

August 17, 2010
Statesboro, GA

Special Called Meeting

The Board of Commissioners met at 1:00 p.m. in the Community Room of the North Main Annex. Chairman Nevil welcomed guests and called the meeting to order.

Ms. Maggie Fitzgerald, Clerk of the Board, performed the roll call of the commissioners and staff. The following commissioners were present: Chairman Nevil, Vice Chairman Rushing, Commissioner Ethridge, Commissioner Simmons, Commissioner Mosley, Commissioner Thompson, and Commissioner Gibson. The following staff were present: County Manager Thomas Couch, Staff Attorney Jeff Akins, County Attorney Charles Brown, and Human Resource Director Heather McNeal.

After Roll Call, Chairman Nevil stated that the purpose of the special called meeting of the Board of Commissioners was to conduct a hearing concerning Mr. Edwin Smith's appeal of an adverse employment action. Chairman Nevil stated that the hearing would be conducted in accordance with the following procedures. Both the employer, represented by County Attorney Charles Brown, and Mr. Smith would be allowed an opportunity to make a brief opening statement in that order. Opening statements would be waived if the parties so choose. Following the opening statements, or the waiver of same, Mr. Brown would be allowed to present evidence for the employer. All testimony will be under oath. Mr. Smith would be permitted to cross examine any witnesses called by the employer. At the conclusion of the employer's evidence, Mr. Smith would be allowed to present evidence on his behalf, all testimony would again be under oath, and Mr. Brown would be permitted to cross examine any witnesses called by Mr. Smith. At the conclusion of the evidence, both parties would be allowed the opportunity to make a closing argument in the same order as the presentation of evidence, and that at the conclusion of the closing arguments, the Board may move to enter executive session for the purposes of discussion and deliberation on this matter. Chairman Nevil stated that if the Board chose to enter into an executive session, as a matter of convenience to the parties, the Board would relocate to the conference room down the hall for the executive session, and that the Board would then return to the Community room to vote and render its decision in this matter. Chairman Nevil stated that Staff Attorney Jeff Akins would

serve as parliamentarian for the hearing, and as parliamentarian, Mr. Akins would rule on any evidentiary or other objections, and would rule on any other points of order or procedure. However, Chairman Nevil stated that the parties were advised that, in accordance with the County's Personnel Policy Manual and Employee Handbook, technical rules of evidence would not apply during the hearing, and therefore, Mr. Akins would grant both parties some leeway when it comes to technical points of evidence. Chairman Nevil called on Parliamentarian Jeff Akins, and Mr. Akins administered the oath to Mr. Couch and Mr. Smith as the only two witnesses.

Chairman Nevil asked Mr. Brown if he wished to make an opening statement, and Mr. Brown began by discussing the process taken by the County Manager to terminate Mr. Smith. Mr. Brown stated that essence of the position of the employer was to enforce the Drug Free Work Place Policy and the Personnel Conduct Policy, which were both violated by Mr. Smith as the Transportation Director with a CDL License, Peace Officer Standards and Training (POST) Certification, and as a Safety Sensitive Employee who supervises inmates, when he tested positive for Marijuana/THC during a random drug test. Mr. Brown discussed the Georgia Law as referenced in the Personnel Policy, §16-13-2, and explained the meaning of THC in a drug test. Mr. Brown discussed how the Employee Handbook and Manual references Progressive Action and how there is a need for consistent punishment for employees where there has been a breach of policy, especially considering the termination of another employee in the Roads Department that tested positive for marijuana. In conclusion of his opening statement, Mr. Brown stated that at the conclusion of the evidence, he would ask on the behalf of the employer that the Board would sustain the position of termination as decided by Mr. Couch.

Chairman Nevil called on Mr. Smith for his opening statement, and Mr. Smith stated that he has not supervised inmates in several years and that the policy states that he was not to be held at any higher level of accountability than anyone else. Mr. Smith stated that he was not charged for any crime, and that he was honest regarding the positive results of the drug test. In conclusion of his opening statement, Mr. Smith stated that he terminated a Road Department employee when the employee tested positive for marijuana during the pre-employment drug screen, and that employee had only worked for the County for a very short time.

