**OCB AWARD NUMBER: 2193**

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| **SUBJECT:** | **ARB SUMMARY # 2193** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20120124-0010-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **E. William Lewis** |
| **GRIEVANT NAME:** | **Gary Griffeth** |
| **MANAGEMENT ADVOCATE:** | **Charles Linek** |
| **UNION ADVOCATE:** | **Elaine Silveira** |
| **ARBITRATION DATE:** | **01/09/2013** |
| **DECISION DATE:** | **01/28/2013** |
| **DECISION:** | **Granted** |
| **CONTRACT SECTIONS:** | **Article 19.01 – Just Cause** |
| **OCB RESEARCH CODES:** | **118.08 – Suspensions-In General; 118.311 – Just Cause-Concept of****118.6567 – Safety-Rules** |

**HOLDING: Grievance granted. Although the Grievant did not detain an individual with warrants per Agency policy, the Arbitrator vacated the Grievant’s five-day suspension because the Grievant had multiple individuals on-scene without backup which generated overriding officer safety concerns.**

The Grievant is a Trooper with the Ohio State Highway Patrol (the Agency) with approximately fourteen years of service at the time of the hearing. On November 17, 2011, the Grievant stopped a pickup truck with three occupants. Dispatch radioed that one of the passengers had a warrant. The Grievant handcuffed the passenger and placed him in the rear of the Grievant’s patrol car. Ten minutes later, the Grievant learned that the driver was under a license suspension, so the Grievant instructed the driver to call for a substitute driver to drive the truck. Shortly thereafter, Dispatch radioed that the third occupant, a female without identification, had a warrant for her arrest as well. The Grievant directed her to remain in the truck and the Grievant did not handcuff her. A short time later, the substitute driver along with a passenger arrived at the scene. Within minutes, the female occupant fled. She was quickly apprehended and arrested.

The Agency initiated an Administrative Investigation (AI) and found that the Grievant violated the following Agency rules: 1) Performance of Duty; and, 2) Compliance to Orders. Consequently, the Agency suspended the Grievant for five days. In lieu of serving the suspension, the Grievant forfeited some accrued vacation and compensatory time. The Grievant challenged the suspension claiming that the Agency did not have just cause to discipline him.

The Agency argued that the discipline was appropriate because the Grievant violated the above listed work rules which allowed the female occupant to flee. The Agency explained that their policies mandate that the Grievant should have arrested the female occupant as soon as he learned that she had a warrant.

The Union argued that officer safety concerns justified the Grievant’s decision to not immediately arrest the female occupant. The Union explained that the Grievant, without back-up assistance, had to manage a very fluid scene with five individuals present. To complicate matters, the Grievant could not detain the female occupant in his patrol car without moving equipment to his trunk. Under the circumstances, the Grievant could not safely move the equipment from the back seat to the truck in order to make room for the female occupant.

The Arbitrator determined that the five-day suspension was not appropriate due to the overriding officer safety concerns. The Arbitrator recognized the multiple challenges on that particular scene given the five individuals that were present and no backup assistance. The Arbitrator concluded that the Agency did not convince him by a preponderance that “concern for officer safety should have been ignored in lieu of immediately cuffing the female passenger.” Accordingly, the Arbitrator sustained the grievance.