**OCB AWARD NUMBER: 2242**

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| **SUBJECT:** | **ARB SUMMARY # 2242** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **25-18-20121007-0010-05-02** |
| **DEPARTMENT:** | **Ohio Department of Natural Resources** |
| **UNION:** | **FOP** |
| **ARBITRATOR:** | **Susan Grody Ruben**  |
| **GRIEVANT NAME:** | **Matthew Roberts**  |
| **MANAGEMENT ADVOCATE:** | **Kandie L. Carson** |
| **UNION ADVOCATE:** | **Paul L. Cox** |
| **ARBITRATION DATE:** | **10-24-2013 and 12-9-2013** |
| **DECISION DATE:** | **3-6-2014** |
| **DECISION:** | **GRANTED**  |
| **CONTRACT SECTIONS:** | **Article 19.01**  |
| **OCB RESEARCH CODES:** | **118.01-Discipline-In General**  |

**HOLDING: Grievance GRANTED. Since the Grievant was instructed to report “straight 8’s,” the Grievant did not “willfully falsify” his timesheets. Accordingly, the State did not have just cause to remove the Grievant from his position.**

*Facts.* In response to a citizen complaint, the Ohio Office of the Inspector General (OIG) administered an investigation regarding inappropriate behavior by Wildlife Officers on work time. Specifically, OIG’s report determined that the Grievant hunted while on duty. In deciding the Grievant’s fate, ODNR mainly relied upon this imperfect OIG report. And based this reliance, ODNR removed the Grievant from his position.

*The Employer’s Position*. An Officer hunting while on duty discredits the agency. Accurate timekeeping is essential in maintaining public trust. Dishonestly reporting “straight 8’s” clearly violates that public confidence. Further, reporting “straight 8’s” is not an established past practice. Ample training was provided to the Grievant regarding this issue. And the Grievant should have known that his actions were unethical. The Union, thus, failed to meet its burden.

*The Union’s Position.* The Employer failed to meet its burden, as the Grievant made no attempt to deceive the State. For thirty years, ODNR employees have reported “straight 8’s” regardless of their actual time worked. An officer could work fifteen hours one day and only four the next day because Wildlife Officers are basically on duty 24/7. Flextime, thus, is a necessity. Concomitantly, the Grievant actually worked more hours than he reported. Some weeks, the Grievant worked over sixty hours, while only reporting “straight 8’s.” For all these reasons, the State did not have just cause to remove the employee.

*The Arbitrator’s Decision.* Since the Grievant was instructed to report “straight 8’s,” the Grievant did not “willfully falsify” his timesheets. In fact, the record shows that the Grievant worked more hours than he was paid for. Accordingly, “it would be fundamentally unjust…to hold the Grievant to a standard that did not get communicated to him until after the days in question.” The Arbitrator granted the grievance.