

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Joseph L. Ashcraft,

Appellant,

v.

Case No. 2014-REM-02-0033

Hamilton County Engineer,

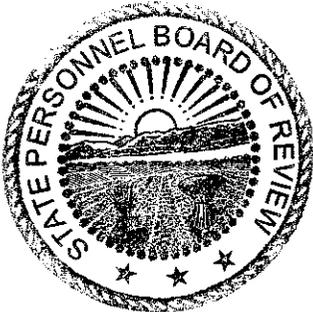
Appellee,

ORDER

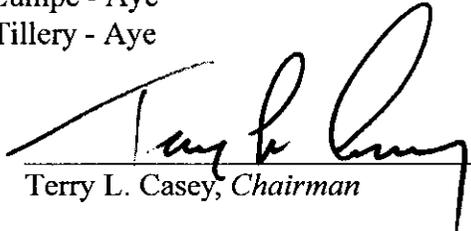
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the instant order of removal issued to Appellant, effective February 12, 2014, removing the Appellant from his position of Highway Maintenance Worker is **AFFIRMED** and the Appellant's appeal is **DENIED**.



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, December 17, 2014.


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**

Joseph L. Ashcraft

Case No. 2014-REM-02-0033

Appellant

v.

November 18, 2014

Hamilton Co. Engineer

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

On February 10, 2014, the Hamilton County Engineer served an Order of Removal, in accordance with Ohio Revised Code Section 124.34, upon the Appellant, Mr. Joseph Ashcraft, a Highway Maintenance Worker. The order alleged the following:

This order is to serve as official notice, that you are removed from the position of Highway Maintenance Worker in the Hamilton County Engineer's Office effective Wednesday, February 12, 2014.

Pursuant to ORC section 124.34, the reason for this action is that a preponderance of the associated information provided indicates you are guilty of the following particulars and/or charges, to wit:

Violation of any other policy or work rule of a similar nature and seriousness by violating section 7.16 of the Policy Manual (August 2013) states that all after-hours access to the County Engineer facilities, grounds and/or buildings must be approved in advance; Willfully demeaning, verbally abusing and/or humiliating another person; use of vulgar, profane, abusive or threatening language by an employee to another employee, subordinate or supervisor; Unauthorized use of Employer property or equipment; Willful disregard of Employer rules, regulations, policies, and procedures; Failure to observe department procedures.

The actions associated with the above noted particulars and/or charges have shown a lack of respect for the County Engineer's policies and regulations. The Hamilton County Engineer is responsible for the safety, assets, and funding entrusted by the citizens of Hamilton County. The associated charges have the

potential to negatively impact safety, cause property damage and create a hostile environment. These violations include but are not limited to Group III offenses as described in section 8.3A of the Hamilton County Engineer's Policy and Procedure Manual (August 2013), which can result in discipline up to and including termination for the first offense.

Work history and previous discipline are important considerations when prescribing fair and just discipline associated with the subject infractions. The last 11 months, you were suspended for 25 days due to the misuse of County equipment and the use of malicious statements containing profanity. Apparently, the aforementioned discipline has not had a positive impact on correcting the unacceptable behavior. Therefore, your employment with the Hamilton County Engineer's Department will be terminated effective Wednesday, February 12, 2014.

Thereafter, on February 18, 2014, the Appellant filed a timely appeal from this Order of Removal. The record hearing in this case was held on September 29, 2014, and concluded that same day. The Appellant, Mr. Joseph Ashcraft, appeared at the record hearing and was represented by Ms. Katherine Daughtrey Neff, Attorney at Law. The Appellee, the Hamilton County Engineer's Office, was present through its designee, Mr. Theodore B. Hubbard, the Hamilton County Engineer, and was represented by Ms. Kathleen H. Bailey, an Assistant Prosecuting Attorney.

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 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 Mr. Eric Beck, the Deputy County Engineer for Field Services, a position he's held for last five years, while being employed with the Engineer's Office for the last 25 years. When questioned, the witness testified that he reports directly to Mr. Theodore Hubbard, the Hamilton County Engineer. Further, the witness described that his job duties, included but were not limited to, overseeing the day-to-day operations in the field which includes highway maintenance, construction and bridgework. Specifically, when questioned,

the witness explained that Mr. Joseph Ashcraft was assigned to the Burlington Garage, within his chain of command, and that Mr. Mike Roach, the Highway Maintenance Supervisor, was Mr. Ashcraft's direct supervisor, and that he answered to Mr. Matt Yunger, who in turn answered directly to him. Furthermore, when questioned what his role was regarding the instant allegations against Mr. Ashcraft, explained that he was involved in the investigation, gathered the information and presented matter to the hearing officer at the pre-disciplinary hearing.

The witness then identified Appellee's Exhibit 1, as a document dated February 27, 2006, showing that Mr. Ashcraft was hired into his position of Highway Maintenance Worker on that date. The witness identified Appellee's Exhibit 2 as Mr. Ashcraft's position description of a Highway Maintenance Worker. The witness then identified Appellee's Exhibit 3, as a revised notice of pre-disciplinary hearing dated January 10, 2014, given to Mr. Ashcraft. When questioned why the notice was revised, the witness explained that there have been intervening outburst that occurred when he was originally given the first notice, and as a result that incident of misconduct was rolled into this revised notice. (See Appellee's Exhibit 4, original notice). The witness then identified Appellee's Exhibit 5, as his summary of his investigation, which included A-H attachments. The witness then briefly described the two allegations against Mr. Ashcraft as follows: the first allegation occurred on Sunday, January 5, 2014, wherein Mr. Ashcraft entered the Hamilton County engineer's Burlington facility at approximately 9:30 PM, not during working hours, nor had he been called out for snow and ice operations at that time, and entered the facility without prior approval, started the vehicles and pulled them out of the building. Upon being questioned by Mr. Mark Schwettmann, who had been called in, Mr. Ashcraft returned the vehicles to the garage; the second allegation occurred when Mr. Ashcraft was given the pre-disciplinary hearing notice on Thursday, January 9, 2014, wherein he had a verbal confrontation with Mr. Roach, his supervisor, that included a face-to-face clash, loud speaking/shouting, aggressive body language, profanities and name-calling. The witness testified that with respect to the first allegation there were two violations of policy, one being an employee cannot set their own hours, especially overtime, and a second violation occurred when he entered County facilities without prior approval. Furthermore, the witness explained that Mr. Roach also received discipline in the form of a written reprimand as result of his actions, in not deescalating the situation.

