

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Jane Langill-Cole,  
Yolanda Marsh

Case Nos. 09-SUS-11-0491  
09-SUS-12-0496

*Appellants,*

v.

Hamilton County Engineer,

*Appellee.*

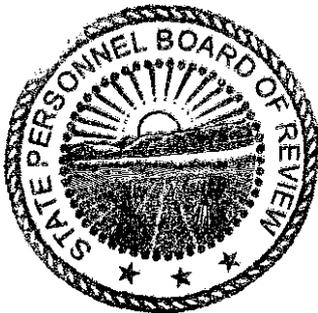
**ORDER**

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellants' twenty-day suspensions be **AFFIRMED**, pursuant to O.R.C. § 124.34.

Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye



  
J. Richard Lumpe, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, August 12, 2010.

  
*Clerk*

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

JANE LANGILL-COLE,  
YOLANDA MARSH,

Case No. 2009-SUS-11-0491

Case No. 2009-SUS-12-0496

*Appellants*

v.

July 21, 2010

HAMILTON COUNTY ENGINEER,

*Appellee.*

JAMES R. SPRAGUE

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This *consolidated* case came to be heard on June 29, 2010. Present at the hearing were Appellants Jane Langill-Cole and Yolanda Marsh, who appeared *pro se* and who serve as Clerk 2s with the Office of the Hamilton County Engineer (HCE). Appellee, Hamilton County Engineer William W. Brayshaw, was present through his designee, Ted Hubbard, Chief Deputy Hamilton County Engineer. Also present were Gina Stammer, Personnel Officer Supervisor, Michael Roach, Highway Maintenance Supervisor, and Laura Maus, Human Resources Development Manager (HRDM) with the Hamilton County Human Resources Department. Appellee was represented at hearing by Kathleen H. Bailey, Assistant Prosecuting Attorney for Hamilton County.

This consolidated case comes on due to respective appeals timely filed by Appellants Langill-Cole and Marsh on November 23, 2009 and November 24, 2009, respectively. These appeals resulted from pre-disciplinary decisions received on November 17, 2009. Appellants were charged with Dishonesty, Malfeasance, Negligence, Inefficiency, Failure of Good behavior, and Violation of County Policy and after the hearing, were suspended for twenty (20) days as a result of many allegedly inappropriate emails sent between Appellants.

Appellants believe that the county's progressive discipline policy was not followed because Appellants had not had any disciplinary issues previously. They assert that the discipline they were given was punitive and inappropriate given the infractions and their records.

Appellee asserts that, due to the large volume (nearly 300 pages) and nature of the emails in question sent between Appellants, a twenty day suspension was the appropriate discipline; even though Appellants were not progressively disciplined for their infractions.

Jurisdiction over the subject matter of these appeals was established pursuant to R.C. 124.03 and R.C. 124.34.

## **CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT**

R.C. 124.34(A) states:

The tenure of every officer or employee in the classified service of the state and the counties...shall be during good behavior and efficient service. No officer or employee shall be reduced in pay or position, fined, suspended, or removed, or have the officer's or employee's longevity reduced or eliminated, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony...

The respective R.C. 124.34 disciplinary orders in these cases stated:

Pursuant to Section 124.34 of the Ohio Revised Code, the reason for this action is that you have been guilty of Dishonesty, Malfeasance, Negligence, Inefficiency, Failure of Good behavior and Violation of County Policy in the following particulars, to wit: Based upon the charges set forth in the Notice of Pre-Disciplinary Conference dated October 22, 2009.

At the hearing, four witnesses testified: **Gina Stammer**, Personnel Officer Supervisor; **Michael Roach**, County Engineer Highway Maintenance Supervisor and Appellant Langill-Cole's direct supervisor; **Laura Maus**, HRDM with the Hamilton County Human Resources Department; and **Ted Hubbard**, Chief Deputy County Engineer and Appellee's designee at hearing, who conducted the pre-disciplinary hearing for Appellants.

First to testify was **Gina Stammer**, Personnel Officer Supervisor. Ms. Stammer testified that she is responsible for directing, advising and communicating with supervisors about their subordinates' employment and that she reports directly to Mr. Hubbard. She described the Appellants' duties as follows: working with communications centers, municipalities, townships, the public and their supervisors; tracking time; and inputting.

Ms. Stammer explained that the investigation that resulted in the instant charges against Appellants was initiated following a phone call she received from Ms. Langill-Cole informing Ms. Stammer that Ms. Langill-Cole would be off work for a period time under FMLA. Ms. Stammer asked if Ms. Langill-Cole would provide her a reason for this leave; Ms. Langill-Cole was not required to answer.

