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3 **WRITTEN DECISION OF THE MONO COUNTY**  
4 **PERSONNEL APPEALS BOARD**  
5 **IN THE MATTER OF THE APPEAL OF FINAL DISCIPLINARY ACTION**  
6 **FILED BY RICHARD ALAN LUMAN**

7 **Panel Members: Timothy Hansen (Chair), Kenneth Goode, and Ralph Obenberger**  
8 **Hearing Dates: April 4, 5, 6, 9, 11, 19, May 16, June 11, 13, 18, and 25, 2012**

9 **I. BACKGROUND**

10 Appellant Richard Alan Luman was an Equipment Mechanic III in the Road Division of  
11 the Mono County Department of Public Works (the "Department") until his termination from  
12 employment with the County on December 13, 2011. The Department's stated reason for  
13 terminating Mr. Luman was that he made a threatening comment to another County  
14 employee and then engaged in a physical fight with that employee during an incident which  
15 occurred at the Bridgeport road shop on October 3, 2011. The discipline was additionally  
16 based on a charge that Mr. Luman had made false and/or misleading statements about the  
17 October 3<sup>rd</sup> incident.

18 The Department served Mr. Luman with a Notice of Proposed Disciplinary Action on  
19 October 28, 2011. On November 15, 2011, the Department served Mr. Luman with a second  
20 Notice of Proposed Disciplinary Action, which corrected an omission and an error on the  
21 previous notice, but was otherwise identical. A pre-termination, or Skelly, hearing was held  
22 on November 28, 2011. The Skelly officer recommended that the Department conduct  
23 additional investigation to determine that the policies and procedures that were in effect on  
24 the day the alleged acts occurred were violated, and the appropriate sanction, if any, to be  
25 imposed. The Department served a Notice of Final Disciplinary Action (the "Final Notice") on  
26 Mr. Luman on December 13, 2011, which responded to evidence presented by Mr. Luman at  
27 the Skelly hearing and stated the Department's conclusion that the policies and procedures  
28 in effect on the day of the incident were also violated. The Final Notice additionally informed  
Mr. Luman that he was terminated, effective immediately, and advised him of his appeal  
rights. Mr. Luman timely appealed.

1 A panel of the Personnel Appeals Board (PAB) for Mono County was appointed,  
2 consisting of Timothy Hansen (Chair) and Kenneth Goode, appointed by Mr. Luman's  
3 collective bargaining unit, and Ralph Obenberger, appointed by the Mono County Board of  
4 Supervisors. The PAB convened to hold an evidentiary hearing on the appeal, which took  
5 place on April 4, 5, 6, 9, 11, 19, May 16, and June 11, 13, 18, and 25, 2012. Also present  
6 throughout the eleven-day hearing were: appellant Mr. Luman; Ms. Katie Maloney Bellomo,  
7 counsel to Mr. Luman; Deputy County Counsel Mr. John Carl Vallejo on behalf of the  
8 Department; Mr. Jim Arkens, Acting Public Works Director (and County Administrative  
9 Officer); and Assistant County Counsel Ms. Stacey Simon, as legal advisor to the PAB. At  
10 Mr. Luman's request, the hearing was open to the public. Accordingly, various members of  
11 the press and public attended portions of the hearing.

12 The hearing involved the testimony of 19 witnesses called by Mr. Luman and 6  
13 witnesses called by the Department. The Department presented Exhibits A through J, all of  
14 which were admitted into evidence by the PAB, with the exception of Exhibit I, which was  
15 redundant with an exhibit presented by Mr. Luman. Mr. Luman presented Exhibits 1 through  
16 36 (excluding Exhibit 24), all of which were admitted into evidence by the PAB, with the  
17 exception of Exhibit 25 (which was withdrawn) and Exhibits 26, 27, 30, and 34 (which were  
18 witness subpoenas).

