**OCB AWARD NUMBER: 2260**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2260** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **MEGAN SCHENK** |
| **OCB GRIEVANCE NUMBER:** | **15-03-20130325-0020-05-02** |
| **DEPARTMENT:** | **Department of Public Safety-Ohio State Highway Patrol** |
| **UNION:** | **FOP, Unit 2** |
| **ARBITRATOR:** | **E. William Lewis**  |
| **GRIEVANT NAME:** | **Timothy Gales** |
| **MANAGEMENT ADVOCATE:** | **Lt. Cassandra Brewster** |
| **UNION ADVOCATE:** | **Paul Cox** |
| **ARBITRATION DATE:** | **9-4-2014, 9-19-14** |
| **DECISION DATE:** | **11-24-2014** |
| **DECISION:** | **MODIFIED**  |
| **CONTRACT SECTIONS:** | **Article 20.08** |
| **OCB RESEARCH CODES:** | **118.01—Discipline—In General**  |

**HOLDING: Grievance MODIFIED. The Grievant’s removal was without just cause. Although the Grievant did misuse a workplace searching system, and although the Grievant was charged with multiple criminal offenses, the Grievant was never found guilty on any count, and the Grievant does not have a recent history of discipline; thus, an immediate removal was improper. The Grievant, however, had been charged with a similar offense previously, and should have known not to engage in questionable conduct which may lead to such charges. The totality of the circumstances invoked the Arbitrator to restore the Grievant to his previous position, allowing the time he spent removed from his position to function as time served on suspension.**

*Facts.* Enforcement Agent Timothy Gale, the Grievant, was removed from his employment after he was charged with illegal vehicle sales and theft, and, after it was discovered that he allegedly violated a workplace policy by misusing the Ohio Law Enforcement Gateway System (OLEGS). The Grievant likes to buy cheap cars and sell them. Sometimes he makes a profit, and sometimes he doesn’t. It’s a hobby. But it might have been an illegal hobby if it could have been proven that he bought and sold a certain amount or kind of cars in a particular time period without a proper license, something that the Grievant here was charged with doing. In addition, on one occasion, he agreed to buy a few cars for a civilian. And although he purchased two cars for this person, he had agreed to purchase four and was given money to purchase four. The excess money for the third and fourth car was not given back to the individual, and so she sought recourse. The Grievant also allegedly used OLEGS to search individuals for non-criminal justice purposes. The cumulative effect of the criminal charges brought and the workplace violation inspired the Employer to remove the Grievant from his position.

*Employer’s Position.* Grievant brought discredit and disrepute to the Employer. By selling a number of salvaged and original titled vehicles in less than a year, the Grievant violated Ohio law. He also presented himself as a police officer to a civilian, taking money from that person, then not purchasing the amount of cars agreed to and not paying back the excess money given. He violated a work rule by using OLEGS to look up family members and his supervisor when such activity was not related to criminal justice as well. His removal thus was for just cause.

*Union’s Position.* The Grievant’s removal was not for just cause. The vehicle sales made by the Grievant do not require a license. A prior, similar arbitration concerning this Grievant held that the Grievant did not illegally sell vehicles without a license. The Grievant did not misuse OLEGS either, because he did not knowingly violate a workplace policy. He searched for family members and the supervisor on OLEGS to practice using it. And he was not convicted of theft; he was only indicted. An indictment cannot serve as a sufficient reason for removal as it does not result in guilt; it only results in an accusation. The Grievant, moreover, does not have any prior discipline, and thus the Employer did not use progressive discipline. Consequently, the Grievant should be restored to his previous positon.

*Arbitrator’s Decision.* The Grievant’s removal was without just cause. Upon examination of the evidence, the Arbitrator concluded that the Grievant had not violated the statute when he engaged in numerous vehicle transactions, because several of these transactions should be considered transfers without consideration instead of sales with consideration. The Grievant, however, did appear to violate policy by using OLEGS for non-criminal justice purposes. He is familiar with the system, and it is highly unlikely that he still conducts searches sporadically for practice. The Grievant did discredit the Employer when he misled an individual, resulting in theft allegations. His conduct there was questionable at best. His clean record, though, and the lack of supporting evidence available to substantiate the Employer’s claims of illegal activity by the Grievant demand reinstatement.