Yet, Ms. Langill-Cole responded that she was under emotional distress because of her supervisor, Michael Roach, and she needed time off to recover. As a result of this conversation, Ms. Stammer had to investigate the situation.

Under Chief Deputy Engineer Hubbard's direction, Ms. Stammer, HRDM Laura Maus, and Bridge and Maintenance Engineer Steve Mary conducted the investigation. As part of the process, they interviewed Mr. Roach to determine issues he may have thought he had with his employees. After explaining to him what was happening and why they were there, Mr. Roach handed over email transactions to them he had found at Ms. Langill-Cole's cubicle when searching for other documents.

These emails contained communications between Appellants that he believed indicated they were attempting to plot against him. Ms. Stammer indicated that she also believes that Appellants were plotting against Mr. Roach.

At hearing, Ms. Stammer referenced the emails that Mr. Roach provided, which detailed different ways in which to structure the bases for Ms. Langill-Cole's claims against "SS", a nickname for someone in the office whom Ms. Stammer believes to be Mr. Roach.

The communications in these emails clearly regard a conspiracy against Ms. Langill-Cole's supervisor. Ms. Stammer also pointed out that inappropriate words were consistently misspelled in their emails. Ms. Stammer posited this was a way for Appellants to avoid detection by the HCE's IT filter in place to catch inappropriate use.

Ms. Stammer then explained the concept of progressive discipline. She noted that progressive discipline is usually applied in the HCE's office, except in extreme cases.

She admitted that Appellants were given punitive discipline for their actions and violations of rules. She explained that their infractions were more serious

than others that were cited because of the volume, content, and potential impact of the emails exchanged between Appellants.

Ms. Stammer explained that, because of Mr. Hubbard's position as an elected official, and because of the new version of the Hamilton County Engineer Personnel Policy and Procedure Manual, Mr. Hubbard was in an appropriate position to conduct Appellants' pre-disciplinary hearings.

Second to testify was **Michael Roach**, HCE Highway Maintenance Supervisor and Appellant Langill-Cole's direct supervisor. He explained that Ms. Langill-Cole was out of the office one day and he needed gas tracking documents that she kept at her desk.

He looked for the documents and in his search he came across several of Appellants' emails in paper form. He had heard rumors that Appellant Langill-Cole was bringing accusations against him, but he did not know what they would concern.

The following day he was called for a meeting regarding these accusations, at which he produced the emails he had found the day before. He testified that he was later made aware of the content of the remaining emails and that he has concerns about Ms. Langill-Cole's her ability to perform her job duties well. He stated his discomfort with her future abilities to perform her work was due to the content of the emails because her position gives her access to other employees' disciplinary write ups.

Next to testify was **Laura Maus**, Hamilton County HRDM. Ms. Maus testified that she is outside of the HCE's chain of command, as she reports to County Human Resources Director Gary Berger, who reports to the Hamilton County Administrator. Ms. Maus indicated that, although Ms. Stammer was originally the witness for Appellants' pre-disciplinary hearings, Ms. Maus took her place when it became obvious that some of the emails' contents concerned Ms. Stammer.

Ms. Maus asserted that the investigation was initiated to determine whether the emails produced by Mr. Roach were the product of a singular incident or regular usage. That investigation demonstrated that Appellants had had regular communication of a similar nature to the emails Mr. Roach found, she averred.

Ms. Maus explained in detail how the emails exchanged violated County policy, including derogatory references to people and various sexual references. More specifically, Appellants used terms that were sexist, racist, derogatory to persons with disabilities, and offensive to a reasonable person, especially in regard to sexual content. There were several instances in which Appellants used the term "retard" or "retarded" in reference to their coworkers and supervisors. Ms. Maus also cited sexist comments such as "the guys are doing nothing except

standing around ALL day grunting and touching” and “that’s where Fat Boy came from!”

Ms. Maus also pointed out several references to violence, a few of which are as follows: “until I took a screwdriver and plunged it thru [sic] his pervo [sic] heart;” “its [sic] either take the day off or pull a ‘Postal’ and bring in my 38 special;” “the only fantasy I have about [him] is to shove a 2 x 4 where the sun don’t shine;” and a reference to a backup plan for “public stoning and torching.” These are among several references to bringing firearms to the workplace to shoot coworkers, physical violence, and acts of violence each Appellant wished to carry out on specific individuals.

Ms. Maus also referenced several instances of Appellants’ disdain for their jobs and their disregard for their job duties and even for members of the public. One example comes from Appellant Langill-Cole and reads, “Just give me my pink slip & watch me dance off into the sunset, a tear of joy glistening on my cheek!” Another email includes, “I’m not answering the phone. They are all going to voice mail.”

