**OCB AWARD NUMBER: 2194**

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| **SUBJECT:** | **ARB SUMMARY # 2194** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20110602-0065-04-01** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **E. William Lewis** |
| **GRIEVANT NAME:** | **Justin Hurlbert** |
| **MANAGEMENT ADVOCATE:** | **Charles Linek** |
| **UNION ADVOCATE:** | **Elaine Silveira** |
| **ARBITRATION DATE:** | **01/09/2013** |
| **DECISION DATE:** | **01/28/2013** |
| **DECISION:** | **Denied** |
| **CONTRACT SECTIONS:** | **Article 19.05 – Progressive Discipline** |
| **OCB RESEARCH CODES:** | **118.301 – Progressive Discipline; 118.08 – Suspensions-In General;**  **93.4661 – Timeliness of Grievance** |

**HOLDING: Grievance denied. The Arbitrator upheld the Grievant’s three-day suspension because the Grievant failed to exercise proper care while unloading his firearm during a courtroom demonstration.**

The Grievant is a Sergeant with the Ohio State Highway Patrol (the Agency) with approximately sixteen years of service at the time of the hearing. On June 8, 2010, the Grievant helped arrest an OVI suspect. While inventorying the suspect’s vehicle, an officer found a loaded handgun. On January 18, 2011, the Grievant testified about that loaded handgun in a suppression hearing. During his testimony, the Grievant used his service weapon to demonstrate how to unload a firearm. According to multiple witnesses, including the county prosecutor, the Grievant’s demonstration was disturbing and frightened those in the courtroom. A video recording of the demonstration shows the Grievant unload his firearm in a very quick and careless manner. Shortly thereafter, the Agency initiated an Administrative Investigation (AI) and found that the Grievant violated the following Agency rules: 1) Performance of Duty/Inefficiency; 2) Conduct Unbecoming an Officer; and, 3) Use of Force and Firearms. Consequently, the Agency suspended the Grievant for three days. The Grievant challenged the suspension, requesting a reduction from three days to one day.

The Agency argued that the discipline was appropriate because the Grievant did not exercise proper care during his courtroom demonstration and endangered those in the courtroom. The Agency produced several witnesses who testified that they were shocked and frightened by the Grievant’s demonstration. The Agency also challenged the timeliness of the Union’s Step 3 request for arbitration; however, the Arbitrator determined that the Union had a reasonable excuse/justification and proceeded to the merits.

The Union argued that the Agency did not have just cause to discipline the Grievant and that the three-day suspension was not progressive. The Union stipulated to the Conduct Unbecoming an Office Charge and argued that the Grievant’s demonstration did not violate the Use of Force and Firearms rule.

The Arbitrator determined that the three-day suspension was appropriate because the Grievant’s hurried demonstration did not amount to proper care and endangered those in the courtroom. The Arbitrator explained that while handling a loaded weapon during a demonstration, the demonstrator must move “in a slow meticulous manner” and that “the observers need to feel safe.” The Arbitrator determined that the Grievant did not comply with these principles. Accordingly, the Arbitrator denied the grievance.