive anyone. The Union further argues that any FSIs that performed the grievant’s tasks in his absence would take longer to do because of their lack of experience with those particular facilities.

The Arbitrator found that there was just cause to remove the grievant from his position of FSI. Due to the overwhelming evidence showing the grievant’s failure to perform his duties and the fact that the grievant’s position holds a high responsibility of ensuring public safety, the grievant was terminated justly. The Arbitrator dismissed all procedural arguments raised by the Union, saying that the State did act correctly and within its abilities during the discipline process. The IG, HP, and DOC’s investigation coupled with the Richland County criminal conviction, provided enough conclusive evidence to support the State’s work rule violation claim on the grievant and therefore merited termination of the grievant. The grievance was denied in its entirety.