Next, the witness identified Appellee's Exhibit 6 as the hearing officer's report dated January 22, 2014, where it was found that there was sufficient evidence to support the charges relating to the verbal abuse and vulgar language stemming from the confrontation of January 9, 2014, and the charges relating to the unauthorized presence of Mr. Ashcraft at the Burlington facility on January 5, 2014. The witness then identified Appellee's Exhibit 7, as a memorandum from the Engineer, Mr. Theodore Hubbard, dated February 6, 2014, wherein he found that

Mr. Ashcraft should be terminated from his employment. The witness noted that there were six bullet points of misconduct within the memorandum noted above, but that there was no evidence that Mr. Ashcraft physically did not threaten his supervisor, nor did he actually damage any truck.

The witness then identified Appellee's Exhibit 8, as the instant Order of Removal that was issued on February 10, 2014, to Mr. Ashcraft. The witness also identified Appellee's exhibits 9 and 10 as recent performance evaluations covering the couple of years wherein it was highlighted that Mr. Ashcraft needed to improve in most areas, but mostly on following policy and not being argumentative and disrespectful to others. The witness also identified Appellee's Exhibit 11 as a Notice of Written Consultation issued to Mr. Ashcraft on or about June 29, 2011, wherein he was told he must take responsibility for inappropriate language used towards his Foreman, Mr. Justin Anderson. Appellee's Exhibit 12 was identified by the witness as an order of suspension of one day given to Mr. Ashcraft on or about December 7, 2011, regarding the use of inappropriate language (profanity) towards supervision. Additionally, the witness identified Appellee's Exhibits 13 and 14 as an order of suspension issued to the Appellant, Mr. Joseph Ashcraft, on or about April 3, 2013, for 25 days, and the accompanying Hearing Officer's report. Mr. Beck described the events which led to the 25 day suspension as Mr. Ashcraft on a snow call event had spilled calcium on himself and on the County vehicle when refilling calcium into the vehicle; used a County vehicle to drive himself home in order to shower and change clothes; and did not notify his supervisor of the incident or of the subsequent travel home; and did not report the incident to the safety person until further instructions to do so. The witness also identified Appellee's Exhibit 15, as a notice of pre-disciplinary hearing dated July 1, 2013, regarding Mr. Ashcraft's activity in not performing assigned work duties and not by following the employer's rules, regulations, policies and procedures. The witness explained that they had received calls from a member of the public wherein it was noted that Mr. Ashcraft was pulling off the road on a daily basis to feed their animals, in addition to that member of the public contacting the Colerain Police Department in March 2013. Further, the witness testified that the second allegation contained within the above noted notice of pre-disciplinary hearing occurred when Mr. Ashcraft made phone calls and left recorded messages to the Personnel Department that contained inappropriate profanity, with respect to his previously issued 25 day suspension. The witness identified Appellee's Exhibit 16, as a July 16, 2013 Hearing Officer's Report, with respect to the above noted charges in Appellee's Exhibit 15's pre-disciplinary hearing notice. The witness noted that Mr. Ashcraft, at that time most likely because of all of his previous misconduct and past activities, was going to be terminated. As a result, the witness explained that Appellee's Exhibit 17, a settlement agreement dated August 22, 2013 was entered into, and the 25 day suspension appeal was withdrawn and not contested. (See Appellee's Exhibit 18).

On cross examination, the witness testified that Mr. Ashcraft did most likely think Mr. Roach had a vendetta against him. With respect to the Mr. Ashcraft's 25 day suspension, the witness testified that he should've notified his supervisor to get time off to go to shower, and that he wasn't punished for just going home to shower. Further, when questioned, the witness testified that on January 9, 2014, Mr. Roach used vulgar language in his confrontation with Mr. Ashcraft, and had used it before. The witness then identified Appellants' Exhibit A, as an April 16, 2014, Notice a Written Warning issued to Mr. Roach by his supervisor, Mr. Matt Yunger. When questioned as to who made the decision to charge the Appellant with the actual group offense, whether the group 1, group 2 or group 3 offenses, the witness testified he did based upon the personnel manual. The witness identified Appellee's Exhibit 23 as a Hamilton County Engineer's Office personnel policy and procedures manual outlining the employee discipline covered in Chapter 8 and verified that he did review this prior to his charging the Appellant. When questioned why he chose to issue a group 3 offense for the actions that took place on January 9, 2014, the argument between Mr. Ashcraft and Mr. Roach, the witness testified based upon the seriousness he felt it called for a group 3 offense, as opposed to a group 2 offense which could've been issued, as well.

When questioned, the witness testified that he knows of the employee by the name of Mr. Ronald Jackson, a Highway Maintenance Worker. When questioned if he was aware of being issued a written warning for getting an argument with Mr. Mark Schwettmann, stated that he could not recall. The witness identified Appellants' Exhibit B, as the notice of written consultation issued to Mr. Jackson on about September 20, 2011, for being argumentative with vulgar and raise voices, culminating in knocking his glasses off. When questioned, the witness testified Mr. Jackson could've been issued a group 3 offense, but was not. The witness then identified Appellant's Exhibit C as a Notice of Verbal Counseling issued to Mr. Shawn Jackson, also known as Ronald Jackson, for unprofessional conduct that had occurred on January 15, 2013. When questioned if Mr. Jackson had gotten into any further altercations with Mr. Bowman after January 15, 2013, testified that he could not recall.

