**OCB AWARD NUMBER: 2205**

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| **SUBJECT:** | **ARB SUMMARY # 2205** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20121219-0101-07-15** |
| **DEPARTMENT:** | **Ohio Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Jack Beuttner** |
| **GRIEVANT NAME:** | **Daren L. Johnson** |
| **MANAGEMENT ADVOCATE:** | **Corey W. Pennington** |
| **UNION ADVOCATE:** | **Hershel M. Sigall** |
| **ARBITRATION DATE:** | **1-31-2013** |
| **DECISION DATE:** | **3-27-2013** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Article 19 – Disciplinary Procedure** |
| **OCB RESEARCH CODES:** | **118.6561 – Work Rules; 118.6484 – Falsification of Records** |

**HOLDING: Grievance GRANTED. The Arbitrator found that the Employer did not meet its burden to show just cause in Grievant’s termination. The Arbitrator considered Grievant’s 19 years of satisfactory experience, leadership roles, and lack of personal gain when making decisions to find that Grievant acted in good faith during each of the three incidents where he was accused of violating work rules.**

Grievant was a sergeant at the Lima Post and had 19 years with the Ohio State Patrol. Grievant was terminated due to three distinct incidents that occurred on September 1, 2012, September 22, 2012, and September 30, 2012. The first incident involved allegations that Grievant had told a trooper under his command to falsify a document after taking a suspect into custody. The second incident involved allegations of violating “Responsibility of Command” when Grievant asked a trooper to follow a camper that was later found to belong to a drug trafficker. The third incident alleged falsification of records and failure to supervise when Grievant wrongly told a trooper not to issue a citation.

First, the Employer argued that Grievant told a trooper to make a false statement when he told the trooper to “be creative” in writing his statement and say that it was not in his best interests to say he arrested the suspect. The Employer also argued a trooper was “scared to death” because Grievant told a trooper to follow a camper and wait at the residence until Grievant arrived that was owned by an indicted crack-cocaine dealer. This was believed to be a violation of the work rules. Finally, the Grievant told a trooper to follow the direction of the Sheriff’s Department on a criminal damage to property situation. The trooper did and was then told by Grievant that if he did not void the ticket and delete the case, he would be written up for insubordination. The Employer also argued that Grievant was untruthful while testifying at the arbitration hearing.

The Union argued that Grievant was wrongfully terminated and the Employer failed to consider Grievant’s 19 years of service, including 29 letters of positive recommendation, numerous awards, and holding the position of an instructor at the Highway Patrol Academy. To the first issue, the Union argued that the trooper misinterpreted his communications and Grievant had been trying to clarify the difference between arresting and placing a suspect in investigative custody. Moreover, Grievant believed the trooper knew he had been joking in the communications as evidenced by his “lol”. Grievant did not tell the trooper to falsify the report and the only suggestions Grievant made about the report (after review) were grammatical. Next, the trooper did not communicate that he felt uncomfortable escorting the camper and the trooper did not find out about the ownership of the camper until long after the escort began. In combination with a limited administrative investigation on Grievant’s actions and the fact that his order to the trooper to void the ticket was reasonable under the circumstances, the grievance should be denied.

The Arbitrator found that Grievant was not fired for just cause. Grievant’s long work history, awards, and time as an instructor support the reasonableness of his decisions. The Arbitrator found that Grievant did not ask the trooper to falsify a statement and only explained the distinction to ensure the trooper used the correct terminology in his report. Any corrections to the report were grammatical in nature and did not change the substantive content. Grievant did not violate his responsibility of command because the trooper never made his known and did not become aware of the ownership of the camper until after the decision was made. As radio contact was maintained, Grievant’s actions were reasonable. Finally, Grievant’s communications to the trooper about the citation were reasonable and subject to debate. Although the decision was ultimately made to issue a citation, the issue was a difference of opinions and not a question of failing to supervise or falsifying records. Grievant had nothing to gain through any of the actions he took and every decision he made was reasonable. The administrative investigation was not expansive enough (lack of interviews with key witnesses, no review of videos, etc.), so under a totality of the circumstances the Employer did not meet its burden that termination was appropriate.