Mr. Brown submitted exhibits marked 1 through 14 without objection. For purposes of the official minutes of the Bulloch County Board of Commissioners, these exhibits have also been assigned exhibit numbers in the following format: Exhibit 2010 - _____. The exhibits submitted by Mr. Brown are as follows:

Exhibit 1 (Exhibit 2010 - 128): Copies of pages from the Bulloch County
Employee Handbook

Exhibit 2 (Exhibit 2010 - 129): Copy of Employee Handbook
Acknowledgement

Exhibit 3 (Exhibit 2010 – 130): Copies of pages from the Bulloch County
Personnel Policy Manual

Exhibit 4 (Exhibit 2010 – 131): Copies of pages from the Georgia Peace
Officer Standards and Training
Council Profile Report, Mr. Smith's
Certificate, and Rules; Copies of
Pages from the Bulloch County
Correctional Institute General Post
Orders and a signature/
Acknowledgement Sheet; and copies
Of pages from the Georgia
Department of Corrections Standard
Operating Procedures

Exhibit 5 (Exhibit 2010 – 132): Copy of the Position Description for
Chief Administrative Officer for the
Transportation Division

Exhibit 6 (Exhibit 2010 – 133): Copy of Patient Authorization Release for
Drug and/or Alcohol Testing

Exhibit 7 (Exhibit 2010 – 134): Copy of Stipulation and Toxicology
Requisition

Exhibit 8 (Exhibit 2010 – 135): Copy of Stipulation and Original
Laboratory Report

Exhibit 8 A (Exhibit 2010 – 136): Copy of Stipulation and Confirmation

Laboratory Report

Exhibit 9 (Exhibit 2010 – 137): Copies of pages from Progressive
Corrective Action Reports

Exhibit 10 (Exhibit 2010 – 138): Copy of Notice of Pre-Termination
Hearing Letter

Exhibit 11 (Exhibit 2010 – 139): Copy of Notice of Termination Letter

Exhibit 12 (Exhibit 2010 – 140): Copy of Employee Performance
Evaluation from 2008

Exhibit 13 (Exhibit 2010 – 141): Copies of Pre-Employment Toxicology
Requisition and Laboratory Report

Exhibit 14 (Exhibit 2010 – 142): Copy of Payroll Status Change Form

These exhibits will hereafter be referred to as designated by Mr. Brown (Exhibit 1, Exhibit 2, etc.).

Mr. Brown called Mr. Couch as his only witness. Mr. Brown presented Exhibit 1 to the Board, and Mr. Couch stated that as a department director, Mr. Smith would have possessed the Employee Handbook and Personnel Policy Manual. Mr. Brown presented Exhibit 2 to the Board, and stated that the Drug Free Workplace Policy as stated in the Employee Handbook was adopted and has been in place since April 2006. Referring to page 10 of Exhibit 1, Mr. Couch discussed the relevance of the Employee Handbook and Policy Manual to Mr. Smith being a Safety Sensitive Employee who was subjected to random drug testing, discussed the violations and conduct prohibited that was stated in the Drug Free Workplace policy, and stated that it is a violation to use illegal drugs while off duty. Referring to page 11 of Exhibit 1, in regards to disciplinary action for violations of the policy, Mr. Couch stated that the Handbook infers that the employee shall be subject to appropriate disciplinary action up to and including termination of employment. Mr. Couch discussed the definition of safety sensitive employee as found on page 11 of Exhibit 1, why Mr. Smith's position was classified as safety sensitive, and the work he oversaw as Transportation Director, his administrative duties, and his supervisory roles of other POST Certified Officers. Mr. Couch discussed the meaning of POST Certification and referring to page 17 of Exhibit 1, Mr. Couch discussed the essence of what the Personal Conduct Policy requires and how he thought it was applicable to Mr. Smith's

case, how many people Mr. Smith supervised, and how the Progressive Corrective Action Policy, on page 19 of Exhibit 1, was applicable in Mr. Smith's case.

Mr. Brown presented Exhibit 3 to the Board and referred to page 21, and Mr. Couch discussed the purpose and definition of the Drug Free Workplace Policy as stated in the Bulloch County Personnel Policy Manual and also read aloud a list of safety sensitive employees as listed in the Manual as Exhibit B. Mr. Couch stated that Exhibit B in the Policy Manual had not been updated in several years, but that Mr. Smith's position on the list would be represented as Road Superintendent. Referring to page 22 of Exhibit 3, Mr. Couch discussed the random and periodic testing of Safety Sensitive employees. Referring to pages 23 and 29 of Exhibit 3, Mr. Couch discussed how the Manual expands on the Handbook's information regarding confirmed positive tests and Personal Conduct, and Mr. Smith's admission to the positive drug test.