19 Following deliberations, the PAB announced its decision to uphold the termination by  
20 a 2-1 vote. This written opinion constitutes the final written findings and decision of the PAB  
21 with respect to the appeal of final disciplinary action by Mr. Luman and is the final action of  
22 the County of Mono with respect to such discipline. Not all PAB members have joined in  
23 each section of this written opinion. Where they have not, such is noted at the end of the  
24 opinion.

25 II. RELEVANT FACTS

26 On September 29, 2011, Mr. Luman was invited by a co-worker in his division, Jim  
27 Kerby, to attend a meeting to be held on October 3, 2011, between Mr. Kerby and Jerry  
28 VandeBrake. Mr. VandeBrake is the Fleet Services Supervisor for the Road Division and

1 was at the time of the October 3<sup>rd</sup> meeting Mr. Kerby's and Mr. Luman's supervisor (there is  
2 also a lead mechanic between them, Joel Erickson). Mr. Kerby sought the meeting for the  
3 purpose of reporting an incident which occurred on September 28-29 between him and Brett  
4 McCurry, the Road Operations Supervisor, during which he asserted that Mr. McCurry had  
5 harassed and threatened him.<sup>1</sup> In his oral testimony, Mr. Kerby explained that he invited Mr.  
6 Luman to attend the meeting as a witness and union brother because he intended to take his  
7 complaints about Mr. McCurry "up the chain" if Mr. VandeBrake was unable or unwilling to  
8 address them. Mr. Kerby had previously complained about Mr. McCurry to Mr. VandeBrake.<sup>2</sup>  
9 Prior to the meeting, Mr. Kerby informed Mr. Luman that Mr. McCurry had called him (Mr.  
10 Luman) a "motherf--ker" behind his back.

11 The meeting among Mr. Luman, Mr. Kerby, and Mr. VandeBrake convened in Mr.  
12 Vandebrake's small office at approximately 8:00 a.m. on October 3<sup>rd</sup>, with Mr. Kerby  
13 commencing to explain his complaints about Mr. McCurry. According to Mr. Luman, the  
14 complaints were general at this point, and related to Mr. McCurry telling him how to do his job  
15 and objecting that Mr. McCurry had no supervisory authority over him.<sup>3</sup> On September 28,  
16 he, along with the Facilities Manager Joe Blanchard and Jeff Walters, had been checking on  
17 the status of a Kubota tractor that Mr. Kerby was working on, and which was needed by the  
18 Facilities Division. It is not disputed that Mr. McCurry told Mr. Kerby that he should check the  
19 tractor's hydraulic valves. Beyond that, Mr. Kerby's account of this interchange differs  
20 substantially from Mr. McCurry's account. Mr. Kerby describes Mr. McCurry as being  
21 extremely aggressive, in his personal space, red-faced, over-shooting his authority, and  
22 demanding that he take apart the hydraulic valve.<sup>4</sup> In contrast, Mr. McCurry described

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23  
24 <sup>1</sup> Mr. VandeBrake had been out of the office on vacation the prior week when the incident occurred.

25 <sup>2</sup> Mr. VandeBrake testified that Mr. Kerby's previous complaints related to Mr. McCurry micromanaging him and  
interfering with the way he did his job. He stated that Mr. Kerby never informed him that he felt threatened or  
26 bullied. In contrast, Mr. Kerby testified that he had complained about Mr. McCurry's aggressive demeanor and  
bullying.

27 <sup>3</sup> Mr. McCurry is not Mr. Kerby's supervisor, nor the supervisor of any of the road shop mechanics, but he is a  
supervisor within the Department and would interact with the mechanics when checking on the status of jobs  
related to his duties or at the request of his superiors. Jeff Walters, the Director of Road Operations, and Mr.  
28 McCurry's boss, testified that Mr. McCurry had the authority to check on mechanics' work.

