

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

Theodore Boehm,

Appellant,

v.

Case No. 2013-REM-11-0294

Hancock County Engineer,

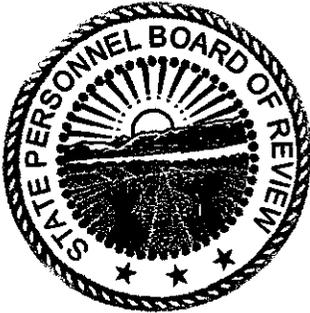
Appellee,

ORDER

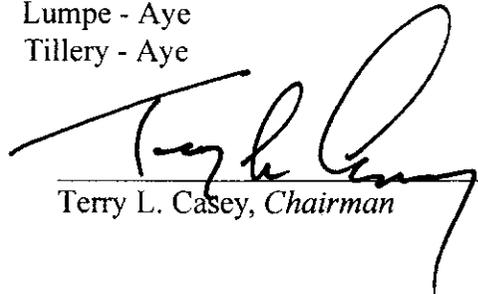
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 instant order of removal issued to Appellant, effective November 7, 2013, removing the Appellant from the position of Assistant Superintendent is **AFFIRMED**, pursuant to Ohio Revised Code Section 124.34 (B).



Casey - Aye
Lumpe - Aye
Tillery - Aye

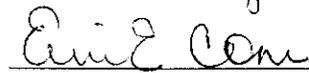


Terry L. Casey, *Chairman*

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 constitutes (~~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, January 28, 2015.



Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE February 4, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2013-REM-11-0294

Transcript Costs: \$210.00 Administrative Costs: \$25.00

Total Deposit Required: * \$235.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: February 12, 2015

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

Theodore Boehm

Case No. 2013-REM-11-0294

Appellant

v.

November 25, 2014

Hancock County Engineer

Christopher R. Young

Appellee

Administrative Law Judge

**NUNC PRO TUNC
REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

On November 6, 2013, the Hancock County Engineer's Office (hereinafter HCEO) served an Order of Removal, in accordance with Ohio Revised Code Section 124.34, upon the Appellant, Theodore Boehm, an Assistant Superintendent with the Hancock County Engineer's Office. The order alleged the following:

This will notify you that you are removed from your position as an Assistant Superintendent effective November 7, 2013.

The reason for this action is that you have been guilty of specifically: Resulting from past discipline, the employee signed a Last Chance Agreement, one term of which was that he was to attend anger management counseling. The employee misled the Counselor as to the conduct he committed that led to him needing to attend counseling. Additionally, the Employee stated that he did not commit an incident of workplace violence that the Employer's investigation found to have occurred. Finally, the Employee in his pre-disciplinary conference attributed statements to a 3rd party that he actually made to another employee. All of these instances of conduct constitute dishonesty, failure of good behavior, malfeasance, and neglect of duty. The Employee was instructed to provide truthful answers to questions in the pre-disciplinary conference and to his anger management counselor. He failed to

do so for both instances. This constitutes insubordination, failure of good behavior, neglect of duty, and nonfeasance. Last, the employee violated a last chance agreement prohibiting workplace violence and policy violations, committing such conduct on 8/22/13. This conduct constitutes malfeasance and failure of good behavior.

Thereafter, on November 8, 2013, the Appellant filed a timely appeal from this order. The record hearing in this case was held on July 23, 2014, at 10:00 a.m. and concluded upon the simultaneous filing of post hearing briefs on September 12, 2014. The Appellant, Mr. Theodore Boehm, appeared at the record hearing and was represented by Mr. Todd A. Fichtenberg, Attorney at Law. The Appellee, HCEO, was present through its designee, Mr. Christopher Long, the Hancock County Engineer, and was represented by Mr. Eugene P. Nevada, Attorney at Law.

