**OCB AWARD NUMBER: 2200**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2200** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-11-20120123-0010-01-03** |
| **DEPARTMENT:** | **Department of Rehabilitation & Correction** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Craig A. Allen** |
| **GRIEVANT NAME:** | **Jessie Hubbard** |
| **MANAGEMENT ADVOCATE:** | **Kristen Rankin** |
| **UNION ADVOCATE:** | **Robert Jones** |
| **ARBITRATION DATE:** | **8-31-2012** |
| **DECISION DATE:** | **3-6-2013** |
| **DECISION:** | **Modified** |
| **CONTRACT SECTIONS:** | **Article 24 – Discipline** |
| **OCB RESEARCH CODES:** | **118.301 – Progressive Discipline; 4.013 – Protected Activity-Individual Employees; 118.634 – Off-Duty Misconduct; 118.6561 – Work Rules** |

**HOLDING: Grievance modified. The Arbitrator found that Grievant’s off-duty Facebook post indicating that we should get Kasich like we got Bin Laden was not a threat, however, grossly inappropriate. Because of the impropriety of the comment, discipline was warranted but termination was not justified. The grievant received a time served suspension with no back pay.**

Grievant was a Correction Officer at Lebanon Correctional Institution (LCI) who worked as a Special Response Team Leader. On May 3, 3011, Grievant posted on Facebook that “we got Bin Laden . . . let’s go get Kasich next . . . who’s with me?” The post happened off-duty but was viewed by at least four employees of LCI. The post was forwarded on to the prosecutor and a criminal investigation ensued though no charges were brought. Following an investigation by the Employer, Grievant was terminated for violating Work Rules 18 (Threatening), 37 (Actions That Compromise Duties as a Public Employee), and 39 (Act That Discredits the Employer).

The Employer argued that Grievant’s statement was a threat and in violation of Work Rules 18, 37, and 39, each of which designates removal as a first offense. The comments reflected intent to harm. Grievant received training and was aware that making threats was a disciplinary offense—even when posted on social media sites. Although the comments were made off-duty, the threats were against Grievant’s boss and Grievant identified himself as a public employee. No collective action occurred. The stipulated issue did not involve concerted activity and arbitration is not the proper venue. Moreover, the posting did not involve collective bargaining issues or terms of employment. Rather his actions encouraged criminal activity against the Governor.

The Union countered that there was no just cause for removal as no threat occurred. While the comment was inappropriate, the prosecutor declined to charge Grievant criminally. Grievant was attempting to get the membership’s attention. The actions were therefore protected concerted activity. He was not on notice the social media policy included off-duty conduct, and he wrote the Governor an apology for his comments. Grievant also had an extensive record of good behavior, outstanding service, and was known as a jokester.

The Arbitrator found that the evidence and testimony justified extensive suspension of Grievant but not termination. The Arbitrator did not find any protected concerted activities as Grievant acted on behalf of himself. His actions did not constitute a complaint. Threats must be viewed in terms of context and the record failed to show that the comment was anything more than empty words. Grievant’s military and corrections experience, absent any indication that Grievant was perceived as potentially dangerous, did not demonstrate Grievant was disposed to violence. However, the comment was improper and more than a mere joke. The comment was made in a public forum and exhibited a job-related nexus in violation of Work Rule 39: his profile indicated where he worked and his status as a public employee. As such, termination was not justified, and the discipline is to be reduced to suspension for time served without backpay.