

DECISION OF HEARING OFFER

NAME OF APPELLANT: Terrell Bolton
HEARING DATES: June 10 – 12, 2009 and July 15, 2009
ADVERSE ACTION: Termination

Terrell Bolton (hereinafter referred to as "Appellant") was, at all times relevant hereto, an employee of DeKalb County Police Department, as the Chief of Police Services.

Pursuant to DeKalb County Code, Chapter 20, Article IX, Section 20-190, the Appellant was notified by letter that his termination from the DeKalb County Police Department.¹ Said letter, dated February 23, 2009, from W. Burrell Ellis, Jr., Chief Executive Officer (hereinafter referred to as CEO Ellis), informed the Appellant that the termination was being taken in accordance with DeKalb County Code, Chapter 20, Article IX, and Sections 20-191(3) and (22), which read:

Sec. 20-191. Causes for dismissal or disciplinary action.

Cause for dismissal and disciplinary action shall include but not be limited to the following:

- (3) Improper use of county equipment or property.
- ...
- (22) Insubordination or willful failure to carry out an official supervisory directive or job assignment

...

Conduct unbecoming a Chief of Police Services.

The effective date of the termination was February 24, 2009. The Appellant was advised of the right to appeal the termination to the Human Resources and Merit System by filing a written request for appeal with the Human Resources and Merit System Director within ten (10) days after the effective date of the termination. The Appellant filed an appeal on or about February 27, 2009, and an appeal hearing was scheduled for March 23, 2009. Due to conflicts of the parties, the appeal hearing was re-scheduled for May 6, 2009. Due to conflicts of the Appellant, the appeals hearing was re-scheduled for and commenced on June 10, 2009, through June 12, 2009. After two and a half days of testimony, the hearing was recessed and recommenced and concluded on July 15, 2009.

The department was represented by Howard Indermark. The Appellant was represented by William J. McKenney. The following persons were called and testified:

¹ Department's Exhibit 1.

On behalf of the Department:

- Assistant Chief Karen Anderson
- Captain Annette Lane-Woodard
- Herman "Tip" Green
- Deputy Chief Donald E. Frank
- William Travis Sakrison,
- Donald Paul Geary, Chief
Assistant District Attorney
- Major Christopher Craddock
- Assistant Chief Kennis Harrell
- Keith Alan Barker, DeKalb
County Chief Operating Officer
- Lt. Cornelius Yarbrow

On behalf of the Appellant:

- Vernon Jones, former
DeKalb CEO
- Debbie Boyd,
Administrative Coordinator
- Terrell Bolton

FINDINGS:

A. IMPROPER USE OF COUNTY EQUIPMENT

Effective February 10, 2009, the Appellant was placed on administrative leave and asked to turn in all county property that had been assigned to him, including but not limited to, his county vehicle.² During the property collection process, it was discovered that the Appellant had seven (7) county vehicles set aside for his use and/or the use of his drivers.³ It was also discovered that during the previous administration, the Appellant kept two luxury seized drug vehicles (a Mercedes and a Range Rover) at his personal residence from May 2008 to November 2008. Further, it was discovered that the Appellant directed employees under his command to remove and store the luxury vehicles away from County facilities. Moreover, it was later determined that the Appellant directed Officer Tip Green not to place the luxury seized vehicles under the Appellant's "cost center" in the county records.

Former DeKalb CEO, Vernon Jones, who hired the Appellant, testified that he and the Appellant had a conversation about the luxury seized vehicles. Particularly, Mr. Jones stated that there was no rule or regulation to limit the number of cars that the Appellant could have for his personal use, and therefore left that issue to the discretion of the Appellant. The number of cars the Appellant had was not an issue to Former CEO Jones stated because the Appellant was the Chief of Police 24 hours a day, and on-duty

² Appellant's Exhibit 52.

³ Department's Exhibit 1.

at all times. Thus, Former CEO Jones afforded the Appellant discretion to drive any car he wanted so long as it was not improper, inappropriate or illegal.

