

THE PINELLAS COUNTY
UNIFIED PERSONNEL SYSTEM BOARD

IN RE:

Appeal of Termination

Derrick Clark,

Appellant,

v.

Appeal No. 20-6

Public Works – Department for Pinellas County,

Appellee.

_____ /

MOTION FOR RECONSIDERATION

Appellee PUBLIC WORKS – DEPARTMENT FOR PINELLAS COUNTY (herein “Public Works”), pursuant to Section 11-1(b) of the Appeal Procedures of the Pinellas County Unified Personnel Board (“Appeal Procedures”), requests the Unified Personnel Board (“UPB” or “the Board”) reconsider its decision rendered at the termination appeal hearing held on April 1, 2021, in this matter (“the hearing”), or in the alternative, reopen proceedings for additional evidence to be presented and examination to occur. A rough transcript of the hearing, prepared by Board Records, has been attached hereto.

I. Authority for Reconsideration

The Appeal Procedures provide that a Motion for reconsideration, modification, or amendment “will be granted” if:

- a. The proposed modification or amendment is based upon evidence previously presented or is based upon newly discovered evidence which, by due diligence, could not have been discovered prior to the appeal hearing; and
- b. A showing is made that the Board’s decision was made through or based upon fraud, collusion, deceit, or mistake of fact or law.

Appeal Procedures 11-1

The Appeal Procedures additionally provide “[s]ome examples of appropriate cases for reconsideration” which are:

- a. The Board has overlooked or misinterpreted points of law or fact;
- b. There was a misrepresentation or misconduct at the appeal hearing by the Opposing Party; or
- c. There is a showing that false testimony or evidence was submitted.

Appeal Procedures 11-1

The specific grounds for this motion, pursuant to Section 11-1 are:

- The Board misinterpreted points of law, including the provisions of the Appeal Procedures, and due process.
 - Public Works was not afforded the opportunity to provide evidence to counteract the unsworn and false testimony provided by a board member during deliberation.
 - The Board waived closing argument on behalf of the parties thereby denying them the opportunity to argue the law and voluminous facts.
 - The Board misinterpreted “progressive discipline” as defined by Rule 6, Discipline, of the Pinellas County Personnel Rules.
- The Appellant provided false testimony regarding his previous disciplinary history.

II. The UPB Considered Unsworn Testimony in Reaching its Determination

Unsworn testimony was improperly accepted during the hearing as well as during deliberations after proceedings for the hearing were closed. Public Works was not afforded an opportunity to cross-examine in either instance. Deliberations of the Board make it apparent that this unsworn testimony was considered in the Board’s final determination.

Board member William Schulz made several statements presented as fact during deliberation as to the practices of Pinellas County that were relevant to the facts giving rise to

Appellant's termination. It is clear from the transcript that Mr. Schulz considered his statements as fact, and evident that his statements presented as fact also made an impression upon his fellow Board members and influenced the final determination of the Board in determining that termination was not appropriate, despite finding that Appellant did violate the rules for which he was disciplined. Specifically, Mr. Schulz stated on multiple occasions that Pinellas County employees do not have to seek permission to leave the worksite to go to a meeting with human resources. Mr. Schulz stated: "Authorization wasn't required to attend this meeting, just notification." Transcript at 92, William Schulz - 2:17:09; "Well there's no written policy. Where is the written policy on those? Where are the standard operating procedures, these are verbal implied procedures, again like I said in my 27 years with the county, if you had an issue and you wanted to take it up with HR you notify your supervisor that you're going to have a meeting. You don't ask for permission you tell them. That's the way it's supposed to work." Transcript at 93, William Schulz - 2:17:22. Mr. Schulz has not worked for Pinellas County since 2015 and cannot speak to its current practices or policies; Mr. Schulz also questioned the existence of such a policy for permission to attend a meeting, despite an enumerated violation found within Rule 6 of the Pinellas County Personnel Rules being 6(d)(7), Leaving work station without authorization. Public Works was not afforded an opportunity to address this with Mr. Schulz by way of inquiry, nor could Public Works address this in a closing statement which was also not afforded. The Circuit Court of the Sixth Judicial Circuit has previously held that a non-witness testifying after the close of presentations is unacceptable. *Schneider v. Pinellas County, Florida*, Sixth Jud. Cir. 10-00047AP-88A, September 13, 2011, *aff'd*, 88 So. 3d 846 (2d DCA 2012). In *Schneider*, the Board elicited testimony of an unsworn non-witness during deliberations. *Id.* The Circuit Court held that the act of engaging in a dialogue with an unsworn, non-witness during deliberations was

unacceptable and such an act should not be tolerated in the future. *Id.* The testimony provided by Mr. Schulz was not elicited by the Board, but Mr. Schulz's testimony was nonetheless improperly considered by the Board in rendering its decision as Mr. Schulz is a member himself of the Board and represented himself as an authority on Pinellas County policy as a former employee.

Additionally, Appellant's advocate, who was not listed as a witness for Appellant nor sworn in to testify at the beginning of the hearing, nonetheless testified on multiple occasions to facts relevant to the proceedings when cross examining witnesses for Public Works. See generally, transcript at p. 37 (Advocate testifying about the grounds for Appellant's unrelated grievance and the contents of a manual for departmental equipment); transcript at 48-49 (Advocate testifying regarding Appellant's previous discipline regarding a car accident on December 2, 2019). Appellee's objections to the advocate testifying were overruled, and Appellee was not afforded an opportunity to cross-examine the advocate. It is apparent from the deliberations of the Board that this testimony was improperly considered in reaching its determination, which was unfairly prejudicial to Appellee.

III. The UPB Considered False Testimony in Reaching its Determination

Appellant falsely testified about his disciplinary history during the hearing. The consideration of such testimony was unfairly prejudicial to Public Works, who was offered no opportunity to rebut or address at the hearing.

Appellant offered patently false testimony during questioning by the Board. When asked if he had any other incidents involving damage, Appellant testified "No, not an accident. Not to be written up. No." Transcript at 72. This is in direct contradiction to evidence in the record, namely Appellant's February 17, 2015, Disciplinary Notice, contained within his personnel file, regarding similar conduct of recklessness. Appellant was cited for "Negligence resulting in minor

consequence” for negligently and recklessly operating a batwing tractor mower and damaging the ditch he was mowing, tearing up the banks and flow line of the ditch. Appellant testified about an incident of using profanity which was also referenced in the same Disciplinary Notice, so any argument that he may have forgotten is not credible. Nevertheless, Appellee was not afforded an opportunity to re-cross Appellant after this testimony or reference the evidence during a closing argument. Accordingly, Appellant offered patently false testimony during the hearing.

IV. The UPB Appeal Procedures Were Not Followed During the Hearing

During the hearing on April 1, 2021, Appellee was denied two crucial opportunities to clarify evidence that was described by the UPB as “conflicting” and “extraneous”, citing “a lot of confusion” (Transcript at 89, Ken Peluso - 2:05:23). Board Member Peggy O’Shea aptly stated, “There’s been a lot of conflicting testimony, which makes it really hard to get down to the root cause of the issue.” Transcript at 89, Peggy O’Shea – 2:05:55. Additionally, the abundance of irrelevant and extraneous evidence permitted into evidence further contributed to the confusion and conflation of the issues before the Board for its consideration. The failure to follow the UPB Appeal Procedures resulted in due process not being afforded to Public Works.

First, and most crucially, neither party was permitted to give closing argument, with the UPB Chair stating that the “board has the discretion as to whether [it] would hear closing argument” and subsequently declining to hear closing argument (Transcript at 87-88, Joan Vecchioli – 2:00:03). Pursuant to the UPB Appeal Procedures, Section 10-1 states:

Following the closing argument, the appeal proceedings shall be closed to presentation of further evidence or testimony. The Board shall then deliberate, in public, regarding the testimony and evidence presented. The deliberation shall begin with a review by the Counsel of what issues the Board must resolve in the appeal.
(emphasis added)

The UPB Appeal Procedures contemplate parties being permitted to presenting closing arguments to summarize the evidence and testimony presented and address how the evidence relates to the

applicable law, the Board's Rules and relevant policies, and the issues to be decided. This denial unfairly prejudiced Public Works by denying it the opportunity to summarize and contextualize the testimony in light of the burden of proof, much of which was confusing, irrelevant, and conflicting, which is reflected in the deliberations of the UPB Board. The denial of closing argument was especially prejudicial to Public Works given the lengthy hearing and the well-recognized recency effect ("The recency effect is a cognitive bias in which those items, ideas, or arguments that came last are remembered more clearly than those that came first....." <https://www.sciencedirect.com/topics/psychology/recency-effect>).

The lack of closing argument also prejudiced Appellee when considering the Board permitting an abundance of collateral, irrelevant testimony, of which Appellee objected to in its Motion for Exceptions. Appellee argued at that time that the proposed additional evidence and testimony would confuse and conflate the issues before the Board, which are specifically limited to the prongs enumerated in Section 10-2 (a) – 10-2 (c) of the UPB Appeal Procedures. The Board ruled against Appellee, voting to deny Appellee's motion, with the Board stating "I think we should put it into evidence and let's see how it plays out, see what the relevance is for ourselves." Transcript at 10, William Schulz - 25:23. Appellant then provided an abundance of testimony claiming that the Personnel Rules are not equally applied in Appellee's department, alleging multiple violations of "insubordination." Appellant attempted to show incidents of insubordination by tendering undated, unauthenticated documentation showing certain employees had registered business names with the Florida Division of Corporations (Sunbiz.org) and arguing this constituted "outside employment". At no time did Appellant offer any testimony or evidence to show that other employees committed conduct similar to Appellant's misconduct, such as refusing to follow

a supervisor's instructions or damaging department assets but did not receive any discipline for such conduct.

The Board's consideration of this "outside employment" evidence resulted in the Board relying on a mistake of law regarding this policy and finding that rules were not applied equally within the department. Having outside employment is not a conduct violation enumerated in the matrix of violations found in Rule 6, Discipline, of the Pinellas County Personnel Rules. While failure to seek approval for outside employment can be grounds for discipline pursuant to Unified Personnel Board Policy #5, Outside or Non-County Employment, the policy does not include any outright prohibitions to ownership stakes in business entities (subject to applicable Florida law), notwithstanding that such ownership stakes were not proven nor were those employees able to speak for themselves about their purported activity. Additionally, Kelli Levy, Public Works Director, testified that the issues raised by Appellant in regard to outside employment had been investigated prior to the hearing and had been determined to have either been previously disclosed or had been found not to constitute outside employment (see generally transcript at p. 45, transcript at p. 86). Despite the lack of relevancy of the outside employment issue and the testimony clearing up any discrepancies thereto, the Board nonetheless considered such testimony in its deliberations, stating "there are other cases where the rules aren't being applied consistently." Transcript at 89, Peggy O'Shea - 2:05:55. Despite the reconciling of the evidence regarding outside employment, it is clear from deliberations that the Board considered this evidence in reaching its determination that termination was not appropriate.

A second issue arose when the Board inquired of witnesses at the conclusion of each witness's testimony but failed to allow the parties to re-cross or re-direct witnesses before dismissing them. "A party to a quasi-judicial hearing, by virtue of its direct interest that will be

affected by official action, ‘must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.’” *Kupke v. Orange County*, 838 So. 2d 598, 599 (Fla. 5th DCA 2003) (citing *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996 (Fla. 2d DCA 1993)). Lack of ability to re-cross a witness prejudiced the Appellee most distinctly when Appellant provided false testimony about his disciplinary history during the Board’s inquiry, which Appellee was unable to address.

Appellee acknowledges that by its nature, the hearing is quasi-judicial and does not adhere strictly to the Florida Rules of Evidence; however, the lack of a closing argument, coupled with the inability to redirect or recross witnesses after the Board’s inquiry and the consideration of irrelevant and extraneous evidence resulted in unfair prejudice to Appellee.

V. **Rule 6, Discipline, of the Pinellas County Unified Personnel Rules, Was Not Followed in the Determination of the UPB Board**

Rule 6, Discipline, provides as follows:

Discipline should be progressive in nature. **Progressive means that more severe discipline is warranted if an employee continues to exhibit performance and behavior problems, whether similar in nature or not.** Additionally, there are circumstances where a transgression is egregious enough to warrant termination with no prior discipline.
(emphasis added)

Appellee argued during presentation that based on the progressive discipline levied against Appellant, termination was proper. The overarching theme of Appellant’s poor judgment was exhibited in various ways, including many instances of property damage, both minor and causing total losses of \$81,000.00, exposing Appellee to lawsuits as a direct result of Appellant’s conduct, and Appellant stating he was a “gambling man” and refusing to follow simple directives of his supervisors, instead choosing to be insubordinate.

Despite Rule 6’s definition of progressive discipline involving all performance and behavior problems, “whether similar in nature or not”, the Board, in its deliberations, found that

Appellant's termination was not proper as it was not progressive discipline due to it being dissimilar from previous discipline. "Prior disciplinary actions in my mind are not relevant to this case. You're talking, accidents, this is insubordination, they're not on the same level, they're not the same. In fact, I don't believe that the prior disciplinary has any bearing on these charges here." Transcript at 88, William Schulz - 2:02:42; "Progressive discipline again comes back to me that the previous cases that we thought have no relevance to what we're talking about today, I don't believe that they should have any bearing on this." Transcript at 95-96, William Schulz - 2:23:48; "The [discipline] items that were dated back in earlier years, that I think we're used to at least demonstrate progressiveness of discipline. I'm having trouble understanding that. I'm not so sure I'm convinced that this is an example of progressive discipline." Transcript at 89, Ricardo Davis - 2:03:44. However, Rule 6 defines "progressive discipline" as cumulative discipline, not categorical discipline. The Board's statements show a misunderstanding of the progressive discipline policy of Pinellas County and how it applied to Appellant and resulted in his termination.

Appellee is bound by the Pinellas County Personnel Rules in its progressive discipline policies. Prior to his termination, Appellant had already been suspended and demoted, both of which are considered the same level of progressive discipline. The Board, in rendering its determination, misinterpreted the progressive discipline policy of the personnel rules, which resulted in unfair prejudice to Appellee in the hearing.

CONCLUSION

It is appropriate for the Unified Personnel Board to reconsider its decision if there is a showing that the Board's decision was made through or based upon fraud or mistake of fact or law. UPB Appeal Procedures 11-1. Appellee has raised numerous issues from the hearing including false testimony, unsworn testimony, and procedural issues, all which unfairly prejudiced

Appellee. For this reason, Appellee respectfully requests the Board reconsider its decision in this matter, or in the alternative, reopen the case for further evidence regarding the conflicting evidence and the current policies and practices of Pinellas County.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished via electronic delivery to **Kimberly Crum, SHRM-SCP**, Human Resources Director, at kcrum@pinellascounty.org, **Jennifer Moore, Esq.**, counsel for the Unified Personnel Board, at Jennifer.moore@ogletree.com, **Derrick Clark, Appellant**, at regina72.re@gmail.com, and **Tammera Maloney, Employee Advocate for Appellant**, at tjmaloney@co.pinellas.fl.us this 16th day of April, 2021.

/s/ Ashley N. Donnell, Esq.

Ashley N. Donnell, Esq.

Florida Bar No. 100535

Assistant County Attorney

Pinellas County Attorney's Office

315 Court Street, Sixth Floor

Clearwater, FL 33756

Phone: (727) 464-3354

Fax: (727) 464-4147

E-Mail address: adonnell@pinellascounty.org

Counsel for Public Works

PCAO Doc. No. 324969

EXHIBIT A

Appellee's Motion for Reconsideration

Appeal No. 20-6

DISCLAIMER: This document provides a largely unedited version of a transcript produced using automated voice-recognition software and should not be relied upon for complete accuracy or used as a verbatim transcript, as it will contain additions, deletions, and/or words that did not translate correctly.

Unified Personnel Board

Thu • 4/1/2021 • 6:29PM • Pinellas County Extension Office, 12520 Ulmerton Road, Largo Florida

Present

Joan M. Vecchioli, Chair; Ricardo Davis, Vice-Chair; Jeffrey Kronschnabl; Peggy O'Shea; Kenneth Peluso; and William A. Schulz II

Not Present

Paul Rogers

Others Present

Jack Loring, Human Resources Officer; Jennifer Monroe Moore, Ogletree, Deakins, et. al, P.C., Board Counsel; Ralph Reid, Human Resources Business Partner, Technology Moderator; Shirley Westfall, Board Reporter; and other interested individuals

Joan Vecchioli 00:10

Good evening. I'm Joan Vecchioli and I'd like to call the Unified Personnel Board meeting to order this evening on April 1 2021 And I'd like to start by welcoming back several of our board members and others that we haven't seen in a while, and I'm happy that we can all assemble together this evening. Before we begin our meeting can we all please rise for the pledge. I pledge allegiance to the flag. Thank you.

Joan Vecchioli 01:03

Do we have any Citizens to Be Heard this evening. [No], thank you. The next item on our agenda is a report from the employees Advisory Council.

Charles Toney 01:25

Good evening, Charles Tony. We're going to do the update for the advisory employee advisory council. Lisa and Bill we're not available so you get me tonight. The EAC Council we've been meeting in person since the beginning of the year and we meet in this room also so we've been able to do that. We still haven't been able to have our larger group meetings yet with our delegates for our May meeting we're tentatively planning on meeting at one of the county parks where people can be spread out and try to get that larger group back together again so going to try to do that.

Charles Toney 02:04

I want to say, give a thank you to our assistant senior County Attorney Carole Sanzeri, she had attended our January meeting, she helps us out quite a bit with review of things but she was there,

giving us updates for the Sunshine Law, we had several new people join the council and it's always good to have that, that update on the Sunshine Law with her. The EAC advocate committee. Lisa met with the committee and with Rodney Marion and Kimberly Crum. Some of the discussion there included current policies, processes and some issues they were working on.

Charles Toney 02:45

The EAC bylaws, we worked on those, about a year and a half ago, and we've got some revisions of those, those have been presented to the personnel board for your review and discussion and approval, and hopefully we'll be able to get to that at your next meeting I realize you've got a lot on your schedule for the meeting tonight. Most of those changes were grammatical moving things around and just cleaning them up, but I plan on being hopefully your next week or next meeting for any updates that you might need on that.

Joan Vecchioli 03:19

Charles, my understanding is that they were being reformatted to highlight the actual changes for the Board to review. [Yeah], hopefully that will be part of the agenda packet for next month.

Charles Toney 03:30

Yep. We did that because they, like I said a lot of stuff was moved around a little bit changed but mostly just moving it around.

Charles Toney 03:41

The EAC has also been submitting monthly articles to the county newsletter The Pinellas pen, and what we've been doing is rotating through our council , 15 members. So it all, all don't get an article, each year, but this gets a chance to have a different perspective from the people on our council from different areas of the county and give a little, little personal information on each of the Councilmembers.

Charles Toney 04:10

The Benefit Advisory Committee, which is sanctioned under Human Resources and the Board of County Commissioners. They've established several subcommittees to work in those areas. EAC is currently serving on two of those committees, the voluntary benefits, Lisa's working on that they've had a meeting, the committee reviewed various voluntary benefits and information such as demographics, other municipalities. It was also decided that the committee for Willis Towers Watson to proceed with forwarding information on supplemental insurance for the county employees.

Charles Toney 04:55

I'm serving on the leave time off committee. A couple years ago we had formed a committee we met for about 10 months, gathered a lot of information, comparing the county's leave accruals, their leave time off, the holidays, compared to some of our peer organizations. So that was provided. And one of the other things I think you remember when we were discussing this a few years ago was the parental leave and then it got into some discussion about the possibility of providing some type of caregiver leave because a lot of a lot of the employees now have elderly

parents that were, were having to take care of and, you know, rather than just for the, the, the newborns and the adoptions coming on, you know, additional time for care of our elderly parents would also be a good, a good addition.

Charles Toney 05:51

One of the things concerning with the state and our Florida Retirement System. The legislator has one current Senate bill, that could affect our state retirement system. The proposal is to eliminate entry into the pension side of the, the Florida State Retirement for any new employees, they would only be have available the investment side of the pension and there's a lot of concerns that we have with that so we've been getting in touch with some of our legislators to discuss those items.

Charles Toney 06:31

And Kimberly Crum HR director she's been attending our meetings regularly giving us updates on the HR side. She's been including us on decision making process. And she's been communicating with us very well, that's most of what I've got.

Charles Toney 06:58

One thing I did want to point out this evening I believe you've got six members present and in areas of decision with this board, a tie vote in the matters of discipline can make a difference. And I'm sure your legal counsel is aware that can point that out if and when it comes to that point. That's all I've got for now is anybody has any questions for me.

Joan Vecchioli 07:27

Any questions for Charles. [Thank you.] Thank you.

Joan Vecchioli 07:36

Next item on the agenda is the consent agenda and the approval of the March 4 meeting minutes. Do I have a motion to approve.

Ken Peluso 07:46

Move for approval.

Joan Vecchioli 07:48

Okay, I'm sorry, can you just State your name for the reporter can get

Ken Peluso 07:51

Absolutely Ken Peluso Move for approval

Joan Vecchioli 07:53

Thank you Ken. Is there a second [Second] is that Rick? Okay, thank you. All in favor. [Aye.] Any Opposed? All right, next item are informational items from Human Resources and as Kimberly couldn't be here tonight I think Jack's going to deliver that report.

Jack Loring 08:19

Thank you Madam Chair for the record my name is Jack Loring Human Resources Officer. And I'll start out with just a very brief summary of some of our activities in HR. We recently concluded a special enrollment period for benefits that affected supplemental and dependent care dependent life coverage, and also enabled employees to enroll or make changes in their flexible spending accounts. It was very smooth process it went very well, and it was successful.

Jack Loring 08:56

We're also working on some collaborative events, we have our classification compensation team partnering with Stakeholders from our various Appointing Authorities to help streamline some of our physician maintenance processing.

Jack Loring 09:12

The HRS team is working diligently on a project to upgrade our Oracle VRP system we expect that project to be concluded, sometime in July. There are many promising upgrades that will impact Human Resources tremendously.

Jack Loring 09:29

Our workforce strategy staff have continued to provide uninterrupted assistance to hiring managers, this calendar year to date, we have 112 new hires and counting. And with that, I'll move to communications.

Jack Loring 09:46

And what really want to highlight our special edition of the pen newsletter you heard Charles referenced the pen. And on the anniversary of the COVID-19 outbreak, we put together, Irena and her communication staff put together this special edition of the pen. And I guess just to touch on some of the highlights, we've had UPS employees that logged over 112,000 COVID related hours, dealing with this event and of course it's not over yet. And this 10 Page publication also tells us more about various county departments, joined forces to manage the cares funding, no less than seven different departments worked on that. We had more than 4700 resource requests from citizens in Pinellas County. And we had more than seven and a half million personal protective equipment PPE items that were distributed. And many of our employees volunteered to make masks and donate them to their coworkers and to others. And this special edition of The Pen received kudos from the County Administrator and also from Commissioners Seel's office. So, In one week, we had more than 2500 views on this special edition so kudos to Irena and her team and everyone within the county, who's been putting forth such a great effort during this pandemic. Thank you.

Joan Vecchioli 11:25

And, um, any questions for Jack on the authority delegated by the personnel board, I know we always gloss over that item, it's just informational, or any other items for Jack. Okay. Thank you Jack.

Joan Vecchioli 11:41

Before we move on to the termination appeal. Are there any other informational items that the board needs to raise at this point in time the balance of our meeting will be devoted to the termination appeal. Okay, very good, thank you.

Joan Vecchioli 12:00

And so at this point I'd like to invite the parties. I'm not sure how we're going to be configured for this termination appeal but the attorneys or the representatives, I guess, and the parties, if you could identify yourselves for the record, and introduce yourselves to the board, Are they going to remain sitting where they are. Okay. Are you all ready to make the move.

Joan Vecchioli 12:39

While they're doing that, I'd like to point out to the board, that our esteemed attorney had written a memorandum for us that would outline the procedures and the issues for us to determine this evening. So it's kind of a nice roadmap for us to follow. I don't know if you all have access to it electronically I have one hard copy, but, um, I just thought that was very helpful and thank you Jennifer.

Jack Loring 13:04

While their Getting ready I neglected to mention, Audrey and her team and learning and development, they rolled out a brand-new leadership development program for the utilities department with 55 current folks in the cohort. Congratulations to Audrey and her team as well.

Joan Vecchioli 13:39

So is everyone seated that will be participating as representatives or parties. Okay. Tonight we are going to be hearing the appeal of the termination of Derrick Clark the appellant versus the Public Works Department for Pinellas County the appellee its appeal number 20-6. Before we begin, As I stated, can you please introduce yourselves for the record and who you are appearing on behalf of

Ashley Donnell 14:15

Good evening, my name is Ashley Donnell I am representing Public Works, and I'm joined by my co-counsel Jeffrey Klein both of the Pinellas County Attorney's Office,

Joan Vecchioli 14:23

okay. And who is here on behalf of the appellant.

Tammera Maloney 14:30

I am Tammera Maloney, I am an advocate and I am here on behalf of Derrick Clerk who is with us.

