**OCB AWARD NUMBER: 2177**

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| **SUBJECT:** | **ARB SUMMARY # 2177** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20111101-0115-07-15** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Robert Stein** |
| **GRIEVANT NAME:** | **Linda Piechnik** |
| **MANAGEMENT ADVOCATE:** | **Sgt. Corey Pennington** |
| **UNION ADVOCATE:** | **Herschel Sigall** |
| **ARBITRATION DATE:** | **06/13/2012** |
| **DECISION DATE:** | **09/04/2012** |
| **DECISION:** | **MODIFIED** |
| **CONTRACT SECTIONS:** | **Article 19.01 – Standard; Article 19.05 – Progressive Discipline** |
| **OCB RESEARCH CODES:** | **118.01 – Discipline in General; 118.301 – Progressive Discipline; 118.03 - Demotion** |

**HOLDING: Grievance modified. The Arbitrator found that the discipline of permanent demotion imposed was not commensurate with the offense by the grievant for saying inappropriate, possibly offensive, statements and for suggesting an action that defies Management’s policy. The Arbitrator modified the discipline to a time-served demotion and reinstated the grievant to her original position.**

The grievant is a 16 year employee with the Department of Public Safety, 7 years of which she has been a Sergeant. She has no disciplines to date and a stellar work record. The grievant has had the supervisory role of Post 97, third shift, for 3 years. Between September 5th and September 10th, the grievant was training 5 new police officers. The grievant made comments likening the Post 97, third shift, position detail to being “overpaid security guards” as opposed to actual police officers. During this time frame, the grievant also had a discussion with one of the new officers regarding the officer’s quandary of being subpoenaed as a prosecuting witness in a criminal trial in Perry County the same day he was scheduled for Post 97 third shift. The grievant told the officer that he should report for duty as scheduled but that he could grab some sleep if needed during his shift. A complaint was voiced to the grievant’s supervisor about the comments made by the grievant. The grievant was charged with violating work rule 4501:2-6-03(C) – Responsibility for Orders and work rule 4501:2-6-02(1)(4) – Conduct Unbecoming an Officer. The grievant was permanently demoted to Trooper and transferred to a different post.

Management contends that the grievant’s comments portrayed a negative attitude which is not befitting a supervisor. Considering that one of the main roles a supervisor has is to promote morale of subordinates and make decisions in accordance with the position, the grievant failed at doing so and therefore is not fit to be in a supervisory position. Management also emphasizes that the grievant exercised poor leadership and decision making by suggesting to a subordinate that he could sleep while on duty. Sleeping on duty is against policy. Based on the grievant’s ill-advised statements and suggestions, one of which goes directly against a Management policy, and coupled with the admission from the grievant that she did indeed make those comments, Management deemed that the grievant neglected to fulfill her duties as a supervisor and the appropriate penalty was permanent demotion.

The Union contends that the grievant didn’t actually *do* anything unbecoming of an officer. No misconduct was performed. The issue lies solely with what the grievant *said*, and at no time did the grievant lie or deny saying these statements. The Union argues that the statement regarding being overpaid security guards was taken out of context and was in no way an effort to try and belittle the position or demean the new officers. This comment was used merely to describe the post detail. Given the fact that most of the officers had some experience policing the fairgrounds or other more active posts, the grievant was explaining that the detail for Post 97, third shift, was not a proactive policing force but a security force – like that of a security guard. Regarding the second incident, the Union would like to point out that at no time did any officer sleep while on duty. The Union contends that while her statement may have been “inappropriate” without additional limiting language, it was a statement as to a potential future that never took place. The Union states that had the actual situation arisen, the grievant would have had ample opportunity to further define the acceptable course of action to the officer.

The Arbitrator found that the degree of discipline did not match the offense. The Arbitrator cited the grievant’s pristine tenure and favorable evaluations as a mitigating factor in lessening the discipline. While the grievant did act in a way that warranted some type of disciplinary action, permanent demotion was too extreme. As for Management’s claim that the grievant neglected to fulfill her duties as supervisor and therefore was incapable of acting in that position, the Arbitrator found that there is no evidence here to suggest that the grievant was not capable of remediation outside of demotion. The necessity for recognizing and learning from one’s mistakes should be afforded the grievant regarding this situation. The Arbitrator states that Management has not demonstrated that the grievant is unable to perform as a sergeant in a leadership capacity in a new assignment. The Arbitrator feels that the grievant accepted responsibility for her errors in judgment and deserves the opportunity to be reinstated. The Arbitrator modified the discipline of the grievant so that the grievant shall be reinstated to the rank of Sergeant serving at whatever post Management determines. Her discipline was deemed a time-served demotion with no monetary damages awarded.