On re-direct examination, the witness testified after identifying Appellee's Exhibit 23, the County adheres under Chapter 8.3 to a progressive disciplinary track. The witness testified that written reprimands are only be in effect for purposes of progressive discipline for 12 months from the date it was issued, so long as there was no intervening disciplinary actions. Further, the witness testified that records of suspensions of less than 24 scheduled work hours will only be in effect for purposes of progressive discipline for 18 months from the date it was issued, so long as there is no intervening disciplinary action. However, with regards to records of suspensions of 24 scheduled work hours or more will be in effect for purposes of progressive discipline for 24 months from the date it was issued, so long as there is

no intervening disciplinary action. Along this line of questioning, the witness opined that the previous questions with respect to Mr. Jackson having only received a Notice of Verbal Counseling, as opposed to a more serious group offense, testified that he had had no intervening disciplinary actions.

Appellee's next witness to testify was Mr. Mark Schwettmann, a Highway Maintenance Worker stationed at the Burlington garage, the only one who works the night shift from 10:30 PM through 7 AM. When questioned, witness testified that Mr. Mark Roach is his supervisor. The witness then identified Appellee's Exhibit 19 as his statement which he wrote out on or about January 6, 2014. The witness testified that the Com Center had called him approximately 9:30 PM on January 5, 2014 to come into work as ice was on the road, and that he arrived for work around 10 PM. The witness testified that upon arrival to the garage Mr. Ashcraft was already in and the garage doors were up and he had a couple trucks pulled out of that time. The witness explained he asked Mr. Ashcraft that he had gotten called in, which he responded that he did not, but that he also responded that it was snowing and that they were going to get called into work. At that time, the witness stated that he told him he had just talked to Mr. Roach and it was his understanding that no others were going to get called in, but had told him to call Mr. Roach to see if he could stay. At that time the witness stated that Mr. Ashcraft began pulling the trucks back into the garage. Later, the witness testified that he told Mr. Roach to check out the trucks, as there might have been possible damage on one of the truck's salt dispenser. Further, when questioned, witness testified that the actual call out went out sometime after midnight that evening. Additionally, when questioned, the witness testified that he is never seen individuals come into work and be on premises without first being called out, as per the policy. The witness reiterated that individuals are not to be on County premises without prior approval.

On cross-examination, the witness testified that he did not tell Mr. Ashcraft that he was violating any workplace policy, as that was not his responsibility. Specifically, when questioned, the witness testified that he informed Mr. Roach, the next morning that Mr. Ashcraft had been present when he arrived to work. When questioned, the witness testified that he did get into an argument with Mr. Jackson once, where Mr. Jackson knocked his glasses off his head, wherein he received a verbal warning and that he was unsure what Mr. Jackson had received. Prior to this incident, the witness testified that he had not been any other altercations at work. Further, when questioned, the witness testified that he also seen Mr. Jackson get into an argument with Mr. Bowman, and that he understood that Mr. Jackson is still employed.

Appellee's third witness to testify was Ms. Brandi Travis, a Clerk 2 for the Hamilton County Engineer's Office, who was stationed at the Central Office. When questioned, the witness testified that she has held her job for approximately last

year and that she reports directly to Mr. Mike Roach. The witness was then asked to identify Appellee's Exhibit 20, as her e-mail that she wrote on or about January 10, 2014, to Mr. Matt Yunger and Mr. Tim Gilday regarding an incident she observed on January 9, 2014, between Mr. Mike Roach and Mr. Joseph Ashcraft. The witness testified that while she was looking through some papers she realized Mr. Ashcraft talking louder than usual, which progressed into yelling and cussing. At that time, the witness testified that Mr. Roach looked up and said "who are you talking to?" Mr. Ashcraft quickly yelled back "I'm talking to you!" The witness testified Mr. Roach then asked Mr. Ashcraft something to the effect of what is your problem and who do you think you're talking to me like that. Mr. Roach had been standing right next to her and he walked past herself in an attempt to talk to Mr. Ashcraft, however Mr. Ashcraft was screaming at Mike, and the shaking paperwork and stating Mr. Roach was out to get him in trouble. At that time, the witness testified that Mr. Roach told Mr. Ashcraft to read the papers. The witness testified that Mr. Roach attempted to explain to Mr. Ashcraft that he was simply out of line and that he should be quiet and that he would not appreciate the consequences of his actions. After this occurred, the witness testified she was trying to hand out some paperwork to others, but they were intently watching the argument, at which time she looked up and saw Mr. Ashcraft pointing his finger in Mr. Roach's face and telling him to "Fucking come on!" Upon further questioning, the witness testified that she did not recall Mr. Roach cussing, and believed that Mr. Ashcraft was the person who started the argument in the first place. The witness went on to say that as part of her human resource function at the garage she does track the time of the individuals, as her reason for being there first place.

On cross-examination, the witness reiterated that Mr. Roach is her supervisor, and that she was closer to Mr. Roach, than Mr. Ashcraft when the argument started.