Joan Vecchioli 14:38

Okay. Thank you, Mr. Clark.

Derrick Clark 14:41

Hi I'm Derrick Clark.

Joan Vecchioli 14:43

Thank you. Now before we begin in the presentation of the case. There have been some objections and requests for exceptions to some of the evidence. And so as part of our procedure we entertain the exceptions first and we'll take them one at a time and then the board will vote. After hearing the argument. And I believe all of the exceptions were raised by the appellee and so in that case, let's have the appellee start. And like I said let's just argue exception at a time, if that's okay.

Ashley Donnell 15:23

Yes. Good evening again my name is Ashley Donnell. I did file a motion for exceptions in this case, Mr. Clark had submitted some supplemental exhibits, and I specifically took exception to items, and I'm looking at appellant supplemental witness and exhibit list that was filed by Miss Moore on March 25 And I specifically in my motion took exception to exhibits 10 through 14, and in my motion I art I kind of grouped them, but if it's easier to go one by one, I'm happy to do so.

Joan Vecchioli 16:04

But if you think they're all related to the same objection, we can entertain them as a group, and then if we need to split them out, we can

Ashley Donnell 16:15

very well I'm going to group them and if you have further questions of course I'd be happy to answer them. So the first items I'd like to discuss are items 11, 12 and 13. Those are the 2012 administrative directive regarding outside employment. The Unified Personnel Board policy regarding outside or non, non-county employment, and the administrative directive regarding the ethics guide for employees. The issue I raised with these is that I do not believe they're relevant for the issues to be heard before this board tonight, specifically my understanding from the supplemental pre hearing conference that also occurred on March 25 Is that the appellant intends to argue that other members of the Public Works department and specifically here I believe the forestry urban forestry and landscaping division, that there were individuals who may have been in violation of the outside employment rule.

Ashley Donnell 17:14

And that is represented by the exhibit 14 which is sun biz documents that show ownership stakes in some business entities by individuals. The reason that I'm asking that the board, exclude these from the hearing is because it will force the board to consider collateral issues, such as what the documents stand for which would be actually exhibit 14, whether in fact that constitutes outside employment, whether in fact, that's a violation of the rule or the directive. And I think that that is not relevant for the purposes of the hearing tonight, I don't think that the appellant should be precluded from arguing disparate treatment, or that there was an in, you know, an uneven application of discipline, I think that's relevant, but I think that getting into these additional exhibits is going to get too far off course of what the purpose of tonight's hearing is.

Ashley Donnell 18:13

And so for that reason I'm asking for 11, 12 and 13 to be excluded. At the prehearing conference I did agree that 14, which was his actual Sunbiz documents could come in for impeachment purposes, although frankly, I'm not sure what question would be relevant for the hearing about them, to even get to the point of using them for impeachment.

Ashley Donnell 18:39

So to wrap that up 11 through 14 essentially is asking the Board to put other witnesses on trial, about other violations. Mr.. Clark was not disciplined for outside employment so that's not even the same type of discipline that we'll be discussing tonight. And so for those reasons I'm asking that the board consider excluding exhibits 11,12 and 13 and then necessarily 14 Should it even become relevant for impeachment purposes. Thank you,

Joan Vecchioli 19:09

and what was on Sorry, what was your argument on 10 Or was that something we're taking separately.

Ashley Donnell 19:14

As for the photograph of 10. Ten, I don't even exactly know what it stands for, it's a photograph of somebody standing by a truck. I think from what I glean from the prehearing conferences to stand for the idea that somebody was allowed to dump on site at the urban forestry and landscape division. I also don't think that's relevant. I also don't know how that photograph will be authenticated. So I'm also asking for that to be excluded, unless relevance can be shown. Thank you.

Joan Vecchioli 19:50

Thank you, Miss Maloney what say you.

Tammera Maloney 19:57

The County directives, and the rules for outside employment are relevant, as are the sunbiz showing that individuals did in fact have ownership and outside entities and employment and failed to follow a directive from the County Administrator, which in and of itself is insubordination. And since my client is being charged with insubordination, there's an uneven application of how management is choosing or picking and choosing to apply these. And so for that these are relevant, these, these show that it is a County Administrator directive, requiring employees to get permission from the ACA, or the County Administrator through the Opus system, and in writing for outside employment or entity being business or company, and so having ownership is also a violation, if it's not properly requested for permission and authority of the County Administrator,

Joan Vecchioli 21:12

and those are related to 11, 12 and 13 [Correct.] Okay. And, um, is that your entire argument on those three.

Tammera Maloney 21:22

on those three is that this, this proves that they are not evenly applying this rule they are picking and choosing and that they are choosing to apply this in a discriminatory manner towards Derrick Clark and they are not choosing to file any charges against others who are insubordination.

Joan Vecchioli 21:42

And with respect to exhibit 14

Tammera Maloney 21:45

And what was 14 I'm sorry

Joan Vecchioli 21:46

14 is this Sunbiz print out.

Tammera Maloney 21:51

Yes, those show that those employees have ownership in those companies. And those employees have not been disciplined for their insubordination.

Joan Vecchioli 22:04

So, same, same argument on 14 Basically,

Tammera Maloney 22:07

correct.

Joan Vecchioli 22:08

And then what about 10

Tammera Maloney 22:10

Which one is 10, I'm so sorry.

Joan Vecchioli 22:12

That's okay 10 is the photo. The undated photo of an individual standing next to a truck.

Tammera Maloney 22:18

Now, the photo that is of Mr.. Hinrichs allowing his friend and contractor to dump. She is accurate in saying that we don't have any way to authenticate it. However, it is part of our case because this was part of the meeting, and the things that Mr.. Clark and our witnesses today, were trying to report to an appropriate authority and had requested the meeting with Rodney Marion, in order to report these as unethical violations.

Joan Vecchioli 22:59

If the board and the board will deliberate and consider whether the documents come in if the board decides to allow the documents in. Will that necessitate Additional witness testimony on these documents or will the documents speak for themselves and be able to be explained through the witnesses, you were planning on presenting.

Tammera Maloney 23:22

Well, the witnesses would attest to the fact that these are the charges that they were trying to bring to Rodney Marion with this meeting. So whether it's relevant or not I will leave to the board.

Joan Vecchioli 23:37

So Miss Donnell was it your understanding that there would be no additional witnesses that were being added as by virtue of adding the documents.

Ashley Donnell 23:47

Correct. I believe that an additional witness had been requested, Mr.. William Gorman, but I don't believe he's here. So my understanding is that the exhibits were being offered, without additional testimony, other than who's already been listed for the appellant.

Joan Vecchioli 24:04

Is that correct

Tammera Maloney 24:05

Yes, Bill Gorman will not be here tonight.

Joan Vecchioli 24:07

Okay. So, the board needs to entertain these exceptions. And I would just remind everyone that, obviously, when we have these hearings we don't strictly adhere to the rules of evidence as we would in a court of law. And we've been somewhat liberal in our introduction of evidence, in an effort, obviously, to provide due process, but we still have to determine if issues are relevant to the presentation of the case. So I'd like to open it up to any board member that, that would like to I'm sorry, Jennifer.

Jennifer Moore 24:47

before you go on, I just want to clarify because when we did have the supplemental pre hearing exhibit number nine, was objected to by the appellee they did not file it in their objections and I want to make sure that any objection that they had at the pre hearing was waived at that point and they withdraw it.

Ashley Donnell 25:07

Yeah, I'm not making an objection to nine,

Jennifer Moore 25:09

Right, thank you.

Joan Vecchioli 25:12

Anyone on the board would like to make a motion or observation as to these items.

William Schulz 25:23

I think we should put it into evidence and let's see how it plays out, see what the relevance is for ourselves.

Joan Vecchioli 25:29

Would that be Bill as to 10, 11, 12, 13 and 14

William Schulz 25:33

Yes, ma'am.

Joan Vecchioli 25:33

Okay, so that's your motion. Okay. Is there a second.

Ricardo Davis 25:39

Yeah, I will second that motion, Madam Chair.

Joan Vecchioli 25:41

Okay, discussion? questions? Okay. All in favor of the motion say aye. [Aye.] Any opposed? Okay, we will allow the documents to come into evidence, and obviously if there are particular objections to the testimony or issues that you'd like to highlight you can raise them as we proceed. Before we go forward with the presentation of the evidence in the opening statements, I'd just like to take a 10 minute recess, and the board is going to go back to try to get ready for the long evening ahead of us and you guys can have a few minutes to get your case ready for presentation. Okay. Thank you

.

Joan Vecchioli 02:20

Okay, thank you for your patience. I'm like, like to call the meeting back to order. With all the witnesses who are going to give testimony this evening please stand and be sworn in.

Amelia Hanks 02:39

If you could all raise your right hand for me. Do you swear or affirm that the testimony you're about to give is the truth the whole truth and nothing but the truth? Okay.

Joan Vecchioli 02:50

Thank you. You may be seated. Now since this case involves an appeal of a termination the burden of proof on the case is on the appellee by a preponderance of the evidence, but for opening statements, the appellant gets to present first. So you all may give an opening statement not to exceed 10 minutes please.

The following testimony has been produced using automated voice-recognition software and has not been reviewed for accuracy. An audio recording is available from the Board Records Department upon request.

Thank you. Members of the personnel board. Today you will hear from management how employee Derrick Clark was terminated for cause, and that those actions taken by management or an appropriate application of rule six of the discipline process, What you will hear from Derrick myself and the witnesses being presented by the appellant to provide eyewitness and first hand testimony is that members of management conspired in a purposeful manner to harass intimidate and racially abused Mr.. Clark. Through their efforts to manipulate their own interpretations of the interactions, actions and events in the written justification. They believe they have created an appropriate disciplinary paper trail to justify the targeted termination of this employee to the personnel oversight body. What we ask today is that you consider whether Mr.. Clark had just cause for making every effort to attend the meeting and question based upon his duty to report suspected suspicious and unethical activities to an appropriate authority, which you will hear about from our witnesses, and whether he had the right to attend the meeting in order to report the improper intimidation targeting and racially abusive treatment he was experiencing. You will hear from management that his immediate supervisor was notified of his intent to attend. And we suggest that the subsequent burden to ask for permission from the very person he was attempting to report, created a purposeful and unnecessary psychological burden to Mr.. Clark, for the sole purpose of intimidation. You will hear testimony that discipline rules have not been evenly applied to other public work employees for violating D five and subordination and B 29 employee conduct interferes with the proper cooperation of coworkers or impairs the efficiency morale and good order or discipline of the workplace through their failure to follow a County Administrator directive, and a direct violation of personnel rules. Further, you will hear from three other employees who were part of the meeting in question who utilized their county vehicles to attend the meeting did not ask for express permission, I will testify that like Derek, they merely notified their immediate supervisor, and were not required to request express permission, specifically from anyone they did not directly report to you will hear direct testimony that manager Dave Hinrichs had previously isolated an employee to attempt to discourage or intimidate them from attending a crew member meeting, and that Derek's fear of his managers intent is not unfounded. You will hear testimony of Derek being directed to perform demeaning and menial tasks grunt work and cleanup after supervisors for the sole purpose of being a subordinate, and his supervisor being his boss. A statement which most of us can understand has a racially charged connotation or meaning. you will hear further testimony regarding other insensitive or racially charged statements made by Dave Hinrichs. You will also hear testimony today regarding two previous written warnings which management states are part of the progressive discipline, leading to this termination, one of which was in the process of being grieved to this board by the appellant at the time that the infraction being discussed today, was written. What you will not hear from management, but you will hear from the grievant his testimony showing that the appellant was coerced by Dave Hinrichs into formally dropping that prior grievance, as he was led to believe that doing so would prevent him from being terminated for the incident in question today. I suspect there will be many objections by management today and an attempt to prevent you from hearing the entire set of events and circumstances that had occurred throughout the progressive discipline process beginning in August of 2019, and we asked the members of the board for latitude as we submit these items and testimony and our efforts to provide to you the full picture of the situation Derrick Clark found himself facing. Thank you.

Thank you Miss Maloney, Miss Donna will you be delivering the opening.

Yes,

we may proceed.

Thank you. Good evening, members of the board, my name is Ashley Danelle as I indicated I represent Public Works in this case, and tonight Public Works comes before this board asking that you uphold the termination of Barrett clerk in efforts to provide a full picture of Mr.. Clark as a Pinellas County employee you need to look at his disciplinary record which of course is a part of your exhibits, and specifically you're going to hear a lot tonight about a lack of sound judgment on behalf of Mr.. Clark reckless behavior, and in moments of insubordination. You're going to hear about his progressive discipline and you're going to hear about his refusal to take orders from his superiors. Specifically, you're going to hear from Andy Carr tonight. That was his immediate supervisor at the incident that leads us to the termination, and specifically you're going to hear about how Mr.. Carr was the acting Supervisor of Derek Clark, he was in a role that was in a temporary status not permanent, and that he told Mr.. Clark multiple times that to attend this meeting with Rodney Marion, it was imperative that he speaks to Dave Hinrichs, and make sure to get permission, Mr.. Clark told Andy Carr, I don't have to do that, I'm not going to do that. So that's the first thing that you're going to hear about the second thing I think that's important that you're going to hear about tonight is that nobody knew what Mr.. Clark was going to meet with Rodney Marion about what management knew is that Mr.. Clark was scheduled to work his job and he was told that if he needed to leave the worksite to go to a meeting and Downtown Clearwater, he needed to talk to Dave Hinrichs and that Mr.. Clark refused to multiple times. Dave Hinrichs is also going to come before you tonight he's going to talk to you about Mr.. Clark's progressive discipline, he's going to talk to you about the two mowers that Mr.. Clark destroyed one worth \$45,000 and another worth \$36,000 and the lack of accountability that Mr.. Clark took in those incidents including taking selfies with the destroyed mower and laughing about it, you're going to hear about incidents that, Mr.. Clark wasn't disciplined for, and you're going to hear management talk about the latitude they tried to extend to Mr.. Clark. As a longtime employee that they wanted to extend to him to see him be a successful employee. You'll also hear that Mr.. Clark. During his pre disciplinary hearing regarding the incident that led to his termination apologized and admitted that he was insubordinate, and that he didn't want to lose his job, but you're going to hear from Kelli Levy, the Director of Public Works and she's going to tell you that this incident was the last Straw that Mr.. Clark had already been suspended. He'd been demoted, even coached he'd been counseled he'd been given written warnings all to no avail. And that at the end of this progressive discipline, there was truly no other option but to terminate Mr.. Clark, as he could no longer be trusted. He was someone who was operating heavy machinery, he was destroying machinery, he was involved in not one but two car collisions, one that resulted in a lawsuit against Pinellas County that's pending right now, where three people were injured another incident where a minor pedestrian was struck by Mr.. Clark. So we've got a reckless employee who in addition to that can't even do what he's told. Additionally, I understand that the appellants theory of this case is that there is what I would coin a conspiracy theory, and my witnesses are ready to answer to these theories and to debunk them and to assure this board that there is no grand design that management expected Mr.. Clark to perform in sound judgment, and to do what he was ordered to do by his supervisors, even if that was a menial task, and he refused to do so at the end of this hearing, I will ask that you uphold the termination of Mr.. Clark and find that he did in fact commit these infractions, they were in fact in violation of the Unified Personnel Board rules, and that termination was appropriate. Thank you.

Thank you Mr.. Nell, and you may call your first witness.

We would call Andrew car.

Hello, good evening.

Good evening.

Good evening we please state your name for the

record my name is Andrew car

and Sir What is your current role with Pinellas County,

on the operation supervisor for Landscape Services underneath the Public Works department.

Were you in that position back on March 16 of 2020?

I was in the position as an interim, filling in for additional duties. The position was vacated by another employee, and I moved in and took over additional duties until I eventually was able to interview and obtain the job.

When did that roll become permanent for you?

just about a year ago April 13

So want to direct your attention back to that March 16 date of 2020 at that time was, Derek Clark someone that you were supervising.

Yes, I was supervising him at the time and previously I was crew chief One and Derek was underneath me as an automotive Equipment Operator one before I obtained the additional duties.

How long have you known Mr.. Clark?

No, Mr.. Clark since I started with the county in November of 2016 and we've worked together since then until his termination,

specifically on March 16th What happened on that day with Mr.. Clark.

So, Mr.. Clark notified me that he was going to a meeting with some fellow employees to meet with Rodney Marion. Upon hearing this, I did not give him permission I talked with Dave Hinrichs my supervisor. And I was instructed to let him know that Derek was to come up and talk with Mr.. Hinrichs and ask for permission to go to the meeting. That was the day before the meeting.

Did you tell Mr.. Clarke that on March 16?

Yes, yes I told him, at the end of the day that he was to, if he was planning on attending the meeting to go up to Mr.. Hinrichs office, and make sure he has permission to attend the meeting. Mr.. Clark did not think that he needed to go upstairs and talk to Mr.. Hinrichs he kind of made a stink about

it. He said he had nothing to say to Mr.. Hinrichs, and he did not need permission to attend the meeting he explained that there's an open-door policy with Pinellas County.

Now on March 16 Did you have any idea what in particular, Mr.. Clark was attempting to meet with Mr.. Marion about,

I did not know the specifics of what the meeting was about. All I knew is that, Mr.. Clark. And I believe three other employees were planning on attending the meeting

on March 16 How many times did you instruct Mr.. Clark to make sure that he spoke with Dave Hinrichs about getting permission to go to Downtown Clearwater.

On the 16th we had a little bit of a back and forth conversation about it I was trying to convince him that it'd be in his best interest to just go talk to Mr.. Hinrichs and get permission for the meeting. I got a lot of pushback. He didn't think that he needed to ask for permission. So, I couldn't tell you exactly, but we at least had one decent, you know, five-minute conversation about it.

So on the following day on March 17 Where was your group assigned to work on that day.

I had Mr.. Clark and some other employees out on San Martin Boulevard down off of Gandy.

And did you speak with Mr.. Clark, again, about this meeting with Rodney Marion, on March 17

Yes, in the morning before they left, I asked him if he had intended on going to the meeting. He said yes of course he's going to the meeting I said have you gone up and talk to Dave about the meeting Mr. Hinrichs, once again explain that I have nothing to say to that man that I don't need permission, it's an open-door policy with the county. There's no reason for me to have to go ask for permission.

Now did you as the acting supervisor have the authority to give Mr.. Clarke permission to go.

Um, at that time I was conferring with Mr.. Hinrichs, because I just taken the additional duties, and I was unclear, so I talked with Mr. Hinrichs and found what my best action was, and my best action was to pass it upstairs to Mr. Hinrichs.

Okay. Now, on March 17 Did Mr. Clark ultimately leave the job site at Gandy.

Yes, he did leave the job site, I contacted another employee that was on the job site with him working. I had noticed that the vehicle, he was operating on the GPS system synovia had left the job site. So I had called another employee to say. Did Mr. Clark leave the job site and they said yes. I said, what did he say where he was going. He said, Yes, he said he was going to the meeting with Rodney Marion. So, about. I tried to contact Mr. Clark. I did not hear back about a half an hour later, I finally got in contact with them.

And what did he say to you.

I asked him where he went, he said he had left to go to the meeting, and apparently the meeting had been canceled. But he did leave the job site with the equipment, the truck.

So he left in his county vehicle

in a county vehicle,

and with what attached to it.

He had a trailer with a \$60,000, thorough Batwing lawnmower.

And is it your understanding that Mr. Marion's office is in Downtown Clearwater.

That is my understanding that he had left, and he was traveling in the direction to go to Downtown Clearwater to meet with Mr. Marion.

Now, is this the first time that Mr. Clark showed blatant disregard for any direction you gave to him as a supervisor.

No, there was an incident, a few weeks before. On February, the actual incident was the 28th but on the 27th. There was an a, an employee retirement party that I was planning on attending, and I offered an invitation for Mr. Clark to come with me, it was just himself and I work in that day, he declined the invitation, and I said, well that's okay. You can, you can stay back at our yard instead of going out and working by yourself, or going work with some other people I'll give you some, you know, easy things that you can do for the next couple hours this party was around two o'clock, I believe, and we get off work at 530 I gave him the opportunity to just service, the machine that I normally operated at the time, which is a machine that Mr. Clark was very familiar with because he had operated it for a few years prior, just to do the general service on it grease all the fittings, blow it off blow all the dust off of it and then gave him a few easy tasks running some equipment to our fleet services, and picking up equipment to round out the day. The following day I came in, asked him if everything got done if he serviced the equipment. He said, No, I didn't get to that, and just kind of asked like, Well, did you not have enough time and he said no I didn't have enough time. So, I couldn't really figure out how there wasn't enough time, so I got with Mr. Hinrichs, we had a little meeting with Mr. Clark. Let's gender test, Mr. Clark. You know what's going on, how come you, you didn't have enough time to complete tasks, and he says, I don't have to service. Why am I servicing, his equipment? I do not operate the equipment. I shouldn't have to services, equipment, he should be servicing his own equipment. This rolled into an argument that eventually led to, Mr. Clark telling myself and Mr. Hinrichs that I am not his boss, I do not have to listen to what he tells me to do. And we said, Well, Dave, Hinrichs says, well, he is your boss and, you know, if he asked you to do something, We expect you to do it and he says he's not a boss, he's just a supervisor, and we asked what the difference was, and he said, Pinellas County is my boss. He is not my boss.

What was your general relationship like with Mr. Clark and then what was the rapport between you too?

as when I was a supervisor, I thought I went out of my way to try to accommodate, Mr. Clark and I knew at the time when he had been demoted that he was going through some tough times. I can understand that he, you know, nobody wants to go backwards in life. And I tried to accommodate him and really make things easy on him and it seemed like I was,

you know, getting a lot of pushback,

specifically with the incident where he didn't want to go to the retirement party, and so you gave him some, some tasks were you trying to punish him for not coming to the retirement party. No, I

thought that was a way to give him like a little bit of a break rather than saying hey you got hey I'm going to go over here and enjoy myself and eat, you know, eat cake and, and have some sodas with coworkers and Chum it up. If you don't want to go like I'll give you something easy to do. You know I'm not putting a lot of pressure on you to get it done. There's plenty of time to get it done. And from what I could see. He just thought that I couldn't tell him what to do, I guess.

Okay, one moment.

So going turning your attention back to the March 16 and March 17 incident which is the basis of the termination Did you after Mr. Clark had blatantly disregarded your direction, did you then proceed to follow up with Dave Hinrichs, and initiate discipline proceedings.

Yes I did, I immediately once I found out what was going on contacted Mr. Hinrichs and let them know what happened and then I met with Mr. Clark on the job site and, you know, just asked him, I said, you know I did make it clear like you were not to leave without asking for permission did you ever call Dave, did you ever, you know, get permission to leave and he once again said, it's an open door policy with the county I don't need permission to leave, I can go if I've scheduled meeting, I can go to the meeting without permission.

And just so it's clear what was Mr. Clark's general day to day job, generally speaking, what was he doing in his, his role.

At that time he was automotive Equipment Operator one, and we were servicing the grass on the roadways and southeast and southwest Pinellas County.

Now I understand that you've just testified about some difficulties that you had with Mr. Clark, but do you have any personal issues with Mr. Clark or any reason that you would have been treating him differently than other employees you supervise.

No I don't think I don't have anything personal with Mr. Clark in fact we had, after the whole conversation with you know you're not my boss, you're just a supervisor, you know I had a heart to heart with Mr. Clark and just kind of told me, you know, with the past disciplinary stuff that you've gone through like you're kind of on thin ice, like you know it's not, you know, maybe we should you know calm it down a little bit and you know he was on probation at the time and kind of explained to him like this is not a good road to go down like, you know, let's write out your probationary period. Try not to get in any trouble and within one year when your off probation you can maybe work yourself into your previous position.

And when you say calm it down, you know, what were you. What were you trying to communicate to Mr. Clark?

Just

that he was pushing back with management a lot, and

I didn't think that was a good path to go down, I

didn't think he was being treated unfairly, I think he just, there was a job that, you know, he was hired to do and we expected him to do it and you know it's, we weren't asking for too much it's just, you know, if we expect you to do the basic duties of the job.

And when you have that conversation with Mr. Clark and you told him you're on Sinise, you need to, essentially, watch your conduct. What was his response to you?

Well I had said basically like you know you've been here 20 years with Pinellas County, you know, if you end up getting fired you just throw away 20 years. Are you willing to risk that, and he said that he's a gambling man, he's willing to gamble?

so

I was the response I got. I said, I didn't think that was a wise decision, but that was a response.

And were you personally involved in the decision to terminate or were you just providing information for upper manager,

no I

had no, no input on a termination I just was following the procedures.

I have nothing further at this time.

Thank you, Miss Maloney, you have an opportunity to cross examine the witness.

Thank you. So you were Derek's supervisor at the time, whether it was interim or not in Opus, did you approve his timecard.

I approved this final timecard.

Okay, so then you were his supervisor in Opus, as well as interim. And so there's a chain of command Correct. Yep, okay. And he came to you as his supervisor, and he informed you of his intent to go to this meeting that was set up. Correct. Okay, and so you went to Dave Hinrichs Why did you Why were you hesitant to say okay,

like I said I didn't officially have the job at the time I had just taken on additional duties and there was a learning curve a little bit for me. I didn't know if I would even get that job when it, you know, came open, officially, so I went for guidance to my supervisor before I just, you know, went out and made a decision without seeking any kind of counsel.