<sup>4</sup> This language comes in part from the transcript of an interview Mr. Kerby participated in on October 11, 2011,  
with an investigator hired by the County. Mr. Kerby, and Mr. Luman, dispute the accuracy of that transcript in

1 having made a suggestion that Mr. Kerby look at the hydraulic valve, since a similar problem  
2 had been caused by hydraulics recently. Mr. Walters's testimony about the interchange was  
3 largely consistent with Mr. McCurry's account. Mr. Luman, who was also present, testified  
4 that Mr. McCurry had been telling Mr. Kerby what to do. He did not hear any profanity or  
5 yelling. His response at the time was to say "everyone's a mechanic" and then to leave.

6 On September 29, Mr. McCurry returned to the shop without Mr. Blanchard and Mr.  
7 Walters. Again the evidence of what transpired differs greatly between Mr. Kerby's account  
8 and Mr. McCurry's account. Mr. McCurry states that he said hello to Mr. Kerby, who  
9 responded with a dirty look and blank stare. He approached Mr. Kerby and asked him what  
10 was wrong. According to Mr. McCurry, Mr. Kerby responded in a hostile manner, telling him  
11 he didn't have the right to tell him what to do, that he had made him look bad in front of Mr.  
12 Walters and Mr. Blanchard the prior day, and that he was threatening him. Mr. McCurry  
13 stated that he replied by calling Mr. Kerby a liar, to which Mr. Kerby told him to get the f-ck  
14 out of his shop. Mr. McCurry testified that he moved away from Mr. Kerby to let things cool  
15 down, but did not immediately leave the shop, as he believed he had a right to be there.

16 According to Mr. Kerby, Mr. McCurry showed up on September 29<sup>th</sup> to tell him how to  
17 do his job again. He testified that he then stopped talking to Mr. McCurry in response to his  
18 over-shooting his authority and telling him what to do. Mr. Kerby testified that Mr. McCurry  
19 responded by becoming aggressive and foul-mouthed, yelling "what the f-ck is wrong with  
20 you? Do you have f-cking chip on your shoulder?" To which Mr. Kerby told him to get away  
21 from him. According to Mr. Kerby, Mr. McCurry then came even closer, standing within his  
22 personal space, lit a cigarette, and said he was going to stay right there. Mr. Kerby testified  
23 that he thought Mr. McCurry might attack him. After finishing his cigarette, Mr. McCurry  
24 ultimately left. The only other witness to the incident was Mike Rhodes, whose office is  
25 upstairs in the shop. Mr. Rhodes testified that he heard Mr. McCurry yelling at Mr. Kerby and  
26 that he was hoping that Mr. Kerby wouldn't hit Mr. McCurry, because that is what he would  
27 have felt like doing had he been yelled at in a similar manner. He did not see the incident.

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28 several locations and accuse the investigator of manipulation and bias in the conduct of the interview, based on  
his also being a workers' compensation investigator for Mono County.

1           Shortly after Mr. Kerby began voicing his complaints about Mr. McCurry to Mr.  
2 VandeBrake on the morning of October 3<sup>rd</sup>, Mr. McCurry arrived outside Mr. VandeBrake's  
3 office door. There is conflicting evidence and testimony as to who invited Mr. McCurry into  
4 the office, both Mr. VandeBrake and Mr. Kerby acknowledged doing so, although Mr. Kerby  
5 testified later that he did not do so or did not recall doing so. The conversation in the small  
6 office quickly became heated, as Mr. Kerby continued to describe his complaints against Mr.  
7 McCurry, including Mr. McCurry's directing of his work. Evidence indicated that Mr. Kerby  
8 then began to get more specific, accusing Mr. McCurry of harassing him, directing profanities  
9 at him, and yelling. Mr. McCurry responded by loudly calling Mr. Kerby a "bold-faced liar,"  
10 and using epithets recalled as including either "b-l-lshit" or "f-cking," by different witnesses.