Mr. Brown presented Exhibit 4 to the Board, and Mr. Couch stated that Exhibit 4 represents Mr. Smith's POST Officer Profile Report, and Certification from 1987, the rules regarding the Georgia Peace Officer Standards and Training Council, and the Georgia Department of Corrections Standard Operating Procedures. Referring to page 9 of Exhibit 4, Mr. Couch read aloud the definition of Unprofessional Conduct as listed in the POST rules. Mr. Couch read aloud paragraph 5 on page 10 of Exhibit 4, in regards to the General Post Orders of the Bulloch County Correctional Institute and stated that page 11 showed that Mr. Smith signed the Post Order Signature/Acknowledge Sheet as an Outside Detail Officer. On page 12, of Exhibit 4, Mr. Couch read aloud section IA under Policy of the Georgia Department of Corrections Standard Operating Procedures, and page 14 regarding Applicability of the Policy. Mr. Couch read aloud section 1c of the Fitness for Duty on page 16, discussed how the present charges were described on page 22 under Employee Conduct, and that the directive on page 24 stated that employees shall not use illegal drugs at anytime.

Mr. Brown presented Exhibit 5 to the Board, and Mr. Couch discussed Mr. Smith's Job Description as the Chief Administrative Officer of the Transportation Division. Mr. Brown presented Exhibit 6 to the Board, and stated that the Patient Authorization Release for Drug and/or Alcohol Testing was signed by Mr. Smith on July 19, 2010. Mr. Brown presented Exhibit 7, Exhibit 8, and Exhibit 8A to the Board, and

stated that the Stipulation attached to the Requisition and Laboratory Reports are admissible in evidence and the correctness of the positive test results for THC Metabolites were agreed to by Mr. Smith and that Exhibit 8A was the confirmation test results. Mr. Brown presented Exhibit 9 to the Board, and Mr. Couch discussed the Progressive Corrective Action Notice issued to Mr. Smith on July 21, 2010. Mr. Brown presented the following timeline for the Board: (1) Mr. Smith submitted to a random drug test on July 19th; (2) the positive result was received on July 21st; and (3) the positive confirmation for the drug test was received on July 28th. Mr. Brown presented Exhibit 10 to the Board, and Mr. Couch discussed the Notice of Pre-Termination Hearing for Mr. Smith. Mr. Brown presented Exhibit 11 to the Board, and Mr. Couch discussed the Notice of Termination letter that was mailed to Mr. Smith on August 3, 2010. Mr. Couch stated that he met with Mr. Smith on August 2nd for the Pre-Termination Hearing and then summarized the reasons he terminated Mr. Smith. Mr. Brown presented Exhibit 12 to the Board, and Mr. Couch discussed Mr. Smith's 2008 Employee Performance Evaluation. Mr. Couch stated that Mr. Smith's work performance was very good, but that the seriousness of the violation outweighed Mr. Smith's prior evaluation and work performance.

Mr. Couch read aloud the last paragraph on page 32 of Exhibit 3 regarding the guidelines for Progressive Corrective Action and stated that supervisors are expected to treat similarly-situated individuals in a similar manner. Mr. Brown presented Exhibit 13 to the Board, and Mr. Couch stated that Exhibit 13 represents a Toxicology Requisition for a redacted employee who tested positive for THC Metabolites on April 8, 2010. Mr. Brown presented Exhibit 14 to the Board, and Mr. Couch stated that the document was in regards to the individual who was terminated by Mr. Smith for failure to pass his pre-employment drug test. Mr. Brown stated that Exhibit 14 completed the County's evidence.

Mr. Smith was allowed the opportunity to cross examine Mr. Couch. Mr. Couch discussed which departments use inmate labor and if other department directors are POST Certified. Mr. Smith presented Mr. Brown's Exhibit 1 to the Board, and referring to page 11 of the Employee Handbook, Mr. Couch stated that if the County does not uphold the CDL testing then it should be done in the future. Mr. Smith stated that the

County does not participate in the CDL testing even though it is discussed in the Handbook under the Drug Free Workplace section. Referring to his position as a Safety Sensitive Employee in Mr. Brown's Exhibit 3, Mr. Couch stated that Transportation Division Director was not listed in Exhibit B of the Personnel Policy Manual. Mr. Smith stated that the Manual had not been updated in four years, and that his job was not on the Safety Sensitive list. Referring to Mr. Brown's Exhibit 1, Mr. Smith discussed the use of the words "may be" in regards to corrective action on pages 17 and 19.