Section 3-6.8 of the DeKalb County Police Department Employee Manual (hereinafter "Employee Manual") permits cars to be issued to police employees on a temporary and/or permanent basis for the purpose of conducting County business.⁴ "Permanent assignment of a vehicle is defined as when an employee is issued a vehicle that they are to take home and these employees will be subject at any time to being called in while off-duty."⁵ Section 3-6.8 of the Employee Manual requires the accountability of permanently assigned vehicles to be the same as other County property, and is addressed in a separate portion of the police manual.⁶ However, Master Police Officer Tip Green, Fleet Manager, testified that any time county vehicles are assigned and/or moved, the cost center must be changed to reflect the move in order for the cost center to track the expenses of the vehicle. According to Officer Green, while the Appellant enjoyed the use of five (5) cars as of March 2008 (Ranger Rover, Dodge Charger, Chevy Suburban (2) and a Crown Vic), there were no cars listed in the Appellant's cost center. Officer Green further testified that when the Appellant took possession of the luxury seized vehicles, he instructed Officer Green not to place the vehicles in his cost center (#4610). The records reveal that, at all times relevant hereto, the luxury seized vehicles remained in the Narcotics Division's cost center (#4613) and all costs associated with the cars were charged to the narcotics division.⁷

The Department argues that the current administration may discipline the Appellant for conduct that occurred under the previous administration that was, by all accounts, permitted and condoned by the previous administration. However, the Department could point to no ordinance or policy to support its position. If the Department's position is to be accepted, then it stands to reason that each and every current DeKalb County who is acting within the scope of the authority of this administration may be in jeopardy of being disciplined under the administration to follow for conduct that is now expressly or impliedly condoned. If that is the case, and I am not convinced that it is, that would set an unacceptable precedent because no employee could be put on notice that their acceptable conduct now could be deemed unacceptable conduct later. Without something more, I am compelled to reject the Department's position.

That however, does not address the Appellant's responsibility to follow the directives laid out in the Employee Manual and/or the rules and regulations of the Police Department related to the use and accountability of county issued vehicles. The Appellant posits that, because he was the head of the Department and given certain

⁴ Department's Exhibit 33.

⁵ Department's Exhibit 33.

⁶ That portion of the Employee Manual dealing with accountability of permanently assigned vehicles was not offered into evidence.

⁷ Department's Exhibit 12.


leeway by CEO Jones, he was somehow excepted from following the rules and regulations of the Department. To be sure, the Appellant testified that "I was an executive, I was unique". If that is to be accepted, it too would set a bad precedent because it would permit department heads to ignore county policies and departmental rules ad hoc.

While CEO Jones permitted the Appellant to use any car at his disposal, surely that permission did not extend to disregarding the Employee Manual, specifically the accountability requirements therein. After all, former CEO Jones testified that he gave the Appellant the discretion to drive any car he wanted so long as it was not "improper, inappropriate or illegal." The Appellant testified that he did not read the relevant portion Employee Manual, which in itself is disconcerting. That notwithstanding, he was aware that the vehicles set aside for his use should have been in his cost center. His conduct in instructing Officer Green not to place any of the cars at his disposal in the proper cost center was improper and likely a violation of the Employee Manual.⁸

I am troubled by the Appellant's belief that, as the top officer in the DeKalb County Police Department, he was not required to follow the Police Department procedures, and his admission that he did not read the Employee Manual laying out those procedures. This is particularly troubling since during his administration as Chief of Police he issued at least three General Orders updating and/or changing the Employee Manual.⁹

B. INSUBORDINATION

In the weeks leading up to the 86th Police Academy Graduation Ceremony, held on January 30, 2009, the Appellant testified that he lost a lot of weight, and even during the ceremony he was not feeling well. Immediately after the ceremony, the Appellant boarded a plane and flew back to his home in Dallas, Texas. When he landed he went

 Also on January 30th, at 6:32 p.m., COO Barker sent the Appellant an email confirming a meeting between CEO Ellis, COO Barker, and the Appellant, scheduled for February 2nd at 6:00 p.m.¹⁰ The Appellant responded to the email on January 30th at 7:06 p.m., stating, among other things, that he would be on leave until the time of the meeting.¹¹ However, on February 2, 2009, the Appellant sent a memo to CEO Ellis and COO Barker informing them that he was

⁸ The section of the Employee Manual that addresses accountability of permanently assigned vehicles was not offered into evidence.

