**OCB AWARD NUMBER: 2185**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2185** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110726-0085-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **E. William Lewis** |
| **GRIEVANT NAME:** | **Kristopher Massey** |
| **MANAGEMENT ADVOCATE:** | **Lieutenant Charles Linek** |
| **UNION ADVOCATE:** | **Elaine Silveira** |
| **ARBITRATION DATE:** | **11/15/2012** |
| **DECISION DATE:** | **11/23/2012** |
| **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** |

**HOLDING: Grievance modified. The arbitrator found that there was indeed some culpability by the grievant for his involvement in a verbal altercation with another employee, but felt that the punishment of a 1 day suspension was not commensurate with the offense. The Arbitrator reduced the 1 day suspension to a written reprimand.**

The grievant was an 11 year employee with the Department of Public Safety as an Electronic Technician 2 at the time of the discipline. The grievant had no prior disciplines and an overall good work record.

The grievant got into a verbal altercation with a fellow employee regarding the repair of a radar unit. According to the grievant, both parties traded insults back and forth which escalated and ended with the employee making verbal death threats to the grievant. The grievant reported the incident on the same day it occurred.

Management argued that the grievant and the other employee violated DPS Work Rule 501.01(C)(10)(d) – Failure of Good Behavior, by engaging in a verbal dispute with each other – using expletives and issuing threats. Both employees were issued a 1 day suspension for the incident.

The Union argued that the other employee was the aggressor in the situation and that the grievant simply reacted. The grievant did not make any death threats during the altercation and both parties apologized and “made up” after the incident. The Union argued that the 1 day suspension is not progressive and is not commensurate with the offense.

The Arbitrator found the discipline was indeed not commensurate with the offense. The Arbitrator stated that while there is little doubt that expletives and obscenities were traded - which is a definite violation of the work rule in question, the Arbitrator believes that death threats are a serious accusation that need to be investigated. Based on testimony by witnesses, the Arbitrator believes the grievant did not threaten the other employee and is only responsible for the foul language during the dispute. The Arbitrator therefore reduced the 1 day suspension to a written reprimand.