**OCB AWARD NUMBER:**

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| **SUBJECT:** | Arb Summary #2511 |
| **TO:** | All Advocates |
| **FROM:** | Megan Schenk |
| **OCB GRIEVANCE NUMBER:** | DRC-2014-39519-3 |
| **DEPARTMENT:** | DRC |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Sarah Cole |
| **GRIEVANT NAME:** | Evan Nephew |
| **MANAGEMENT ADVOCATE:** | Garland “Eddie” Wallace |
| **UNION ADVOCATE:** | James Hauenstein |
| **ARBITRATION DATE:** | January 13, 2016 & March 16, 2016 |
| **DECISION DATE:** | May 5, 2016 |
| **DECISION:** | Denied |
| **CONTRACT SECTIONS:** | 24, 24.01-24.03 |
| **OCB RESEARCH CODES:** | 118.01 – Discipline in General; 118.6498 – Contraband on State Property; 106.01 – Dishonesty in General |
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**HOLDING:** Grievance **DENIED**. The Arbitrator found that Grievant violated the employer’s work rules by using his cellphone and personal e-mail excessively while on duty, and failing to follow the post-fight procedures. Given the violation of those rules, and the fact that the grievant had an active discipline on his record, there was just cause to remove the Grievant.

**Facts:** Grievant was a correctional officer at the Ohio Reformatory for Women (ORW) with approximately 7 years of service at the time of his termination. The Employer began an investigation of Grievant after inmates alleged that he had encouraged one inmate to attack another. Through the course of this investigation, the Employer discovered numerous other infractions committed by Grievant. The Employer found that Grievant had improperly and excessively used his personal e-mail and cellphone while on duty, and not followed appropriate post-fight procedure.

**The Employer argued:** Grievant was terminated for just cause.Grievant had an active one day working suspension on his record for a performance violation at the time of the current incident; thus justifying Grievant’s termination. Grievant violated the work rules by using his state and personal e-mail accounts to e-mail another officer while they were both on duty, by possessing a cellphone while on perimeter duty and used that cellphone to send non-business related text messages, and by lying during the investigation process. Further, the Grievant violated the work rules by engaging in horseplay with an inmate where he repeatedly withheld a pen and paper from her, and then attempted to intimidate an inmate by sticking his finger in her face and saying “bad inmate”. The Grievant also violated the work rules by encouraging an inmate to fight, and failing to take proper action to secure the fighting inmate afterwards.

**The Union argued:** Grievant was wrongfully terminated.All employees use their cellphones inappropriately at times and send personal e-mails. Employees use their personal e-mail for NASCAR and football pools, so this should be no different. Grievant’s use of his cellphone while on perimeter duty is not problematic because occasional texts would not distract him from his overall purpose: to make sure contraband is not thrown over the fence. Grievant did not intend to convey his cellphone to anyone, and therefore it cannot be contraband. Grievant insisted that his “horseplay” was not inappropriate, sticking his finger in an inmates face and calling her “bad inmate” is not intimidation because the inmate herself said she was not intimidated, and that he did not entice a fight or act inappropriately afterwards.

**The Arbitrator found:** The arbitrator found that the Employer had established that the Grievant had: inappropriately sent and received personal emails in his personal email account and his state email account while on state time; used his personal cellphone, which was contraband, while on perimeter duty; lied during his investigatory interview, and; failed to follow agency procedures for reporting an inmate fight. The Employer did not establish that the Grievant had engaged in inmate intimidation or enticed two inmates to fight each other. However, the violations that the Employer had established justify the Grievant’s termination.