This hearing was conducted by the State Personnel Board of Review in accordance with Ohio Revised Code Section 124.34, which specifically provides that an employee may file an appeal of any order filed under Ohio Revised Code Section 124.34, within ten (10) days after having received the order with the State Personnel Board of Review. The parties agreed and stipulated to the jurisdiction of this Board, as well as to the timely filing of the appeal.

STATEMENT OF THE CASE

Appellee's first witness to testify was the Appellant, Mr. Theodore Boehm, as if called on cross-examination. When questioned, the witness explained that he is currently not employed, but was last employed by the HCEO on November 6, 2013, as an Assistant Superintendent. The witness identified Appellee's Exhibit 1 as a pre-disciplinary hearing notice and an addendum which he received on or about October 8, 2013, for a scheduled conference to be held on October 16, 2013. The witness, when questioned, understood that he was being charged with a violation of his Last Chance Agreement which he previously signed, and confirmed that counsel had attended the pre-disciplinary hearing conference with him. The Appellant then identified Appellee's Exhibit 2 as the hearing officer's report dated November 4, 2013, which he received, which stated that he had been charged with violating a Group 3, No. 13 offense; providing false testimony, statements or information in an official employer administrative investigation; a Group 3, No. 9 offense; intimidating

an employee; a Group 3, No. 12 offense; insubordination and a violation of a Last Chance Agreement. When questioned, the witness then identified Appellee's Exhibits 3 and 4, as the instant Ohio Revised Code Section 124.34 removal order and a November 5, 2013 letter and notice of termination of employment from the Hancock County Engineer.

Further, the witness stated that as a 26-year employee with the HCEO, he understood the standard of conduct that employees were to adhere to in their employment, as he had received a personnel handbook. Next, the witness identified Appellee's Exhibit 5, page 000067, located at the top of the page, or page 00022, located at the bottom of the page, which identified Group 3 offenses. The document further indicated that, for a first Group 3 offense, the appropriate punishment could include termination of employment. The witness stated he was unaware of any specific policy regarding workplace violence. However, the witness then identified Appellee's Exhibit 6, which revealed a policy regarding workplace violence that was in the handbook, along with identifying Appellee's Exhibit 7, acknowledging his receipt of the Appointing Authority's personnel, policy and procedures manual, evidencing that he had been aware of the workplace violence policy.

The witness then identified Appellee's Exhibit 8, as the Last Chance Agreement which he entered into on or about August 6, 2013. The Last Chance Agreement states that he had firmly grabbed a co-worker, along with warning the co-worker that he would remember him come winter. This constitutes an implied threat that Appellant would not schedule the co-worker for over-time plowing work. The witness acknowledged that because of his actions he could have been fired and he entered into the Last Chance Agreement. Further, the witness explained that in addition to entering into the Last Chance Agreement he was demoted from Superintendent, along with agreeing to enter into mental health counseling.

Next, the witness affirmed he was working on August 22, 2013, from 6:30 AM to 5:00 PM at the HCEO. When questioned, the witness testified that he did not approach Mr. Tyler Fredritz's truck after work or jump on the bumper, as alleged. Additionally, the witness testified that he told his counselor, Ms. Denise Kring, that he firmly grabbed a co-worker and that his counselor saw the Last Chance Agreement.

With respect to the incident that occurred on September 11, 2013, the witness testified that he was working that day, and that he came in after his

counseling session in the morning to discuss the same with Ms. Lynn Taylor, an Office Manager/Administrative Assistant for the Hancock County Engineer's office located in the main building. Specifically, when questioned, the witness testified that while talking to Ms. Taylor he did say, "Chris better not be blindsiding me." The witness then explained at that time he was only relating back to a story his counselor had told him, in reference to Appellant not getting any feedback either from Mr. Chris Long, the Engineer, or from his immediate supervisor, Mr. Mike Clark.

Moreover, when questioned, the witness testified that when he was being investigated he was told to answer the questions truthfully. The Appellant identified Appellee's Exhibit 11, as an affirmation that he was to respond to the investigator, Mr. Patrick Hire, truthfully. The witness testified that he has always denied having jumped on the truck, but did acknowledge that he had said that Chris better not blindside him, only as something that he learned from his counselor.