⁹ Departments Exhibits 7 and 31; See Appellant's Exhibit 81.

¹⁰ Department's Exhibit 3.

¹¹ Department's Exhibit 3.

[REDACTED] until February 9, 2009, and that Assistant Chief Karen Anderson would serve as Acting Chief until his return.¹²

a. Termination of Keisha Williams

During the February 2nd meeting CEO Ellis directed Acting Chief Anderson to, among other things, terminate the employment of the then Assistant Director Keisha Williams. Assistant Chief Anderson informed the Appellant of her orders from CEO Ellis. That night and the following morning, over the course of approximately eight (8) telephone calls,¹³ the Appellant ordered Acting Chief Anderson not to follow CEO Ellis's directive, told her to call in sick, informed her of the legal consequences against her, and directed her to have CEO Ellis call him. The Appellant told Chief Anderson that "he" could protect her and asked her to "pray about it." Assistant Chief Anderson testified that during the telephone conversations, the Appellant spoke in a normal tone of voice, he did not sound impaired, his speech was not slurred, and he did not sound any different than normal; but she could tell that he was agitated and upset about the directive from CEO Ellis.

Assistant Chief Anderson was also contacted by Deputy Chief Donald Frank and Assistant Chief Kennis Harrell. Deputy Chief Frank testified that the Appellant contacted him and asked him to "stand with Assistant Chief Anderson." The Appellant asked Deputy Chief Frank to tell Assistant Chief Anderson not to terminate Keisha Williams until he got back in town. Deputy Chief Frank testified that the Appellant did not sound any different than normal. Assistant Chief Harrell testified that he too was contacted by the Appellant early on the morning of February 3rd and asked to make contact with Assistant Chief Anderson, help her out, stick by her, and contact him if she needed to make major decisions.¹⁴

It bears noting that while the Appellant contacted several subordinates, at no time did he attempt to contact CEO Ellis directly after he learned that CEO Ellis ordered Ms. Williams' termination.

The Appellant argues that he was not insubordinate because "he" was never given the directive to terminate Keisha Williams, therefore "he" could not be insubordinate. That argument lacks merit.

¹² Department's Exhibit 3, page 4; See also, Department's Exhibit 7.

¹³ Department's Exhibits 8 and 9. The Appellant's county issued telephone/blackberry number was (404) 227-5955.

¹⁴ Phone records reveal that the Appellant called Assistant Chief Harrell at 6:16 a.m.

b. Scheduling of Staff Meeting

In response to the February 2nd memo from the Appellant, and attached medical/hospitalization information,¹⁵ on Tuesday, February 3rd, COO Barker sent an email to the Appellant acknowledging his medical leave.¹⁶ The February 3rd email specifically directed the Appellant to “refrain from conducting any county business while you are or on medical leave,” and further directed the Appellant that his first action upon his returning to work should be to contact COO Barker for the purpose of setting up a meeting with CEO Ellis.¹⁷ The email was opened and read on Tuesday, February 3, 2009 at 1:28 p.m.¹⁸

On Wednesday, February 4, 2009, at 11:42 a.m. the Appellant, while on medical leave in Texas, sent an email to Keisha Williams, Jim Helms, Kennis Harrell, Rodney Rancifer, Karen Anderson, Donald E. Frank, Maleta Waddleton, Gerald Horner, Orlando D. Isom, and Darrien R. Bush, notifying them of a Mandatory Staff Meeting to be held on Monday, February 9, 2009, his scheduled return date, at 8:00 a.m.¹⁹ The Appellant then scheduled a second staff meeting on February 9th at 9:30 a.m. At approximately 1:26 p.m. the Appellant’s Administrative Coordinator, Ms. Debra Boyd, sent an email to the Appellant asking him to clarify his earlier email.²⁰

