**OCB AWARD NUMBER: 2228**

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| **SUBJECT:** | **ARB SUMMARY # 2228** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-00-20130510-0041-05-02** |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **FOP** |
| **ARBITRATOR:** | **Sherrie Passmore**  |
| **GRIEVANT NAME:** | **Ronald Robinson** |
| **MANAGEMENT ADVOCATE:** | **Lt. Heidi Marshall** |
| **UNION ADVOCATE:** | **Paul L. Cox** |
| **ARBITRATION DATE:** | **9-17-2013** |
| **DECISION DATE:** | **11-15-2013** |
| **DECISION:** | **DENIED**  |
| **CONTRACT SECTIONS:** | **Articles: 19.01, 19.05, & 20.09** |
| **OCB RESEARCH CODES:** | **118.01 Discipline - In General; 118.6515 – Poor Judgment; 118.646 Discourtesy to Public** |

**HOLDING: Grievance DENIED. The Grievant had a clean record prior to the two incidents subject to the removal. The Grievant showed co-workers sexually explicit content. He also made false statements to the Employer about an incident where he—without the authority to do so—chased down a vehicle, identified himself as a police officer, yelled at the occupants of the car, and bruised the arm of an individual by grabbing her. These two incidents justified the Grievant’s termination. The Grievant’s actions were unbecoming of an officer and in violation of the CBA. Because the Grievant was also found to have been dishonest, the Arbitrator lacks authority to modify the discipline.**

The Grievant was an Enforcement Agent in the Ohio Investigative Unit. On October, 4, 2012 the Employer received a letter alleging the Grievant had shown sexually explicit content to a co-worker while on duty. A second incident occurred on December 16, 2012 involving the off-duty conduct of the Grievant. Here, he chased down a vehicle that had allegedly cut the Grievant off. The Grievant followed the vehicle—while flashing its lights and honking the car—to a private residence. The occupants of the car called 911. The Grievant then threatened the occupants of the vehicle. An individual from the private residence exited the house and attempted to calm down the situation, and the Grievant grabbed the individual’s arm causing bruising. The police showed up shortly thereafter, and the resident decided not to press charges against the Grievant. Between the incident and disciplinary investigation, the Grievant provided conflicting accounts about his actions.

The Employer contended that discharge was appropriate in light of the two incidents and concerns over the Grievant making a false statement. The facts from the first incident were not in dispute, and the only inconsistent account from the second incident was given by the Grievant. The four witnesses gave consistent accounts and did not have time to conspire before the police arrived. The Grievant exceeded his authority by following the vehicle and his misconduct and subsequent untruthfulness were sufficiently severe to warrant removal.

The Union argued that the vehicle was followed because the Grievant suspected the driver of being intoxicated. He claims that he did not announce himself as a police officer until asked. The Union contended that the testimony of the observers should be discounted or ignored because they did not attend the arbitration hearing, and a passenger of the vehicle was shown to be intoxicated. Evidence used in the administrative investigation was not properly authenticated by the Employer. Additionally, sexually explicit content is common at the workplace and brought no disrepute to the agency. Therefore, discharge was disproportionate to any alleged offense and the Grievant’s testimony was not dishonest.

The Arbitrator found that the Grievant brought discredit to the agency by aggressively confronting private citizens at their private residence without any authority to do so. He caused the altercation and then identified himself as a police officer. Several individuals observed these Grievants actions. The Union failed to show that the observers had the time or the motive to conspire against the Grievant in their statements. The police were willing to file criminal charges, but the woman who was grabbed chose not to press charges. The Grievant’s actions were inconsistent his stated purpose: following the car because he believed the driver to be intoxicated. Given the Grievant’s 15 years of experience, he should have known his actions were unreasonable and would only make the situation worse. Even if sharing of sexually explicit material at work does was commonplace, this does not make it acceptable. The lack of sexual harassment charges does not eliminate the Grievant’s culpability or violation of the rules. His inconsistent testimony throughout was sufficient to satisfy the dishonesty threshold. As such, the Grievant’s actions were sufficient to justified discipline, and the Grievant’s dishonest actions prevent the Arbitrator from modifying the penalty. Therefore, the grievance is denied in full.