And what did you tell Mr. Hinrichs about their ex request.

I just said that he was planning on attending a meeting with some other employees. I didn't know what the meeting was about I knew it was Downtown Clearwater.

And I

told him what time it was, and I basically just asked him like what you think should I let you know should I give him approval.

And do you know why. Dave decided that you weren't able to give the approval.

Why he said I can't get the approval correct Why did

there need to

this I think in conjunction with the previous incident that I said where there was a lot of insubordination that, you know, maybe he just wanted to talk to.

Derek, you know,

but you knew there were issues between Derek and Dave, and you followed the chain of command, but for some reason, Dave felt that he was unable to advise you, at you. Yeah, as to whether or not you could advise your employee, whether they could or couldn't go.

Following my chain of command.

That's

correct, but he was great he was not,

I can't speak for Dave,

right, but he didn't tell you. Yes he can go or no he can't go he

did not he just, he asked me to tell Mr. Clark to come up and ask him for permission or at least just talk to him,

you know,

and when was when Mr. Clark. Express hesitancy or a desire not to personally speak to, Dave, did you offer any other avenue for him.

I didn't think it was that. I mean, difficult of a choice is to go and talk to a supervisor is

that you, you're not in touch or you can't tell what Derek might have been feeling, but you're correct. So, you know to imply that he shouldn't have been afraid to go talk to Dave, that's not really your call to make.

No, I don't know if he was afraid or not. Okay, thank you. He didn't express that he was afraid. Okay, so that he didn't feel like he needed to ask for permission in the first case.

Yeah, I think we got that part. Okay, um,

objection can the witness, please be allowed to finish his answer. Yes,

Miss Maloney just let the witness finish the answer.

So did you offer any other options such as he could take personal time, or he could put in for leave if he didn't want to go ask for this permission that he so badly needed,

I don't, I don't

recall. I don't recall.

Okay, because that would be an option, wouldn't it, it would

be an option and if he would have to put in for leave yes he could use his free time for,

and then he would not have had to go talk today.

Well yeah, if you took the day off, you wouldn't have, you know, had to talk today that's correct.

Okay. I'm on this incident about Derek being insubordinate before. Yes, when he didn't clean your equipment. Okay, because you were going to a party in could he finished everything else on the list that you gave him.

He did.

Okay, so he just did not clean your equipment.

Yes, but the way I laid it out was in an order, when the first task was to get that done so the equipment was ready for the following day.

Do your employees, typically clean and serve as your

yes because we work as a team, we're, you know, three-man team, you know, at that time but it was just me and him, but everybody is expected to work together. So we help each other out,

was he using the equipment as well?

At times he was,

yeah, during the day.

Yeah, there's times that he was on the equipment there was times where I let him ride that piece of machinery and I took a different one.

Okay. And did he claim his machinery that he had been using.

Oh, Yeah, he did.

So you don't understand why he might not have wanted to clean your machinery since it wasn't really his role to clean up after you,

I think it was a simple request.

But you, you don't understand. And that would be insubordination so when you came in the next morning, and it wasn't done.

I think the insubordination is more along the lines of where you say, I do not have to listen to this man, he's not my boss, he's just a supervisor.

Okay, well we'll let Derek answer to that later. Okay. Um, do you have outside employment.

Yes. Not anymore. No,

not anymore. And who did you work for,

or were for catering company, or

did you not work for Vinson be put out a prompt saying his name for I have?

in the past.

And did you ask for permission. What to have outside employment. No, I

was unaware of that had to ask for permission,

you weren't aware of the county directive, and the personnel rules.

I was not aware of that, that role to ask for permission to outside employment,

and so you do not work for Vincent any longer.

I am like an independent contractor I get a 99 at the end of the year so from time to time I do some work for him.

Okay, but you know that Vincent does have a biz and outside.

He's had a business since he was in the parks department, a long time ago. And that's the same business he had when he was over there.

And do you know if that was entered into Opus and the

supervisor, I would not know that.

I thought he reported to you at some point did not

report to you ever reported to me that you've worked I used to work underneath Vincent,

try not to speak over each other because we're having a transcript made.

Sorry, sorry.

And, and when did you stop performing outside business.

It's,

it's time to time it's not, you know, like, I'm not like a permanent employee for prevent like I said, I get the 1099 at the end of the year.

Well, and I understand that my husband's a musician and he do the same thing, but he entered his into Opus and did request permission to do so. Objection, irrelevant.

Advocate testify.

I mean it's a comment as opposed to a question so let's,

let's just try to stay with the questions, please. And, and have you been written up for insubordination for not following the directive. No I have not. Have you been taught to about the directive and about the need to do so?

Nope,

I don't recall being talked to No,

Tammera Maloney 34:51

so nobody has advised you that this is a directive and that you needed to do that.

Nope. Okay.

Now, we've heard counsel, bring up some incidents about accidents that have happened. Okay. Did you run over someone's foot?

There was an incident there, an employee was he walked up behind the machinery that I was operating. When he was told multiple times, just to pull up next to me on his machine do not get off the machine, because sometimes accidents could happen. He got off as machinery, walked in my blind spot where I could not see. And when I turned the machine, I ran over his foot.

And would you consider that serious consequences. No,

I would consider that an accident, that was probably the fault of the gentleman that walked up blindly behind a machine.

Okay, and Was there an incident report, yeah. Okay. And were you written up for that. No, I wasn't written up for it, because it was an accident. It was an accident and accidents do happen from time to time. Okay, thank you.

Anything else. Okay.

Hang on, I'm sorry sir, please come back to the podium. Just give me one second. Just getting some clarification on procedure Mr. Nell any redirect. Yes, briefly, please. Okay.

Mr.. Carr, in reference to this incident where this accident occurred regarding someone's foot in the line of work that you all do. Is there some inherent danger, just using heavy equipment?

Every day is dangerous. We're operating, you know lawn mowers in the middle of roadways. There's traffic everywhere. Like I said this gentleman had

walked up

behind me where I could not see him when he was instructed multiple times. Do not if I wave you over, do not get off your machine just pull it up next to me I'll pull the throttle down so we can hear each other, I'll talk louder, and in that particular incident. That's what happened. He got off his machinery and walked behind the machine.

Would it be fair to say that not every accident, results in discipline because, obviously, not every accident is intentional? Yes,

so that would be fair to say,

would you differentiate an accident, from a repeated mistake that has been coached and counseled on?

Well, accidents, you know aren't planned I think when you repeat the same actions. You have a choice to make and if you continue to make the same bad choice I mean that's a different from an accident.

Is it your understanding that, Mr. Clark had incidents involving property damage, where he wasn't disciplined at all?

Yes, yes.

Okay, so he was given chances to correct those accidents or mistakes. Yes, Okay, and then briefly in regard to you. You said you did some outside catering. Yeah. Is that what it was,

well I did that for a while and then I do some work for Vincent DePaul.

And what kind of work is that

it's landscaping work just one property that needs help with.

And

was that, Oh,

I'm sorry it didn't Pasco County,

was that ultimately disclosed to a superior

from myself, yes.

I mean some people know that I do that, but it's never been an issue.

Okay. So, if you were to be told that you needed to go ahead and enter that into Opus Would you have any concerns about doing that.

No,

it's not a problem at all. I don't see how, I mean it's not really conflict with what I do at Pinellas County,

Okay, and you're familiar with the outside employment rule, and you understand that the concern is conflict with the county.

Yes, okay,

which is honestly why I probably never put it in there because I don't consider a conflict with the county we don't seek contracts with the county. It's in the one location that I work at and it's in Pasco County.

Okay. And after tonight if perhaps you hear from a supervisor that they want to go ahead and have you in the abundance of caution enter that into Opus that's not going to be an issue for you. No,

that's not an issue.

Okay, and nothing further.

Okay, Mr.. Carr if you're just Stay at the podium the Board may have some questions for you. Okay, and I'm going to start with Bill.

Good evening, Hey John, good. So one of them, if an employee wants to say go speak with employee relations or human rights or HR. Is there a written standard operating procedure on what they're supposed to do?

Mostly we just verbalize that and approve it so it's implied.

Yeah. Thank you.

Joan Vecchioli 40:50

Is your microphone.

Yeah, okay,

okay. Yeah, I'm sorry, press my button. The rod Marion meeting. Yes, thank you pacified that it was canceled.

I believe Rodney canceled it. At some point, I don't know what exact time Rodney canceled it.

But,

Mr. Clark had already left to head in the direction

to attend the meeting, but you would not have any knowledge of that

I did not know I did not know about that I didn't find out about until I talked to Mr. Clark and he said well the meeting was canceled anyways. I was not in contact with Mr. Marion at all,

that all your questions with Ken.

As a side to that question I recall reading somewhere in these 341 pages that the meeting was cancelled because Mr. Clark did not meet with Mr. Hendrick to guide mentioned, are you aware that

maybe somebody else could answer I don't, I don't know why it was canceled. Peggy.

Yes. Okay, thank you Mr.. Carr,

okay thank you

may call your next witness.

Public Works with call Dave Hinrichs.

Good evening, I'm Dave Hinrichs Operations Manager of Landscape Services.

And sir, can you please explain your job duties,

yes I watch over all the landscaping activities which include the slope mowing ditch cutting right away mowing and the medium mowing.

For the purposes of the board can you just kind of explain generally the hierarchy between yourself, Mr.. Carr, and then Mr. Clark out is that hierarchy work between the state again. So, do you supervise Mr.. Carr, I do, and then does he supervise a group of people that included Barrett Clark,

we have four ground maintenance crews and Andy does too and another fellow named Robbie Koski does too.

When did you start your role with Pinellas County?

six years ago.

So is that fair to say in some time in 2015

Yes Is

2016 2016 okay, and at that time was Mr. Clark already an employee of that you assumed in your role he was yes. Okay.

Can I interrupt one second Mr. Hinrichs I know it's awkward but if you don't mind facing us. Okay, is talking to you. Thank you.

So tell me, and the board please, what was your relationship like with Mr. Clark once you became Operations Manager,

it was good. Derek and I thought always got along well. Derek worked really hard for me. In fact, he was always my go to slope mower whenever I needed something to be done, special. Yeah, it was good. What's a slope mower or slow mower is a John Deere tractor with the big 30-foot arm on it that goes down in the ditch and cuts the sides of the banks of the ditches. Now,

generally speaking, how would you describe Mr. Clark as an employee, at least initially when you first began

supervising Eric was a good employer. Yes, a very good employee, I thought.

So we're here tonight to talk about the incidents leading determination but necessarily, that means we need to talk about Mr. Clark's disciplinary history, so I'd like to first ask you about some of the previous incidents that are reflected in his discipline file. I'd like to ask you about the time that he I want to direct your attention to 2017 Were you involved, or were you aware of the time that he had hit a pedestrian when he was exiting fleet management,

I was aware of that. Yes,

and what, what happened with that situation that you recall,

so he from what he told me that he was pulling out a fleet and Stuck the nose of his truck out a little too far and there was a girl riding a bike on the sidewalk, and she hit the front of a straw.

And as a result of that, Mr. Clark got a citation.

Yes he did

by law enforcement obviously not by county. Yeah okay, um, was he given any discipline, as a result of that incident, no,

not from it.

No. Okay. Was he disciplined by anybody? No. Okay. Would that be a type of situation where it would be chalked up to an accident,

I would say so. Yes. Okay,

so then another incident 2017 Were you aware of a time where he hit a signpost

yes I was aware, on the one that makes the I make the damage reports up.

So damage report what kind of damage, resulted from that accident.

He basically knocked the mailbox off, and the post.

And was that in a county vehicle. Yes. And did that result in damage that had to be paid to repair that vehicle Correct.

Okay.

Did he get any formal discipline after that incident? No. Was that another incident chalked up to an accident. It was an accident. Now when these accidents occur you having just conversations with Mr. Clark is about generally, you know, watching, watching the road watching what you're doing so

when an accident like that happens there's a supervisor's report that I make a report up and we both sign it and talk, talk about what to do better next time and what you did this time to make that happen.

And as some of, some of those direction just to generally like pay attention or be careful that,

yes.

All right, so then I want to draw your attention to 2018 Are you familiar with an incident where Mr. Clark, hit a residential mailbox, yes. Okay, and was that again in a county vehicle.

It was in his slow Moe a machine the tractor. Yes,

okay and then did the county need to pay the citizen to replace or repair their mailbox Yes correct. Okay, and was any formal discipline lobbied against Mr. Clark for that incident No. Was this another chalked up to an accident. Damage report, and just having another conversation about being careful and paying attention. Correct, yes. Okay, so let's talk about another incident in 2018 Was there an incident where Mr. Clark damaged a remote mower, there was,

I sent him over with the remote control mower that we use, we use this mower that the big tractors are unable to get into and it's a remote control, he was cutting the ditch, and it lost control of it and it rolled down into the water and totaled the machine.

How much was that machine worth?

that 140 5000

So how did you first learn that this had happened,

he called me up and told me that, that the mower flips, and that it was upside down in the ditch.

And what did you do

for a crier. I was upset, but I went over there to look at the situation and the grass was very tall, and he told me that it fell on a hole, and it lost traction. And I've looked at the situation and I agreed. I agreed with him, that, that could have happened.

What did you observe, Mr. Clark doing when you arrived at that scene?

so him and another slope mower were there, and they're taking selfies of it with the mower in the background, with, with the mower upside down, all I can see is the blades of the mower, and he's taking pictures of it with the mower in the background and

why those blades still going,

no the lawn more what's completely underwater.

How did that sit with you to come up upon that scene and see Mr. Clark taking photographs with that \$45,000 machine.

Literally, it literally made me sad. You know I told him that this isn't a laughing matter. You know, it was. I didn't feel good about it.

How did you guys get the machine, the mower out of that ditch even get it.

I called one of the urban forestry Crane Trucks over, and that's got a boom on it, and they extended it, and we posted it.

Okay. So after all of that, did you at this point, discipline, formally discipline, Mr. Clark. No. Okay, and I'm sure the question on everyone's mind is why not, at this point, we just talked about two incidents in 2017, two incidents in 2018 progressively more expensive damage so, can you explain why you still did not initiate formal discipline if

I can, and I've had commercial yard service. Did you know hospitals and USF and big, big jobs had quite a few people that work format and in the yard service. There're things that get broken when you're using tools like that every day, and accidents do happen, I mean I did add Matt. When, when, when I was operating equipment, I would accidentally break things too. It's kind of just part of the kind of part of the business, that things do get damaged and broken. I totally understand that.

So now I want to draw your attention to August of 2019 Did your department have another remote mower on loan to you from a vendor,

we did. So, when the first one got damaged, we put in for risk, to get a new one to get that one replaced. There was a backlog on that to get a new one. So Alamo the manufacturer of that remote-control mower told me that they will let me borrow one temporarily to get some of the ditches done that we need to use that mower on. So I sent Derek to go do the property and told them to please be very careful whether it's not our mower. You know don't damage it. So he calls me up about an hour, hour and a half later, and told me that he accidentally drove the mower off the ledge, and it fell like 10 feet down, destroying the mower.

Now is this a new machine to Mr. Clark or is this a machine that

No, it's the identical machine is the one that went in the ditch the first time,

is it fair to say he'd been using that machine at least since 2016? That model of machine. Correct. And was he the main operator of that type of equipment or for years, there really was no main,

main operator that piece of equipment was used like when the guy's primary machine would break, and it'd be like a filling piece.

But Derrick

I would say out of, out of the other operators to slow down our operators, He probably had the most experience using that machine.

So good. He explained to you how he managed to have this second mower fall off a ledge falling 10 feet and being fully destroyed, he,

he told me that the mower veered off to the, to the left, and it somehow went out of control, and it went off the ledge.

And are you familiar with this machine yourself,

I am yeah,

and does it have any kind of kill switch or mechanism to completely stop operation,

so when you shut the engine off, it stops itself.

What was the value of that machine?

It was the same as the first one,

and then ultimately did the county have to pay with Alamo back for that machine,

we did. And so now I have a pain for two hours and Still don't have any of them.

So, at this point did you initiate discipline against Mr. Clark we

Yes we did. I have got with my boss, and then he got with Kelly and we set up disappointment for that.

And who is your boss,
Michael de papa is the Section Manager urban forestry and Landscape Services.

And what discipline was chose what was the discipline for this incident.

So I don't I don't have that with me.

Well its records reflected that Mr. Clark was given a one-day suspension would that sound accurate you. Okay. All right, so I want to then draw your attention to two months later, On December of

2019 Do you remember an incident where you had to tell you had a call with Mr. Clark. Can you tell me about that?

I did I was going down Ulmerton Road and Derek called me and said that he was in a car crash on Gulf to Bay Boulevard.

Okay, what was, what, what was like leading up to that incident.

So, about a half hour, well probably 20 minutes prior to him calling me and telling me that he was in a hit, you know crashed his truck. He called and he was over at the IRB, the Public Works building off a Drew fueling up, or somewhere around there and said that he was having a medical emergency where his, his stomach was, you know he's in severe pain. And I asked him, you know, would you like me to call 911 Or do you, you want to come back you want to leave for the day would you like to go to the hospital. And he says, Well, let me call, let me call you back in, and I'll drive my tractor back to where my pickup truck and I'll decide what I want to do so. When he got back over to where his pickup is he called me up and, and, and we discussed that he was planning on taking himself to the hospital, and there's, you know a little bit of talk about, you know, just go ahead and take care of yourself. You sure you're able to drive, do you want to call 911 again we went through all that, he goes what no I think I'll be able to make it and I said, Well, if you'd like, just go ahead and take the county truck to more implant if that's where you'd like to go and we could figure out a way to pick the truck up later on if they decide to admit you in the hospital. The truck was no big deal to me. I have people all over the place that we get to pick it up later on. 20 minutes later he calls me up and says that he got in a crash. Apparently he changed his mind about driving himself to the hospital and decided to go back to our office which is off 126 and 49 and pick up his personal vehicle and drive himself to the hospital. I go okay well I will come on up to Gulf to Bay and you know I want to see what's going on with the accident stuff, and when I got there he, his truck was in the middle of the road, hit with another vehicle in the middle of the median. The ambulance was in the, in the middle of the road and he was already transported gone from the scene from, I guess the pain and the side, and an injury from the accident.

As a result of that incident was there damage to the county truck,

There was serious damage. Yes,

and then was there also damage to a third-party vehicle

vary quite a bit. Yes,

okay. And in regard to that incident, you know, had you offered to take Mr. Clark to the hospital or get someone else to take him to the hospital,

had I offer right when you spoke to him.

Yeah I mean I offered to come pick him up I offered to call 911 I offered to do anything that I can, you know, six, seven miles away from him, told him that he needs to do whatever he thinks he needs to do, you know I wasn't there with him to see what condition he was on. And, and he decided to go ahead and drive himself to the hospital at that point,

was your primary concern, Mr. Clark or the truck,

it was, it was definitely there I wasn't worried about the truck whatsoever.

So as a result of this car accident. Did you and your management, upper management, again, discipline, Mr. Clark. Yes. Okay, and if the records reflect that. As a result of this, Mr. Clark was demoted from an automotive equipment operator to down to a one would that be accurate. Yes, ma'am. Okay. Now, I think the question that's always on people's minds is you know, why did you discipline him if he was not feeling good. You know that, why, why were you disciplining him if he was having a medical event,

it was I think that, you know at the end of the day I think that he should either call 911 or, or, he's kind of blaming X and on him not feeling well I think they should have pulled over, and either called, you know, the paramedics or, I don't really know I mean I wasn't there to see what condition he was in, but there was a, you know this is like the third incident that we've had damage and serious damage done.

Was this another incident where you felt that Mr. Clark was not exercising good judgment, I did, yes.

And it was this another incident whereas a result of his actions, there was extensive asset damage on behalf of the County.

Well, and to the people that were injured with the in the crash and the other car, which I was upset about.

Are you aware that the county now is being sued as a result of that accident?

I definitely am aware. Okay,

so let's move on to the incident that led to termination, which is this meeting with Mr. Marion right at this point, Mr. Clark had obviously been suspended and demoted, what was your relationship with your working relationship with Him like at that point,

with, with Eric. I don't have a whole lot to do with Derek because not meaning, you know, like, on a day to day basis because he was working on the MOE crews that were before his supervisor left and I was watching over personally over this love mowers and Derek was included with one of the operators. So when he was switched over to an AO one. I didn't have a whole lot to do with that from, you know, day to day.

Mr.. Carr testified about an incident in February, where, obviously there was a conversation that occurred between you, Mr.. Carr and Mr. Clark you recall that conversation,

I do. Yes.

And how would you describe Mr. Clark's attitude at that time. Derek can

get upset, you know, fairly easy. And, and he was pretty upset about saying that, you know, I'm not listening to him, and Stuff like that.

Did you explain to Mr. Clark that Mr. Carr was in fact the supervisor to him and if he gave him a direction you needed to follow that direction I

did, yes. Okay,

so then in March, March 16 and 17th When did you first become aware that Mr. Clark was trying to attend a meeting with Rodney Marion,

so I found out about the meeting, initially through Larry gardener and Ivan Cooper came up the morning prior to that, and asked for permission to go to the meeting, which I'd said no problem. Yeah, I don't, I don't have a problem whatsoever about golf.

Okay. And when did you learn that Mr. Clark also was trying to go to that meeting,

I found that out through Andy like, I don't know if his next day or, or that afternoon.

You know what they were going to discuss with Mr. Mary Oh,

I didn't, I didn't have an idea at all.

And what's your understanding, what was your understanding back in March of 2020 as to Mr. Marion's role with Pinellas County.

He is employee relations, it then. To me, honestly, it didn't really, it didn't bother me what they're going to talk to him about, you know, I mean that's between the like.

So obviously it's been discussed that the topic was going to be partially about you, but did you know that back on March 6 No,

I didn't know that. Okay.

So, is it accurate that you then told Mr. Carr that Derrick also Excuse me, Mr. Clark also needed to come and speak to you just like the other two gentlemen had?

So with that situation. Andy was a feeling a brand-new supervisor that was filling in, until we found a permanent replacement. And I kind of like to know when people are coming and going, you know, I kind of think of being the manager that I have a right to know who's going to be here and who's leaving and. And I want to make sure that if he was going to go not to take the county equipment drive a pickup truck rather than, you know, a \$60,000 law more important a 26 foot trailer down and Clearwater and leaving it to be exposed for people to either come by and Steal blowers or whatever. Yeah, I wanted him to come on up and asked me to make sure that that we went through those, that that before he left.

Did he ever come and ask you if he could have done that meeting?

no he never

once you learn that he had in fact, traveled to that meeting, while we learn that meeting didn't occur when did you first learn that he had in fact, never asked you to go and then went to went on ahead and went anyway,

so when we found out what time the meeting was we went on synovia which is a tracker that tracks the vehicles, and I could see that he was up on Missouri heading that way. He left all the way from where the dog track was which is pretty far to be falling all that equipment without permission. I led Mike Depappa I know what was going on and I believe that he either called Kelly and Flo Kelly what was going on are Susan, our stormwater director.

And just to be clear, you're talking about.

Kelli Levy,

the Director of Public Works Yes

ma'am,

and then that's Susan canning yes okay and Who is she, she's are the stormwater director. Okay, so once you discussed with management this incident what was, what was the next step,

so I wasn't where all that other stuff happened but I believe and I'm not like 100% Sure, I think that either Susan or Kelli called Rodney and Rodney notified them that they, they, he thought that they did have permission to go to the meeting.

Make sure you look at them. I know it seems unnatural, but they're our audience. Okay. Um,

okay,

so there's been some discussion about Mr. Clark potentially feeling uncomfortable talking to you. Did that ever come across to you.

No, I never, I

never got the feeling I mean I thought that, you know, I mean we talk every morning have, you know, personal conversations and get around and, and no I never I never knew that he felt that one.

Okay. Now, were you involved in the decision to terminate Mr. Clark. As a result of the March 17 incident,

my opinion was yes,

yes. Okay. And

did you speak with your supervisor Mike depappa, and onward up management regarding that? Yes, okay. You have anything personal against Mr. Clark.

No, and I still don't like I don't I don't have any issues with Derek, Not whatsoever.

There is an exhibit that Mr. Clark has submitted that contains a text message, which I think is number nine for our technology coordinators. Thank you. Um, what is this text message about.

So, that text message was made. Rob And Andy. I guess I think it was or were discussing one of the employees that was taking too much on scheduled time off.

Okay, was this text message about Mr. Clark. No, okay. And I want to ask you this. Do you take enjoyment in disciplining employees, no, no, other than Mr. Clark? Have you ever terminated another employee with Pinellas County?

no I have. Okay,

there's been talk about Korea move on to exhibit 10 Please, the same document. There's been talk about this photograph. Okay. Can you tell this board what this photograph is depicting?

yep so that's Sam from mile away property management and Sammy has the contract to cut all of ours. He does all the empty lots for the county on empty lots.

