**OCB AWARD NUMBER: 2226**

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| **SUBJECT:** | **ARB SUMMARY # 2226** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20130318-0018-05-02** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **E. William Lewis** |
| **GRIEVANT NAME:** | **Thomas Dalton** |
| **MANAGEMENT ADVOCATE:** | **Aimee Szczerbacki** |
| **UNION ADVOCATE:** | **Paul Cox** |
| **ARBITRATION DATE:** | **8-22-2013** |
| **DECISION DATE:** | **11-4-2013** |
| **DECISION:** | **GRANTED** |
| **CONTRACT SECTIONS:** | **Articles: 19.00, 19.01, 19.05** |
| **OCB RESEARCH CODES:** | **118.01 Discipline- In General** |

**HOLDING: Grievance GRANTED. The Grievant did not harm the Employer’s reputation when the Grievant, while off-duty and acting in self-defense, shot an aggressor.**

Grievant is an Enforcement Agent. On March 6, 2012, while off-duty, the Grievant was involved in an altercation. The Grievant was driving to his girlfriend’s house with his children when he noticed that a Mr. Deaton was following him—the girlfriend’s ex-husband. At the same time, both men arrived at the girlfriend’s house. Mr. Deaton then exited his car and approached the Grievant. The Grievant drew his back-up weapon and ordered Mr. Deaton to the ground. During this exchange, two or three times, the Grievant stated that he was a police officer. Mr. Deaton retreated to his car. Threatening words were exchanged. The Grievant holstered his weapon. Soon after and in the midst of continued arguing, the two men ended up face-to-face. Mr. Deaton punched the Grievant in the head, causing the Grievant to stumble backwards. The Grievant responded by firing a bullet into Mr. Deaton’s abdomen. Mr. Deaton was later treated and recovered. The Grievant was subsequently discharged from his Enforcement Agent position for violating work rules: Conduct Unbecoming to an Officer and Compliance to Orders.

The Employer contended that the Grievant acted outside the scope of his authority. While off-duty, he identified himself as a law enforcement officer and drew his weapon in an attempt to detain a private citizen. As an Enforcement Agent, the Grievant is a peace officer. Further, his authority is limited to those situations when he is performing duties as an Enforcement Agent. Because the Grievant acted outside the scope of his authority, the state of affairs escalated. Due to these actions, the State can no longer trust the Grievant to handle a deadly weapon. Therefore, the Employer asked that the grievance be denied.

The Union argued that Mr. Deaton was a dangerous person, a risk to the Grievant and the Grievant’s children. Mr. Deaton had previously threatened the Grievant on Facebook. What transpired was a domestic violence situation, one that the Grievant could not walk away from. The physical altercation was not started by the Grievant. The shooting occurred in self-defense. Therefore, the Union asked that the grievance be granted.

The Arbitrator found that this was clearly a domestic violence situation. Mr. Deaton had made serious Facebook threats to the Grievant that very same day. Further, Mr. Deaton’s presence on the property violated a restraining order. The Grievant acted reasonably while protecting his children and girlfriend. The charged physical altercation that allegedly brought discredit to the Department was not initiated by the Grievant. The courts decided not to pursue charges against the Grievant. This proves that the Grievant acted in self-defense. Therefore, the arbitrator granted the grievance.