Assistant Chief Anderson, who was still the acting Chief at the time the February 4th memo from the Appellant was sent, testified that the scheduling of both staff meetings was unusual because the Appellant routinely held mandatory staff meetings every Monday morning at 10:00 a.m. Prior to the February 4th memo, the staff was not notified of the Monday morning meetings because it was a standing meeting. In fact, the only reason an email would go out regarding the mandatory Monday meeting was if the meeting was cancelled. In the event of a cancellation Ms. Boyd would send an email to the staff notifying them of such. Thus, unless there was a cancellation, the staff was required to attend the mandatory staff meeting Monday morning at 10:00 a.m. Apparently the change in the meeting time for the Monday Staff meeting caused confusion because Assistant Chief Anderson testified that she received numerous calls from the Staff regarding the change in time. She, in turn, contacted COO Barker for directions. After speaking with COO Barker Assistant Chief Anderson sent an email to the staff cancelling the 8:00 a.m. and 9:30 a.m. mandatory meetings.²¹

The Appellant testified that he did not receive the February 3rd email from COO Barker. When asked why he re-scheduled a mandatory staff meeting from 10:00 a.m. to 8:00

¹⁵ Department’s Exhibit 3, pp. 4 and 5.

¹⁶ Department’s Exhibit 4.

¹⁷ Department’s Exhibit 4.

¹⁸ Department’s Exhibit 4.

¹⁹ Department’s Exhibit 5.

²⁰ Department’s Exhibit 5.

²¹ Department’s Exhibit 5.

a.m. his response was that he wanted his staff to know that he was "still alive." The Appellant's explanations were specious. It seems unlikely that the Appellant did not receive the February 3rd email from COO Barker. To be sure, the Appellant testified that he made and received calls and emails on his county issued blackberry. Indeed, his telephone records indicate that he made and received calls on his county issued blackberry on the same day and around the same time that the February 3rd email was sent and read.

The Appellant testified that he wife took his blackberry [REDACTED] however by his own testimony, [REDACTED] Further, the Appellant's own phone records show that on February 3rd the he made and received calls on his county issued blackberry all day long, beginning at 12:18 a.m. and again 6:05 a.m. when he checked his voice mail, he called Acting Chief Anderson at 6:07 a.m., 6:15 a.m., 6:30 a.m. and 9:39 a.m.²² He checked his voice mail several more times throughout the day, made and received several calls including a conversation that began at 3:59 p.m. and lasted for half an hour.²³ It simply did not ring true that after almost two years in the position of Police Chief that the Appellant felt it necessary to re-arrange his mandatory staff meeting to let his staff know that he was "alive" when there was no evidence that his staff would have thought otherwise. If it were the case that he wanted his staff to know that he was alive, he could have done so, and for all intents and purposes did do by virtue of the February 4th email.

At some point during the testimony it seemed as though the Appellant was suggesting the "he" did not re-schedule the mandatory staff meeting because his name was included in the list of addressees; however, that is belied by the fact that his own administrative coordinator, Debra Boyd emailed him back for clarification of who was to be notified to be in attendance.²⁴

C. CONDUCT UNBECOMING

a. Encouraging Subordinate Employee to Falsely Call in Sick

As laid out above, the Appellant was scheduled to meet with CEO Ellis and COO Barker on February 2, 2009. However, due to his being hospitalized in Dallas, Texas, he designated Assistant Chief Karen Anderson to act as Chief until his return.²⁵ Acting Chief Anderson attended the meeting and was directed by CEO Ellis to terminate the employment of Assistant Director Keisha Williams. Acting Chief Anderson contacted the Appellant to advise him of what she was directed to do and over a series of

²² Department's Exhibit 8.

²³ Department's Exhibit 8.

²⁴ Department's Exhibit 5, page 2.

²⁵ Department's Exhibit 3, page 4; See also, Department's Exhibit 7.

telephone conversations with the Appellant he told her to call in sick so as to avoid having to carry out CEO Ellis's directive.