Last to testify was **Ted Hubbard**, Chief Deputy Hamilton County Engineer, who served as the hearing officer for Appellants’ pre-disciplinary hearings. Following same, Mr. Hubbard determined that the HCE had substantiated charges of dishonesty, malfeasance, negligence, inefficiency, failure of good behavior, and violation of county policy. Accordingly, he stated, he recommended a twenty (20) day suspension for both Appellants.

Mr. Hubbard testified that Appellant Langill-Cole admitted the aforementioned acts and acknowledged that her actions could be harmful to the workplace. He also found in the hearings that both Appellants were equally at fault for their misbehavior. He indicated that Appellants violated Section 2.2 of the Personnel Policy and Procedure Manual, which states, in part, “All employees...are responsible for creating a work environment free from offensive behavior.” He also indicated Appellants violated Sections 7.5, 7.18, and 8.3A (Group III offenses).

Mr. Hubbard explained that progressive discipline depends primarily on the type of offense committed and that, for extremely serious offenses such as Group III offenses, a simple verbal reprimand would not suffice. He testified that he took into consideration the fact that Appellants had never had any prior disciplinary actions taken against them.

He asserted that Appellants knew their actions would be taken seriously because they signed the computer use policy that stated, “Abuse of this tool will be dealt with severely.”

He concluded by explaining that he recommended a twenty (20) day suspension because Appellants plotted against people, discussed workplace violence, and used terminology that was demeaning to people, with all of their communication becoming a public record. He also pointed out that Appellants knew what they were doing was wrong and yet continued to do so, even attempting to find ways to hide their offenses.

### **CONCLUSIONS OF LAW**

This case presents this Board with the question of whether Appellants were properly disciplined when they were given twenty (20) day suspensions for their inappropriate emails at work amounting to dishonesty, malfeasance, negligence, inefficiency, failure of good behavior, and violations of County policy? Based on the findings set forth, above, and for the reasons set forth, below, this Board should find that twenty-day suspensions were appropriate in this instance.

The following policies are in place in the Hamilton County Engineer's Office and were violated by Appellants' emails to each other: discriminatory conduct; offensive, disruptive and unprofessional conduct; inappropriate use of computer, internet and electronic mail; workplace violence; and wanton or willful neglect in the performance of assigned duties.

Evidence presented at hearing demonstrates that Appellants intentionally avoided doing their jobs properly by not answering telephone calls, plotting accusations of sexual harassment, and insulting coworkers *via* email. Appellants regularly discussed people in the office they did not like and what they wished to do to them as a result, which included falsely accusing them, creating more work for them, or physically hurting them.

Appellants also displayed a blatant disregard and lack of appreciation for their jobs at a time when many laid off employees in Hamilton County would likely be grateful to hold Appellants' positions. Indeed, the descriptions of how happy Appellants would be if they no longer had to work at the HCE's office causes one to question with what with degree of seriousness Appellants approached their jobs.

Because Appellants' emails are public record, they easily could be requested and read by all employees of the Hamilton County Engineer's office. Such an occurrence would almost certainly hurt the reputation of the office and severely and negatively impact the morale and atmosphere of the office; in light of Appellants' derogatory and discriminatory comments. Further, Appellants' explicit references to violent acts go directly against the policies promulgated by the County and certainly could put coworkers in fear of their safety.

Additionally, both Appellants acknowledged that what they were doing was unacceptable, not only by using nicknames and different terms for inappropriate words, but also by direct admission that they would have to find new jobs if their emails were discovered.

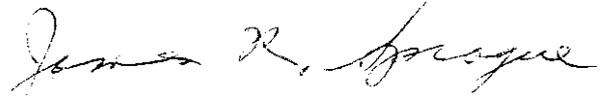
Group III offenses include wanton or willful neglect in the performance of assigned duties; willfully demeaning, verbally abusing, and/or humiliating another person; and dishonesty; and violating the workplace violence policy.

It is true that neither Appellant has received any prior discipline. Yet, because of the severity of Appellants' conduct, twenty-day suspensions adhere to the proper disciplinary policy as set forth under Group III offenses, which allows for any discipline up to termination.

By merely browsing the voluminous emails Appellants exchanged, one can easily determine that Appellants committed numerous Group III offenses and that the HCE was indeed both compassionate and gracious in allowing Appellants to remain employed by Hamilton County.

#### **RECOMMENDATION**

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** Appellee's respective twenty-day suspensions of Appellants Langill-Cole and Marsh, pursuant to R.C. 124.34.



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JAMES R. SPRAGUE  
*Administrative Law Judge*