The fourth witness to testify on Appellee's behalf was Mr. Robert Buckmeier, a Highway Maintenance Worker, who is held his job for approximately 2 years who has been stationed in the Burlington garage, where he reports directly to Mr. Roach. When questioned, the witness stated that he witnessed the event that occurred on January 9, 2014, known as the argument between Mr. Ashcraft and Mr. Roach. The witness explained at the end of the day while everybody was signing out, Mr. Roach handed Mr. Ashcraft an envelope, wherein Mr. Ashcraft started getting mad/yelling at Mr. Roach and pointing at Mr. Roach, after Mr. Roach had began walking away, stating that this was all his doing. At this point Mr. Roach asked Mr. Ashcraft what was he was talking about, only to have Mr. Ashcraft reply by stating, "Do you have a fucking vendetta against me". The witness further stated that Mr. Roach at that time replied to Mr. Ashcraft by stating, "Look at the paper, it was not my doing" and "you're not going to like the outcome of this". Then the witness recalled that both of them simply began to argue with each other. At about this time, Mr. Nicewonger

gathered up all of the Mr. Ashcraft's belongings and helped usher him out the door. The arguments continued outside into the parking lot, as he could hear them, but that he did not witness that activity. When questioned, the witness specifically stated that Mr. Ashcraft was the one who started the argument with Mr. Roach, when he handed him the envelope.

Next, the witness was then questioned regarding the incident where Mr. Ashcraft came into the County facilities on a possible callout, without having first received notification to do the same. The witness testified that specifically the County policy states that unless you have been "called out" or "prior approval has been given by a supervisor" one is not supposed to be on the premises.

On cross-examination, the witness testified that during the arguments that took place, he did hear Mr. Roach use profanity, and phrases such as "Fuck you". When questioned, the witness testified that he hadn't really seen Mr. Roach use profanity before the above noted incident, but has heard others use profanity at work before.

On re-direct examination, the witness testified that he did hear Mr. Roach tell Mr. Ashcraft, "that he just needed to leave".

Appellee's last witness to testify was Mr. Theodore B. Hubbard, the Hamilton County Engineer, a position that he is held since January 1, 2012, and that prior to that he was employed by the Hamilton County Engineer's Office as the Chief Deputy Engineer, a position he had held since 1992. When questioned, the witness testified that as the County Engineer, and as the appointing authority, he makes the ultimate decisions with respect to any suspensions or removals, on any of his subordinate employees. However, the witness testified that with respect to any notice of corrective actions, written reprimands, verbal reprimands and the like are handed out by the individual employees' supervisors. The witness then identified Appellee's Exhibit 17 as a settlement that was entered into on or about August 22, 2013 between the Hamilton County Engineer's Office and Mr. Ashcraft. The witness then explained that Mr. Ashcraft had been issued to 25 day suspension, wherein he had misused county vehicles and left three messages to the personnel department containing verbally abusive language towards Mr. Beck and Mr. Roach, coupled with the feeding of the animals at the private property which was going to be a subsequent disciplinary action, wherein he felt that the two instances be rolled in to one disciplinary action, to give Mr. Ashcraft break, and another chance to save and/or improve at his job. The witness explained after the agreement was signed both Mr. Ashcraft and he had discussions about him not having anymore arguments, only to be thanked Mr. Ashcraft.

The witness then identified Appellee's Exhibit 21 as the Hours of Work and Overtime policy under section 5.4 of the Hamilton County Engineer's Office. Under paragraph B the witness stated that the rule states "Overtime is generally discouraged and is for emergency situations only. All overtime must be approved by the appropriate Department Head, supervisor, or designee prior to the overtime being worked." Along this line of questioning, the witness stated that Mr. Ashcraft showed up to work on his own, without prior approval, and thus violated this policy. The witness identified Appellee's Exhibit 22, as the Building Access policy under section 7.16 of the Hamilton County Engineer's Office. The witness stated that under paragraph D and E of the above stated policy all after-hours access needs to be documented and approved in advance, with proper purpose, and if this is violated, it is grounds for discipline. Again, the witness testified that Mr. Ashcraft did not get prior approval or authorization, nor was there proper purpose in his entering the grounds without prior approval. The witness explained because of liability issues the Engineer's Office had become stricter with respect to granting access into the County premises. The witness then identified Appellee's Exhibit 23 as Chapter 8 regarding Employee Discipline of the Hamilton County Engineer Personnel Policy and Procedure Manual. Specifically, when questioned, the witness explained that under section 8.2, page 8-3, the witness reiterated previous testimony with respect to progressive discipline with regards to written reprimands versus suspensions, and how long they stay active. Next, the witness when reviewing page 8-7, agreed when questioned that Mr. Ashcraft violated a group 2 offense, number 4, unauthorized use of employer property or equipment when he moved the trucks without authorization. With respect to the group 2 offenses, number 17 and 18 located on page 8-8, a willful disregard of employer rules, regulations, policies and procedures and use of vulgar, profane abusive or threatening language by an employee to another employee, subordinate or supervisor, respectively, the witness again agreed that Mr. Ashcraft violated both of these rules by his unauthorized entry into the premises and using the trucks, as well as his argument with his supervisor Mr. Mike Roach. When questioned with respect to a group 3 offense located on page 8-9, number 13, which states "willfully demeaning, verbally abusing and/or humiliating another person", the witness testified that it was his determination that Mr. Ashcraft had started the argument in question and the exchange that he had with Mr. Roach. Lastly, the witness identified another group 3 offense located on page 8-10, number 31, as a "violation of any other policy or work rule of a similar nature and seriousness", and explained that Mr. Ashcraft violated this policy by attempting to grant overtime to himself. Additionally, when questioned, the witness testified that the Hamilton County Engineer's Office adheres to a progressive discipline. Moreover, the witness when questioned testified that when he considered all of the events that occurred he decided to terminate Ashcraft, only as a last resort, because in granting him additional time to correct his behavior, he had shown that he was not willing to do so.