Interestingly, Keisha Williams did not show up for work on February 3rd. Ms. Williams called in prior to 9:00 a.m. with an emergency doctor's appointment. Acting Chief Anderson made several attempts to contact Ms. Williams and even sent someone to her house, but was unable to make contact with her. Ms. Williams did not return to work in the days following, leaving Acting Chief Anderson no alternative but to terminate her by (certified) letter, dated February 6, 2009.³⁶

b. Remarks at Police Graduation Ceremony

On January 30, 2009, during the 86th Police Academy graduation ceremony CEO Ellis was scheduled to make remarks after an Introduction by the Appellant.²⁷ During his remarks, CEO Ellis stated that he had an open door policy and was willing to speak to anyone. He further stated that all proposed promotions, demotions, reassignments, transfers, and disciplinary actions affecting them must be approved by the CEO and presented to the affected employee prior to taking the proposed action.²⁸ Immediately after CEO Ellis concluded his remarks, the Appellant, although he was not scheduled to speak according to the program, returned to the podium and stated:

“...we will work with the CEO and his order and commands, but make no mistake we still have a chain of command...”

The Appellant testified that he made those remarks to protect the safety of CEO Ellis. Specifically, the Appellant stated that he believed his officers would feel like they would not have to go to their assigned duties based on the CEO statements. As an example, he told his officers, if you are called to an automobile accident, work the accident then go to the CEO, because the Appellant did not want any officer to fail to respond to a police call under the guise that the officer was on his way to talk to CEO Ellis. Major Craddock, who was present at the graduation ceremony and heard the statements and remarks, interpreted the Appellant's statement as a challenge to CEO Ellis. Upon reviewing the relevant portion of the recording of the CEO's remarks and the Appellant's follow up remarks, I am not convinced by the Appellant's explanation. In response to my question of whether the Appellant thought that the CEO's remarks

²⁶ Department's Exhibit 6.

²⁷ Appellant's Exhibits 37 and 38.

²⁸ Appellant's Exhibit 39 and 40. Following the graduation ceremony, CEO Ellis issued an Executive Order, effective January 30, 2009, to encourage and facilitate public safety personnel to share their opinions and concerns with CEO Ellis and the Board of Commissioners. The testimony of Major Craddock revealed that three Captains in the Police Department had been transferred after they had "spoken out".

was an attempt to circumvent the chain of command, the Appellant testified that he envisioned himself as an advisor to the CEO.

c. Police Equipment to Civilian Employee

The evidence revealed that Keisha Williams, the Appellant's Chief of Staff, was issued a police car equipped with lights and siren, a uniform similar to a police uniform, and a badge. The car issued to Keisha Williams was a "fully loaded" Crown Victoria equipped with 911 blue lights, a siren, strobe lights and a police radio.²⁹ There were no identifiable markings on the outside of the vehicle, but it was equipped with the blue lights behind the grill, and a police radio. Ms. Williams was not authorized to use the police lights or the police radio and there was no evidence that she actually used any of the equipment in or on the car. After a news story focusing on Ms. Williams driving a "police car" Officer Green expressed to Assistant Chief Anderson that Keisha Williams should be in a car without police equipment and that there were civilian cars available that did not have police lights and radios. That notwithstanding, the Appellant issued Ms. Williams an updated model.³⁰

The portions of the Employee Manual introduced into evidence do not appear to prohibit non-sworn county employees from being issued temporary or permanent vehicles.³¹ Section 3-6.8 (f) states, in part:

Any employee who has been issued a County owned or leased vehicle and the vehicle is not issued to a sworn police officer or the vehicle is not fully marked as a fire or EMS emergency vehicle, will be required to complete the appropriate form regarding the use of a County vehicle for residence-to-work transportation.

This portion of the Employee Manual makes no distinction as to the "type of vehicle" (i.e. equipped or non-equipped) but only refers to the "status" of the vehicle (i.e. temporary or permanent). There was also undisputed testimony that other civilians in the previous administration were issued the same type of vehicle with the same type of equipment.

The (dress) uniform issued to Keisha Williams³² was very similar in its look to dress uniforms worn by the Appellant, Assistant Chief Anderson and Captain Tonya Dietrich.³³ It included four gold bars on the sleeves above the wrist and patches on the

²⁹ The cost to outfit the Crown Vic with the police equipment was \$805.21.

