**OCB AWARD NUMBER: 2646**

SUBJECT: Arb Summary # 2646

TO: All Advocates

FROM: Rachel Tollefsrud

OCB GRIEVANCE NUMBER: DNR-2018-02152-02

DEPARTMENT: Ohio Department of Natural Resources

UNION: Unit 2 Association

ARBITRATOR: Felicia Bernardini

GRIEVANT NAME: Shaun Lentini

MANAGEMENT ADVOCATE: Andrew Shuman

UNION ADVOCATE: Kimberly Rutowski

OCB REPRESENTATIVE: Eric Eilerman

ARBITRATION DATE: 6/16/2020

DECISION DATE: 8/12/2020

DECISION: GRANTED

CONTRACT SECTIONS 17, 19, 31

OCB/BNA RESEARCH CODES: 118.67 – Disparate Treatment; 119.01 – Promotion-Selection in General

KEYWORD SEARCH TERMS: Destruction of Evidence, Promotion, Remedy, Disparate Treatment, Notice

**HOLDING: GRANTED**.While the Grievant had knowledge of the policy, the element of notice requires a workplace expectation that failure to follow the policies would result in discipline, which was not in place. The Grievant was the only one involved in the incident to receive a suspension as opposed to a written reprimand. The element of notice is not satisfied and there has been disparate treatment.

**Facts:** The Grievantis a Natural Resources Officer and on June 19, 2017 responded to a radio call to Buck Creek State Park’s beach with two other NRO’s and a Lieutenant. One of the other NRO’s searched the purse of the unwell woman and found a baggie with remnants of marijuana. The allegedly illegal search meant the woman was not charged; the NRO’s then decided that the remaining marijuana crumbs would be destroyed. The Grievant and a fellow NRO went to the bathroom where the Grievant flushed the drug remnants down the toilet. The Grievant recorded this destruction in his incident report. A criminal charge for destruction of evidence was declined after an investigation by the Ohio State Highway Patrol; an administrative investigation followed and the Grievant was issued a one-day working suspension. Due to this suspension, the Grievant was allegedly denied a promotional opportunity.

**The Union argued:** The Union argued that the Employer failed to establish just cause for the discipline since the Grievant was an employee of 5 years with no prior disciplinary record. Additionally, the destruction of minimal amounts of marijuana, when no charges were filed, was a common practice among officers, so the Grievant had no way of knowing he would be disciplined for his actions. Other officers have not been disciplined for this same conduct. The investigation was not handled fairly or objectively. The level of discipline is excessive and prevented Grievant from being promoted.

**The Employer argued:** The Employer argued that destruction of the marijuana as done by the Grievant violated the Department’s clear policy on the handling of evidence/property. The Grievant was aware of the policy and acknowledged he did not follow policy on the date of the incident when destroying the marijuana. Grievant had attended training two months earlier on proper reporting of drugs. The one-day suspension is commensurate discipline for this level of policy violation because Grievant actually destroyed the marijuana. The Grievant’s “make whole” remedy that he be promoted must fail since the promotion offer never moved beyond conditional status and the promotion was never filled by someone else.

**The Arbitrator found:** The Employer has not met its burden to prove a policy violation occurred. There is substantial evidence that the destruction of minimal amounts of marijuana by Officers was not uncommon and either a warning or no discipline ensued. The Grievant was transparent with his handling of the small amount of marijuana. While he had previously destroyed small amounts of marijuana, his supervisors never corrected him. As a result of the suspension, Grievant was denied a promotional opportunity for which he had received a conditional offer prior to the issuance of the discipline. Therefore, the grievance is **GRANTED.**