On cross-examination, Mr. Hubbard was questioned by Appellants' counsel with respect to the previously issued 25 day suspension, that culminated in the settlement agreement, was not considered relevant. Further, the witness was questioned, affirmed that he was aware about a former employee named Mr. Justin Anderson who in 2009 was suspended for three days for coming onto County property without authorization to work on his private car. However, the witness testified he was the Chief Deputy Engineer at that time, and that he did not have final say so in issuing Mr. Anderson's discipline. The witness, agreed when questioned that in 2014 he did issue Mr. Anderson a 10 day suspension, and that he did not consider the prior three day suspension in 2009, according to the progressive discipline policy, although it could have been considered a group 3 offense which could have warranted termination.

When questioned, the witness explained that he does know of an employee by the name of Mr. Matthew Harper, as a Highway Maintenance Worker. The witness identified Appellants' Exhibit D, as Mr. Harper's disciplinary record from February 10, 2006 through October 16, 2013. The witness identified Appellant's Exhibit E, as a notice of written warning issued to Mr. Harper on or about February 16, 2011, for neglect of duty and insubordination. Moreover, the witness identified Appellants' Exhibit F, as a notice of verbal counseling issued to Mr. Harper on or about December 16, 2011, for unprofessional conduct. The witness when questioned testified that he did not get involved in these types of discipline, as are handled at the supervisory level. The witness then identified Appellant's Exhibit G, as an order of suspension for three days issued to Mr. Matthew Harper on or about August 18, 2014, which he issued to Mr. Harper for violating the Engineer's Office Workplace Violence policy. The witness explained that he understood Mr. Harper and another employee got into an incident regarding a "weed eater" and a shoving/or brushing up against someone incident. The witness explained that he did not consider removing Mr. Harper at that time, but if something was to happen again like that, he could face termination. Further, when questioned, the witness explained that he was not involved in Mr. Mike Roach's discipline, as that was handled at the supervisory level.

The Appellant began his case-in-chief by calling Ms. Danielle Dabbs, the Hamilton County Engineer's Office Human Resource Supervisor, a position she's held since October 2013 to the witness stand. When questioned, the witness testified that she attended Mr. Joseph Ashcraft's pre-disciplinary hearing, along with affirming she was involved partly with the investigation, along with Mr. Beck. The witness when questioned testified that Mr. Ashcraft was removed based upon his improper access into the County premises, along with the argument he had with Mr. Roach. At this point, Appellant's counsel proffered portions of the unemployment compensation hearing into the record. Specifically, when questioned, the witness explained that she was involved in the improper access on to the County premises

violation and the argument between Mr. Ashcraft and Mr. Roach. Moreover, when questioned, the witness explained that she was also involved in looking into Mr. Roach's harassment misconduct, as Mr. Yunger passed along a note from Mr. Ashcraft alleging that Mr. Roach had been harassing him, and wanted to press charges. Further, when questioned, the testimony revealed that Mr. Yunger did not talk to Ms. Dabbs about transferring Mr. Ashcraft to a different garage. Again, the witness reiterated that Mr. Beck and she conducted the investigation and gathered the evidence, with respect to both Mr. Ashcraft and Mr. Roach, as his behavior needed to be addressed, as well.

With respect to the violation of improper access on the County premises, the witness testified that since she began employment on October 2013 improper accessing on the County property had not been a problem, although she did not look back beyond October 2013 to see if there had been any access problems.

When questioned about her knowledge of Mr. Shawn Ronald Jackson, the witness explained that she had investigated matters that involved him. The witness testified that she recalled an incident that he had with Mr. Harry Bowman and the fact that he "flipped Mr. Bowman off".

On cross examination, the witness testified that there were no factual indications that Mr. Roach continued the argument outside.

Appellants' next witness to testify was Mr. Harry Bowman, a Highway Maintenance Worker for the Hamilton County Engineer's Office, a position he's held for little over the past 11 and 1/2 years. When questioned, the witness testified that he is worked at various times with Mr. Joseph Ashcraft in his capacity as a Highway Maintenance Worker. With respect to the January 9, 2014 incident between Mr. Ashcraft and Mr. Roach the witness testified that he was there and observed the incident. The witness explained that Mr. Roach handed Mr. Ashcraft an envelope/letter and that he walked away, when Mr. Ashcraft was opening the envelope/letter. The witness explained that he saw Mr. Ashcraft reading the letter regarding his pre-disciplinary notice regarding the early access onto the premises, upon which Mr. Ashcraft began shaking his head, and stating, "I can't believe this", "this is petty" and "bullshit". The witness testified at this time Mr. Roach brought out his clipboard to sign everyone out, and stated to Mr. Ashcraft, "I didn't have you wrote up you retard, look at it". The witness testified that he then observed Mr. Roach following Mr. Ashcraft out to his car and see Mr. Roach pointing at Mr. Ashcraft. When questioned, the witness testified that he did not hear Mr. Ashcraft call Mr. Roach, any names or use of the profanity, nor did he see Mr. Ashcraft threaten Mr. Roach. Further, when questioned, the witness testified that he has seen Mr. Roach act in a harassing manner, but that he doesn't think that Mr. Yunger ever witnessed the same.

The witness was then questioned if he had ever had any incidents involving Mr. Shawn Ronald Jackson, which he affirmed. The witness explained that they had a verbal altercation culminating in Mr. Jackson taken a swing at him, and that he received a verbal warning discipline. Further, the witness testified that both Mr. Jackson and he have been written up when Mr. Jackson flipped him off and he began to laugh at work. Currently, the witness stated that both Mr. Jackson and he are each being kept apart for 90 days, working at different garages.

When questioned if he has ever come in to work early without authorization testified that he has if it was snowing, like others, but that he would just sit there until the call would go out before he would get in any of the trucks.

On cross examination, the witness testified he would come in to work early maybe 2 to 3 years ago, but not presently since we are so low on salt. Further, the witness testified that he would wait for the callout, before you would get into the truck. Moreover, the witness when questioned testified that he did not witness all of the argument between Mr. Ashcraft and Mr. Roach.