³⁰ Department's Exhibit 33, p.9.

³¹ Department's Exhibit 33.

³² Department's Exhibit 29.

³³ Department's Exhibit 17.

sleeve at the shoulder which read "DeKalb Co. Georgia, Service, Justice." While it is apparent that the uniform did not specifically identify Ms. Williams as a "sworn" police officer, the uniform did not distinguish her from "sworn" police officers. To the untrained eye, there appears to be no difference between her uniform and any other police officer's uniform.

Likewise, the badge issued to Keisha Williams was very similar in its look to badges worn by the Appellant, Assistant Chief Anderson and Captain Tonya Dietrich.³⁴ However, it read "Assistant Director, State of Georgia, DeKalb County, GA. And, the testimony revealed that other non-civilians (i.e. chaplains) had been issued complimentary badges. While, the badge issued to Ms. Williams did not specifically identify her as a "sworn" police officer, it did not distinguish her from other police badges. To the untrained eye, there appears to be no difference between her badge and the other badges worn by the "sworn" officers.³⁵

There was no evidence presented to show that the Police Chief did not have the authority to issue a car, uniform, and/or badge to his Chief of Staff, but it should go without saying that certain police equipment, particularly a uniform and badge, affords the wearer a symbol of authority and conveys the message to the general public that the wearer is a law enforcement officer.

d. Failing to obtain clarification of Compensatory Time Policy

The January 12, 2007, confirmation of employment letter addressed to the Appellant states that he was granted 10 paid holidays, 15 vacation days, and 13 sick days per year.³⁶ The letter, however, is silent as to compensatory time. The County's Working and Overtime Compensation Policy provides that any employee who works more than forty hours in a week will be entitled to overtime pay or compensatory time at 1.5 standard hours. The portion of the Employee Manual entered into evidence, states:

(Currently, the department's policy is to pay overtime compensation rather than grant compensatory time off.)³⁷

Former CEO Vernon Jones testified that when he hired the Appellant he knew that the Appellant had a family in Dallas, Texas, that he had children in school, and that he did not want to take his children out of school. As such, Mr. Jones had no problem with the Appellant going back and forth spending time with his family. Mr. Jones testified that because he could not offer the Appellant his requested salary he offered flexible compensatory time. Under the Jones administration the Appellant was permitted to take

³⁴ Department's Exhibit 17.

³⁵ Department's Exhibit 17.

³⁶ Department's Exhibit 30.

³⁷ Department's Exhibit 32.

compensatory time for every hour over 40 hours per week. However, that portion of the compensation package was not reduced to writing. That notwithstanding, the Appellant appeared to operate under the understanding that he was permitted to take compensatory time when needed. The procedure under the Jones Administration was such that the Appellant would request permission from Ann Kimbrough, Richard Stogner, or CEO Jones of when he wanted to take compensatory time. Former CEO Jones testified that after some time he no longer required the Appellant to request permission, but to simply notify him or Ms. Kimbrough or Mr. Stogner of the time that he would be taking. Under the Jones administration the Appellant took a significant number of compensatory time days between January 2007, and December 2008, which was the basis of a news segment aired on Fox 5 News.³⁸

On or about January 5, 2009, DeKalb County installed W. Burrell Ellis, Jr. as the new Chief Executive Officer of DeKalb County which marked the beginning of the Ellis administration. COO Barker testified that sometime thereafter, but prior to January 16, 2009, he met with the Appellant to discuss, among other things, the Appellant's use of compensatory time. Because of issues raised in a newscast about the Appellant's use of compensatory time, COO Barker informed the Appellant of CEO Ellis's position that department heads who are highly compensated should be judicious in their use of compensatory time. COO Barker testified that in that meeting he advised the Appellant that he would not have the flexibility and freedom under CEO Ellis's administration as he enjoyed under the previous administration. As such, until the new administration came up with a guideline COO Barker instructed the Appellant that compensatory time must be requested and approved before it can be taken, given his status as a merit system employee, exempt from overtime compensation pursuant to DeKalb County Code, Chapter 20, Article VIII, Sec. 20-161(c).³⁹