So this is an independent contractor that the county contracts with correct, Yes. And does this vendor work with multiple departments.

He works for five different departments with Pinellas County right now.

That'd be the Housing Authority, community development, Landscape Services, 911, and code enforcement.

Yep, he does code enforcement cleanups and Stuff. Okay.

And is this vendor allowed to dump on site at your department,

he is so when he's out doing the empty lots the big mountain, if there's any big tree branches. We allow the vendors including our tree install vendor, and the regular right away, like our main vendor that does, you know portion of the mowing, to bring all debris over to our yard and that's, that's part of the contract.

Are you friendly with the owner of the vendor, you don't have the company work friends? Okay, acquaintances, friendly,

yeah I mean I think um, you know, yeah, I would say that with all the contractors I'm friends with,

were you instrumental in getting this contract between the vendor and Pinellas County,

no. So we put out the specs for the contracts. He and purchasing it's the one that put it out and accepted the bid awarded the bid, I didn't have anything to do with him getting the

contract.

Okay, one moment.

Okay, I don't have anything further at this time.

Thank you, cross examination.

Anyone.

So you testified that you first found out about the meeting because Larry and Ivan and was Mike December as well.

You know I don't I don't know Mike December wasn't there it was Ivan Alera that asked me in the in the in the slow Moe and office that they could go.

And did they tell you at that time that Derek was going as well, no. And did they ask you for permission or did they just let you know that they intended to go. No, they asked,

they asked if they minded if they want.

Did they ask if they could use their county vehicles to go?

No they don't.

And it was okay with you. Yes, that was fine with that they took their county nuchal, so they weren't in trouble for taking their county vehicles No, and, and, according to you, they asked you for permission,

they did ask for permission. Okay, and Bill,

I don't have a problem with them going to the meeting, and if they're on the clock and they're going to talk about business. Yeah, I have no problem with them, taking the company vehicle anything.

And why was it so important that Derek come and ask you permission,

I just thought that with,

with

Randy being the fresh supervisor that he is, and I just, that's the way I wanted to have it done.

So you just didn't know that you could say, tell him okay. No, I doubt you didn't, you, you needed him to come and ask your permission.

Yeah. Okay.

And you knew that he had issues with you. Did you not know, I didn't know that? So you and he had never had no differences.

So,

there was an incident in which you walked into a room, before a room that Derek and Ivan were in. And you referred to them as boys. You said, Hey boys,

I don't remember that.

Okay. Um, did Derek at that, well you don't remember it, but we'll let Derek speak to that because he remembers that as well as Ivan. Do you know what the term boys, do you realize that the term, when a grown man calls another grown man, a boy,

do you realize that Russian advocate testifying?

Okay she

don't remember doing it so right now,

sir. Hang on one second. She is using that in the context of a question so we'll overrule your objection, so please just let her finish and vice versa so that we can get an accurate transcript. Go ahead and re ask your question please.

Okay. So, are you aware that when a grown man calls another grown man, a boy, that has a demeaning connotation?

I really don't know. I don't know I've never done that.

Okay, and so dare you don't recall that Derek told you that he is not a boy, I don't and that he was offended at being called a boy,

I don't remember that

now, and that it does have a racial undertone. I don't remember you don't remember.

We've heard a lot of testimony here about these prior accidents that have happened to accidents happen frequently.

No, I wouldn't say accidents, I mean we do have, you know, windows, taken out from rocks being thrown from the law Moore's

not frequently but,

once, once a year, maybe, I mean it depends what are you considering an accident.

Well, I mean I have a lot of incident reports here that we had asked for. So there was a lot of incidents there. Yeah, they're there, there

is, again, I mean there's. We're riding. We're cutting the grass lawn the right ways that the grass is three feet tall and a lot of times you don't know what's in there and the majority of the damage done is by cars that are driving by, even though we have our suits down on the law Moore's things do seem to slip by sometimes and acorns.

So there are minor acts such as a lawn mower or a sign, getting hit or a mailbox getting hit with equipment, this is rather large equipment

correct total Yeah,

yeah, can be difficult to maneuver

I totally agree, yeah. Okay,

so with relations to the slope mowers. I know there was the first incident and you've testified that you could understand and see how that would have happened I did see photographs of that. And that's why you didn't discipline him because you agree it was an accident.

Correct.

And that happened in 2018

Yes. Okay.

And when did you receive that first slope mower.

Right prior to it being damaged.

Correct,

um,

was that 2016

A couple years prior to that,

and how often was it used in those two years, not all

spirit you know like every now and then whenever we only have just a few ditches that literally, we use that machine on and that's not used often probably six times a year, eight times a year.

Okay, so in the two years before the incident where it flipped over. Derek might have used it a handful of times, possibly, a dozen over a two-year period say so yeah and that constitutes proficiency and great training, And that he's an expert.

Um, harder operate the thing literally it's a joystick left and right and up and down. I wouldn't say by the time that he used, if you're saying, 12 times in the couple years I would think that he'd be pretty good at it. Yeah,

okay. And then when that incident happened and the slope more was destroyed, there was not another slope mower in between.

Another remote-control mower and correct Nicorette

another Ridge runner, correct,

that was the only one that we had.

Okay so then it had been more than a year since Derek had used one.

The first one was damaged, until he damaged the second one

correct cuz you had borrowed the second one so he would not have used no because we only do have one

yes and the first one that was damaged was never replaced.

Okay, so on that second incident, you did write Eric up. Correct. And, and Eric was grieving that was he not,

he was yes he

was and he was grieving that on the grounds that that piece of machinery did not have a braking system. And that is proven in the manual that we have here that there was no braking system you, you referred to a kill switch but that kill switch is only for the engine.

Objection, advocate testifying, no evidence of the statements that she's making

you can go ahead and answer her question.

I'm not the manufacturer or the, the builder of the of the machine. When I've used it, you hit the kill switch and it stops on the remote control, it's right here in the center.

Okay, well I have the manual here and it states that it will roll downhill, if it stalls, and it's on a hill. Okay. And it says that there is no braking system. And I believe that I've pointed that out to you before, do you recall that, yes, your

objection improper line of questioning.

Again, I'll just overrule the objection in the interest of moving along, but just try to make sure you're asking him questions as opposed to making statements.

Thank you.

Do you recall having a conversation with Derek Clark, about the pre disciplinary hearing for this particular incident of insubordination prior to the meeting. No, you don't recall telling Derek, that if he dropped the grievance on the prior incident with the ridge runner, that it would show good faith and go easier for him. No, you don't recall, after we left the pre disciplinary hearing that you approached Derek while I was standing there and reminded him of that conversation, no objection

asked and answered.

You can move on.

Thank you.

Do you remember a time when you and a girl named Shauna went to pick up Barrick? I believe it was up at Keystone.

I was with her quite a bit. Yes,

okay, and in the truck on the way back, the three of you were in the truck and a discussion came up, and you made a comment that you didn't understand why white women like black men.

You're no, I don't remember that either.

You don't recall that no,

that's, that's unbelievable you're even saying that

Miss Maloney, I just want to caution you a little bit about for cross examination is within the scope of the direct examination. So when you're asking questions that are outside of what his earlier testimony is that's not truly cross examination, but just this is evidence that is relevant to your case. I just want to make sure we're sticking with

yes a part of our case is that there were racial comments made that were making Derek uncomfortable and feel that it was a hostile environment. And that was one of them because Derek is married to a white woman and that really bothered him.

Okay, well we'll, we'll allow it to a certain extent I just want to make sure we're keeping it to the relevant subjects in the case

of no further questions.

Any redirect,

briefly, Mr. Hinrichs regarding the idea that accidents happen, would you agree that that's why we didn't initiate formal discipline against Mr. Clark until the fifth time he had damaged assets that's, that's correct. Yes, you were asked by Miss Maloney about whether or not, Mr. Clark was an expert with the ridge runner mower. Were you expecting him to be an expert, no,

no, no,

is it your understanding that he had actually been trained by the vendor to operate that machinery, we all were.

Yes.

And do you recall that Mr. Clark was actually instructed not to operate that machinery, near the edges alleges cybercrime,

many times,

is a very simple question, I just want a very simple answer is, any of the decisions that you've made regarding Mr. Clark's discipline have anything to do with his race, no, not whatsoever. Does it have to do with the race of his wife,

no, no, I don't even know his wife,

nothing further.

Okay Mr. Hinrichs, the board will now have an opportunity to ask you questions and we'll go in the same order bill.

Yes, sir. You said in the past, you do have spoken on the phone right, you have cell phone you have a cell phone number. Yeah, how come you didn't call Mr. Clark. Say the morning of that meeting and say hey what are you doing,

I wanted to actually to see if he was going to be coming up and asking me to go to the meeting. Okay, I just, I, in a way it's kind of, I was testing him to see if he was going to come on up and ask

me. Okay, so then again, when he has to come ask you this, is that a written procedure or is that an implied procedure.

No, it's just a, that's just what Andy told him to do.

Rick.

Thank you for reminding me. It's more of a clarifying question, sir, I'm sorry. I'll try to speak up, it's more of a clarifying question. Okay, part of your testimony. And I'm want to take you back to that car crash, incident Okay, December 2019. There was some testimony, I think that you provided about. He reported that he wasn't feeling well, is that correct

correct yes sir, and,

and then of course you have an accident. During that same occasion, but your knowledge is there any type of fitness for duty policy in the county where if an employee in the doing their job, have an accident that they're required to have like medical examination to see if there was something wrong that contributed to the accident, there's no such policy that you're aware of, I'm,

I'm not aware of that, I know that we do like you know like biometric screenings and Stuff every year with our insurance. Not that I'm aware of now. Thank you,

Peggy. Yes. I just have a couple Mr. Henry Yes ma'am. You testified that Mr.. Gardner and Mr. Cooper had asked you ahead of time for permission.

Yes my meeting,

how far ahead of the meeting. Do you recall that yes it?

was the morning before they went. The day before yesterday before yesterday.

Okay, and that was the same day that you had instructed, Mr. Clark to get permission. In other words, the same day that you instructed Mr. Carr, to tell Mr. Clark to get permission. Correct, yes. Okay.

And you also testified that your opinion was asked in connection with determination. But we didn't hear what your opinion was, so I just like you to state what was your opinion with respect as

far as should Derrick have been terminated for what's happened. I think that he's been given more than ample enough, Like, like little I think I've been very patient and with the dollar amounts of the damage done.

And at that point. Yes, I

I voiced my opinion to Kelly and Michael Depappa that I agreed with, with him being terminated.

Okay, thank you. I think that's nothing further for this witness. So let's go ahead and call Thank you very much Thank you can call your next witness.

The final witness on behalf of Public Works will be Kelli Levy.

Sorry short.

Good evening,

can you please state your name for the record, Kelly hammer Levy, a man, what's your role, what is your title with Pinellas County?

I'm the Director of Public Works,

and how long have you been in your position about 17 months, and prior to that were you the interim director, um,

that includes the interim, so I was interim starting in October 20 October 27, 2019 and then they permanent January 29th, 2020

Are you familiar with Mr. Clark?

Yes.

Okay. And do you have any kind of personal relationship with him.

No, no, I didn't know him before. Before this,

is it fair to say that your main involvement with Mr. Clark has been in regard to the disciplinary actions that we've discussed tonight? Yes, okay. So, specifically, what was your involvement, regarding Mr. Clark being demoted after the car crash. Was that a decision that was ran by you, let me rephrase

it was a decision that I made. Okay. Yeah, but he had been suspended first so. Okay,

so let's talk about the suspension first. Now also, is it was that also decision that you made. Correct. Okay. Who first took brought that to your attention that the first suspension being when Mr. Clark had destroyed the second Ridge runner lawnmower?

I believe it was Michael DePappa and Dave Hinrichs. Were you made aware that this was actually the second Ron mower that he had destroyed? Correct. I had had actually discussion with Human Resources to get a history with regard to, you know any coatings and counseling, and, you know, Any type of previous disciplinary actions that had occurred. And they also made me aware that this was the second unit within a 12-month period of time, totaling \$81,000 in damage.

And so at that time, you also learned about the previous incidents that have been discussed tonight, including the minor property damage such as the signpost the citizens mailbox and the also the motor vehicle act involving a pedestrian. Correct. Did you rely on all of that information and making the decision to suspend? Yes, yes,

he had been coached and counseled since there was actually a prior incident to the 27th to 2017 incidences, another one in 2016 where he ran over another resident's mailbox, causing damage and we had to make that resident whole as well

so,

you know, up to that point, there was a lot of coaching and counseling about safety and being aware of your surroundings and making sure you're operating your equipment safely so there have been a lot of coaching and counseling up to that point, I was actually a little shocked about how much

is it fair to say that you believe that there should have been more formal disciplinary proceedings against Mr. Clark before his second Ridge runner lawnmower incident?

Well, there's a purpose to coaching and counseling and is to help an employee move forward in there, in their job to course correct, you know, whatever the behaviors are that are causing the issue. Let's get those under control so that the employee successful in their job and clearly, coaching, counseling wasn't working so I didn't. Again this all predates me, so I don't really understand why a verbal was not done why a written was not done. Clearly, you know, this was starting to become a pattern of behavior.

Is that your, what was your understanding of Mr. Clark's proficiency with this ridge runner lawnmower.

My understanding was he was the primary user when it when it needed to be utilized in the field, he was the primary user that he was trained by the vendor we had a video of the vendor training and he was the operator. You know, so I was.

That's what I was aware of. Hypothetically, if an employee of yours, expresses concern, or that they're having difficulty operating a piece of equipment, what would you expect their manager to do.

I would expect their manager to pull back, but number one if an employee says I'm not comfortable operating that, then they don't operate that until they are comfortable, so whatever additional training needs to be done or whatever we need to do to help that employee get ensure that they're proficient and they feel comfortable operating that equipment,

and as far as you know, did that ever do Mr. Clark ever asked for any additional training or express any concern regarding this equipment, No.

Okay.

So the decision of this particular incident was to suspend So explain to the board why it was a suspension and not a written warning or written reminder or one of those type of disciplinary actions.

Well, when we return here, of, of poor judgment, where we've got damage, damage \$45,000 worth of damage now we're up to \$81,000 worth of damage. I understood that, you know the first time, the, The grass was high, there was a hole there, but I also understand that the, the section, urban forestry and Landscape Services sections procedure say that you will walk your area to make sure that there aren't obstacles there aren't things that you might run over and hit caused damage, and, and, or potentially hurt yourself or something so you know that is a procedure. I also knew from that event that prior to leaving the yard that morning, there was a serious conversation about that piece of equipment, it was on loan to us. We needed to be extremely careful with that piece of equipment. The area where he was going to be mowing he was advised to stay away from the embankment edge that a crew was going to come in behind him and edge that area, so stay away from it. The day prior, the vendor had been there, into that location himself and mowed a portion of it. The unit work perfectly. There were no issues. There was nothing in, you know, and, in reviewing the case that this was. Oops, I made a mistake. This was your supervisor, as she to be extraordinarily careful asks you to stay away from the edge of the embankment. And of course, based on the pictures that were shown, he mowed, right to the edge. He didn't follow instruction. And I think that is what contributed to the accident. And that is why I suspended him for one day.

Is it fair to say you are trying to send a message that this is serious?

That is what the progressive disciplinary process is for. And there were clearly so many opportunities for him to correct that behavior. So this one was, this is these are the things we need you to do. We must be careful, work with your supervisor. Listen to your supervisor, be safe, you know, these are all the things that we're asking him to do.

Were you present at the pre disciplinary hearing for the suspension?

I can't recall if it was me or the Division Director. Okay,

that's fine. So let's move on now to the next incident that you were involved in which was the demotion as a result of the car accident in December of 2019 When did you first learn about that incident.

I received a call, or probably shortly after the accident occurred, to let me know what had happened.

And, in reviewing this circumstance of this Why did you make the decision to demote Mr. Clark.

Again, it went to judgment, I realized he wasn't feeling well, but I also realized at the same time that his supervisor riser gave him multiple opportunities do you want me to call 911 Call 911 come pick you up. Do you want me to come get you? Do you want me to come get you and I will take you to the hospital? No, no, I'm going to take the county car, go straight to the hospital. Don't worry about it. Nope, I felt fine. I got in the car I drove anyway. Not only did I not go to the hospital, I went, I'm going to go back to the yard which is in the opposite direction, and I'm going to get my personal car, and then I'm going to go to the hospital. It was just a series of bad judgment, and there was no reason for it. I mean, Derek had the support of his supervisors. We could have ensured his safety, to get to the hospital, he was the number one concern. But at the end of the day he made a series of bad judgments that led to a significant accident caused significant damage to the county vehicle totaled the other vehicle, hurt people, and now the counties in a lawsuit. It was just bad judgment.

Did you have any conversations with Mr. Clark about this incident at a pre disciplinary hearing or otherwise,

I did. We had informal was an informal grievance panel, and where the informal grievance panel reviewed all of the evidence and they upheld. For demotion. After a while they were, I guess, working on paperwork. I leaned over to Mr. Clark and his and his advocate Ms. Maloney was also there. And I talked to him and I told him, I need you to be safe. I need you to pay attention. I need you to, to do the right thing I put it right in, in the, in the, in, in his corrective actions. These are the things I need you to do your supervisor says that you are a good worker you do good work, that that's not the issue. The issue is, you try to go too fast, you're competitive with your teammates, you got to be first. I said an I don't want to be having to be the person who's going to call your family and tell them you're not coming home. Please be careful, and he thanked me for talking to him.

At this point had anyone indicated to you that there had been other conduct issues with Mr. Clark regarding insubordination. Were you aware of anything like that?

At this time, no, no, not at all. Okay,

so let's fast forward then to the incident, giving rise to the termination. I want to draw your attention to March 17 of last year, when did you first learn about Mr. Clark. And the meeting with Mr. Marion.

I received a call that Derek had left his worksite without authorization. And here was, his, his truck, a long trailer and all of his equipment and was headed downtown to a meeting with Rodney Marion and he did not have authorization he was taken all the equipment down there.

So that caused you concern that Mr. Clark was driving across the county with a 26-foot trailer and equipment.

It did. And also,

you know, no and Rodney and I had had calls conversations before, and I called Rodney to ask to say, you know what's going on about this meeting. Not that I care that employers are meeting they can use with employees all the time. It was more about making sure that the proper authorizations were in place, and making sure that an employee is not dragging, probably, in total, over, well over \$80,000 worth of equipment to leave unattended somewhere Downtown Clearwater while they go into a building for a meeting. And there and Rodney advised me that he said no. He has I told them that if they wanted to meet with me I would meet with them any time before after work on their own

time, but if they wanted to meet during county hours they must have permission, and that's why he canceled the meeting. Okay, because the permission was not there.

Did you know at that time what the purpose of the meeting was No, and I don't matter? Is it safe to assume that you assumed it was an employee related matter due to Mr. Marion's position with the county?

Well, yeah, yeah.

There's an indication that, you know, basically that Mr. Clark in trying to talk with Mr. Marion is was being punished, you know by his termination is because he tried to talk to Mr. Marion about issues he had with his job. Is there any validity to that?

There is nothing that was ever, you know,

I mean there was,

I mean, at that moment when I reached out, you know, across the table to Derek to talk to him about what was going on and about being safe, and about, you know, let's get this back on track, you can get this back on track, you know, his never, ever said anything about being mistreated about there being racist racial issues in the workplace, ever anything at all.

So obviously this particular incident was a little different, we've had a lot of property and asset damage now we've got insubordination and leaving the worksite without a without authorization or unauthorized use of county equipment or property. Can you explain why, even though the infractions were different termination was still appropriate in this situation. And well,

you know, when

you look at us. I'm sorry, challenging for us even with a mask on. So if you could just kind of face us we're just we have to try to judge credit, sorry.

Oh no, no problem. Okay, so, um, you know, in looking at, you know, the, the personnel, the progressive discipline process. You know we went through a suspension. It was just a one day it wasn't more than that. Then we had demotion and I do realize that those are the same level. I was kind of reprimanded by an informal grievance panel for that and that's not progressive but I felt, and I explained myself I said you know, he is a long term employee, and I want to give him a another opportunity to get this right. We had the conversation My expectations were very clear, you know, at that point in time, you know, I didn't know really what more we can do. You know he had clear, repetitive history of poor judgment. Even with coaching and counseling, the DISA, the suspension notice had clear expectations outlined the demotion notice had clear expectations outline, and he continued to do what he wanted to do. And that's just doesn't work, you know we have employees out in the field with hundreds of 1000s of dollars' worth of equipment, dangerous equipment they're working in public rights of ways near people. We need them to exercise good judgment, and I had lost trust that Derrick was capable of doing that.

Nothing further

crossness Maloney.

Do you feel that discipline should be evenly applied to all employees?

Yes.

Would you consider disregard for a County Administrator directive insubordination?

depends on, you know specifically what it is.

The county directive. Regarding outside employment or enterprise.

Again, there's very specifics about that role with a being in conflict with the county,

correct, but that's the County Administrator's call to make as to whether or not there's a conflict. Is that correct or his designee, which at actually the, I believe, the directive says the assistant County Attorney. If it gets specific. Let me find it. My apology papers. I apologize. I do have it here. Okay,

classified service

are prohibited at all times from engaging in employment or enterprise that is inconsistent incompatible or immoral legal or technical conflict with their duty's functions and responsibilities as a county employee classified employees are required to seek approval from their Appointing Authority before engaging in outside employment or other enterprise. Both classified and exempt employees are expected to avoid engaging in activities that results in a conflict or sense of a conflict. So my question to you is, would you consider employment outside the county for the exact job that you're doing for the county to be a conflict.

It depends, I would have typically, and you know when I've had employees bring this stuff to me I asked the attorney's office for an opinion. Okay,

well I do it in every case, right and this has been turned over to the inspector general. So at this point it's a moot point but you've been aware that these that several employees including exempt employees under your direction. Do have outside enterprise or employment did not ask for permission, and have you issued any discipline.

The information that you provided in the packet I investigated it. Mr. de papa registered to business names never ran a business so that was nothing. Mr. Derek Sunderland operates a tree business that he has had an approval on the record for outside employment since 2003 and Mr. De Pappa did not know that he was required to me owe I told the supervisors to ask him about that. He was working I guess when he started that business he was actually working in parks for Bill Gorman, and didn't know that he was required to do that but if we said we, we want you to do that, he did it, It was approved and now it's an Opus,

and that they are supposed to do this every year. Oh, they are supposed to reapply for permission every year.

Is that a question.

I don't know. I don't know,

I'm asking if you're aware of what they died.

No I was not aware that they have to reapply every year.

Now you're aware that they're at Clark's meeting, as well as Larry Gardner, Mike December and Ivan Cooper was with regards to some of these suspicions that they had about, unethical conduct by the employees in question are you you're aware of that now.

No, I mean, other than what you've said here I was not aware of that before this moment, no.

What prompted you to call Rodney Marion, to get the meeting canceled.

I didn't call Rodney Marion to get the meeting cancelled I called Rodney Marion to find out what was going on. He told me that we had the conversation with the employees and said if they wanted to meet with them. They had two choices, meet outside of work and he would meet with them anytime, anywhere. Or, if they were going to meet during work time that they needed to have their supervisor's permission to do so. And he said since Derek does not have permission. I'm going to cancel the meeting. I do believe he offered to meet with Larry and Ivan because they did have that permission and they declined to meet with Mr. Marion without Derek, and then never call to reschedule the meeting so.

Did you ever meet with Derek, to find out what was going on? Have you ever spoken to their either before or after disciplinary measures to find out from him what his point of?

He's had opportunities to meet with me when we were having these are pre disciplinary hearings. I spoke with him and you at after a hearing had closed out. We thank me for talking to him, he is never if there was such a huge issue. I would have expected that he would have elevated it to somebody. But you've never bothered to find out his side of the story is that correct, everything that you have brought up today. I have never heard anything of its Tammy, this is all brand new.

And were you aware that Dave Hinrichs, hold, Derrick, that if he dropped his grievance about the ridge runner, that you would see it as good faith, and that it would go easier for him, implying that he could save his job. No, you're not aware of that.

You're saying that here tonight first time I've ever heard it.

Did Dave Hinrichs have any part in recommending that there be terminated,

not recommending. I already had evaluated all of the information I had made myself a recommendation, it is my decision to make, but I do make sure that I talk with the direct supervisors, I do want their input. Am I missing something? Am I misinterpreting something, am I getting something wrong? And they said no, so the only information that you ever got regarding these incidents was directly from Dave, or Mr. DePappa.

No,

I got it from Derek as well. I mean, Derek was in the room for the pre disciplinary hearing on this last one, Derek had the floor, you had the floor, made it very clear that you understood completely

what the ramifications of this of this incident was. He took responsibility he said, I did, I did it, I did all of it. I apologize. But then he blamed others and said that there are individuals in the group in the mowing Landscape Services Group that influenced him and are a bad influence on him and he shouldn't listen to what they say.

But you're not aware that he was coerced by Dade into making those declarations.

There has never been such an assertion before tonight Tammy.

On the slope Moore's. We've heard a lot about the slope mowers, and that he, I guess when it went over, and to the water, that he should have walked the area. First, have you seen the photos of that area.