Appellants' next witness to testify was Mr. Greg Nicewonger, a Highway Maintenance Worker for the Hamilton County Engineer's Office, a position he's held for little over the past 11 and 1/2 years. When questioned, the witness testified that he is worked at various times with Mr. Joseph Ashcraft in his capacity as a Highway Maintenance Worker, over the last eight years. With respect to the January 9, 2014 incident between Mr. Ashcraft and Mr. Roach, the witness testified that he was there and observed the incident. The witness testified that when Mr. Ashcraft was handed the envelope/letter by Mr. Roach, Mr. Ashcraft opened it and stated to Mr. Roach that this was, "Petty and harassment". The witness explained that Mr. Roach at that time then asked Mr. Ashcraft, "Who he was talking too." Again, the witness testified that Mr. Ashcraft repeated his prior statement that this was petty and harassing, wherein Mr. Roach replied by stating that Mr. Ashcraft was an, "idiot and/or dumbass". Moreover, the witness testified that Mr. Roach at that time stated to Mr. Ashcraft that he had nothing to do with the impending pre-disciplinary hearing. When questioned, the witness testified that he never heard Mr. Ashcraft say anything vulgar or profane, but that he did hear Mr. Roach tell Mr. Ashcraft stop yelling as he would not like the consequences and to get his hands out of his face. Further, the witness testified that Mr. Roach then followed Mr. Ashcraft out into the parking lot, and in his opinion Mr. Roach escalated the situation, but that he did not use any abusive language towards Mr. Ashcraft.

With respect to coming in early on a snow day, the witness testified that under Mr. Ashcraft's previous supervisor, Mr. Volhard (sic), Mr. Ashcraft would often come in early and start the trucks, and be praised for it.

On cross-examination, the witness testified that Mr. Roach became their supervisor approximate 7 years ago.

On re-direct examination, the witness testified that he got called in at 12:30 AM on the night in question.

Appellant's last witness was the Appellant, Mr. Joseph Ashcraft. As an employee for the Hamilton County Engineer's Office, Mr. Ashcraft explained that he was employed as a Highway Maintenance Worker for approximately the last eight years, as well as his grandfather, father and brother having worked there, as well. The witness then reiterated his rendition of the events surrounding the March 2013 incidents which led to the previously issued 25 day suspension. The witness testified that he did leave the county premises, only at the behest of telling his crew leader, and that when he called into personnel when he was notified of being disciplined, he was very upset and swore. Further, the witness testified that he felt that Mr. Roach had it in for him, or had a vendetta against him, and he thought he had documented him being harassed by Mr. Roach, by calling Ms. Gina Stanley in Human Resources. The witness testified that he talked to Ms. Gina Stanley about transferring out, as well as talking to Mr. Matt Yunger.

Next, the witness testified regarding the events surrounding the January 5, 2014 incident. The witness explained that he came in to work on January 5, 2014, after he went to the grocery store and noticed that it had begun snowing, but before he had actually been called in to come to work. The witness testified that when he got there around 9: 30 PM or so, he opened up the garage and started pulling out the trucks, to get them warmed up in anticipation of having a call out. At this time the witness testified that Mr. Mark Schwettmann the night Highway Maintenance Worker approached him and asked him what he was doing, and told him that Mr. Roach had just called and told him that the callout was going to come until the early morning. The witness testified that Mr. Schwettmann suggested that he call Mr. Roach, at which time he simply pulled the trucks back into the garage, and left. The witness testified that Mr. Schwettmann never told him that he had violated any policy, nor was he looking to get any overtime by coming into work earlier, before his callout.

Regarding the events surrounding the January 9, 2014 incident, the argument between Mr. Roach and himself, the witness explained that that is when he got a letter from Mr. Roach notifying him that he had violated the county access policy on January 5, 2014. The witness testified that when received a letter from Mr. Roach he stated, "This petty shit has got to stop". The witness stated that Mr. Roach asked him if, "I was talking to him" and for "me to get my finger out of his face." The witness further stated that when he left Mr. Roach followed him out to the

parking lot and told him, "it wasn't me you dumbass and to get the fuck out." The witness testified that at no time did he ever threaten Mr. Roach with any physical contact. Further, the witness testified that he did fax in a harassment complaint, but this was after the events had taken place in January, and that he never heard anything before he was terminated.

On cross-examination, the witness identified Appellee's Exhibit 5C, as a statement he wrote out regarding the above event. When asked if he started the argument, the witness explained that he did state that this petty shit needs to stop, first. Further, the witness testified that there were approximately 10 people present when the argument broke out. The witness, when questioned, testified that he understood that there was a policy about after-hours access, and its prohibition against it.

FINDINGS OF FACT

The jurisdiction of this Board to conduct this hearing was established by O.R.C. § 124.34.

Mr. Joseph Ashcraft was employed by the Hamilton County Engineer's Office as a Highway Maintenance Worker for the last eight years.

The Appellant, Mr. Joseph Ashcraft, as a Highway Maintenance Worker, was removed from his position with the Hamilton County Engineer's Office for violating any other policy or work rule of a similar nature and seriousness by violating section 7.16 of the Policy Manual (August 2013) states that all after-hours access to the County Engineer facilities, grounds and/or buildings must be approved in advance; Willfully demeaning, verbally abusing and/or humiliating another person; use of vulgar, profane, abusive or threatening language by an employee to another employee, subordinate or supervisor; Unauthorized use of Employer property or equipment; Willful disregard of Employer rules, regulations, policies, and procedures; Failure to observe department procedures.

On February 10, 2014, the Hamilton County Engineer's Office delivered to Mr. Joseph Ashcraft an O.R.C. § 124.34 an Order of Removal which removed the Appellant from his position effective February 12, 2014.

Appellee stipulated to the fact that Appellant's appeal was timely filed.