Referring to Mr. Brown's exhibit 4, page 9, Mr. Couch stated that he was not aware of any employees who had refused to take a drug or alcohol test or any POST Certified employees caught driving under the influence. Mr. Smith stated that those situations had occurred in the past twenty four years of his employment. Mr. Smith asked Mr. Couch if the Transportation Division Director works for the Warden, and Mr. Couch stated that he does not work for the Warden. Mr. Couch stated that Mr. Smith did not work in the prison. Mr. Couch stated that Mr. Smith is the only departmental director who uses inmate labor that is required to be POST certified, because of the amount of inmate labor used and the coordination of the inmate labor. Mr. Smith stated that his POST Certification was acquired when he was a Correctional Officer, and that the Certification was not necessary for his position as Transportation Director. With no more questions from Mr. Smith and no re-direct from Mr. Brown, Chairman Nevil called for a five minute recess.

Mr. Smith submitted exhibits marked A through D without objection. For purposes of the official minutes of the Bulloch County Board of Commissioners, these exhibits have also been assigned exhibit numbers in the following format: Exhibit 2010 - _____. The exhibits submitted by Mr. Smith are as follows:

Exhibit A (Exhibit 2010 - 143): Copies of pages from the Bulloch County
Personnel Policy Manual

Exhibit B (Exhibit 2010 - 144): Copy of 2004 Employee Performance
Evaluation

Exhibit C (Exhibit 2010 - 145): Copy of 2007 Employee Performance
Evaluation

Exhibit D (Exhibit 2010 - 146): Copy of 2008 Employee Performance

Evaluation

These exhibits will hereafter be referred to as designated by Mr. Smith (Exhibit A, Exhibit B, etc.).

Mr. Smith stated that he has worked for the County since 1986 and he worked his way up from an Equipment Operator to Transportation Director. Mr. Smith stated that he never denied the test results and that he is an honest person. Mr. Smith presented Exhibit A to the Board, and read aloud the Scope on page 21 in regards to the issue that Mr. Smith felt that he should not be held to a higher standard than other employees. Mr. Smith read aloud the Confirmed Positive Test section of Exhibit A on page 23 and emphasized that policy stated that he or she may be involuntarily separated from employment. Mr. Smith also read aloud that the decision will be based upon the employee's length of service, his or her job performance, and the circumstances leading up to the test. Mr. Smith stated that he has worked for the County for 24 years and has only been written up one time during those 24 years of services. Mr. Smith discussed his sick leave and annual leave accumulations, and stated that those numbers prove he did not have a drug problem. Mr. Smith discussed his relationship with the citizens and how people call him personally regarding road issues. Mr. Smith stated that he had been randomly tested for drugs and alcohol many times in the past twenty four years and had never tested positive until July.

Mr. Smith discussed his performance during emergency situations, and the many times he has left his family to answer the call of duty for work. Mr. Smith stated that his department's budget has been reduced by three to five percent consistently for three years in a row, and that he has saved the County money on many occasions. Mr. Smith presented Exhibit B to the Board, and stated that in 2004, as Road Superintendent, he scored a 3.59 overall rating on the Employee Performance Evaluation. Mr. Smith presented Exhibit C to the Board, and Mr. Smith read aloud the General Instructions, Ratings and Values, and his high ratings and Mr. Couch's comments regarding Job Description: Principle Accountabilities, Employment Development, Leadership, Resource Management, Work Habits, Cost Control, and Mr. Couch's Narrative Comments on his Employee Performance Evaluation for 2007. Mr. Smith stated that he scored a 3.87. Mr. Smith presented Exhibit D to the Board, and stated that he scored a

3.88 on his 2008 Employee Performance Evaluation, and that he was not given an evaluation for 2006 and 2009.

