**OCB AWARD NUMBER: 2248**

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| **SUBJECT:** | **ARB SUMMARY # 2248** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20130923-0079-04-01**  |
| **DEPARTMENT:** | **Department of Public Safety** |
| **UNION:** | **OSTA** |
| **ARBITRATOR:** | **Dwight A. Washington** |
| **GRIEVANT NAME:** | **Jason Fantone** |
| **MANAGEMENT ADVOCATE:** | **Lt. Cassandra Brewster** |
| **UNION ADVOCATE:** | **Herschel M. Sigall** |
| **ARBITRATION DATE:** | **1-21-2014** |
| **DECISION DATE:** | **3-19-2014** |
| **DECISION:** | **DENIED**  |
| **CONTRACT SECTIONS:** | **Article 19.01 and 19.05**  |
| **OCB RESEARCH CODES:** |  **118.01-Discipline—In General**  |

**HOLDING: Grievance DENIED. The evidence supports the Employer’s theory that the Grievant’s OVI arrest derived from his volitional choice to drink.**

*Facts.* The Grievant was a Highway Patrol Trooper, removed for an OVI arrest. While off-duty, he went to a Buffalo Wild Wings. There, he consumed alcohol and left without paying the bill. A search for the Grievant ensued. Employees and the police finally found the Grievant passed out in his car. The car was running. And they needed to wake him. But knocking on his car window did not suffice. The police had to open to his door. With his door open, the police continued to try to wake him. Finally, it worked. After awakening, it became apparent that the Grievant was not in a normal state of mind. He appeared drunk and was reportedly confrontational with police. Consequently, he was arrested. The Grievant claimed that he was not drunk, but that he was sick. The Employer did not buy it.

*The Employer’s Argument.* As a Highway Patrol Trooper, it is imperative that the Grievant obey the law. It discredits the State when an enforcer of its laws disregards those same laws in his personal life. The evidence supports the theory that he was drunk.

*The Union’s Argument*. The Grievant was not drunk. He was sick. He had been working on installing a toilet in his house. And while doing this work he was exposed to noxious gases. The Grievant, thus, acted as he did not because of a volitional act, but because of his exposure to these gases. The Grievant, further, is a good officer with no deportment record.

*Holding.* The evidence weighs in favor of the Employer. It appears that the Grievant behaved as he did because of a volitional choice to drink alcohol. There was no corroborating evidence to support the Grievant’s theory.