The Appellant, Mr. Joseph Ashcraft, in his eight years of service with the Hamilton County Engineer's Office, had received a Notice of Written Consultation on or about June 29, 2011 wherein he was told he must take responsibility for inappropriate language used towards a supervisor, had received a one-day suspension on or about December 7, 2011 regarding the use of inappropriate

language towards a supervisor, and a 25 day suspension issued to him on or about April 3, 2013, wherein he had misused county vehicles and left three messages to the personnel department containing verbally abusive language toward Mr. Beck and Mr. Roach, coupled with the feeding of animals at the private property which was going to be a subsequent disciplinary action, prior to his removal. All of Mr. Joseph Ashcraft's prior disciplines were issued from June 29, 2011 through April 3, 2013.

While the Appellant attempted to submit evidence of disparate treatment, the incidents and/or individuals either did not have the lengthy disciplinary history of the Appellant herein, in addition to the fact that some of the back-to-back disciplines were outside of the time frames laid out in the progressive disciplinary track.

The Appellee did prove by a preponderance of the evidence that Mr. Joseph Ashcraft received his procedural due process through a pre-disciplinary hearing.

The Appellee, by a preponderance of the evidence, established that standards of conduct existed for and were known by Mr. Joseph Ashcraft regarding his required duties of his position as a Highway Maintenance Worker. The testimony and documentary evidence presented at the record hearing established by a preponderance of the evidence:

- a. Appellant violated the Hours of Work and Overtime policy under section 5.4 of the Hamilton County Engineer's Office, in that Mr. Ashcraft showed up to work on his own, without prior approval, violating the policy before being called in to work on a callout.
- b. Appellant violated the Building Access policy under section 7.16 of the Hamilton County Engineer's Office, as all access needs to be documented and approved in advance, with proper purpose, and again Mr. Ashcraft did not get prior approval or authorization, nor was there proper purpose in his entering the grounds without prior approval.
- c. Appellant violated a group 2 offense, number 4, unauthorized use of employer property or equipment when he moved the trucks without authorization.
- d. The evidence revealed that the Appellant violated group 2 offenses, numbered 17 and 18, a willful disregard of employer rules, regulations, policies and procedures and use of vulgar, profane abusive or threatening language by an employee to another employee, subordinate or supervisor, respectively, when Mr. Ashcraft entered the property without proper access or

approval, moved the vehicles, and when he got into an argument with his supervisor Mr. Mike Roach.

e. The evidence also revealed that the Appellant violated a group 3 offense, number 13, by willfully demeaning, verbally abusing and/or humiliating another person when the evidence revealed that he was the one who in fact started the argument and exchange between Mr. Roach and himself. However, the evidence did not reveal that the Appellant violated a group 3 offense, number 31, by violating any other policy or work rule of a similar nature and seriousness when Mr. Ashcraft attempted to grant overtime to himself by granting access to the grounds without proper notification or being called in to do the same.

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, and 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 O.R.C. § 124.34 and 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 weighing the appropriateness of the discipline imposed upon Appellant, this Board will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

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 O.R.C. § 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, proceed to the merits of the charges made against Appellant. Appellee established by a preponderance of the evidence that it had established standards of conduct and that such standards had been communicated to Appellant. According to the O.R.C. § 124.34 Order, Appellant's removal was based upon his violating any other policy or work rule of a similar nature and seriousness by violating section 7.16 of the Policy Manual (August 2013) which states that all after-hours access to the County Engineer facilities, grounds and/or buildings must be approved in advance; Willfully demeaning, verbally abusing and/or humiliating another person; use of vulgar, profane, abusive or threatening language by an employee to another employee, subordinate or supervisor; Unauthorized use of Employer property or equipment; Willful disregard of Employer rules, regulations, policies, and procedures; Failure to observe department procedures.

Violating after-hours access to the County Engineer facilities

Appellee proved by a preponderance of the evidence that Mr. Joseph Ashcraft was guilty of violating section 7.16 of the Policy Manual that states that all after-hours access to the County Engineer facilities must be approved in advance. For the Appellee to establish that an employee violated the after-hours access to the County Engineer facility, the Appellee must demonstrate that a duty upon the part of the employee existed, the employee knew of that duty, and that knowing of that duty, the employee breached that duty.

As was revealed by the testimony, the Appellee did prove by a preponderance of the evidence that the Appellant was neglectful of his duties, in this regard. The documentary and testimonial evidence revealed that the Appellant knew of the established standard of conduct with regards to his duties as a Highway Maintenance Worker, in that he was not allowed access into County facilities without prior approval. Clearly, the evidence revealed that on January 5, 2014, the Appellant gained access into the County facilities known as a Burlington garage, without prior approval, thinking he was going to get a "call out" because it was snowing, which had not come, nor which he had received, wherein he began moving trucks around to warm them up. The evidence also revealed that when he was approached by Mr. Mark Schwettmann, another Highway Maintenance Worker who worked the night shift came to work, asked him if he had gotten called in, and he responded by stating that he had not. When told to call Mr. Roach to see if he

could stay, the evidence revealed that Mr. Ashcraft began pulling the trucks back into the garage, and went home; essentially knowing that he should not have done what he did.

Unauthorized use of Employer property or equipment

Appellee proved by a preponderance of the evidence that Mr. Joseph Ashcraft was guilty of violating a group 2 offense, number 4, unauthorized use of Employer property or equipment. Again, for the Appellee to establish that an employee violated unauthorized use of Employer property or equipment of the County Engineer, the Appellee must demonstrate that a duty upon the part of the employee existed, the employee knew of that duty, and that knowing of that duty, the employee breached that duty.