The Appellee's next witness to testify was Mr. Tyler Fredritz, a Highway Maintenance Worker in the HCEO, a position he has held for little more than 10 years. When questioned, the witness explained that his duties included, but were not limited to, bridge and drainage work, as well as plowing the streets in the winter, as needed.

Specifically, Mr. Fredritz testified that he did work on August 22, 2013, the day in which Mr. Boehm, at the end of his shift, at a little after 5:00 PM, started jumping on his bumper on his 2011 GMC Sierra truck. The witness explained that Mr. Boehm looked to be "smiling", when he was jumping on his bumper. The witness, when questioned, testified this was only for a few seconds and that after Mr. Boehm got off his bumper, he pulled out of the parking lot to proceed home. Mr. Fredritz explained that after he left he felt confused at first, then angry and then threatened, along with being bullied by Mr. Boehm. The witness testified that he then turned around after driving for approximately 5 to 10 minutes to return to the garage to talk to the Road Superintendent, Mr. Mike Clark. The witness explained that Mr. Clark told him to contact Mr. Long, who told him to write out a statement and/or complaint and identified it as Appellee's Exhibit 9 dated August 26, 2013, four days after the event.

On cross examination, the witness reaffirmed that the incident happened around 5:03 PM, and that he wrote out the statement previously identified as

Appellee's Exhibit 9, in his own words the next time he came in to work on August 26, 2013. When questioned, the witness testified that he continued to work with Mr. Boehm, along with agreeing that Mr. Boehm had previously written him up for things that he had done in the past. Specifically, the witness testified that he just did not make the incident up or write up a statement as a way to get back at Mr. Boehm, as a vendetta.

Appellee's third witness to testify was Mr. Mike Clark, a Road Superintendent at the Hancock County Engineer's office. Mr. Clark explained that he has held his position for approximately one year. When questioned, the witness testified that he is a person who assigns the highway workers their respective work, and affirmed when questioned, that he does supervise Mr. Tyler Fredritz. The witness testified that on or about August 22, 2013, Mr. Tyler Fredritz showed up in person after work at approximately 5:10 PM and explained to Mr. Clark that Mr. Boehm had jumped up and down on the back of his truck when he was pulling out of work that evening, and appeared upset. The witness explained he then told Mr. Fredritz to contact Mr. Long, the Engineer, about the incident.

On cross-examination, the witness explained he did not witness Mr. Boehm jumping on the back of Mr. Tyler Fredritz's truck, as both of them only discussed the incident. When questioned if anyone else had witnessed the above noted event, the witness testified in the negative.

Appellee's next witness to testify was Ms. Lynn Taylor, an Office Manager/Administrative Assistant for the Hancock County Engineer's office, a position she has held since December 1, 2010. When questioned, witness testified that she works in the main office and primarily answers the phones, processes payroll and benefits, prepares correspondence and files any necessary documents.

When questioned, the witness did recall an incident which occurred on September 11, 2013, involving her and Mr. Theodore Boehm that occurred in the main office. On the day in question, the witness explained, Mr. Boehm came into the office to provide the engineer's office paperwork with respect to the counselor, Ms. Denise Kring, whom Appellant was seeing pursuant to a Last Chance Agreement that he had signed. Ms. Taylor stated that she asked Mr. Boehm how he is doing, to which he responded, that he was good, but that Mr. Mike Clark or Mr. Christopher Long had not spoken to him, nor had given him any feedback on how he was progressing. At that point Ms. Taylor testified that Mr. Boehm stated to her

that, "Chris better not be blindsiding me, or it will get interesting". The witness testified that she took this as a threat upon Mr. Long, the Engineer, and that Mr. Boehm's tone was aggressive. The witness then identified Appellee's Exhibit 10 as her statement which she wrote out on or about September 11, 2013 at approximately 2:00 PM that afternoon, after the event.