No, I understand that the grass was very high. But I also do understand that you don't know what's out there. I mean I mean, predating my being a Public Works director as an environmental scientist so being on the field you have to know your surroundings and yes I've had to walk through grass, almost as tall as me and go through it and see what's out there.

So I'm very firm with having to do that work and especially when you're going to be using a mower that has sharp blades. Okay, but don't you guys use that slope mower in areas that are high risk for accident, so that the person doesn't get hurt because it's remote if the person is not walking this area that is sloped very steeply and contains very tall grass and holes and snakes and things of that nature is that isn't that why use a slope more

motor the reason yes it's in, in inaccessible areas for heavy equipment, so it's an it's a more appropriate tool, but that doesn't preclude somebody from doing some basic, you don't have to go all the way down the slope, but you can do some basic looking around to make sure that there are not obstructions. Not to say that he wouldn't you know the hole wouldn't have been there and you wouldn't have seen it and it still would have happened, but a cursory look never hurts, okay,

but all of the testimony that you gave about conversations that have happened between Dave and Derek. They're not firsthand knowledge to you are they.

Between Dave and Derek no but between me and Derek yes,

no,

you testified to conversations that happened between Derek and Dave, but you got your information from Dave is that correct,

somewhat,

and, you know, And Derek now,

you've not spoken to, Derek, you just told us you hadn't spoken to Derek

Barrett confirmed, like the last incident where he was insubordinate he confirmed that he did everything that was said was true.

But you weren't aware that Dave made the statement that if Derek dropped his prior grievance that this would go easier on him.

This, again, first time you've ever right here right now. No, I've never heard anything like it.

And so you've not spoken to Derek, alone or asked him, what's going on, you've only gotten your information from Dave Hinrichs, is that correct objection asked and answered yes,

I'll sustain the objection. Let's move on from that.

How many lawsuits are currently open with Public Works, that involve damage or accidents. I don't know, it's wood, maybe 10 More than 10 I mean, is it quite frequent that there are lawsuits.

The majority of our lawsuits are related to falls on sidewalks.

But there are some that are related to accidents,

so they're not. There are a few but 10 No, no, not that many. I don't think. I honestly don't know the number but 10 seems very high.

Okay, but there are a lot of open lawsuits between the county and other entities, and not just Public Works but other entities and other sections and divisions. A lot. Again,

I would not be aware of. I'm aware of lawsuits, with Public Works but not outside of Public Works.

And when Derek had the accident involving a metal medical condition that he was having. You did not speak to him. Regarding what happened during that incident, did you.

Yes, we talked, he talked about his pre disciplinary hearing, he explained what happened.

Okay, and he explained that he was told by Dave Hinrichs to go ahead and go to the hospital and then later when they were speaking, Dave Hinrichs, made the fact that he was taking his county vehicle to the hospital and issue. And with the prior incidents between the two of them that he was confused as to what he was supposed to do, did he testify to that. No,

No, at the at the informal grievance paddling

grievance hearing.

Oh, initially, but then when he was cross questioned by a panel member he admitted that Dave did that he did say I can, I will call 911 I will come get you, or you can take the truck to the hospital.

But Eric was already in route.

That was when he called from the IRB.

Right, no, Derek was in route. When he changed direction based upon his conversation with Dave Hinrichs, that was what he testified to

objection advocate testifying,

again just phrase it in the form of the question if you want any

do you recall that testimony?

I recall that, Dave, called Dave. Dave said, do you want me to call 911 Or I'll come pick you up and take you to the hospital. He said no. They've told him he could take the truck and go straight to the hospital. Then he made a difference. Instead of going to the hospital in the county truck. He went back, he started heading back to Landscape Services to get his personal vehicle and that is when the accident happened.

No more questions,

redirect.

Yes, briefly. Miss Levy, how many lawsuits are you aware of where it's involving a Public Works employee totaling another person's vehicle in a car accident.

And if you don't know the answer that's a perfectly appropriate.

I don't know

how many other employees are you aware of if you are aware that have destroyed two pieces of equipment within a 12-month span?

I can't think of any.

Would you describe these repetitive asset damages by Mr. Clark as unusual?

It is definitely an unsettling pattern. Yes, unusual.

Let's say that tonight, doesn't go your department's way, and the board decides that termination isn't appropriate. What job,

what,

what could you trust Mr. Clark to do as an employee of your department at this point, based on his history? I guess me rephrase what tasks could you trust, could you interest in him.

Well, I'd have great concern with putting him in a vehicle to drive, I would have great concern with him, operating heavy equipment. And he's, I would just have a lot of concern about, I mean he's an automotive equipment operator. This is what he does for a living and I have a, I would have strong reservations about putting him back in a role where he is, could hurt himself or others,

are those concerns why ultimately termination was the appropriate decision in this matter.

Yes.

Nothing further.

Okay Miss Levy the Board may have some questions for you, Bill.

Two questions, please. I've heard conflicting testimony tonight, just from the County Attorney, speaking to you, they were referring that, Mr. Clark destroyed, these two Ridge mowers, were I think Mr. Hinrichs said they were accidents. What's the case or that What did he willfully unintentionally destroy those, or were they accidents. The first one I

would say, was an accident. You know he didn't realize that there was a hole there, and he drove into it and it flipped. I do believe that was an accident. The second one I do not believe, was an accident because I believe it was bad judgment. He was told explicitly to stay away from the edge of the embankment, that a follow up crew would come and handle the edging and trimming on that side. So if he would have stayed away from the embankment if he would have followed direction. If that wouldn't have happened.

Okay. And then, you said you lost trust in Mr. Clark. But you still let him operate county vehicles in his day to day job is wasn't there someone else that could drive him or. I'm kind of conflicted, you say you lost trust you don't trust him to drive a county across the county or handle heavy machinery, yet he was doing that until he was terminated. Why didn't you stop him ahead of time?

He was driving less when he was demoted into the 801 roll from the 802 roll, but he still has to do his job, and I can't say, Okay, you can't, I'm going to take away your job, that is, a minimum qualification to the job. Again, I had a strong conversation with him about slowing down, being safe. Let's get back on track. His corrective actions to understand his physical and limit mental limitations at a time of distress and exercise good judgment in determining if it's safe to drive or perform other work related assignments, err on the side of caution and notify your supervisor immediately if you feel you cannot perform such activities if unexpected issues arise. Exercise awareness of your surroundings when operating a motor vehicle look both ways, wait for oncoming traffic state to safely pass before you drive your vehicle under the traveling. When operating motor vehicle, avoid entering major roadways from side streets if possible, use major roadways that have light traffic lights, traffic lights will assist you in entering the major roadway safety. I required him to attend to driver's awareness training class with Risk Management, again, and to comply with our county motor vehicle and driver's license employment guidelines. Now he's an adult, he needs to make good decisions. Thank you.

There we go. You see you well wherever you weren't aware of lawsuits in general throughout the county but that you were familiar with both within the Public Works division,

Public Works Department.

How many are we talking about approximately.

I honestly don't know the number

I,

again, the overwhelming majority of the law, with the Public Works Department are related to trip and fall on sidewalks, so that's the overwhelming majority of what we deal with unfortunately. Thank you, Peggy. Yes,

I have a few. How long is this employee been employed by the county is that long term employee How long has he been employed,

I think, I think it's just over 20 years on I don't have I mean I think it was at least 20 years 20 to 25.

Alright so we have seven incidents within three years,

how many incidents have we had within the prior 17 years?

I don't know, I think believe he was in a different department, and there, I don't have the records.

Are you aware of any incidents at all?

You were having any kind of errors and judgment during that 17 years.

Any suspensions,

anything.

I can't remember I do believe there were some things but they were very old, so I didn't take them into account because they were old.

Alright, it was mentioned tonight something about he's going through a rough patch. What does that rough patch mean Mr. Hendrick said he's, he's going through a rough I

didn't, I didn't know about that.

Okay. How about the health issues do you think the rough patch, or the health issues might have had any kind of effect on what's happening here?

Now what he shared with me at the pre disciplinary hearing is that he had a case of diverticulitis, and that he was treated for it. Okay, and that was the event that he had the redness and pain. Thank you.

Just a couple more questions for you. How much of a factor was it in your decision that Mr. Clark, drove the county equipment to the meeting that he didn't ask permission to go versus going to the meeting itself, was that a factor.

It was a factor, it is, it

was a combination of things, again, we're talking about judgment calls, is it smart to drive \$80,000 worth of equipment that is not secured to an area where you're going to leave it in a parking lot where anybody can come steal it. There are edgers trimmers landscape blowers chainsaws and \$80,000 mower unsecured out there in the open, that's not good judgment, and then again just being unwilling to work with his supervisors in a collaborative way. The other employees seem to

do it but no problem walk into Dave's office say hey, I want to go to this meeting with Rodney Marion, good, okay, you know, take the county vehicle, I don't think they dragged a trailer all the way down there. I don't think they're approved for that. But the fact that he was completely even unwilling to the point to say, I don't have to, you know, open door policy, I don't even know what that means, you know, if I want to attend something outside of the Norm. I go to my supervisor and say hey, I need to do this, is there any issue. I clear it. It's not really that hard to just go up and say hey, I want to go attend to this meeting any issue, they would have probably told him, don't take the trailer, and then there would have been no issue. Again, it's all about judgment.

Did you ever speak with Mr. Carr directly about what exchange he had with Mr. Clark? With regard to that meeting or did you get all your information about the incident from Mr. Hinrichs. No, I,

I asked Andy some questions. Okay,

and did Mr. Clark admit to you in the pre termination disciplinary hearing of the insubordinate Did he admit directly to the insubordination. Yes he did that Mr.. Carr gave him that instruction and that he did not follow it. Correct. Okay, thank you. Thank you. You're excused. Oh, I'm sorry, Peggy.

You had mentioned, Peggy O'Shea speaking, you mentioned that in the 20 some odd years he's worked with the county. How many of those have been in Public Works, you said he worked in other departments prior to Public Works.

I can't quite recall when the mowing program was moved from Parks Department to Public Works, I don't know that exact date. I don't. Okay, so the other department was parks, the parks department. Yes, the main program was in the, the county wide mowing program was in the parks department, and then at some point I can't remember the exact time period, mowing was kind of broken up into two there was mowing that was preserved for the things within the parks in the parks department handles that. And then right away mowing and all of the things outside the Parks was turned transitioned over to Public Works, and certain number of employees stayed in parks and a certain number of employees went to Public Works,

so all of his 20 years involve mowing. Correct.

Thank you.

Okay thank you Miss Levi. Mr. Nell, you mentioned that that was your last witness. Yes, okay. Did you want to introduce your documentary evidence at this time.

Yes.

I'm not sure I believe that it's already admitted because it's a part of the discipline or of the employment file, it was specifically the pre disciplinary notice, and then the notice of termination.

See what I have here.

Well, I was thinking just to expedite things, my understanding is there were no objections to your exhibits, is that correct. I'm sorry. Do you know if there were any objections Miss Maloney to the, to the exhibits from the county? No, there were no objection. So, again, while you we don't have to

go through them one by one I was just trying to do a formality. If you are intending to introduce them as a composite. We can introduce them now if there's something specific that

you want to go through. I'm just trying to move things along. No, I'm one of the exhibits that GPS burnout, um, I'm not planning on using that for argument purposes and rule six discipline and the pre disciplinary notice are already a part of the employment file so that's good for the board then that is good for APA Li.

Okay, well, we do have to either identify them by number for the record, or we can just introduce the whole packet, but that's up to you.

If it's easier to introduce the whole packet I think that's

quicker without any objection I think that's fine. Okay, thank you. Okay, thank you. Before we proceed, I'd like to have everyone take a 10-minute comfort break and then we'll come back and start with your face. Thank you. Yeah.

Preventing.

David you're ready, you can call your first witness.

I'd like to call. I'd like to call John cloud. Hello sir.

Hello, good evening to the panel.

Thank you.

My name is John Cloud

Thank you. And, and John.

Yes.

What are you retired from the county?

my employment began in 19 187. I retired in 2019 November 14 14

And what were some of the roles that you've had at the county

was hired in as a maintenance one promoted to maintenance to same year, then promoted to craft worker, the same year, promoted to crew chief to two years after that. Assistant District Supervisor and 2003, where I supervise 50 people and 1/3 of Pinellas County was under my supervision, promoted to district supervisor. 2006 are high. Also, supervised over 50 people. And, Mr. Baba Salah got administrator decided to make a budget.

He far one sided to what I'm sorry.

I couldn't make a budget cut. Gotcha. He fired 1822 people, and demoed a

whole lot more.

What was your role when you retired?

Field Operations Manager, been a field, Inspector.

And did Derek report to you.

Was my direct report from 2016. The 2019 When I retired.

And was he an indirect report to you at any point.

Yes, from 2007. He was in direct report as well.

So you've known Derek a long time. Yes I have, and what kind of employee was Derek,

I wrote several evaluations on, Mr. Clark. And they were all excellent. Eric, is a very, very highly skilled and highly intelligent operator. Always willing to go the extra mile out for hurricanes, work with this slope more to open up the flow lines of ditches, you can always depend on Derek.

Did you have behavioral issues with Eric.

Oh no, when Mr.. Dave Andrus was in the office.

So there was an issue between Dave and Derek. In your opinion, what were the interactions like between the two of them. At

one point, I went to Dave Hinrichs, and Miko department. And I said, we need to have a sit down with Derek. At that point, Dave Evans became giddy. Happy a static, what do you do now what do you do now. I said, it's time to remove him from Active status to inactive status. At that point, had no interest in the meeting.

Now when you say, moving Eric from an active status to an inactive status, you're referring to his reporting to you on an Opus, is that correct, he needed to be inactivated from reporting to you because of, he, he was no longer reporting to you is that correct,

yes and negative. He was reporting to me. When he came over from endorsed her head wrote him out. And her right became inactive. I got an email and I shared it with Hinrichs and the proper, but they had no interest in clearing it in their record.

Okay, so this was a write up that had happened during his being under Jimmy Wurster at parks, and the timeframe had elapsed, and you went to Dave Hinrichs to request that it become an inactive.

That's correct.

Okay. and Dave did was not receptive to that.

Not at all. Yeah, nothing but despise him in for Derek.

Now, when Dave Hinrichs was first hired. And did he call you into the office to just have a short sit down with you.

Negative, how voluntarily went up towards office, explain to him how slow boy should be run. It gives him information that he should he team effectively. And at that point, he said, you know I'm friends but Michael the proper. I said no. He said, The Best Buddies, I mean we're really good friends. I could care less about that.

Did he asked you how you felt about that?

Oh, and I had no interest in it because already the new depicts within. When the interviews went out, I interviewed for that job because I had been doing this job for the past 10 years. And I was the most qualified person then, and I'm the most qualified person now. They've came to me and all of a small business, with no right of way skills in no know anything about right away mowing, but I did. However, when Michael de papa gave interviews for that position. And I interview for that job. It took four months for the job to be filled or got out that backhoe I chose his best friend Dave Henry's phone and City of Largo, to fill the position. We interviewed in January, the proper call me up to his office. In April, to tell me. He had filled the position and I didn't get it. If he was bringing your hand up person by the name of pate Dave Hinrichs,

and, and when you had the conversation with Dave handworks regarding his deep friendship with Michael, Papa, um, did that give you an indication that it was sort of a good old boy's club was how he got hired,

it was business as usual. Let's see, as a standup man, kiss up to them. The market, and mark me, Mark Derek. Mark Cooper. Mark Larry Garner. all of those names worked for me. Haines came on board

now. Good, good Dave hand down menial, and, and demeaning tasks to Derek, I mean, did he have there a few more than he had other people doing.

We had a lot of communication, set up here, and the communication was too big, be if Miko made his decision. He told Dave told me and I told the team. So, when I gave instructions in the morning, as to where they needed to go arrived to be moved. We need to be picked up what section are the county, we will be moving. Then, my team would follow through with that. And it came to pass, relatively early in our time together. When Dave would bow like Broward County policy and violate the communication arrangement and bypass me and call my operators on their cell phones, which they should not be using, they should be using the county, radios, and he would tell them where he wanted him to go. And they would ask him, did you tell John, he would say no. So my member call me and say Dave, Dave has moved me. I need to let you know, our thank them and go on with my day.

Do you have any other information to add regarding Dave Hinrichs treatment of barrack?

Yeah, yeah, Derek, and Dave were talking in our office. And he came down with some EDID comments to Derek turned around in his Chair and says, I don't like to call me boy either. At that point, he got right in the face, trying to install narrative door. Another time, we were at the back of my pickup truck, and myself. Mr.. Gardner, Mr. December had and Dave. Dave asked a question.

Do you think we're racist here? I said I don't think it I know it as well filed two federal charges against the county already. I was successful. Mr. December say, Yes, you are raised is here. Davis Why do you say that because of the way you treat Derek and the way your g Ivan.

Thank you. No further questions,

cross examination.

Good evening Mr. crowd, my name is Ashley Donnelly represent Pinellas County and Public Works in this matter. I just have a few quick questions for you, um, would it be fair to say that you're ready, retirement with Pinellas County was not entirely on your own terms. Would you agree with me that in 2019 you exhausted family medical leave and then asked for additional leaves of absence that were denied by the county,

the same Correct.

Can you clarify what would be the correct statement in that regard, you indicated that you filed two federal charges against the county Correct.

Yes,

and were those with the Equal Employment Opportunity Commission or the EEOC,

I'm not allowed to expand upon that.

Would it be fair to say that at least one of those was found to have no cause, where they dismissed your charge nothing? Okay nothing further.

Any further questions, Miss Maloney. Yes, Mr. Cloud, when there were complaints, and many complaints from other people within this crew did. Dave Hinrichs call a meeting in which he divulged your timecard and which, which then also gave your FMLA status and pays off and things like that that were sort of personal and private.

He put it in a written document for a year. I found out about him. I asked Dave I said, you owe me. And you oh my demon apology. What a pack of lies, is that you wrote in his statement. He said that my operators intentionally broke their equipment. And they do not do that. If they go down. I had arranged for another John Deere more for them to use. And we also had a remote more that nobody had been trained on Dave would take out. Do we have a demonstration by the salesman, on a remote, no training was ever done on it?

and this is the ridge runner. That's correct. So it was a it was a demo that was being conducted, and not real training,

no training whatsoever done on arrays Ronna. The other remote which we used years ago, which must be gone Garner, ran to me, Mr.. Kelly was rapidly receiving His summary for me on a vast array of equipment for me. So I was sent out by my assistant director to give feedback as to whether the remote is what we refer to it as the real remote more would be a valuable piece of equipment to purchase. So, I sent her an email. And I advised her that we were no would not be a piece of

equipment that I recommend, we purchase because it's going to end up upside down in a pond or creek or lake leaking and leaking oil.

Thank you.

You're welcome.

Mr. cloud let's see if any of the board members have any questions for you feel sure. Phil brick AG, Jeff. I just have one question for you, sir. I think you talked about, when Mr. Clark came over from Parks, and you said, you use the word inactive because the prior write up was going to was going to expire. Is that Is that what I'm understanding from the how much time does it take for something like that to expire usually six months. Okay, do you recall what it was for.

No, I don't know.

Okay, thanks. Oh,

it was written by Mr. Werster, and it was a joke. He didn't know he was going either. Okay, and he and Dave both. Neither one of my barber experience. In, in learning right away morning.

Okay, Thank you sir. You're excused. We appreciate it. Welcome. Call your next witness, Miss Maloney,

I call Derrick Clark

evening. Good evening sir Clark.

Sure, you're here today. According to management for a series of infractions, the last being insubordination. Your progressive discipline, started in August of 2019 with the incident with the first Ridge runner, can you tell us about that incident and what happened

first into the ridge runner we were doing a pre K Largo, and I was about half finish, and there was a vine pad to grass, where there was a hole in it, and the machine. I mean, even she walked out, I would have fell into it. But the machine went towards it and it went right into the hole. So I call Dave and explained to him that hey the machine dipped into the hole. I mean, I was being very careful with it. I mean we were halfway finished with it I mean machine. It did what it wanted to do. I mean, did his job. But at that time, I mean, there was no control. It just flipped right into the hole. And there was nothing I could do

is, is there not enough traction on

sheep attraction. It was part that say that it was basically a camouflage hole, and you couldn't see it. It was a culvert. That was running from, I guess from another direction, and it would just cover with a bunch of viney grass. So it just like it was a trap, just fell right into it.

And at that point, Mr. Hinrichs, agreed with you, that it was an accident, and that he understood that this was not intentional on your part. Right, okay. So when did your issues between you and Dave handworks begin?

First one, dealt with. Well I had gotten to see how this were how it's going to go first, was issues where people will come into me, it's, you know, telling me hey dude, these guys are doing this, and I told him it's like they're scared to hit they're scared to come to him and tell him what's going on. And I wasn't, you know, I wasn't afraid of them. You know, it was very it is very intimidating and put it this way, we had a convention that we went to, and it was me Larry. Andrew car, and John McCracken and Mike December, who all go on to Orlando. Well, the issue over the, over who's going to drive the truck. And basically we had meet all could have fit into the Ford Explorer. But they chose to take the Ford Explorer and we chose to take the super crew, and go to Orlando. Well, upon coming back next morning, Andrew car basically cussed me out, you know, telling me you don't control the car, I mean control the truck, you know, and I'm like no, I don't control the truck, but you don't talk to me you know you don't cussed me out and I basically you know, we got into a heated argument, but I didn't get to,

was, was this the incident in which you are all advised to lose weight.

No, this, that was a different incident. This one here was, well what happened was I, we had a we got to Dooley's to super cruise in the super crew was basically online. And we needed it to transport the heavy equipment. And we had a trailer to do it with. Well, came in the next day, the trailer and truck. Well, the trailer is sitting in on the bay. The truck is given to Andrew car. And they already had a crew cab to work with. Well, the machine, I mean the truck was taken away from us. And I confronted David about that. And he told me that basically you could do whatever you want. I said fine. Now,

Tell me about the incident in which Mr. Hinrichs told you about his friendship with the owner of Ireland way.

Well,

that there is that the guy would come in from what I found out the guy does a cleaning of the machines, I mean, the vehicles in the yard,

he watches the cars

he watches the cars, the trucks. the equipment, the, basically the fleet equipment, and he does. The. There was one incident we had to go out and Dave sent me out to take the tractor to go out into a field and cut for them.

Did he tell you how he knows Sam. Did he say anything about selling his prior business equipment to this person?

vaguely No, no, it's just that I knew that he would that was a basically buddy,

that they were friends before, Dave came to the county. Correct. and was it your suspicion that day was throwing work to his friend, based upon their relationship. Objection relevance. Was that part of what you wanted to talk to Rodney Marion about.

Yes, cuz I know there was a thing about conflict of interest. And I will see that every time you call me. I will come in. I will see him talking with the guy out in the parking lot, you know, and I thought

it was kind of, you know, strange and, you know, how is he getting away with this. And I wanted to find out from Rodney, you know

what's what, how you say it.

The protocol, you know, and how we run business in the county.

Oh, that's what I wanted to go down and talk to him about and you know, in about how we basically, we were at one time, what they call operator threes. We were the same as a crew chief, and we got basically demoted to basically where the crew chief can basically have more authority over us and see we will basically our own department, and I work with John cloud, and we did all the slow motion we help leave and help the arm, the morning crew, because we, me Larry, Ivan, and Mike December, we came from, basically 2007 There was a thing called the bid the goal. And we basically ran all the county right, I'm in county wide right of ways, mowing a large tractors with the flowers on them. The slow mowers. And then we went to the zeros.

And did you feel that you were being treated unfairly by Derrick Clark, and by Dave Hinrichs.

Sometimes, yes.

What led you to believe that.

Well, you know, coming into work, I mean, I mean, to me, Dave was like a snake in the grass, you know you got to keep them happy. If not, he will stab you in the back. Basically, I mean I put it where I mean I come in the morning it's like you know hey bud. How's it going, you know, I mean we'll sit there, I mean he would talk and say, when there was one incident where a guy named Carl Hunter had parked a truck, the wrong way on a right away, where the car, the truck the all the vehicles had to go around him, he was facing. Basically, ongoing traffic. And I basically reported that to Dave and I guess. Me and Carl gotten a little heated a little situation where he went back to Dave and I'm told Dave basically like I was picking on him. So Dave came to me and told me that basically Carl alone. And I like I tell him I was telling him, hey, the guy was talking the wrong side of the road, you know, it's kind of a safety concern, and I had two pictures and everything of it. And he basically chastises me for finding something that was wrong.

So do you or can you tell about the incident when you were told to clean, Andy Carr's equipment.

