**OCB AWARD NUMBER: 2186**

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| **SUBJECT:** | **ARB SUMMARY # 2186** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110302-0068-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **E. William Lewis** |
| **GRIEVANT NAME:** | **Troy Hale** |
| **MANAGEMENT ADVOCATE:** | **Lieutenant Charles Linek** |
| **UNION ADVOCATE:** | **Herschel Sigal** |
| **ARBITRATION DATE:** | **11/15/2012** |
| **DECISION DATE:** | **11/23/2012** |
| **DECISION:** | **Denied** |
| **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 denied. The grievant accidentally discharged his taser in his patrol car. The grievant was disciplined a 1 day fine. The Arbitrator found that the grievant violated DPS Work Rule 4501:02-6-02(B)(5) Performance of Duty. The grievance was denied.**

The grievant was a 10 year employee with the Department of Public Safety at the time of the incident. The grievant was under a last chance agreement, although for what was unknown as it was not entered as an exhibit or evidence during the hearing.

The grievant was leaving work for the day when he went to his patrol car to drive home. Before driving home, the grievant attempted to spark test his taser, which troopers are required to do on a regular basis to ensure the taser works properly. During the spark test, the grievant accidentally fired the taser into the car. The spark test does not require the taser to be fired and is only meant to test the spark/charge of the unit. Management disciplined the grievant in the form of a 1 day fine.

Management argued that they were indeed lenient regarding discipline for the incident as the grievant was a last chance agreement. Management argued that the grievant violated work rules 4501:02-6-02(Y)(2) Compliance to Orders and 4501:02-6-02(B)(5) Performance of Duty. Management contends that all test firing of weapons should be done in the designated area assigned for such activity.

The Union argued that the grievant was not test firing his weapon so the expectation for him to go to a designated area is not a logical request or assumption. The grievant was trying to spark test his taser and he accidentally triggered it. The grievant did not expect the taser to fire. The grievant simply committed an operator error by not spark testing the taser correctly. The Union argued that the discipline imposed by Management was not commensurate with the offense.

The Arbitrator found that the grievant did not violate 4501:02-6-02(Y)(2) Compliance to orders by not test firing the taser in the designated area. The Arbitrator stated that it was clear the grievant had no intent on discharging the taser and certainly not in his own patrol car. The Arbitrator did find that due the grievant did violate work rule 4501:02-6-02(B)(5) Performance of Duty by his inability to properly spark test his weapon. This seems a routine procedure that should troopers should be expected to do correctly. The Arbitrator found that the discipline imposed was progressive in nature and denied the grievance in its entirety.