On cross-examination, the witness testified that she was not under any orders to document Mr. Boehm's actions at any time. Further, when referencing back to Appellee's Exhibit 10, the witness testified that even though she wrote in her statement that Mr. Boehm's voice became firm, it was aggressive. Further, the witness agreed when questioned that she was the contact person for Mr. Boehm's counselor, Ms. Denise Kring. The witness then identified Appellant's Exhibit A as a notation that she put in the file regarding the phone conversation she had with Ms. Kring on September 11, 2013 at 9:15 AM, wherein it stated, among other things, that management needed to speak with Mr. Boehm to let him know how he was doing. When questioned how she treated, and/or thought of Mr. Boehm as an employee, the witness stated that the both of them spoke and that there was no like/dislike present.

The Appellant began his case-in-chief by calling Mr. Christopher Long to the witness stand, as if on cross-examination. When questioned, the witness explained that he has been the Hancock County Engineer since 2008/2009. The witness testified that he knows Mr. Theodore Boehm, as he was an employee of the Hancock County engineer's office, who was removed pursuant to violations of his Last Chance Agreement.

The witness identified Appellee's Exhibit 3 as the instant Revised Code Section 124.34 order of removal that was issued to Mr. Boehm which was written under his authority. Further, the witness identified Appellee's Exhibit 4 as a letter dated November 5, 2013, notifying Mr. Boehm of his termination of employment. Engineer Long agreed, when questioned that his signature was affixed to the document, along with agreeing to the contents of the document.

The witness then identified Appellee's Exhibit 8, as the Last Chance Agreement at issue that was signed by Mr. Boehm on or about August 6, 2013, and agreed, when questioned that the Engineer's signature was on the document, along with agreeing to the contents of the document, as well. Upon questioning, the witness identified Appellee's Exhibit 11, as a document which he drafted and signed

on or about September 25, 2013, wherein Mr. Boehm, affixed his signature to it as well. The witness explained that this document was a directive to Mr. Boehm to answer any and all questions by him or his representatives of the engineer's office. The witness also identified Appellant's Exhibit B, as a document dated July 11, 2013, which reported the statements that led to the underlying Last Chance Agreement which Mr. Boehm signed.

Next, the witness was questioned regarding Mr. Tyler Fredritz's claim about Mr. Boehm jumping on his truck, and the Engineer explained he was aware of the incident. When questioned as to what he did to investigate the matter, the witness explained he called Mr. Mike Clark and got a statement from Mr. Tyler Fredritz. Further, the witness testified that it was his understanding that no one else witnessed the incident, but that he did not interview all of the employees in the garage.

The witness re-identified Appellee's Exhibit 8, the Last Chance Agreement that was in effect and signed by Mr. Boehm. He agreed that it is stated in the agreement that Mr. Boehm, "made physical and threatening contact with the employee". Engineer Long was questioned regarding what lie Mr. Boehm told his counselor that differs from Appellant's Last Chance Agreement.

Engineer Long re-identified Appellant's Exhibit B, which Mr. Long signed, which stated, "Mr. Boehm touched Mr. Francisco in an unwanted matter during a discussion" and "Mr. Boehm put his right hand on Mr. Francisco's shoulder and squeezed it hard". The witness then testified that he did not recall exactly what was the difference. However, when asked if Mr. Boehm had only told his counselor that he only firmly grabbed Mr. Francisco's shoulder, the Engineer stated he believed that to be an understatement of the matter.

Further, when questioned, the witness testified he never had discussions with Ms. Denise Kring, Mr. Boehm's counselor, but he was aware that she had recommended that both he and Mr. Clark meet weekly/biweekly with Mr. Boehm to discuss his progress. However, the Engineer stated they had only found out about the planning of meetings on September 11, 2013, and that they never actually implemented that plan of action, due to Appellant's termination. Moreover, the witness when questioned testified that he had always liked Mr. Boehm, before Mr. Boehm's removal.