Mr. Smith discussed the circumstances leading up to the test, and stated that the test was random and not a test of suspicion. Mr. Smith discussed the overwhelming stress related to providing care for his elderly father, and stated that the stress of the situation led to him making a mistake by smoking marijuana with friends on a Saturday night. Mr. Smith stated that he made a mistake, but did not have a drug problem. Mr. Smith stated that the provisions in the Policy Manual allow for the County to save or salvage a good employee by offering rehab. Mr. Smith stated that he was willing to attend outpatient drug rehabilitation if he is reinstated. Mr. Smith stated that provisions have been made in the past for other employees. In closing, Mr. Smith apologized to the Board and asked for a second chance, especially considering the provisions that were stated in the Policy Manual.

For his closing argument, Mr. Brown stated that the Board should make their decision regarding Mr. Smith's employment based on facts and the policies and not based on emotion. Mr. Brown stated that Mr. Smith, who held a leadership position, violated a policy that he had considerable knowledge about and that the policy violation was a serious breach of judgment. Mr. Brown stated that he advocated Mr. Smith's termination, and that the Board should uphold the County Manager's decision. Mr. Brown stated that any other decision would considerably undermine the leadership in the County. Mr. Brown discussed the Drug Free Workplace policy and stated that stress was not an excuse. Mr. Brown reaffirmed that Mr. Smith was a Safety Sensitive employee, and stated that Mr. Smith's department does supervise inmates. Mr. Brown discussed Mr. Smith's leadership role and that he was held to higher standard under the Personal Conduct Policy. Mr. Brown discussed Mr. Smith's POST Certification and CDL License in regards to random drug testing. Referring to Progressive Corrective Action, Mr. Brown stated that if Mr. Smith was reinstated, the County would be setting a precedent for other employees. Mr. Brown stated that reversing the County Manager's decision would make Mr. Couch and Mr. Smith less credible to the public and other employees. Mr. Brown stated that according to the County's policy the Board must vote to affirm Mr. Couch's decision.

For his closing argument, Mr. Smith stated if the Board reinstated him, it would show compassion for the employees, especially the dedicated long-term employees. Mr. Smith stated that he was not a bad person, but a person that made a mistake. Mr. Smith stated that he did not drive heavy equipment or large trucks anymore and that he only kept the CDL license because it was hard to obtain. Mr. Smith stated that as a departmental director, it was his job to be in the office most of the time. Mr. Smith referred to the Employee Policy Manual and stated that the employee's length of service, his or her job performance, and the circumstances leading up to the test were three provisions in the policy that should have been taken into consideration. In closing, Mr. Smith asked the Board for compassion.

Chairman Nevil called for a motion to adjourn into Executive Session in accordance with the provisions of O.C.G.A. 50-14-3 and other applicable laws, pursuant to the advice of Parliamentarian Jeff Akins for the purposes of deliberating on the Personnel Matter for Mr. Smith (See Exhibit #2010-147). Without further discussion, Commissioner Ethridge offered a motion to enter into Executive Session to discuss Personnel Matters. Commissioner Simmons seconded the motion, and it carried unanimously. Commissioner Mosley, Commissioner Ethridge, Commissioner Simmons, Commissioner Rushing, Commissioner Thompson, and Commissioner Gibson voted in favor of the motion.

The meeting was reconvened, and Chairman Nevil stated that the floor was open for a motion regarding Mr. Smith's appeal of his termination. Commissioner Thompson offered a motion to affirm the County Manager's decision to terminate Mr. Smith. Commissioner Gibson seconded the motion, and the motion carried with a vote of four to two. With a show of hands, Commissioner Ethridge, Commissioner Rushing, Commissioner Thompson, and Commissioner Gibson voted in favor of the motion. Commissioner Mosley and Commissioner Simmons voted against the motion.

Before adjourning the meeting, Mr. Brown stated that Mr. Bill Smith wanted to introduce the Board to Mr. Dallas Fanning and that Mr. Fanning would like to make a short presentation to the Board. Commissioner Thompson offered a motion to adjourn

the Special Called Meeting. Commissioner Rushing seconded the motion, and it carried unanimously.

With the Special Called Meeting adjourned, Chairman Nevil, Commissioner Mosley, Commissioner Gibson, Commissioner Simmons, Clerk of the Board Maggie Fitzgerald, and County Manager Thomas Couch remained for Mr. Fanning's Presentation. Mr. Fanning discussed his role in the rapid growth of industrial development in Huntsville, Alabama. After Mr. Fanning's presentation, the Board recessed for ten minutes.

J. Garrett Nevil, Chairman

Attest: Maggie Fitzgerald, Clerk of the Board