Yes, we were just finishing up a job. And I'm seminal, he was leaving early. I felt that I was already you know outcasts, because I was already you know upset. Why, why would I want to go to a party I never said I didn't want to go to the party, it just that I chose to stay and work. All right. I never said I wanted to go to the party. Andrew said he was going to the party. He gave me some chores to do. I completed them. I went to Mr.. Hinrichs and asked him, because I kind of figured that I knew it, that it's not right for me to clean somebody's vehicle just because he's going to go I mean, his machine, and I never operated it to go and why he goes to a party, so I wanted to ask Dave. Hey. Is it good, I mean this is okay for me to clean somebody's machine? They said, No. All right, so I left it that I did all of the chores, that he gave me. And he came in the next morning. I said, Andy, I wasn't able to complete your more. All right, I said no, if I use it, I'll clean it, but I didn't use you used it, so you need to clean it. He went up and told Dave. They came back downstairs, and he came to me and says hey we need to go into the office, day wants to talk to you. All right, I said, I'm going to put this on a recording, do whatever you want. Alright, I said, what is the problem. I never they've

tried to put it to where I was supposed to be insubordinate, I said no, I'm not being insubordinate I mean hey, is some machine, why should I clean somebody's machine, he's going to a party, I mean that's not fair. I did everything you asked me to do but why should I clean his machine where he's your boss, I said, No, no, no, no, no, no. You're not my boss. He says, Well, what are, what am I, I said, you're my supervisor was Andy. He's my crew chief. All right, what's the Papa. He's my director. Kelli Levy. Director, there's a chain of command. I mean that and then I did

the term boss bothers you

because they got a picture in the office, where it says Hey boss, it's a black guy. All right, and then you got a white guy depicted, of being a coach. But black guys got to have, I mean, it's just to me, is racist. And when he said that boss to me. I took it offensive. Because I told Andy it's like and he's like, Well, what is a mean, what does a boss, I said a boss, basically. Can't be. He owns the company he can't be far. They can be, I can be far I got terminated, he can be far a boss owns a company, how you going to fire the boss. And I Google it to Andy and explained it to him.

And did they seem to understand why you took offense to the term.

Well Andy did. I don't think they did.

And was this, and they knew

that they knew that that would irritate me by saying that,

and it was that similar to the incident in when you were called you and I even more proud boys.

Yes.

And that was offensive to you as well.

Yes, I couldn't believe he had said it, you know, we were only black guys in that room. And it's like, how your boys doing. What can you say how you, how you gentlemen, or how you men are doing? Well, you had to bring out the boy. Alright so I explained and told John out about it that I was how he, Except, I mean, I mean, I'm appreciate him saying that. All right, so I guess John talked to him. But he came into the office and I guess something, some other issue arises, and that's when I told him I said, I don't appreciate you calling me a boy and I walked off the room.

So there was a lot of tension between yourself and Dave

Yeah but I tried to make peace with him, you know and do what I never in my career. Been insubordinate you send me out. Basically, When I got hired, I put it to the roll. I'm very tenacious. All right, I'm able to go out there and try to complete my task, you know, and that's what I was doing.

And on the day in question when you went to Gandy car. And what, what did you say to him, did you tell him you were that you were going to a meeting,

we would come in in the car. We were driving in the car, I mean in the truck, he would come back to the yard. And I told Andy I said, I'm going to be leaving early. I'm going to a meeting, and I gave him the time, and he told me, okay.

He said okay he said okay.

The next morning, I was approached by him again. And he called me. Ah. Can't go until you speak to Dave now like, why would I want to speak to Dave. When we already gotten to off. I mean altercation.

I mean, had you told Dave before that you were going to report things to the, to the appropriate Appointing Authorities. Had you

told them before I told him that day when he had called me when he called when he said he was my boss, you I told him then I told him I was tired of it, you know, things that are going on here. I'm tired of it. All right, I went out and did my work and I just got tired of him trying to basically intimidate me and he did. and basically how I lost my job. Like I got intimidated by him.

Now, we've heard Stuff about this second Ridge runner incident that you were grieving. Can you tell us what happened when you were operating the ridge runner that day?

Yes, a bad day. I think it had rained. And we came. I came in the machine was sitting out there in the parking lot, wasn't undercover or anything. And approach Dave, Dave said be careful. All right, I was going to go out there to 38 to the railroad trestles, I've done it before, I've done it with them a different machine called a Ventrac. That was the first one we had, and I used it there. Ivan Cooper has used the ridge runner on that particular area. And I was finished up my last section and check the level head feel. But the problem is, is that you cannot take this machine I mean, on this on a slope like this. And you can't run it forward. You have to go sideways. But the bank. I mean, embankment that I was doing. I was going up and basically I witnessed the edge. Kelli Levy was making it like the I intentionally drove it off the edge. It stalled it shut off. All right, I hit the button on it. No, it kept rolling in the thing about it I guess the tensions, it's got those tensions on it. Well, the tracks started turning it and it went right over the side. I tried to hold it. A Pinellas Park. Fire Department saw me sitting there trying to, I mean the thing was dragging me, it's 990 something pounds, and I'm trying to hold it, I had a pedestrian, even come I said No, get away from it because I don't want you to get hurt, and I had to let it go. I called him Mr.. Mr. Hinrichs, he hung up on it he hung the phone up on me. You know, and there's nothing I could do, I mean the machine had either me or the machine.

So the machine had stalled,

yes Kelly was making it like I intentionally drove it to this cliff. They've never told me that he was gone. I mean, I've done this area before with this machine, and know the distance and judgment of where it's going to go. This thing shut off, and it just veer right to decide and went off. All right. They have pictures where what happened to five man came back, they flipped it back onto its I mean, right. And we cranked it up, it rolls, but you know there's damage, and they put on the flatbed, and took it definitely.

Now, are you aware that there's no braking mechanism on that,

yes, yes.

And that is written in the manual is that correct, yes. And the manual says that if it's on a slope, and not running it should be chocked, is that correct. Yes, so that when it stalls. It's going to roll it says. It says here that it generates a braking effect and reduces the roll away effect but does not bring the machine to a stop.

Yes. And if I tried to start it up. It basically opens the braking system up in a roll faster, so I didn't mess with that, just tried to hold this thing. So, basically, see if I could stop it because I couldn't, I could just too heavy, and it started dragging me down to heel.

Now, Derek. After the incident that we're here for today. The insubordination. Did you have a conversation with Dave Hinrichs, in which he implied that if you dropped the grievance, it would go better for you.

Yes.

And when we left the pre disciplinary hearing.

I turned back to Miss Levy and told her I'm dropping that charge; I'm dropping the grievance.

And why did we go back into the room did Dave approach us. Yes, and he reminded you of that conversation, yes that we had, and I was standing there. Yes, and we went back into the room, and you told Kelli Levy that you were going to drop the grievance. I did, and that was based upon Dave's forcing you that you would be able to save your job.

Yes.

You know why it was really important to Dave that you go ask him for permission.

I think it was already the intimidation that he already had gotten under my skin. And I basically told him I was tired of it.

And at this point, do you think he was trying to play gotcha.

Yes, because that morning, Dave, didn't we, in that hope we're in that building, so he has to walk past me. He didn't say anything to me.

But at that point he could have said, Derek, can you come see me. Yes. And he did not. No, no. And when you left to go to the meeting. Did you go straight to the meeting?

Uh, no. First thing I did is I got. I had a truck right went out there with the bat wing in tow, completed a SAM Martin. All right. Got a call. Hey, the meeting started. Are you on your way? I said Yes. Q I'm giving you the bat wing, and I'm letting you use the bat wings. Why uses the hustler. Zero mower and never took a \$60,000 piece of equipment down the road. I let the one of the other employees, take it to the job, and by the time I got there, they were still sitting on break. All right, Andrew pulls up and asked me how the meeting went. He knew where I went.

Do you believe he knew it was canceled?

Yeah, it's because he yeah he knew it was counted because that's all I said to me, you know the meeting was canceled. You know it's like man you just you just you just making you know, I said, making, making it hard on myself.

And so you, you left after you gave the bat wing to someone else you left, and you went to Rodney Marion's office.

Yeah, well I never made it down here because I got a call the meeting was counseled not by Dave by a fellow employee,

okay and you turned around and you went back to the job site,

my job site.

So you didn't miss use the equipment and run around town or stop at the store, or anything like that they knew where you were going and you went there, right, and you returned,

and basically I think that took like 3030 minutes so basically I chose as my break. You know because I didn't take a break, and that was my break. Now, I say, if the meeting that happened. I already was going to; I already had secured the more that was on a machine because we got a lock that we can lock the gate up on the trailer. Take the key out, we'd hear an edger. They got a cage. And all I would have done was parked it over in my general services by the church that's there and gone and seen Rodney,

but you did not have a \$60,000 piece of equipment, no

I didn't know.

Do you recall when Dave and a temporary employee named Shauna came to pick you up. I guess you were in Keystone.

Yes.

And what was the conversation that transpired in that vehicle on your return to the office,

he made the comment to me just like I mean he knew my wife, he found out my wife was white. And he asked, he told me that well never told him, You know about my wife and I guess he saw, he saw on Facebook. He says you got a beautiful wife. Yeah I know, it's like, well, what's the true you know the problem was he didn't know my wife was white. That day we were out there on Keystone and Shawna was in the car, I guess. Shauna says something about a black man, and he made that smart comment. Why do white women love black cars my wife's white, why do white women love black men, so much so he thought that the idea was questionable.

Yeah. Yes.

And that was offensive to you.

Yes. Like why is the supervisor saying this to me.

You know and were these part of the things that you wanted to bring up with Rodney Marion as well.

Yes, cause she's run. I mean he came in and. New guy. and hey, he's going to, he can do something, you know, finally cuz he was human relations. But I want to find out I mean I've gone through the, I mean I checked the rules and everything, you know who the sexual harassment and all that, I mean, I even let this man touch me. I mean, is everyday come in, I mean gotta grab you, I mean touch you on the shoulders, you know, but it's the intimidation of not seeing anything I say hey, get your hands off me. Don't touch me because I don't want to upset him, get him mad at me, but it doesn't make any difference now I'm already. He terminated me.

Did you feel that that was an invasion of your personal space?

Yes, and he's done it with a lot of people really tell you. Right guys, grabbing on our shoulders and Stuff. No.

Do you find that to be an aggressive action?

Yes,

but I didn't want to tell, you know, same thing to him. Basically to get him upset.

So, let's go back to this contractor Island Way. So you had suspicions regarding this contractor, and their initial contract that they got with the county that was with Public Works, is that correct. And you thought that perhaps because they were friends that gave provided guidance or competitor pricing to his friend.

Yes, because I mean, you think about it, I mean the area that I had went out and cut for Island Way was, basically, he wanted me to cut the grass down low for him. But, so he can keep it maintained.

Did you feel that you, your crew or others were being sent to areas that were supposed to be being done by Island Way, and that island was getting paid for?

Yes, that and you turn areas over to them, that we didn't do like the incident with the ridge runner. Hey, do it now. Not another crew cuz last time tell you this the last time that I did that area. He never sent a crew in there to clean up after it never did,

But you don't know what their contract is but these were just the suspicions that you wanted to discuss with Rodney Marion is that correct, yeah cuz I thought he felt it was on

50:32

topic of interest. Okay. No further questions,

cross examination.

Good evening, Mr. Clark. How are you, okay, I have a couple different things. All right let's talk about Island way first. So, would it surprise you to know that Island Way was a bid that was submitted to the county and approved through purchasing.

Yes,

you've heard testimony tonight to that to that as well. But it was your suspicion that that was somehow. And kind of an underhanded deal, is that correct no

is that you look at it as if the guy Sam also comes in and does the trucks, vehicles, that's getting paid through the county

10 Potentially I can't answer that question because I have not looked at the contract, but you believe that that was improper.

Yes, okay.

So, let's talk about your relationship with Dave Hinrichs so your testimony is that Mr. Hinrichs would touch you, and you would not say anything. No. How often did that happen.

And he wanted something he wanted me to do something. How often would that be a

restaurant runner, you know, be careful. You know, hey, take it easy. Mr.. Cooper. Oh, wow,

strong, you know,

but we wouldn't say anything. Like,

he would have no idea that that was making you uncomfortable. Is that fair to say

yes. Okay.

And you've also talked about a few incidents that you felt were racially charged but you never said anything to anyone about them.

John cloud.

Did you take it to John cloud, as your supervisor or as a confidant and supervisor, okay, and then did that get taken up the ladder to Human Resources or the Office of Human Rights. No. You know why.

Because I'm not feeling it I'm not that kind of person, you know, hey, he needs a job I need a job and.

Okay, so testimony tonight is that you did not want to take racially charged complaint issues and complaints to the Office of Human Rights, but you did want to go to Rodney Marion, about a potential underhanded deal with Island Way. Can you explain

why that was not, that's not racist.

He didn't want to make race an issue. No, but you did want to find out how Island Ray had come to have its business with the county.

Correct. I mean,

your testimony was you have a job Dave Hinrichs has, has had a has a job. But, on March 17 When you were meeting with Rodney Marion, What did you hope would happen with Mr. Hinrichs.

You're things resolved.

What would that mean what would resolution look like to you.

I wanted to find out. Is he had that I mean that right to do what he's doing, that it was what he was doing,

And why did you feel entitled to that information.

Again,

why was it any of your business, what the business deal was between the county and Ireland.

I felt that I mean as a county employee that I had that right,

and you would know then that potentially that could impact Dave Hinrichs job. Right.

In fact, his job, negatively. Right.

If there was some evidence that there was in fact something that was unethical.

She was doing something wrong. Yeah,

but you didn't think it was important to bring up him being allegedly racist towards you and others. I'm just trying to understand your decision making in your judgment in what you chose to bring to an outside individual versus what you chose not to raise as an issue, you know I'm saying, trying to understand why you didn't want to bring up any issues of being harassed, but you did want to investigate this island way issue

was already, you think about it. He already came to me and explained to me that, hey, knew that boss would get me irritated. Right. The thing she said about black blacks in general. And with Alan way. How is it this supervisor can do this. I can't I mean I'm not, I mean, I got to the point. You can only you know do so much let it go. But it's like, I can't I couldn't keep letting keep going on. You know, I have my say to what I wanted to say to Rodney Marion, what was going on, what could I do, you know, and what was going on. What can I do you know if it's right or if it's wrong. That's all I want to know.

And this was after you had been suspended and demoted, and that was partially involving Dave Hinrichs correct,

I tried. Yes, and I tried basically fighting those, and got denied every one of them incident with a little girl on the bicycle. I found out I could have beat that case,

because

she was on the wrong side of the road, the bike lane would she was going to the uncle one traffic. All right, I was coming. I mean, leaving fleet, and I was going across the road to the job site that I was going to. So, there was open to the intersection. All right, little girl came down on me down a sidewalk flying, and she hit the truck. I didn't hit her. Not in the front, she had decided the truck, and that was it.

That was one of the four incidents that you were not disciplined for correct.

Yeah, but they made it seem like I hit this girl. All right, I paid the ticket. Yes, because I have a class, a license.

You heard Dave Hinrichs testified tonight that he, there were these four incidents and he did not formally discipline you. But you're seem to be indicating that he, you know, had it out for you. So how do you reconcile that conflict because

I was outspoken person. I let him a I would let him; he could figure out how to say this way he could get under my skin and other employees and make it to where it was uncomfortable for me. All right. I would help, like a lot, like with the incident. You do what you got to do I mean he patted me on my back. I tried to help the best you can. And it turns out no he's basically stabbed me and my back.

Um,

the incident with the, the car. But the wreck. I pulled down the intersection. All right, it's like, I could just walk, Walk, if I was walking across rows, the lady she came out, she didn't come down from Gulf to Bay she came out from the Clearwater High. And this basically like, or what is the other road Alcatraz. So basically, I pulled out and she came out and she basically hit me. And that's what I stated in my deposition yesterday that she hit me. And she backed her car up and moved it forward, while the other guy got out the car does not, they weren't even hurt the only person that I seen that was hurt was the son. But they're making it seem like I intentionally gotten this rake. When he told me, he told me, go ahead and take the truck to the hospital. I, I'm already driving to the hospital. I call my wife. My wife. The thing about calling on my phone doesn't carjack, So it's a hands-free device and whatnot a phone like this. It's a hands-free device. Okay. I call my wife. My wife says well who's going to take the pickup the vehicle. He never told me that we don't know don't mind that we're have somebody come and pick it up. All right, I called Dave back and I said, Dave, who's going to pick up the vehicle. I thought you were bringing the truck back to fleet I mean bringing it the truck back to the yard.

What.

All right, I'll bring the truck back to the yard. Bam, accident. Right. One thing He confused me. He told me Hey, take the truck. Next thing you know, hey, I thought you'd run the truck back to the yard. So, I don't want to be insubordinate. I've been the truck I would bring the truck back to the yard and go and pick them on vehicle,

Mr. Clark I understand you have a lot of explanations about the previous discipline but truly the reason we're here tonight is about the incident with the meeting with Rodney Marion and so I want to understand why you didn't just ask Dave to just go to the meeting after being told by Andy to do so.

Because, so to basically already chastise me. They already got me upset. He's got he had put me on had to go to my doctor and had to put me on high anxiety medicine because I could not sleep at night because I'm worried about. I'm already got in trouble for the average runner that, I mean like, it was an accident. It happened. I mean, but he made it seem like he's telling you know everybody that hey, I'm holding these pitchers up. I got the pitches on it to show you what I was doing. All right. I messed up. I wasn't making it like a funny picture, it was that hey, I messed up. And I was showing, um, I didn't show everybody these pictures, I just took these pictures, but he's making it seem like I didn't. I'm doing this, I, I intentionally mess these machines up. I take Darrow careful

duty.

I take care of my machines. I'm always cautious of what I'm doing, but it's like accidents do happen. I mean, there's nothing I could have done different or there's something I could have I could have stayed home. I had enough time.

When Mr.. Carr spoke to you about trying to be cautious, because you are on quotes and ice. Why did you say I'm a gambling man. Why would you put your career in jeopardy.

I did say I was a gambling man because after the end, after they already, already had planned on terminating me. All right.

That was your belief.

No, because I need to find help

in getting.

I couldn't get an attorney. So, already had to advocate so I put my trust in her. All right, the thing she was doing, it's like I got people I mean, people coming to me it's like,

I put it this way.

We wanted me to bow down to him.

You didn't like that.

Why should I buy down from I'm here as an employee, as a worker, you go out there and ask me he's told you, I do a job, and he can trust me to go out there and do it. All right. The one thing is this why, if I'm so much mess up. Why are you keep out, I mean keep making me do these jobs. Alright. Other people would sit there and, hey, we're going to put you on something else. We're going to let somebody else go and do it. I'm going to take that from you, you didn't do that. These are the things I wanted to explain to Rodney, what was going on.

Do you agree that you were trained by the vendor to operate the ridge runner or do you deny that

I deny it.

Okay. Do you deny that you were told to stay away from the edge of an odd reading, okay. You didn't do you deny that during your employment with Pinellas County that at times you worked for your mother's business, aka an outside employer,

aka Vivian's crawfish PIE that she goes to the Saturday morning market to help my mom set up.

I'll pay you for that I

don't get paid for nothing. This my mom. No, my brother's doing.

This is your testimony that that was just helping her. You were never paid for anything with your mother's business.

No, it's my mom's. It's my mom's business. There's not a catering, or nothing.

With Mr. car. He had been with the county less time than you correct, yes.

So Did it bother you that someone that was younger than you and had worked with the county less time than you were trying to tell you what to do. Nope. So do you deny that you got upset with Mr.. Carr and Mr. Hinrichs when in the February incident where you, they testified that you had said, I don't have to listen to him. You deny that

I did not. Okay.

Would you agree with me based on the testimony; you've provided on direct that it's like you've had quite a bit of interpersonal conflicts with coworkers over the years.

Everybody does.

Is that true. Does everybody have a lot of interpersonal conflict with their coworkers.

I have good standing with my coworkers, your phone trying to put it. I mean I've come from working in the parks, working in Des Moines division and highway and back into parks, and I have people look up to me and ask for guidance, you know, that man sitting back there Mr.. Gardner. It's just like we used to bump heads. And now it's like we're best. Best Buddies. It's like, I play it like it's the sheep dog in the coyote. They go out there and they do their job. but then they hate. See, I never had bad blood with anybody. And I tried to stay, you know, good friends and try it, those who didn't like me. Hey, that's you,

by your own admission, You're an outspoken person right. Yes, okay. And would you agree with me that sometimes in a job we have to do things we don't want to do, and I don't

agree with me that sometimes we have bosses that we may not particularly like.

And you have to do what they ask you,

yes, I would agree with that sentiment. And would you agree with me that on March 17 You did not tell Dave You were going to the meeting with Rodney Marion. You didn't ask or tell him. Would you agree with me.

I never talked today.

Okay, so we agree. And we also can agree that you admitted as much to Kelli Levy during your pre disciplinary hearing correct

come to say that again,

we can agree that you admitted that you didn't ask for permission to go to the meeting.

When you, when I did ask for permission.

Not from Dave Hinrichs correct

my supervisor at the time was Andrew Carr, but

my question is that you agree with me that you didn't ask Dave Hinrichs,

and I said why would I want to ask Dave I already asked Andrew Carr.

So I understand that you didn't agree with Mr. cards direction to you, but you agree with me that you didn't do what he told you to do correct

first time, Andrew car said, Hey, okay, Derek, I said Andy, I'm going to a meeting. Okay.

Right. And then he came back,

he never talked to Dave.

Back to you, and he told you in fact I needed to talk to Dave, and you didn't do it correct. The next morning, I don't have anything else

you regress.

Thank you. With the auto accident that you had. You testified that you were in the middle of a medical episode did you think you had appendicitis.

Yes.

And you told Dave Hinrichs when you were going to go to the hospital.

I told him that I was having a cramp in my side. And he asked me, Well, what do you want me to do for you. He says I can do you need to analyze I said no. I said no. He says, What do you want

me to come and get you. I said, Well, my truck, is that I'm up at the yard. He says we'll go ahead and take your truck.

And then later,

I drove the slope more back up to where my truck was station. All right, and Park my park my truck, my tractor and gotten the truck and drove was driving to the hospital. I already had, I guess, how you said, a contract like which Mease more than plant I mean more than plant. So I already have my medical record so I wouldn't have to go through, you know, all the red tape.

And, and when you had when the accident happened. You were transported to the hospital. Yes, by ambulance. Yes, and then that would act out, just outside the scope of my cross.

I think that she's just clarifying what was discussed with regard to the accident, so we'll allow it. Thank you.

You were not transported to the hospital because of the accident, you were transported because of the incident that you were having.

I thought it basically when I was in the crash it

ruptured.

And because I was in more severe pain. I couldn't walk or nothing, so they put me on the stretcher, and they put me into the ambulance and took them to the hospital.

And what were you diagnosed with

diverticulitis,

and did they say it was an emergency situation.

They said it was emergency because luckily I didn't make it there because it could have burst.

Now, some of the other issues that you were attempting to bring to Rodney Marion's attention were some questionable purchases, you saw a lot of Amazon packages showing up objection outside the scope of my cross examination.

The meeting with Rodney is not outside the scope. This is new information though that you did not present before.

So, that is true,

I mean we're getting close to being outside. Okay, I'll give you a little latitude with it but let's, you know, try to move forward.

I've seen packages come, basically to the back, what we call the slow more slow Moore's office. I mean office, they will come up to the, because that's the only. I guess door that's adjacent to the building without the gate. So all the packets of apartment I mean, you put there.

Okay. No further questions.

Thank you, Mr. Clark. Let's see if the board has any questions for you. We'll start with Phil.

This one clarification, Mr. cloud said, When did Dave become your supervisor or the manager.

2007, I mean, what 2016 16

Yes, and he was not with Pinellas County prior to that.

Not that I know. No,

thank you Rick.

The mic. I just have one question, your knowledge, are there any medical conditions and you don't need to tell me specifically, If they are just yes or no, that would prevent you from doing your job.

No, I mean, as they all know that there's 2014. We're out an employee, fun function. I rip my Achilles tendon was taken an ambulance. I stayed out for a while, came back with a boot, went back to work, didn't I. With a boom, that's how dedicated I was with my job.

I have no other question. Can

hedgie, Jeff.

Similar question asked earlier how many years you've been with a county 20 years 20 years 20 ever have any other incidents errors in judgment as Miss Maloney stated series of infractions. Did you have any write ups any suspensions and write ups,

you know, last, the write up I had with Mr.. Gardner. We got into a little heated discussion and I got put down for what is it profanity and abusive language in the workplace. And I did my little probationary period on that and

really

good friends, I guess that

no other, no other accidents.

Oh, are the accident, from to now, I mean from then, three years, 16 to 19 you and seven, yes.

Well that means that you had another 17 years of active duty with the county and the other accidents any other incidents any other suspensions any other write ups.

No, not an accident. Not to be written up No.

Well, I'm asking those other terms has been used here, you know, any other infractions at all, no in 17 years you just had the seven and the three years that you've been

with him. Okay. Thank you,

Mr. Klore, what you just talked about with the insensitive with the profanity, that you said was that the same right up that Mr. Cloud was referring to that had lapsed over six months yes that you'd gotten with the parks department. Yes, you had and that was a different supervisor, you didn't have Mr. Hinrichs, right,

Jim Wurster, and it was never took it off my own. It was never took it out the fowl. And Mr. Cloud help, you know, get a deactivated.

That was the only one you had when you were with the parks department.

Yes.