On direct examination, the witness reiterated that Mr. Boehm's counselor had only recommended on September 11, 2013, for the first time weekly/biweekly meetings be held, which were never held due to the incident that occurred with Ms. Taylor on September 11, 2013.

Appellant's next witness to testify was Ms. Denise Kring, Mr. Boehm's mental health counselor. When questioned, the witness testified that she is currently employed as a Mental Health Therapist by Century Health in Findlay, Ohio. The witness testified that she had seen Mr. Boehm as the result of a referral from the Hancock County engineer's office because Mr. Boehm was having some issues at work needing mental health individual counseling.

Upon questioning, the witness testified that she did not recall ever having a conversation with Mr. Boehm wherein she referenced that she had been "blindsided" at work one time, in her discussions with Mr. Boehm. Further, the witness noted that Ms. Lynn Taylor was her contact at the Hancock County engineer's office.

The witness then identified Appellant's Exhibit D, as one of her monthly treatment compliance reports that she completed on September 11, 2013 at approximately 10:37 AM. In that report, she noted that Mr. Boehm had voiced remorse and Ms. Kring had made a recommendation to his employer that both Mr. Boehm and Mr. Clark/Mr. Long, have weekly/biweekly meetings regarding his progress or lack thereof. Ms. Kring identified Appellant's Exhibit G, as a progress note dated September 11, 2013 written at approximately 9:30 a.m. The witness also identified Appellant's Exhibit I as a page out of the diagnostic assessment which noted under pain management that Mr. Boehm has back/leg pain.

On cross examination, Ms. Kring testified that Mr. Boehm was diagnosed with adjustment disorder with mild anxiety. Further, the witness explained she did not remember Mr. Boehm stating to her that he threatened a co-worker. Moreover, the witness testified that she did review the Last Chance Agreement previously identified as Appellee's Exhibit 8, and explained that Mr. Boehm did state that he had physical contact with a co-worker, but not that he had threatened a co-worker.

On re-direct examination, the witness testified that Mr. Boehm at first did not show remorse, but later did.

Appellant's next witness to testify was Mr. Gary Benner. Mr. Gary Benner has held the position of Road Maintenance Worker for the Hancock County engineer's office, for the last three years and seven months. When questioned, the witness explained that he knows Mr. Boehm, as he worked with him during that period of time, as well as personally observing Mr. Boehm as a "good" supervisor. When told about the accusations by Mr. Tyler Fredritz, known as the "truck jumping incident", the witness explained that he is usually the last to leave the parking lot on a daily basis, that he believed that he was there on the day in question, that while everyone parks together, and that he did not witness Mr. Boehm jumping on anyone's truck.

Appellant's fourth witness to testify was Mr. Brad Woodruff, who testified he worked at the Hancock County engineer's office for approximately last 26/27 years, and had worked with Mr. Boehm during that time. The witness testified that he works typically Monday through Thursday 6:30 AM to 5:00 PM, and did not specifically recall if he had been there on August 22, 2013. When questioned, the witness was aware of the "truck jumping incident" allegations, but testified that he personally did not see Mr. Boehm jumping on anyone's truck. Additionally, the witness testified that during the time period in which the "truck jumping incident" was to have occurred he was working on the Bridge Project, as Foreman, and that he did not witness any incident occur between Mr. Boehm and Mr. Fredritz, at the project. However, the witness testified that he had witnessed the previous incident between Mr. Boehm and Mr. Francisco, wherein Mr. Boehm grabbed Mr. Francisco on the shoulder. When questioned, the witness explained that Mr. Boehm had been his supervisor and that he had always been fair, played no favorites, issued no threats and that no intimidating tactics were employed by Mr. Boehm.

Appellant's fifth witness to testify was Mr. Travis Beagle, a Highway Worker 1, employed by the Hancock County engineer's office for approximately the last three years. When questioned, the witness explained as had the previous two witnesses that he had heard of the allegations of the "truck jumping incident", and that he was present on the day in question, but did not witness anything. Further, the witness explained that he thought that Mr. Boehm would not have done that, as both Mr. Boehm and Mr. Fredritz were getting along during the Bridge Project work.