11           Again the evidence diverges at this point, as Mr. Kerby alleges that Mr. McCurry  
12 approached him and began bumping his chest against him, knocking him into the bookshelf  
13 against the wall for approximately 30 seconds, while continuing to yell at him. No one else in  
14 the room was able to corroborate physical touching between Mr. McCurry and Mr. Kerby. Mr.  
15 Luman reported that Mr. McCurry was in Mr. Kerby's face, agitated, and yelling loudly but he  
16 could not confirm that there was any physical touching because Mr. McCurry's body was  
17 blocking most of his view. He did recall seeing Mr. Kerby sticking his head around Mr.  
18 McCurry, telling Mr. VandeBrake that this kind of behavior by Mr. McCurry is what he's been  
19 complaining about and asking Mr. VandeBrake to cause it to stop. He testified that he was  
20 shocked that Mr. VandeBrake did nothing.

21           Mr. VandeBrake testified that Mr. McCurry and Mr. Kerby were separated by a file  
22 cabinet, with Mr. McCurry leaning over the cabinet during the exchange, but never  
23 approaching or touching Mr. Kerby. Mr. McCurry testified that there was no physical contact  
24 and that he remained in or near the doorway, separated from Mr. Kerby by the file cabinet.  
25 At the culmination of this extremely heated interchange, Mr. Luman entered the  
26 conversation, asking Mr. McCurry whether he hadn't called him (Mr. Luman) a motherf--ker  
27 behind his back. Mr. McCurry denied making any such statement and asked where Mr.  
28 Luman had heard it. Mr. Luman indicated that he heard it from Mr. Kerby. Mr. McCurry then

1 denied having ever called Mr. Luman a motherf—ker, to which Mr. Luman responded by  
2 making a statement along the lines of the following:

3 According to Mr. Luman: “If you had enough balls to say that to my face, you’d  
4 probably be falling down your stairs again.”

5 According to Mr. VandeBrake: “If you ever say anything to, if you ever say anything  
6 like that to me, to my face, you might fall down another flight of stairs.”

7 According to Mr. McCurry: “If you ever say anything to, if you ever say anything like  
8 that to me, to my face, you might fall down another flight of stairs.”<sup>5</sup>

9 This statement, which differs slightly depending on the reporter, was interpreted quite  
10 differently by the individuals in the room, all of whom were aware that Mr. McCurry had  
11 recently fallen down a flight of stairs, sustaining significant injuries. Mr. McCurry and Mr.  
12 VandeBrake took the statement as a threat to Mr. McCurry and they testified that they  
13 expressed that belief to Mr. Luman at the time. Mr. Luman, Mr. Rhodes, and Mr. Kerby also  
14 recalled Mr. VandeBrake indicating to Mr. Luman that he perceived the statement as a  
15 threat.

16 Mr. Luman, however, testified that the statement was a joke, wisecrack, or rude  
17 remark in reference to widespread rumors throughout the Road Division that Mr. McCurry  
18 had been drunk when he fell down the stairs. He testified that he directed the comment to  
19 Mr. VandeBrake, rather than to Mr. McCurry and that its meaning was that Mr. McCurry  
20 would have to be drunk to have the courage to make such a statement to his face, so drunk,  
21 in fact, that he’d find himself falling down a flight of stairs again. Mr. Luman indicated that he  
22 denied the statement was a threat at the time. Mr. Rhodes testified to hearing him deny it  
23 was a threat, but neither Mr. VandeBrake nor Mr. McCurry stated that they heard the denial.  
24 Mr. Kerby testified that he interpreted the comment in the same way as Mr. Luman –  
25 specifically, as a joking (or wisecrack) reference to Mr. McCurry’s alleged drinking accident.  
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28 <sup>5</sup> These statements were taken verbatim from the transcripts of interviews conducted on October 11, 2011. Slightly different renditions of the statement were given in oral testimony by each witness, but did not differ in any material regard from those reprinted here.