And you testified that when Miss Maloney asked you I think she used the word implied that Mr. Hinrichs implied. If you would drop your grievance that this would go away at some words to that effect. Can you tell us exactly what he told you that you inferred that you should drop your grievance I'm just trying to distinguish between applied versus what was expressed to you with that issue.

Well, the thing was, it was really from what he was telling me it was upsetting Kelly, because I was doing all these grievances. I mean I had the one where I did with the last one was with the car, because it got demoted and it dropped me down from \$20 to 19. And then the ridge runner, I was still trying to fight that one. And it really upset me when, you know, she sat there and said that a they tested this, and it stopped on a dime. But it's like, it will roll down a hill, and they didn't want to bring it in, that the attorneys didn't want to bring the other evidence in from fleet that they already tested that it rolls.

But what specifically did he tell I just want to know what specifically did he tell you to do with that, with those grievances or that grievance.

He said it would help

lessen

the fact I mean less than the terms of what's happening. I mean, with the, me being terminated. We're less than if I were to tell if I tell Kelly Hey, I'm going to go ahead and drop that. Okay.

did you ever go to Kelli Levy, with any of your issues that you were having with Mr. Hinrichs,

I felt that. I'm going to say this group I put it this way, I felt sure it got contaminated by Dave, because every time. That, to me, Dave was always up, it's he RB, you know, and there was nobody I could turn to. So I thought the person I could turn to was Rodney Marion, you know.

And did you heard Mr. Levy testified earlier that during the pre-disciplinary hearing that you actually admitted that you did not follow the direction or the instruction if you will. Go ask Mr. Hinrichs, to attend that meeting and you did admit to her. That was true.

Yes, it was, yes, yes. I put, I put it this way. I wanted to give them what they wanted to hear. You know,

did you think that was going to help you. Yes. If you had taken some responsibility for what you had done that maybe they would go easy on you and be terminated. Right. Okay.

Thank you, sir.

You can call your next witness.

I'd like to call Ivan Cooper.

Hello, my name is Ivan Cooper. Sobel operator. A yo.

Thank you so

hi Ivan. Now, how long have you worked for the county 20 years.

And how long have you worked with Derek,

they're often not the same as say, 777 years of my own. I know them through, when he worked at the parks and Stuff so, you know, let's say by seven, eight years of knowing.

Okay, so you have an opportunity to see and observe actions with Dave and Derek. is that correct, oh yes.

And

what would you say those interactions are like,

what, it was actually a couple of times that they had to talk I walked out the offices, but he were just like, when she was saying as in words. When he come in and says like boys, they're going to see some like add, you heard that I was like, Yeah, call it. So it was kind of, it was some things that I was wore like was there, and I heard it, but indeed the Pat on the back, you know, we get that, you know, he comes in, might be some Derek didn't like what I, you know I dealt with it. It was, you know, I thought that maybe that was something that he was just you know, was saying Good job.

Keep up the word, but I didn't see it in no kind of way for me, you

know okay, and you have experience with the ridge runner.

Oh yeah, okay. Yeah, definitely.

And have you ever had the ridge runner behave the way that they're described what happened to him that day,

yes it's we got since we got every is running, we've been having problems that they've been going back and forth the fleet in and out, in and out. It's been stolen. So, it stalled on me, actually. I had

it out on the other side of the bridge, and I drove. I was driving it. And it stalled on my end it rolled back, but it just rolled back to the curve, I was actually out there by myself, so it wasn't nobody out there that, you know, it seen it, but I had, um I had called fleet and fleet came in Jamie was mentioned something about just drive it the opposite way, don't drive it up and down drive it across words, but it doesn't have brakes or anything so I was thinking it was, you know, by, by wouldn't having fuel injection. I'm thinking that it would just, Ill stall, because when it teeters that's like a lot more when you hold it up level, I mean, to like our angle is going sputter, but your level is going to stay running. So that's, that's how I feel about Korea's run.

Did you feel it was a poor design.

It's no good. I That's why I stayed away from it.

So you didn't like using it.

Oh no, I was scared. I may say well if you don't feel comfortable running a restaurant, I mean Well, any kind of piece of equipment, you know, Miss speak up and say some so that's what I did I just in there was that go to guy yeah he'll get within he'll just go and just see, whatever it is he never turned down he just, I mean, it helped me out, you know, a wit my job for four years I've been here to have somebody like that.

I like them. So Dade there basically did, and took on any task that he was told to do, and most

definitely. Most definitely. I mean, every day we come into work that that even motivated me even more to come to work, because that to me when I, when I was working with, with this guy. It was like, is that comparison. I was just trying to like, I'll be certain, certain things, he'll cut some I cut something it's like I said, Well, this I'm going to do it. I'm going to do this, he said well you got it you got it. That's only made me better in always better so I'm, I'm, I'm happy back, so he

was a motivating factor for

you always, always, I did. That's a charming guy. He charged me up even more, you know, it didn't slow more operators I've just learned, from, from all of them, I learned that's I'm good now. And I tell you that I'm good. you come in and look at me why to me.

That's what I do now.

Do you have any complaints about treatment within your section,

complaints by treatment, um,

did you see they're being targeted by Dave.

I'm being targeted. Yeah. Um, yeah, I mean he come on, they look at us and, I mean, which I guess that's what supervisor was commanded, watch it in check. Yeah, where we get, you know, we got other guys, fellow supervisors they come by and look at us. Yeah, I was seeing it. I was seeing it. It was more me really tell you that you like, like I'm saying Derek was the go to guy so yeah it was more weight on him so he got more work is more things, because it's the other guys we ain't never stand up to the plate and do it. Here come forth is that I got it. I do it. Guess what he did. And we

all, we, we did this. So he is me, you know, I job even more better but at the end, we learn from, because he'll come back and explain to us and say, Hey, let me show you something here, show me at the end of the day so come and look at this, you got to do it this week because, you see that motivated me. So that made me get out there even more to try, just try this, try and he stick with me. He stayed with me like off, you know, at the end of the day are just on a break time he like me, I'm going to show you something else. What you could do with this thing. And I'm learning.

And did he encourage you to practice safety, we'll see a pretty safe person.

Yes, yes, he was safe, actually, is we had like now places like, where we take this little more. I think I will see it because you, you, you run in this slope more you got the arm out, you teetering with this thing. I got Derek, Derek say get out the week pull up to the SAT. Let me show you some he comes right by and it just that ties right on the edge, He's. He's gone. He was like that. Like I'm going to get it done. It was like, this kind of work I'm going to get this done I'm going to show you how it's done. Yeah, show me.

Now, I've been you were part of the group that had a meeting with Rodney Marion, on, on the day in question.

Yes.

And did you ask Dave for permission to go

get on what it was, um, we came, we was in the office, I was in a wheelchair, and there's no we're going a little meeting in the morning and just discuss what we got to do in the morning. But um, yeah, I hadn't mentioned it, he said something about a day we got to meet, cuz you know Dave come in, he talked with us. So, we said yeah we got to meet me and I'm in Denver, they turned around and say oh you got me too that's like yeah, I gotta mean, so,

um was Mike December supposed to go to this meeting as well. Yeah,

we mentioned Mike back I don't know I guess he decided that he had something else he had to do, or he had to check. In other words, he had to go downtown, because he wanted to check on his retirement. So he said, Well, no I don't, I don't have time for that right now, you know, I'm going to go down and do that. That's what that was.

And did you take your county vehicle.

Yes, I took my, I took my vehicle. And do you also wait, now come back to think about it, there is no more operators that includes all those but I guess at that time there was an incident more, he was, he was stepped down in so he was on the zero so that's something maybe he probably had to x, they.

And you, you reported directly today. Yeah, he didn't report to somebody else like Andy car.

Oh, actually, no, no, no, actually we was a really running the show for a while before we had Are we having a boss after a while, if you look, oh we got was gone. We was basically running. Well, I mean we still talk with Dave, we have a supervisor over us. And we was getting the job done.

But you basically reported to Dave and that is why you told him about your meeting. Oh yes, yes. Okay, and did, did you get in trouble for Did you asked to take your vehicle.

Oh, no, no, I, I just want my personal vehicle.

No you can't, if you

have kind of you know I still I just right from my it was at 1130 So that was almost close to, at 12 o'clock. So whatever time it took. Because I was coming back from Seminole area to drive there. So, I was right down the street. I went too far. So that was like on the 30 minutes to 12 I'm thinking it was 11 1111 o'clock 1130 So, somewhere around. Dade if I can

remember, and you did not get into any disciplinary action for taking your truck without permission.

No, I just went back, I went back to work. When I got down. Well there was a parked vehicle, and there I said, your meeting is canceled. So you just go back to work. So that's what I did, I went back, I went back to my sleep more and they just finished up what I had to do for the rest of the day. All right,

thank you. No more questions for us. I don't have any questions. Thank you.

Okay, board members still.

This one. Maybe you can help me clarify this question in my mind. That's okay. Yeah, I'll pass on,

Jeff. I just have one clarification, Mr. Cooper I didn't quite understand what you said, the difference between the vehicle you had on that day of the meeting that you were heading toward, and the vehicle that Mr. Clark had. You were saying that you thought maybe he needed permission to take that vehicle, but you didn't need permission to take yours. Did I understand you right.

Um, Yes You saw the truck I had right yes now Derek did call me. I did get a call from Derek, which I could have came and picked him up, it wouldn't be a problem if we if it was still that you may need to attend the meeting, yeah to me,

but you said something I want to make sure that I understood correctly, I think you were saying just because of the difference in the trucks that you all were driving at the time that you thought maybe he would have needed permission to take that vehicle, whereas you didn't need permission to take your vehicle. Am I understanding you right

yeah well the truck I had it. I didn't have a trailer on it, he had a trailer he didn't have a trailer. Oh no, I had a child so it was just it was just a regular truck. Okay, so I can just go, you know, I wasn't done tagging behind me. Yeah, he had a trailer with the you know with the mods on the back, zero

equipment on

yes do you ride with the law Morrison.

Yeah, and that so you thought that that would have been something that maybe he would needed to have gotten permission to drive it to that meeting.

Oh yeah, most definitely and are also well, did he, when he was coming down, we could have locked it inside the fence area, because that's what we discussed on doing okay.

And when he called you, and you said you could have picked him up is that when you said the meeting wasn't going to happen

yeah he knew about it because Larry told all this all just reimburse council. So, everything just reverted back to regular work

canceled for all of you. Yeah,

it was really yeah it was far less even, even when I was on my way there it's it was,

It was

merry say why it was canceled.

Nice, say, well, we'll have to do another talk or do some other time, but I want to talk to. Rodney because of the work, the work I do, you know, the slope more, You know, of just to follow up he just did try to you know because he came to the yard and I liked his presentation where he came out with. He was very nice and I was like, Oh man, I got really tough to say well, and then we all kind of got together and said well we're going to get a chance to go in we got to talk, who, so you have a chance to talk with him, so you need to come in. So,

so where are you going to complain about Mr. Hinrichs in that meeting with,

with, if anything's acts as in us in a group, and some acts to me I'm going to tell the truth, I'm going to come out, I mean, If it feels like if somebody is like as in work now, I feel like I'm being a target. I don't know why, you know, I mean that's part of the supervisor, I guess we'll look at you, but every day. I mean you got to have some trust and some, you know, operated, I've been here like 28 years, so you know, I never had no problem in the other supervisors, and I had maybe not a supervisor in my in my time, never problem. No,

thank you sir.

Thank you.

Okay,

yeah, the meeting.

That seems to be at the center of everything that has happened here that we're hearing. Once that meeting got canceled that meeting never got rescheduled, is that correct,

it never happened. No, no, I was No. Okay. Does that mean he came to the yard. It had free station again, we just won't be set it up. Never happened, never happened. Nobody can.

I just want to clarify, thank you. Yeah.

Okay, thank you sir, you may be excused. your next witness.

Like a Call Larry Gardner.

Are you doing. Hello.

You're saying on.

Yes. Your name.

I'm Larry Gardner, Ben are 33 years.

Now Larry. Are you the one who set up the meeting with Rodney Marion,

yes ma'am I

was okay, and, and for what purpose did you want to speak to him discrimination

in the abuse in our yard. Oh, I'm sorry. Sorry, I forgot.

Thank you. What else.

I'm sorry can you repeat that for them.

Yeah, we were going down to talk about the abuse and the basically discrimination in our yard.

All right.

And did you have suspicions of unethical activities or suspicious purchases that were being made.

Yes.

Can you tell us. Well what they were being, you know, or it was just Amazon packages,

oh there was tons of Amazon packages outside the door every morning. Every morning, out of our office, don't know where they went, what they were for just a whole bunch of boxes,

and were you concerned about those purchases because several people had their own businesses and you suspected that they were purchasing for their own businesses,

yes

and no one would know because they're the same business is that right now. Were you ever told about Dave's relationship with Sam Island way

yeah Dave told me he sold his business to Sam. Before he went to City of Largo.

So that would have been back in 2008,

be honest with you. I don't know,

but it was well before his time at the county.

So Dave's Yes, yes, because he went to Largo,

so they were friends for a long time.

That's the way I took it.

And what was your suspicion about the work that was being performed by Island Way. Did you think that they were being paid for work that you all were doing.

Yes.

And you wanted to discuss these things with Rodney Marion.

Yes, I had a whole bunch of stuff to talk with Rodney, I set up that meeting on my own and ask the other slow more operators that they wanted to join in. And they did. But I got there, talk to Rodney and back outside to see if Cooper was there yet or Derek or Mike and Rodney come out and said he got a call that Derek didn't have permission. None of us asked for permission on that Thursday before the meeting that was on Monday. All right. I went to Dave and I told him we had a meeting. All four slow more operators. Eric myself. Ivan, Mike. And I told him we had a meeting Monday morning, and he wanted to know who it was with. So I didn't tell him until Monday. And the meeting was on Monday. So we all the three of us Ivan and I, and Mike walked upstairs where Dave was, and told him that we had a meeting, that it was Derek, Mike, Larry, and Ivan. Never had a problem at We didn't ask permission. Nothing.

Did you take your county vehicle,

yes, had no problem. Never asked just did it never had an issue.

Do you know what happened to the information that you were trying to discuss with Rodney Marion,

the information that was trying to discuss with Rodney,

yes what whatever happened with that.

No idea.

Did you get a call from the inspector general,

yes. I spent an hour and a half in their office questions after questions.

So, so after this meeting was canceled, and Derrick was terminated. Someone decided that it was important enough to go to the inspector general,

yes, because I was out on no duty because I got hurt, and Dave wouldn't find light duty for me. So he sent me home for eight weeks.

Now you've used that ridge runner is that correct, Never. You have not used the roadrunner ever, have you used slope mowers

flow more I run on right now. Okay, I got 15 or 17 years on a slow mower.

Are you aware of their problems. Ridge runner.

Yes, I used to run a remote-control mower, like what the ridge runner is, but it had tires on it. Alright, and it had fuel injection, it did not have a carburetor. The red runners have carburetors. And when you put them on a slope with a carburetor. They flood. And they stall. You can't buy one of them for a slope in the county. That's ridiculous. When we demo that machine. I told Michael to Papa, that it was not a machine that we needed to buy. I said it does not work, it will not work for us. And he basically ignored me. And they bought it anyway.

Now, on the other slope mowers, not the front runner but the other ones that you had previously used. Was there a way to tether those to something so that they didn't roll away, or, yeah, get damaged.

Yes, there was a winch on the front of it. You can hook it on to your truck or to cable to where it wouldn't go away. And if you got it stuck it a winch itself back out.

Well you know if this ridge runner has that capability.

No it doesn't.

So there's no way to tether it. Nope. In order to prevent it from having such accident. No,

there's no way.

No further questions. Oh,

okay. Your attorney cross.

So it's my turn. Good evening, Mr.. Gardner. Yep, okay.

Um,

are you still trying to seek light duty in your role with the,

I have restricted duties.

Okay. Is that relevant. Are you making an objection. Yes.

I'll overrule it because it goes to the credibility and she can explore that. Okay,

I'll be quick though Mr.. Gardner so are your restrictions medical restrictions,

Yes, from an auto accident back in 93.

Have you engaged in the interactive process with the county for the restrictions.

The interact What are you talking about

where you provide medical records and the county then makes accommodations under the ADA
Have you engaged in that process,

they've made accommodations from day one of my auto accident when I came back to work. I was cut out of my car and Baselight it off. Alright, and I have permanent injuries, any supervisor I've had from that time until him.

I'm sorry to interrupt you.

Was that worker's compensation

accident.

Then I just wanted to clear up something else,

um,

did you testify that you believe Michael de papa does in fact have an outside business.

Excuse me,

did you testify that you believe Mr.. de papa does have an outside business,

I don't think I said that, okay,

I was just trying to make sure I understood my notes, and then you testified that you had concerns about Amazon packages Yes. Why did you assume that the Amazon packages meant something unethical was occurring.

Who knows, it was evil out there, where our office was for the sophomores, it goes to the outside of the complex. So the fence is out here, and the doors here. So you can walk out in the Amazon guy wouldn't have to come in the gate to put them down. So, on the mornings, I smoke, I would take and go out there and have a smoke I'd have to push boxes out of the way to get out. And it's all Amazon stacked up everywhere.

Well Mike, my question is, you know, I work for the county and my employer purchases supplies from amazon for our office, so why did you think that Amazon packages were something untoward

there's too many boxes every day. That's why.

And then you also took issue with the fact that Microsoft profit didn't take your advice about the equipment.

Correct. It didn't offend me.

You said he ignored me.

Yes, he did. Okay.

You were planning on bringing the issue of the Amazon packages and what else to the meeting with Mr. Marion, about the disrespect and ignoring anybody's seniority or any kind of disability. There are so many people in that yard down there where we're at the turnover is unbelievable. I've never seen that much. And I've been here a long time.

Were you witness to any of the conversations between Mr. Clark, and Mr. Carr.

No,

I don't have anything else

you redirect. I have nothing. Okay, board members, Bill.

Yeah, question after your meeting with Mr. Marion you said the Inspector General's came in or infecciones office came in, No. That morning that we were supposed to have that meeting with

Rodney.

Okay, it got cancelled Ronnie came out of the office and told me that Derek didn't have permission to come to the meeting. So I called off the meeting, and I called Mike and I told Cooper to go back to work. And the inspector general called me. Okay and asked me to come in. That's all I can tell you, you're not. Are you aware of any action taken by the Inspector General. Nope. Okay,

Peggy.

Yes, sir. Did you relay those concerns to Mr. Marriott I mean how did the inspector general know to call you, I guess I

have no idea.

So, in the, even though the meeting was canceled you didn't relay any of these issues. Welcome Mr. Marion, and no one else in your department.

Not to my knowledge. Okay, so

you have no idea why the inspector general took up this issue. Nope. Okay. Thank you sir. Are we done. Yes,

sir. Okay, thank you.

Thank you. Any further witness,

no further witnesses.

Okay. Did you want to introduce your documentary evidence at this time. Miss Maloney.

I already I thought you guys already have it electronically yeah,

there's just a formality of introducing the exhibits into the record and I understood there were no objection so I just want to make sure it's all part of the yes part of the evidence yes it is okay. Okay, So thank you. Um, at this point, Mr. mill you would have an opportunity for rebuttal, but obviously it's no new evidence or testimony so is there any need for any rebuttal.

I know it's late. Yes, I do just have a few things I'd like Kelli Levy to clear up if the board will allow it. Okay, so that would be your only rebuttal with,

yes, yes. Okay, let's go ahead. Okay.

I'm going to touch on these issues.

We are in choir. Yes, ma'am.

Hello again. Miss Levy, can you explain for the board. The purchase purchases on behalf of the department, we've heard testimony about Amazon purchases and I'd like you to clear up the purchase process for departments. If you could,

yes we monitor all of our purchasing P card purchases through different events. They don't self-monitor, we have a customer services and technical, technical customer Technical Services Division that monitors all of our credit card purchases purchases, they do a monthly report to all Division Directors of all purchases that have been occurred so that we can review them, and if anything out of the ordinary was observed we can look into it. There is only one individual in that section that has a purchase card and that is the Section Manager no one else within that section even had a card so they would be authorized purchases on behalf of this section, and they're very easy to track because there's only one person.

Do you know for a fact if the department's and then makes purchases from amazon for business, you know, government use Excuse me.

Yes, yes

we do. Moving on to the island Ray, do you know if that contract went through the bid procurement process,

correct it did. The bid was put out by the Purchasing Department the Purchasing Department handled the entirety of it and awarded the contract to the lowest bidder.

And then there's been some discussion about the disposal of certain debris can you just explain to the board how that debris is disposed of under the contract.

Yes, General jobs that, you know, mowing general trimming, you know, those are handled the materials just disposed of, it's part of the quote so we have a job, they go out, we have costs but they give us an estimate for that particular job. And if it's just like leaves and Stuff like that, you know that goes to solid waste as part of their quote but anything that's above, I think it's two inches in diameter. The, they bring it back to the yard and we dispose of it in the dumpster and Island Way is not the only one that has that provision. We have two others that do it as well, and allows us to keep track of that material and wait that way our dumpsters are weighed and then we know exactly how much we're disposing,

Mr. Clark had testified about the fire department, appearing at one of the ridge, cancer, the mower incidents. Could you follow up with the fire department. Can you say which Fire Department, it

was if you did, I believe is Pinellas Park. I'd have to defer I don't know if it's Pinellas Park or St Pete But we did check to see if it's the fire department had responded either formally or informally to that location to provide that assistance, and there were no records of anything.

And then finally, there's been testimony from Mr. Clark about a statement made to him by Dave Hinrichs where he was coerced into withdrawing his grievance and specifically Mr. Clark testified that he had left the room where you are present and then returned, can you clarify your recollection of that conversation, and where everybody was when it occurred.

We were in the room.

You know, nobody left and came back we were in the room, everybody's standing up we were kind of the meeting was breaking up. And at that time. Miss Maloney made the announcement that they wouldn't need pursuing you know the, I think that, I don't know if we were if it was an informal grievance panel at that point time or if it was a personnel board item that they weren't going to pursue it and Derek said the same thing but it wasn't. They didn't leave and come back and it was, it was in the room. And I didn't know why. I mean, we've been through a lot of these. I'm fine to go through with them it doesn't upset me

that that's all I had. They may have questions I'm

sorry cross examination on your side.

Your testimony is that nobody walked out of the room.

Of course we all walked out of the room

before and then Derek came back into the room, is that you're saying that's not correct.

No, I'm saying you, you actually you were the one who told me that you were not moving forward with

can't remember what the after we left the room, and were approached by Dave Hinrichs,

we walked back into the room. I don't recall ever saying that it was at the end of the meeting, we were done. Jim Valliere leads they may not have seen asleep, let her. Let her finish. Jim Valliere concludes the meeting, asked anybody if they have any more to say, we conclude the meeting, we

were leaving, we're all standing up for the meetings breaking up, you said and we won't be. We're not pursuing that and Derek said the same thing I do not ever recall you guys leaving and then coming back in.

Mr. Depappa I had his own business, is that correct. No. As a matter of fact I investigated that and he

had two business teams, what do you call it when you want to register with the state but he never operated a business No,

and the name of one of those business was urban forestry consulting,

is it not. I don't remember the exact names, I mean that sounds familiar, and he works for urban forestry. Yes, he registered a name, he did not register a business, there's a difference. He registered a fictitious name that he never utilized to run a business,

no that was not a fictitious name it was under sun biz as a business, not a fictitious name, a business was never operated if you

look there are no there are no annual reports because there is no business,

but for 18 months, it was active in the sunburst Status was it not object, because this is

my rebuttal is outside the scope of her rebuttal.

Well, this goes to the Amazon packages.

Okay, right. And again, you can ask questions but you're arguing with her answers, so she can answer them to the extent she knows the answers. So what is the question.

And Mr.. de papa has a P card is that correct, correct, he has a P card for this section. And so if he's purchasing items for urban landscape, they would be the same items that he might need for his personal business. He did not have a personal business.

So unless you have something demonstrating that he does not.

No further questions.

Okay, any questions from the board bill.

All right, couple quick questions, who was the purchaser the Section Manager for you

guys

for urban forestry and Landscape Services is Michael the proper.

Okay, and works within your department at your facility, he knows everybody here.

He works at the 126 Avenue site not at the main campus now,

okay, and then this island way grew up when did they start associating with the county.

I don't know when the cost when purchasing put out the bid for this.

No,

I can't, I mean, honestly, multiple departments contract. It's an it's a county wide contract.

Okay. And then

it was testified earlier I believe that Mr. Henry choose to own that company. Correct. Island boy services, he was the owner of that and sold it to this current operator is that what I understand,

right, you only hurt you only know what you heard from Larry, I don't know anything about that.

You don't find that as a conflict of interest or impropriety. That a current employee that you spend on money is

what I heard Mr.. Mr.. Gardner say and that could be just to be clear, I heard him say that prior to Mr.. Heinrichs employment at the City of Largo, predating Pinellas County. He had his own business and sold the equipment to Island Way before he started at the City of Largo. And then so many years later, he's now, an employee of Pinellas County so I'm not exactly sure where I see a conflict

here Good. Thanks, Ken.