The Appellant called Ms. Denise Kestner to the witness stand. Upon questioning, Ms. Kestner explained that she is presently employed as a Consultant

in Human Relations, with 23 years' experience in the private sector, with no public employment law experience.

Appellant's counsel attempted to qualify Ms. Kestner as an expert witness. Following Appellee's counsel's objection to same, the undersigned Administrative Law Judge granted Appellee's objection. This was because as Mr. Boehm was employed in the public sector and because Ms. Kestner lacked experience therein.

Lastly, Mr. Theodore Boehm retook the stand as if on direct examination. When questioned, the witness explained that he had been employed by the Hancock County engineer's office for approximately 26 and one half years, and that the last position he held was that of an Assistant Road Superintendent. When questioned with respect to the alleged incident that occurred on August 22, 2013, the "truck jumping incident", the witness explained that he did not jump on anyone's truck that afternoon. Moreover, the witness testified that he did not even hear about this alleged event until September 25, 2013. Moreover, the witness testified that he was on medication for back and leg pain when that incident allegedly happened. When asked if Mr. Tyler Fredritz would have had an axe to grind with him, he explained that Mr. Fredritz was one of those employees whom he often had to "yell" at regarding plow routes, but that he only wrote him up regarding incidents regarding property damage.

With respect to the Last Chance Agreement identified as Appellee's Exhibit 8, the witness acknowledged the voluntary signing of the agreement, as well as its contents. Next, the witness was questioned with respect to the comment he made regarding Mr. Long, to Ms. Lynn Taylor, that Mr. Long better not be "blindsiding" him. The witness testified that he was only reciting something that his counselor had said, although Ms. Kring previously testified she did not say anything about "blindsiding" anybody. When questioned as to why Ms. Taylor would have said anything otherwise, the witness stated that she would have had no reason.

Upon further questioning, regarding whether Mr. Long and he have had issues, Mr. Boehm claimed that they have butted heads on previous bridge and drainage projects, and suspected Mr. Long had it out for him. In summary, the witness testified that he never jumped on anybody's truck, that he did not lie to his counselor, that he answered all questions asked to him truthfully and honestly, and that he only used the words that Mr. Long better not be "blindsiding" me, as repeating something his counselor had previously said.

On re-cross examination, the witness was questioned as to if he believed that Mr. Long had it in for him, why then would Mr. Long have given him a chance to sign a Last Chance Agreement, to which he responded that he did not know why.

FINDINGS OF FACT

1. The jurisdiction of this Board to conduct this hearing was established by Revised Code Section 124.34.
2. The Appellant, Theodore Boehm, was serving HCEO as an Assistant Superintendent when he was removed from employment effective November 7, 2013. Mr. Boehm had recently been demoted from his Superintendent position to the Assistant Superintendent's position on or about August 6, 2013 after having signed a Last Chance Agreement. Mr. Boehm was employed by the HCEO for approximately 26 and one half years.
3. The Appellant, Theodore Boehm, as an Assistant Superintendent, was removed from his position with HCEO for violating Revised Code Section 124.34. The hearing officer's report stated that Appellant had been charged with violating a Group 3, No.13 offense; providing false testimony, statements or information in an official employer administrative investigation; a Group 3, No. 9 offense; intimidating an employee; a Group 3, No. 12 offense; insubordination and a violation of a Last Chance Agreement.
4. Appellee stipulated to the fact that Appellant's appeal was timely filed.
5. The Appellant, Theodore Boehm, signed a Last Chance Agreement on or about August 6, 2013, where he, among other things, agreed that he had made physical and threatening contact with an employee, along with agreeing to meet with a mental health professional specializing in anger management training. Further, Mr. Theodore Boehm did not submit any evidence of disparate treatment. (See Appellee's Exhibit 8)