1 Other witnesses indicated being aware of the rumor that Mr. McCurry had been drunk when  
2 he fell down the stairs.

3 Mr. Luman, Mr. VandeBrake, and Mr. Kerby testified that Mr. Luman then stated that  
4 he had had enough and was leaving. Mr. McCurry testified that he did not hear this  
5 statement. Here the evidence is again contradictory. What is not in dispute is that Mr.  
6 Luman took several steps towards the doorway (bringing himself into very close physical  
7 proximity to Mr. McCurry), the men made physical contact, became locked together, and  
8 traveled together out of the doorway, across the hall, and into a tool bin on the far side of the  
9 hallway.

10 Mr. McCurry asserts that Mr. Luman approached him rapidly as he stood at the  
11 doorway, grabbed him by the shirt, and pushed him across the hall into the tool bin, banging  
12 him into the bin. Mr. VandeBrake's oral testimony was largely consistent with Mr. McCurry's  
13 account, although he stated that he was unable to identify who had touched whom first in the  
14 doorway because Mr. Luman's back blocked his view. He also testified that he interpreted  
15 Mr. Luman's actions in stepping towards Mr. McCurry as a threatening motion.<sup>6</sup>

16 On the other hand, Mr. Luman testified that he was trying to shimmy sideways past  
17 Mr. McCurry to leave the office (consistent with workplace violence training he had received  
18 which instructed to leave a potentially violent situation), when Mr. McCurry grabbed him,  
19 slammed him into the door frame, and attempted to knee him in the groin. Mr. Luman  
20 testified that he attempted to push Mr. McCurry away from him, but because Mr. McCurry  
21 was holding onto him, the two men did not separate. He stated that Mr. McCurry pulled him  
22 up, swung him around and pushed him (Luman traveling backwards) across the hall and into  
23 the tool bin, pinning him against it with his forearm.<sup>7</sup> Mr. Kerby's testimony was largely  
24 consistent with Mr. Luman's oral testimony. He also indicated that he had moved in-between  
25 Mr. VandeBrake and Mr. McCurry and Mr. Luman, thereby blocking Mr. VandeBrake's view

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26 <sup>6</sup> Mr. VandeBrake also explained that statements he had given to a Sheriff's deputy on the day of the incident  
27 were mischaracterized by the deputy as indicating his belief that Mr. McCurry had been the aggressor. He denied  
having told the deputy that.

28 <sup>7</sup> Mr. Luman explained that statements he had given to the County's investigator on October 11, which indicated  
that Mr. McCurry had hit the tool bin, referred to both himself and Mr. McCurry hitting the tool bin together "as  
one," with Mr. Luman's back being the one to actually hit the bin.

1 of the incident. Mike Rhodes, another Road Division employee and the only other witness to  
2 any part of the incident, recounted hearing a large bang while sitting at his office desk,  
3 looking up, and seeing Mr. Luman with his back against the tool bin, and Mr. McCurry's arm  
4 across Mr. Luman's chest, pinning him there.

5 The altercation then entered into a second phase, with evidence not significantly in  
6 dispute indicating that after a short period of time at the tool bin, the two men moved, still  
7 gripping onto each other, back across the hall and into Mr. VandeBrake's office. Mr. Luman,  
8 facing backwards, was the first to enter the office, with Mr. McCurry behind him and facing  
9 forwards. The men continued to struggle without letting go of each other, banged into some  
10 objects in the office and came to rest at or near the file cabinet adjacent to the door office.  
11 After a short time, they separated.

12 In his testimony, Mr. Luman described this second phase of the physical altercation as  
13 follows: Mr. McCurry pulled him off the tool bin in the hall, turned him around again, and  
14 pushed him backwards through the office door, where the two men bumped into various  
15 objects, ultimately ending up at the file cabinet by the door. Both men were still holding onto  
16 each other -- with Mr. Luman bent over the top of the file cabinet. Mr. Luman states that he  
17 was grabbing onto Mr. McCurry during this entire time, but only to protect himself -- he never  
18 punched, kicked, or kneed McCurry. He testified that both men then mutually agreed to let  
19 go of each other and did so.