Question about the AIG intervention into this. Who initiated it. And are you aware of any outcome.

I'm not aware of anything this is the first I've heard of it. AG.

Okay. I think we're good. Thank you.

That was it

free. Yes that's it

thank you very much on rebuttal, you have an opportunity for Sir rebuttal but it's limited to answer what she presented in rebuttal.

I have no rebuttal at this time.

Joan Vecchioli 2:00:03

Okay, thank you. This evidence has been admitted and the testimony is closed and the board has the discretion as to whether we would hear closing arguments. I would suggest based on the time we would probably decline but I'm going to open it up to see if any of the board members would like to hear closing arguments. Okay, so do we need a vote on that. No. Okay, so we will decline

closing arguments. Before we begin our deliberations, I want to commend both of both sides and the participants on very high level of professionalism and thoroughness and preparation in this case and, you know, we thank you very much for those efforts. Now I'm going to turn to counsel and counsel, ask you to frame the issues for the board as we start our deliberations, please.

Jennifer Moore 2:01:08

The first question that the board must decide is, does the board find that the appellant committed the activities for which he was terminated. Okay. Does anyone

Joan Vecchioli 2:01:22

Does anyone

Ken Peluso 2:01:24

I'll make the motion. I think it was self-admitted that he, so I make the motion that board find the appellant committed the activities for which he was terminated.

Joan Vecchioli 2:01:34

Okay, Is there a second. Jeff - Second. [by Jeffery Kronschnabl]. Discussion.

William Schulz 2:01:43

Oh, Where do we start

Joan Vecchioli 2:01:46

with you.

William Schulz 2:01:48

Okay. The fact that one. Let me just say in the 27 years that I worked for Pinellas County, it was always implied that if you had a grievance. No matter where it is in your chain of command, all you had to do is notify your supervisor, that you were going to speak to somebody in HR, you didn't have a get approval you just had to notify. Okay, which is I believe what Mr.. Clark did. The other employees were, they were okay to go to this meeting. They knew Mr. Clark was going to attend this meeting. Now it's an issue, now what's insubordination that doesn't, that doesn't make sense to me.

William Schulz 2:02:42

Prior disciplinary actions in my mind are not relevant to this case. You're talking, accidents, this is insubordination, they're not on the same level, they're not the same. In fact, I don't believe that the prior disciplinary has any bearing on these charges here.

Joan Vecchioli 2:03:01

So before you get ahead of yourself because that'll come into the next level of inquiry. The first issue is did he commit the activities. We can certainly get into discussion about punishment or whether disciplinary rules were violated but let's focus on did he commit the activities that he's

being accused of committing. [okay] So did you have further comment on that. [no] Okay, anyone else. Turn on your mic.

Ricardo Davis 2:03:44

As I understand, the motion. My sense that it is broad, and the question that it is asking, is did he commit all of the offenses for which he was terminated and I'm having trouble with the broadness of that motion. The items that were dated back in earlier years, that I think we're used to at least demonstrate progressiveness of discipline. I'm having trouble understanding that I'm not so sure that I'm convinced that this is an example of progressive discipline. And on the main item, which is the March 20 issue for which he's being terminated. Ah, I'm struggling to say this very politely I don't want to say something that's going to infuriate it and run it, but I find it interesting that his supervisors were aware of the meeting but insisted upon getting specific permission. That is a little troubling to me I probably that's probably the nicest way for me to characterize it.

Joan Vecchioli 2:05:19

Any further discussion.

Ken Peluso 2:05:23

Yeah, a lot of conflicting information, a lot of extraneous information, and a lot of confusion. But as to this specific question. I believe the appellant pretty much admitted that he did not follow the rules, or the instructions given to him. So this specific question appears obvious to me.

Joan Vecchioli 2:05:50

And I think, well, Peggy, did you have.

Peggy O'Shea 2:05:55

There's been a lot of conflicting testimony, which makes it really hard to get down to the root cause of the issue. You know I see up there the rule that says leaving work without authorization and yet it's been said by others that they did not need permission to do this. So either we're not following County policy across the board, or the rule is misinterpreted or something here. There's too much conflict in that, and that's causing concern for me. Not only in this case but are there other cases where the rules aren't being applied consistently. And it's hard in a large organization, but it's still it's something that's very important in order to have fairness, across the board. So, you know, that's, that's where I see a conflict in this right now, And I'm not sure. Not sure how we resolve that.

Joan Vecchioli 2:06:58

Jeff, did you have been, I'm sorry, were you done Peggy? Jeff, did you have any comment.

Jeffery Kronschnabl 2:07:04

I'm going to echo what Ken said, it's just the question one. I think it was answered by everybody the key issue, but there's other ones that are going to come up that are going to take us to a different place, [right.] So question one, I agree that the applicant committed the activities for which he was terminated. But I have stuff to say when we get to the other ones.

Joan Vecchioli 2:07:25

Right, and I and I think that's kind of where I'm coming down to is by his own admission, he didn't follow the directive he was given. I think what everyone is struggling with is, does that action violate rules personnel rules and then if so, was the discipline, appropriate under the circumstances. So any other discussion before I call the question. So it's been motion. The motion and second. Was that the appellant committed the activities for which he was terminated. All in favor of that motion say aye. [Aye] and maybe raise the hands so that we can see what the vote is. Okay, so 1, 2, 3, 4 and Bill and Rick are Nay. [correct] Okay, so the motion carries. So we move on.

Jennifer Moore 2:08:24

Alright so the next issue before the board is, does the board fine that cause existed for the disciplinary action in that the activities found to be committed by the appellant violated the personnel rules cited by the Epele Appointing Authority in this case there are three rules. First being personnel rule, 6-D-7, leaving workstation without authorization. The second personnel rule 6-D-11 unauthorized use of county equipment in it that should speak or property. Personnel rule 7-D-29 The employee's conduct interferes with the proper cooperation of coworkers or impairs the efficiency, morale, good order or distance ? of the workplace.

Joan Vecchioli 2:09:18

And I would suggest that we take them one at a time. So, does anyone wish to make a motion on the first rule 6-D-7 leaving workstation without authorization.

Ken Peluso 2:09:35

I'll make the motion that rule 6-D-7 was violated.

Joan Vecchioli 2:09:40

Is there a second, and a second. Okay discussion. [Seconded by Peggy O'Shea]

William Schulz 2:09:46

Okay, again leaving workstation without authorization. He cleared this with his supervisor Mr.. Carr. The other employees that were going to attend this meeting, cleared this with Mr. Hinrichs. There was no, it wasn't like he just didn't know. And said no you can't go on and He just went, that he followed the unwritten implied procedures for a grievance

Joan Vecchioli 2:10:19

discussion?

Ricardo Davis 2:10:20

I would echo that sentiment. I know that sometimes we can get very technical about whether someone violated a rule or not, but I find that, unless that rule is applied evenly and fairly across

the board, it raises questions in my mind about whether in fact there's a, there's a technical violation.

Ken Peluso 2:10:45

And I keep going back if the supervisor said, Get permission from someone else. And he didn't follow up with that, then that's wrong, why it was different than everyone else involved in the meeting, really doesn't matter. My opinion.

Jeffery Kronschnabl 2:11:16

I think the argument about Mr.. Carr gave permission when he didn't give permission, and that the fact that the gentleman, Mr. Clark said I don't even recognize him as my supervisor, or my boss was a term that was used both ways, negative and positive, leads me to believe that this was an internal conflict. They were seeing - both of them are going like this. If you're looking at just the rule, he violated it. But the big word is but, but he did violate the rule. Not going because he was told to get authorization, he wouldn't go see Mr.. Hinrichs, he went on his own. He said I'm an outspoken person. I say what I want to say what I want to say it. And therein lies the issue, probably the core issue of this whole night lies right there between communication between both Mr. Hinrichs, and Mr. Clark. So, I have to say that though he did violate that.

Joan Vecchioli 2:12:20

Anyone else want to weigh in on that before we vote. Okay. The motion has been made and seconded that he did violate rule 6-D-7 leaving workstation without authorization. All in favor. [Aye] and please raise your hand. 1, 2, 3, 4 All opposed. [Davis and Schultz.] Okay.

Jennifer Moore 2:12:47

Alright, so with that rule, carrying, we go to the second rule cited which is 6-D-11, unauthorized use of county equipment or property.

Joan Vecchioli 2:13:07

Anyone want to make a motion on that,

Ken Peluso 2:13:09

I will because, First of all, I make the motion that 6-D-11 It really, if 6-D-7 was violated, then 6-D-11 was automatically violated if you're authorized and you're taking the equipment from the property that's tied together.

Joan Vecchioli 2:13:36

Is there a second? Okay and seconded. [Second by Peggy O'Shea] Again, discussion.

William Schulz 2:13:46

You don't have to have permission to go by or speak to HR or human rights or employee relations, you just have to give notification. So I don't believe he violated either one of these first two rules

but I know we're past that but you know if everybody else was allowed to drive their vehicle to the meeting. Why couldn't he drive his vehicle to the meeting.

Ricardo Davis 2:14:13

I echo his sentiments for the same reasons.

Joan Vecchioli 2:14:22

Okay. Anyone want to weigh in on that. I was very conflicted over that until I heard the testimony about the distinction between the type of vehicles they were driving and the type of equipment that was included in that truck, if you will, and why that might have been a little different for him to have gotten that permission. And what again the judgment. It's different to say, I'm going, you know I have this meeting but now I'm going and I'm trailing, you know all this equipment with me, and I was conflicted because of the fact that others seem to be able to take their vehicles. And that wasn't a question but apparently, there's a distinction in the type of vehicle they were driving and what that entailed. So that's, I know where I feel that that that rule would have been violated.

Peggy O'Shea 2:15:32

Just for what it's worth, and that one I was a little conflicted because it says, when I first read this unauthorized use of county equipment I'm thinking, Did he take equipment and use it for personal gain, some other place outside of the county. But if it's just driving the county truck down to this meeting because it happens to be a county vehicle granted he was trailing stuff, that to me isn't using it, know what I mean, and that's so that's why I think it's how that's interpreted, maybe employees know how that is what they consider unauthorized use, but to me reading it. I just interpreted it as the use of the equipment mowers trimmers, whatever they have to use them in their own business or outside of the county authorized use not just taking the truck down because they use county vehicles to go other places as well for meetings. So that was a little confusing unless there's a further explanation somewhere in the county policies, I don't know.

Ken Peluso 2:16:41

Madam Chair. I certainly see Ms. O'Shea's point. However, I believe the county equipment and in this case is the truck, not that much of the trailer. So if you're leaving work without authorization. And to, don't have authorization to take that truck. That's how I'm interpreting it.

Joan Vecchioli 2:17:07

Okay, any further. Bill

William Schulz 2:17:09

authorization wasn't required to attend this meeting just notification.

Joan Vecchioli 2:17:14

But that wasn't the testimony, the lion's share the testimony right, you're, you're basing that on your

William Schulz 2:17:22

Well there's no written policy. Where is the written policy on those? Where are the standard operating procedures, these are verbal implied procedures, again like I said in my 27 years with the county, if you had an issue and you wanted to take it up with HR you notify your supervisor that you're going to have a meeting. You don't ask for permission you tell them. That's the way it's supposed to work.

Ricardo Davis 2:17:45

I also find it problematic that a meeting that is scheduled with HR by employees who allegedly have a grievance, whether or not their grievance is legitimate, is really cancel by the supervisor, who knew before the meeting that the meeting was taking place. And then we have this requirement, about well, you have to get specific, verbal permission, which no one else apparently had to get. In fact, I think the testimony that we have heard is that that meeting, still hasn't been heard. So whatever those grievances were. I don't think have even been addressed. I think that's the problem.

William Schulz 2:18:35

Unless the IG is addressing them.

Ricardo Davis 2:18:37

We don't know that. That's based on what the testimony we heard today.

Ken Peluso 2:18:44

And that's one of the reasons I said quite confusing information, because, obviously, the IG spoke to Mr. Gardner for an hour, whatever. Somehow that action was initiated that conversation was initiated, even though no one seems to know by who or no one seems to know what the outcome is. One of the things that makes this confusing but again if you look at the question is it's really up to me a black and white thing and goes beyond the confusion.

Joan Vecchioli 2:19:22

Any further discussion? Okay, let's call the question. The motion has been made and seconded that he violated rule 6-D-11 unauthorized use of county equipment or property. All in favor of the motion say aye. [Aye.] Four. All opposed? Two. [No- Davis and Schultz]

Joan Vecchioli 2:19:48

Okay, the last personnel rule 7-D-29 The employees conduct interferes with the proper cooperation of coworkers or impairs the efficiency, sorry I took over your job. Morale, good order, discipline of the workplace. And I'm assuming this is where the insubordination comes in because I didn't see a specific rule on insubordination. Anyone want to make a motion on that.

Ken Peluso 2:20:27

Yes, I'll make that motion. How can you possibly violate 6-D-7 and 6-D-11 without 7-D-29.

Joan Vecchioli 2:20:39

Okay, so your motion is yes violation. Is there a second? Second. [Second by Jeff Kronschnabl] Okay, discussion. Arguments against. I mean I think he admitted that he didn't follow the instruction. So he admitted to the insubordination. Question is, is that conduct interferes with the proper cooperation, good order or discipline of the workplace.

Ken Peluso 2:21:35

To me that last phrase in the rule is the key thing. Again, if the first two were violated then discipline of the workplace is violated. How can you possibly deny that and given the violations of the first two.

Jeffery Kronschnabl 2:21:56

Certainly the testimony of everybody that came up there is that this, this section is in trouble. And there's morale issues and there's a good order issues and there's discipline issues and there's a lack of communication issues, there's diversity issues, there's all kinds of issues going on so I think that that one speaks for itself.

Joan Vecchioli 2:22:20

Any further discussion on that? Okay. All in favor of violation of rule 7-D-29 say Aye. [Aye] 1, 2, 3, 4 in favor of violation. All opposed two. [Opposed- Davis and Schultz]. Okay, so the board has found that the rules were violated. And so now the question is on.

Jennifer Moore 2:22:56

Yes. So now, now the issue is whether or not the action taken, the termination, was appropriate. If the board finds that it was appropriate and that is its findings if the board finds that it was not appropriate, then the instruction will go back to the Appointing Authority to make a recommendation as to appropriate action. The, Appointing Authority does not need to do that tonight, they can come back to the board at the next meeting with that information if that is the case,

William Schulz 2:23:32

I'd like to make a motion that it was the termination was not appropriate.

Joan Vecchioli 2:23:38

Is there a second.

Ricardo Davis 2:23:40

I would second that motion.

Joan Vecchioli 2:23:43

Questions

William Schulz 2:23:48

Progressive discipline again comes back to me that the previous cases that we thought have no relevance to what we're talking about today, I don't believe that they should have any bearing on this.

Ricardo Davis 2:24:03

I would add to that, because I'm in agreement with that on a discipline that happened, for example with the, what I noted as the car crash the December 2019 I think there are some extenuating medical circumstances that I don't believe management considered.

Joan Vecchioli 2:24:39

Anyone else want to weigh in. Jeff.

Jeffery Kronschnabl 2:24:47

Yeah, I think this is a good example. I got 37 years on. There comes a time when you have miscommunication with employee and take steps. Sometimes when you take that step to terminate,, it's at the wrong time. I mean I wouldn't want a more serious infraction, to terminate. I'm going to, I don't know if I can say my recommendation not because you said to come back with some but I got a number of recommendations, I'd like to say other than the termination I think that how we fix it though is going to be something that's going to be certainly a lengthy discussion. But I don't see the termination from him going to a meeting, I just think that was just the straw that broke the camel's back. I think there should have been something more serious for the termination, in my opinion. That's not to say that it wouldn't have gotten there if they stayed on the course of his disciplinary action maybe 30 days suspension, maybe probation, something along those lines, and then if he violates again, then I would have stood up and said, that's more than enough.

Ken Peluso 2:25:57

I think there's two ways of looking at it. On one hand I agree with every word you say. On the other hand I think back to the three four or five times, that there was no discipline notated on his record. But you cannot forget those so it may not have been noted on the record, but your lenient lenient and reaches a point where Enough is enough. And then some action has to be taken.

William Schulz 2:26:31

Again, Ken, these were accidents that happen. That's why he wasn't written up. It wasn't like you're purposely destroyed that equipment. That's why they didn't write them up because it was an accident.

Ken Peluso 2:26:48

Recall testimony they were considered accidents and, but there was judgment in at all, but I understand what you're saying.

Ricardo Davis 2:26:57

The trouble that I'm having with it is light of those previous incidents, then turn around and use those as a demonstration of progressive discipline when there might not have been any discipline action taken at a time, I find a little interesting. It's, I think, you know, there is, in fact, even the, the whole issue of the permission thing troubles me and I'll tell you why. There is nothing that prevents management from proactively engaging an employee, when they know the circumstances, and I get the feeling that management kind of a held back, although they knew the meeting was planned. I don't know that they knew exactly what the nature of the meeting was they may not have known that. But if it's my employee. I might have reached out to that employee and say I understand that you're going to a meeting in the morning. Is there some problem that we can talk about or discuss. So it was this issue where management did not step forward, although they had the opportunity to do that, that troubles me about how this was handled. It is easier if I'm trying to find a reason to sit back and wait for you to commit the infraction of getting quote permission. When I knew all along. I was informed that the meeting was taking place.

William Schulz 2:27:55

Exactly.

Ricardo Davis 2:28:46

That to me is management in that instant to me is not demonstrating that they have an opportunity that they can step forward, they don't always have to wait for the employee to come forward, especially if they are aware. Now if they weren't aware of it, that might be a little bit different subject because they can now say well, we didn't even know that he was planning on going to have this meeting, but they were aware of it. They were informed. So we hang it on this specific requirement that he hadn't stepped forward. I am not going to sit here and say to you that the employee could not have handled this differently, they sure could have, but they didn't, but also understand that management, also have a responsibility in how they handle those employees. And if you know something is not right. You don't always have to wait for the employee to initiate that conversation. As a manager and a supervisor, you can step forward and say, listen, we need to talk about something. I understand you're having a meeting. If there are a problem that the reason for this meeting that you and I can maybe talk about, or I can sit back and say well, you didn't get permission.

Ricardo Davis 2:30:11

Although no one else in the meeting required that specific permission. That's what's troubling to me about this whole. And I understand that if you hang your hat on the permission issue, as a, as insubordination or violation, we pretty much have to kind of agree to all of the other circumstances that once would go down that alley, it's hard to back away from it, that's why I'm having trouble with it. I just think that this should have been handled differently.

Ricardo Davis 2:30:39

I think this employee's record does not suggest 20 years of insubordination, or destruction intentional destruction of equipment. This is something that happened, And as few years after some change in management. And I think even at the highest level. That should have been looked at. And it wasn't, not because I think any one intentionally chose not to look at it, it was just the

way, this particular case was handled. I think we could have done better. And it may very well have been that at some point, for other reasons, this employee might have been terminated. I just don't know that I'm simply going on the basis of what happened in this case, as presented by the witnesses, and they gave testimony.

Joan Vecchioli 2:31:31

I think what I'm seeing is a power struggle. And typically, the employee would have to yield, right to the supervisor. And so, know where I'm conflicted is that you don't get to take things into your own hands. On the other hand, when you're being disciplined for trying to take advantage of a mechanism that exists for you to be able to air a grievance, it, it seems it seems like there's something unsettling about a termination. In response to that kind of an infraction, I mean there's a technical violation. But I'm struggling with, you know, is that the proper discipline. In light of somebody that I consider to be mitigating circumstances and facts.

Joan Vecchioli 2:32:34

I also feel that it's difficult because we do have progressive discipline and so you get to a point of well we had a demotion and we had a suspension and you know what else do we do and I know Jeff, you were talking about that and it's really not our role to recommend because we just say yea or nay and the termination and the Appointing Authority has to come back to us you know with what that alternative is. And I'm concerned about the dynamic of the situation and how do we reconcile it in this context, but I also, I just kind of see some mitigating circumstance, it almost feels to me like a gotcha. [Yeah], you know, what's not sitting right with me is, it's almost like okay you committed a technical foul. You didn't do what we asked you to do everybody else's okay to do it but you didn't follow it and you know we're tired of dealing with, and attitude and cooperation and judgment, all these things are very important. I just don't know that this incident. As someone else I think already said it should be the one that, you know, results in the termination. So that's where I'm having a problem,

Ken Peluso 2:33:56

I will agree judgment on both parties was not textbook. That's all I say.

Joan Vecchioli 2:34:06

So, you made the motion to overturn the termination [correct], and that was second did, and we've discussed it. Any further discussion? Okay. All in favor of the motion say aye. [Aye]. Okay, that's a unanimous vote.

Joan Vecchioli 2:34:27

Okay, so what next.

Jennifer Moore 2:34:31

So the action is overturned, and it goes back to the Appointing Authority to come up with an alternative action and to come back to the board with that. And I assume you all would like to do that at the next meeting.

Ashley Donnell 2:34:47

If I could just have a moment to confer, I can see if there's any suggestion at this point. I'm not sure. Just a moment.

Jennifer Moore 2:35:18

board member, what the rule actually reads is that Appointing Authority will come back, and the Board shall then render its final decision at the next regularly scheduled board meeting

Ken Peluso 2:35:39

Issue is not resolved until we settled that next month.

Joan Vecchioli 2:35:45

Right, I think I recall another case where we had a similar situation and alternative discipline was recommended and

William Schulz 2:35:57

But the employee has to sit out another month?

Ken Peluso 2:36:00

That was going to be my question what is his employment status for the next month.

Joan Vecchioli 2:36:08

I think until the final decision until the decision becomes final [correct] till the next meeting that we had to maintain status quo as it exists today.

Jennifer Moore 2:36:19

So, the Appointing Authorities is conferring right now if they come back with their alternate action, then our final decision can be tonight. otherwise, it can be the next meeting.

Joan Vecchioli 2:36:42

Are you turned on.

Ricardo Davis 2:36:45

If the board does not support the termination. And we're awaiting some other form of potential discipline. Why is it not that the employee is simply reinstated. Until

William Schulz 2:37:06

I agree.

Joan Vecchioli 2:37:07

Yeah, because number one, we don't, I mean, it's our final decision is not made until alternative discipline is recommended or approved,

William Schulz 2:37:19

right, but we decided that termination is excessive.

Jennifer Moore 2:37:22

Right, that the way the rules read is that the final decision occurs after the Appointing Authority comes back.

Joan Vecchioli 2:37:29

If we found no violation of any rules, then the employee would be immediately reinstated. This is a violation which warrants discipline and so [Okay, understood.] That's the difference.

Jennifer Moore 2:37:47

Ms. Donnell, you have any answer.

Ashley Donnell 2:37:49

Yes, um, unfortunately we don't have a proposal at this moment there's multiple positions, I can share that the consideration is another demotion but the details, the pay grade, the pay class specifications have to be ironed out. Additionally, where the position would be in what group within the department so with the leave of the board what I plan to do with my client is sort out those details. I understand under the rules that has to be provided to the board within 15 days. If I have the permission of the board I believe I can also convey that to, Mr. Clark and his advocate, and if he so accepts then it would be moot at the next board hearing. I'm not sure how, how eager he is to get right back to work. So, if I have the board's blessing I will also convey that proposal to him and if he so accepts then I will alert Miss Moore. Otherwise I will simply provide it to Ms. Moore and include him and then we can have it on the next board agenda and I will adhere to whatever procedure the board prefers.

Jennifer Moore 2:39:00

So just for clarification, what you're contemplating is, if Mr. Clark and his advocate. Agree to the action, then it is possible that he could start earlier than the next board meeting, But the board's actual final determination on this action would take place at the next board meeting, it would just be framed as a stipulated action.

Ashley Donnell 2:39:26

Okay. Understood, thank you.

Joan Vecchioli 2:39:30

But do we need to, I don't think we need to vote on that because we don't have any action to take.

Jennifer Moore 2:39:35

That is correct. There's nothing to vote on.

Joan Vecchioli 2:39:39

Okay. Okay, thank you all very much.

William Schulz 2:39:42

One more thing this is sticking in my craw and we talked about this at previous meetings. If an employee comes with an advocate, management just present the case, not, not an attorney. I'm uncomfortable with this,

Joan Vecchioli 2:39:55

okay I thought tonight could correct me if I'm wrong I thought if the employee did not have an advocate management wasn't going to have an attorney and they were both going to present, but that if the employee had an advocate, then management would also. No?

William Schulz 2:40:11

Right, if the employee came with an attorney then the County Attorney should present the case for the county but if they're only coming with an advocate, management should present the case.

Jennifer Moore 2:40:22

And I just want to provide a clarification there is nothing within the rules that provides that so I definitely understand what the concern is and what it has been but there's simply nothing that provides that

William Schulz 2:40:36

Maybe it's something we should discuss next meeting or something,

Joan Vecchioli 2:40:39

we can certainly take it up, we don't have anything in writing, it was always kind of an informal understanding. I will say from an observation standpoint, that the advocate did a very fine job and I do not, I do not believe there was any disadvantage presented in this particular case. Okay, with that we are adjourned. Thank you.