Mr. Barker testified that he informed the Appellant that must get approval from either COO Barker or CEO Ellis, pursuant to Code, Chapter 20, Article VIII, Sec. 20-165(e) before he could take compensatory time.⁴⁰ Thereafter, on January 16, 2009, the Appellant sent an email to CEO Ellis advising him that he would be taking 12 hours of compensatory time and would return to his duty on January 21, 2009.⁴¹

The Appellant testified that the pre-January 16th meeting "never happened," and unfortunately there is no documentation of the meeting either before or after. However, there is some correspondence from the Appellant which suggests that there was some conversation between him and COO Barker. On December 23, 2008, the Appellant sent

³⁸ Department's Exhibit 28; Only the relevant portion of the news story was aired as evidence during the appeal hearing.

³⁹ Department's Exhibit 27, p. 1489.

⁴⁰ Department's Exhibit 27, p. 1490.

⁴¹ Department's Exhibit 23.

a memo directly to CEO Ellis responding to a Transition Report.⁴² On January 7, 2009, the Appellant sent an email directly to CEO Ellis congratulating him on his election and requesting a meeting.⁴³ The email was responded to by Nina Hall on behalf of CEO Ellis that the email was received and forwarded.⁴⁴ On January 16th, however, the Appellant through his assistant sent an email, not to the CEO, but rather to COO Barker. In it the Appellant states that he had been trying to reach Mr. Barker earlier in the day, apparently to inform Mr. Barker that he would be out of the office. This strongly suggests that there was some discussion between the two before January 16th. The content and tone of the email suggests that there had to have been some prior conversation between the two, ostensibly about the compensatory time policy and the procedures for requesting it. The issue then is that the Appellant "informed" Mr. Barker that he was taking compensatory time, but did not "request" the time. Despite being informed that his compensatory time would be treated differently under this new administration, the Appellant continued to conduct himself the way he did under the previous administration.

The testimony and evidence leaves one to wonder if the Appellant, who described himself as the CEO of his department, would have tolerated any of his assistant chiefs and/or deputy chiefs under his administration engaging in the same or similar behavior.

CONCLUSION:

The undersigned is authorized to reverse an action upon a finding that the action was based upon an "error in fact" or that the action was motivated by a non-job related factor. However, no evidence was presented at the hearing to substantiate an "error in fact" or that the action of the Department was motivated by any non-job related factor that would authorize a reversal of the action of the Department.

The evidence reveals that the Appellant was insubordinate when he attempted to interfere with CEO Ellis's directive to terminate Keisha Williams. Additionally, the Appellant was insubordinate when he attempted to conduct county business while on leave and failed to meet with CEO Ellis immediately upon his return from leave. Further, the Appellant engaged in improper use of county equipment when he purposefully kept his county issued vehicles out of his cost center in county records. Finally, the Appellant engaged in conduct unbecoming a Chief of Police by ordering Assistant Chief Anderson not follow a directive of CEO Ellis; by encouraging Assistant Chief Anderson and Keisha Williams to call in sick to avoid following the directive of the CEO Ellis; by encouraging Deputy Chief Frank to assist Assistant Chief Anderson in not following the directive of the CEO Ellis; by making remarks in conflict with

⁴² Appellant's Exhibit 70.

⁴³ Appellant's Exhibit 27.

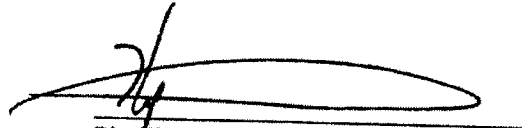
⁴⁴ Appellant's Exhibit 27.

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CEO Ellis in an open forum; and by failing to follow the directives from the office of CEO Ellis regarding the compensatory time policy.

Accordingly, the Appellant's termination is **Affirmed** and upheld, for the reasons hereinabove set forth.

This 17th day of August, 2009.

A handwritten signature in black ink, appearing to read 'Phyllis R. Williams', is written over a horizontal line. The signature is stylized and somewhat cursive.

Phyllis R. Williams
Hearing Officer