20 In contrast, Mr. McCurry testified that this second phase began when he (with his back  
21 against the tool bin) grabbed Mr. Luman by the shirt and pushed him, with Mr. Luman facing  
22 backwards, into Mr. VandeBrake's office. He recounted that once they entered the office the  
23 men bumped into various objects, and that he was being hit in the back of the head. He  
24 indicated that he tried to place Mr. Luman in a headlock to stop the hitting. According to Mr.  
25 McCurry, during this time his glasses were pulled off his face, scratching him. He does not  
26 recall exactly how he and Mr. Luman separated.

27 Both men sustained injuries -- Mr. McCurry a bloody nose and a scratch on his face  
28 and Mr. Luman a hernia and a fractured rib.



1 Finally, there was conflicting testimony regarding a statement made by Mr. Luman  
2 immediately following the physical altercation. Mr. Rhodes and Mr. VandeBrake testified that  
3 Mr. Luman stated that the incident should be handled by the union and that there was no  
4 need to go to the County, or to management, about it.<sup>8</sup> However Mr. Rhodes stated that he  
5 may have heard only portions of the statement. Mr. Luman testified that his statement was  
6 that things had gotten out of control and should have been handled by the union, or even the  
7 County, a long time ago and that if they had been, there would have been no need for the  
8 Sheriff to get involved. Mr. McCurry stated that he was going to report the incident to the  
9 Sheriff, which he did shortly thereafter.

10 Throughout the hearing various employees testified that Mr. McCurry yelled and used  
11 profane language in the workplace. Mr. Rhodes recalled that during the September 29<sup>th</sup>  
12 incident, he heard Mr. McCurry yelling at Mr. Kerby and using words like “goddam” and  
13 “bulls--t.” He also heard Mr. McCurry yell profanities during the October 3<sup>rd</sup> incident. Shelley  
14 Goff, (an employee supervised by Mr. McCurry) testified that she heard Mr. McCurry yelling  
15 and using the word “f-ck” behind a closed door with her former supervisor Spencer Jennings.  
16 Mr. Kerby and Mr. Luman both indicated that Mr. McCurry yelled, invaded the personal space  
17 of employees, and used profanity frequently. Mr. Luman testified that he observed Mr.  
18 McCurry leaning into a mechanic’s vehicle and loudly asking questions such as “why the f-ck  
19 isn’t the work done?” and “what the hell do you think you’re doing?” Mr. Luman also  
20 indicated that Mr. McCurry referred to other mechanics as “a—holes,” “f—cking a—holes”  
21 and “motherf—kers” behind their backs and recounted several other incidents of Mr. McCurry  
22 raising his voice at, and standing very close to, other mechanics. Mr. VandeBrake testified  
23 that Mr. McCurry had used profanities and “gone off on him” on one occasion regarding a  
24 backhoe which had not been fixed. He recalled that Mr. McCurry asked him “why the hell  
25 haven’t you ordered the parts?” Neither Joel Erickson nor Jerry Mosley personally saw Mr.  
26 McCurry yell, use profanity, or otherwise act inappropriately towards another employee,  
27 however, both testified that Mr. Kerby had complained to them about Mr. McCurry directing

28 <sup>8</sup> Mr. VandeBrake, Mr. Walters, and Mr. Arkens interpreted this statement as an attempt to cover up his involvement in the incident, thereby supporting his culpability.

1 his work and asserting his authority. Many witnesses indicated that the use of profanity is  
2 common in the road shops, but several distinguished the use of profanity generally from the  
3 direction of profanity at others (such as name calling) engaged in by Mr. McCurry.