As was revealed by the testimony, the Appellee did prove by a preponderance of the evidence that the Appellant was neglectful of his duties, in this regard. The documentary and testimonial evidence revealed that the Appellant knew of the established standard of conduct with regards to his duties as a Highway Maintenance Worker, in that he was not allowed to use the Employer's equipment or property without prior approval. The evidence clearly revealed that the Appellant when he gained access into the County's property without approval violated this policy with respect to property, as well, when he moved the trucks around, as that violated the policy with respect the unauthorized use of the equipment.

Willful disregard of Employer rules, regulations, policies, and procedures; Failure to observe department procedures.

Appellee proved by a preponderance of the evidence that Mr. Joseph Ashcraft was guilty of violating a group 2 offenses, numbers 17 and 18, a willful disregard of employer rules, regulations, policies and procedures and use of vulgar, profane abusive or threatening language by an employee to another employee, subordinate or supervisor.

The evidence clearly revealed that Mr. Ashcraft entered the property without proper access or approval, moved the vehicles around, and got into an argument with his supervisor, Mr. Mike Roach. Further, the evidence revealed that Mr. Ashcraft clearly was the person who started the argument, and by his own admission stated that when Mr. Roach gave him notice of an upcoming disciplinary hearing, wherein he said, "This petty shit has got to stop". While it was true that both men argued and said things that they should not have, it does not relieve Mr. Ashcraft of his misconduct, especially coupled with his previous disciplines

regarding his use of inappropriate language. Moreover, the evidence revealed that there was a willful disregard of the employer rules, regulations, policies or procedures when the Appellant came in to work on his own before being called in on a "call out".

Violation of Hours of Work and Overtime Policy

Appellee proved by a preponderance of the evidence that Mr. Joseph Ashcraft was guilty of violating the Hours of Work and Overtime policy under section 5.4 of the Hamilton County Engineer's Office. Again, the evidence clearly revealed that Mr. Ashcraft showed up at work on his own, without prior approval, violating the policy before being called in to work on a callout, and thus was in effect trying to set his own hours of work/overtime. Common sense dictates that employees don't set their own hours of work and when someone comes into work on their own, without prior approval, that employee violates that common sense directive. While the Appellant may have had good intentions in coming into work to help out, it does not relieve him the duty to have received a "callout" first, or to simply call his supervisor. In any event, the Appellant violated the above stated policy. However, the evidence did not reveal that the Appellant violated a group 3 offense, number 31, by violating any other policy or work rule of a similar nature and seriousness when Mr. Ashcraft attempted to grant overtime to himself by granting access to the grounds without proper notification or being called in to do the same. In the case at hand, there was no evidence presented at the record hearing that the Appellant actually attempted to have overtime written up on his timecard, which would have risen to a group 3 offense

Willfully demeaning, verbally abusing, and/or humiliating another person

Appellee proved by a preponderance of the evidence that Mr. Joseph Ashcraft was guilty of violating a group 3 offense, number 13, by willfully demeaning, verbally abusing and/or humiliating another person when the evidence revealed that he was the one who in fact started the argument and exchange between Mr. Roach and himself. The evidence was replete with examples of Mr. Ashcraft's inability to understand the necessity to not get into verbal altercations with the supervisors and co-workers, as he had had several previous disciplines in this regard, wherein the last discipline was in fact for a 25 day suspension, along with an admonishment by the County Engineer, Mr. Hubbard, to refrain from such activity. Thus, Mr. Ashcraft was guilty of violating the above noted group 3 offense.

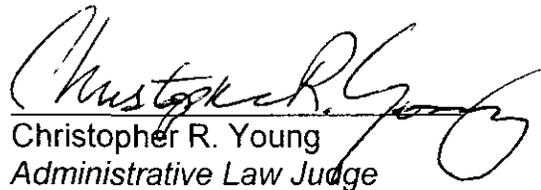
With respect to the issue of disparate treatment which was raised by the Appellant, in his case-in-chief, the undersigned found that the incidents and/or individuals either did not have the lengthy disciplinary history of the Appellant herein, or the back-to-back disciplines which are raised regarding other individuals

who occupied the position of Highway Maintenance Worker, which were outside time frames laid out in the Hamilton County Engineer's Office Personnel Manual progressive disciplinary track.

However, the question remains of whether the discipline imposed should be sustained. The undersigned Administrative Law Judge recommends that the evidence presented at the record hearing, taking the totality of the circumstances into account, is sufficient to support the removal of the Appellant. In this case, the Appellant, Mr. Joseph Ashcraft, in his eight years of service with Hamilton County Engineer's Office, had received a Notice of Written Consultation on or about June 29, 2011, wherein he was told he must take responsibility for inappropriate language used towards a supervisor, had received a one-day suspension on or about December 7, 2011 regarding the use of inappropriate language towards a supervisor, and a 25 day suspension issued to him on or about April 3, 2013, wherein he had misused county vehicles and left three messages to the personnel department containing verbally abusive language toward Mr. Beck and Mr. Roach, coupled with the feeding of animals at the private property which was going to be a subsequent disciplinary action, prior to his removal. All of Mr. Joseph Ashcraft's prior disciplines were issued from June 29, 2011 through April 3, 2013. It appears to the undersigned Administrative Law Judge that the Appellant was not taking any meaningful steps to comply with his supervisor's directives or better fulfill his duties as a Highway Maintenance Worker as expressed to him by his supervisors, and expressly by the County Engineer. Therefore, the undersigned Administrative Law Judge concurs with the Appellee's decision to remove the Appellant.

RECOMMENDATION

Therefore, based upon the above analysis, I respectfully **RECOMMEND** that the instant order of removal issued to Appellant, Mr. Joseph Ashcraft, effective Wednesday, February 12, 2014, removing the Appellant from his position of Highway Maintenance Worker be **AFFIRMED**, and the Appellant's appeal be **DENIED**.


Christopher R. Young
Administrative Law Judge