6. The Appellee proved by a preponderance of the evidence that Theodore Boehm received his procedural due process through a pre-disciplinary hearing.
7. The Appellee, by a preponderance of the evidence, established that standards of conduct existed for and were known by Theodore Boehm. He understood the standards of conduct that employees were to adhere to in their employment. The evidence reflected that Theodore Boehm had received a personnel handbook which had been distributed.
8. The testimony and documentary evidence presented at the record hearing established by a preponderance of the evidence that the Appellant:
 - a. Violated the Last Chance Agreement due to intimidating an employee, specifically Lynn Taylor, on September 11, 2013.
 - b. Violated a Last Chance Agreement due to providing false testimony, statements, or information after having been ordered to tell the truth.
 - c. Did not violate the Last Chance Agreement due to a violation of the workplace violence policy with respect to the alleged incident which occurred on August 22, 2013, known as the "truck jumping incident".

CONCLUSIONS OF LAW

As in any disciplinary appeal before this Board, Appellee bears the burden of establishing, by a preponderance of the evidence, certain facts. Appellee must prove that Appellant's due process rights were observed, that it substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in administering Appellant's discipline, and that Appellant committed one or more of the enumerated infractions listed in Revised Code Section 124.34 as set forth in the disciplinary order.

With regard to the infractions alleged, Appellee must prove for each infraction that Appellee had an established standard of conduct, that the standard was communicated to Appellant, that Appellant violated that standard of conduct, and that the discipline imposed upon Appellant was an appropriate response. In this case the Appellant had signed a Last Chance Agreement on August 6, 2013,

agreeing, among other things, that any rule violation or conduct violation of Revised Code Section 124.34, occurring at any time within the five (5) year period beginning with the execution of the agreement, shall result in termination.

Moreover, Revised Code Section 124.34(B) states in pertinent part:

The board, commission, or trial board may affirm, disaffirm, or modify the judgment of the appointing authority. **However, in an appeal of a removal order based upon a violation of a last chance agreement**, the board, commission, or trial board **may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment** of the appointing authority.
(Emphasis added)

Therefore, neither the undersigned Administrative Law Judge nor this Board shall consider the seriousness of Appellant's infractions, Appellant's prior work record and/or disciplinary history, and Appellant's employment tenure. Further, any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant are only relevant if Appellee fails to demonstrate that Appellant violated the pertinent Last Chance Agreement. If Appellee fails to prove that the Last Chance Agreement was violated and if the infractions or violations set forth in the removal order are not proven by a preponderance of the evidence, the order must be disaffirmed.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to be heard prior to the imposition of discipline, coupled with post-disciplinary administrative procedures as provided by Revised Code Section 124.34. *Seltzer v. Cuyahoga County Dept. of Human Services* (1987), 38 Ohio App.3d 121. Information contained in the record indicates that Appellant was notified of and had an opportunity to participate in a pre-disciplinary hearing. The Appellant also had notice of the charges against him and an opportunity to respond to those charges. Accordingly, the undersigned Administrative Law Judge finds that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in removing Appellant.

This Board's scrutiny may, therefore, focus on whether the Appellee proved

by a preponderance of the evidence that Appellant violated the Last Chance Agreement.

This Board must consider whether there was a violation of the Last Chance Agreement due to: 1) a violation of a workplace violence policy due to the alleged incident regarding the "jumping on the back of the truck"; 2) a violation of a workplace violence policy due to intimidating an employee (the alleged "Lynn Taylor incident"); or 3) providing false testimony, statements, or information after having been ordered to tell the truth.

With respect to the alleged incident regarding the "jumping on the back of the truck", and whether it was a violation of the workplace violence policy, the evidence revealed that the Appellee failed to prove this allegation. While the evidence revealed that Mr. Tyler Fredritz testified that Mr. Boehm jumped up onto the bumper of his pickup truck, which could be considered horseplay in the very least, and a violation of workplace violence policy at the very most, Mr. Boehm simply denied these allegations from the very start, all the way through his pre-disciplinary process, through his testimony at the record hearing.

It is the burden of the Appellee to prove by a preponderance of the evidence this allegation, which it did not. The evidence did not reveal that this event occurred at the end of the workday, wherein various individuals would have been leaving at that time, and not one other individual witnessed this event, nor did the engineer's office interview any other employee with respect to this event, if it had ever occurred. Appellee's failure to sufficiently investigate this matter turns this allegation into simply a "he said-he said" scenario. Thus, the Appellee did not carry its burden of proof in this regard.

However, with respect to the second allegation regarding a violation of the Last Chance Agreement due to intimidating an employee (the alleged "Lynn Taylor incident"), the evidence revealed that the Appellee proved this allegation by a preponderance of the evidence. The uncontroverted evidence revealed that on September 11, 2013, the Appellant came into the main office at the County Engineer's Office in the morning after having attended his regularly scheduled mental health counseling session. At that time, the Appellant, Mr. Boehm spoke to Ms. Taylor wherein she inquired as to, "How are things going?"

According to the testimony of Ms. Taylor, Mr. Boehm approached her and

gave her a slip. Further, Appellant indicated that neither Mr. Mike Clark, his supervisor or Mr. Chris Long, the County Engineer had given him any feedback regarding his progress, and that if Mr. Long was going to, "blindsided him, things would get interesting". The Appellant conceded saying the comment he made regarding Mr. Long, to Ms. Lynn Taylor, (i.e. Mr. Long better not be "blindsiding" him). While Mr. Boehm offered that he was only reciting something that his counselor said, his counselor denied ever using that comment/phrase in any manner with her counseling of Appellant. Further, the evidence revealed that Ms. Taylor felt "uneasy, intimidated and threatened" by Mr. Boehm's actions, especially when he ended the sentence with, "things will get interesting".

Thus, the undersigned Administrative Law Judge found this to be a violation of the workplace violence policy. Accordingly, Appellee has demonstrated that Appellant violated the Last Chance Agreement in regard to workplace violence.

Allegations that Appellant provided false testimony, statements, or information after having been ordered to tell the truth (specifically regarding the Appellant not having told his mental health counselor clearly what he had done previously with respect to his being given a Last Chance Agreement) were proven by a preponderance of the evidence. Further, Mr. Boehm's comments to Ms. Taylor about being "blindsided", were also proven to be false. As noted at the hearing, Appellant's counselor, Ms Kring, testified that she never made that comment to him during her counseling session, as alleged at the record hearing.

The undersigned Administrative Law Judge found Ms. Kring's testimony was totally impartial, as she had nothing to gain or lose at the record hearing, contrary to Mr. Boehm. Additionally, the evidence revealed that Mr. Boehm was deceitful, at the very most, or understating to the very least, to his counselor with respect to the reasons why he was given the Last Chance Agreement in the first place. This is because he never told his counselor that, in addition to Appellant having had a physical altercation, he had made a threatening comment to his co-worker.

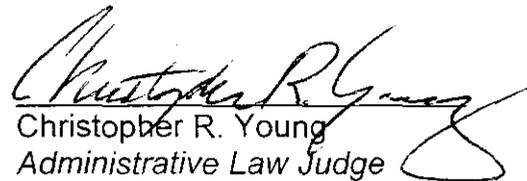
Accordingly, Appellee has demonstrated that Appellant violated the Last Chance Agreement in regard to telling the truth.

To summarize, since I have found, above, that Appellee demonstrated that Appellant violated his Last Chance Agreement, this Board must affirm Appellant's instant removal.

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RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the instant order of removal issued to Appellant, effective November 7, 2013, removing the Appellant from the position of Assistant Superintendent be **AFFIRMED**, pursuant to Ohio Revised Code Section 124.34 (B).


Christopher R. Young
Administrative Law Judge