4 At least one meeting was held at which mechanics voiced their concerns about Mr.  
5 McCurry to Mr. VandeBrake. Mr. VandeBrake testified that he understood these complaints  
6 as largely relating to unhappiness at Mr. McCurry directing the mechanics' work and telling  
7 them what to do. He also recalled that they (and in particular Mr. Kerby) didn't like the way  
8 Mr. McCurry spoke to them, which he characterized as direct and assertive. Mr. Erickson  
9 recalled Mr. Kerby and Mr. Luman (and possibly another mechanic Matt Davis) voicing  
10 concerns to Mr. VandeBrake regarding Mr. McCurry's demeanor. He stated that they  
11 characterized that demeanor as aggressive and bullying. Mr. Kerby and Mr. Luman testified  
12 that they understood from Mr. VandeBrake that he would convey their concerns to Mr.  
13 Walters or otherwise handle the situation.<sup>9</sup> At one point, Mr. VandeBrake told Mr. McCurry to  
14 speak to him, rather than the mechanics, about the equipment. Mr. Walters testified that he  
15 was aware that Mr. Kerby didn't like Mr. McCurry directing his work. However, he testified  
16 that Mr. McCurry, as a supervisor in the Department, did have authority to check on the work  
17 of the mechanics. Mr. Walters testified that he was unaware of any other employee  
18 complaints about Mr. McCurry, but that Mr. McCurry himself had informed him that he had  
19 yelled at Matt Davis on one occasion.

20 Mr. Luman and Mr. Kerby testified that they had been told by Mr. VandeBrake that  
21 they should bring all complaints to him, and not to Jeff Walters. Mr. Walters testified that he  
22 had an open door policy and that employees could bring their concerns directly to him.

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28 <sup>9</sup> There was also testimony from Mr. Luman that Mr. VandeBrake later told him that there was nothing he could do about it, as Mr. McCurry was a supervisor and had a right to be in the shop and inquire about his equipment.

1 III. DISCUSSION AND FINDINGS

2  
3 A. Mr. Luman made a threat of violence against Mr. McCurry and provided misleading  
4 statements about that threat to the County, in violation of County policies and rules.

5 A preponderance of the evidence indicates that on October 3, 2011, Mr. Luman made  
6 a threat of violence against Mr. McCurry when he stated, essentially, that if Mr. McCurry ever  
7 called him a “mother—ker” to his face, he’d find himself falling down another flight of stairs.

8 Mr. Luman’s explanation of this statement’s meaning, or his intent in making it, is not  
9 found to be credible. The statement was made in the midst of an extremely heated and  
10 volatile discussion in a very small physical space, where voices were raised, and tempers  
11 were extremely hot. In light of the intense and heated nature of the scene in which the  
12 statement was made, as indicated by all testimony, it is not logical to believe that such a  
13 comment was intended (or could be interpreted) as a wisecrack as claimed by Mr. Luman.  
14 Mr. Luman’s statement provoked and further inflamed Mr. McCurry, who was already  
15 outraged at the time. It added fuel to the fire and contributed to the chain of events resulting  
16 in the physical altercation between Mr. McCurry and Mr. Luman.

17 Mono County has a zero tolerance policy towards workplace violence. Mr. Luman was  
18 aware of this policy at least since August 24, 2011, when he participated in an anti-violence  
19 in the workplace training sponsored by the County at which the policy was discussed.  
20 Materials from the training describe workplace violence as including direct and indirect  
21 threats of violence, clearly define what constitutes a threat, and indicate that the making of a  
22 threat violates the zero tolerance policy. County Code provisions in place at that time  
23 provided in relevant part that an employee could be subject to discipline for, among other  
24 things: willful violation of any lawful department policy (Mono County Code (MCC) §  
25 2.68.230(B)(11)); failure to meet reasonable work performance standards and requirements  
26 (MCC § 2.68.230(B)(2)); neglect of duty (MCC §§ 2.68.230(B)(2)-(3)); and/or dishonesty  
27 (MCC § 2.68.230(B)(5)). Similarly, the County’s current Personnel System provides that an  
28 employee may be subject to discipline for, among other things, engaging in threatening or  
intimidating activities (§ 520(B)(20)); failure of good behavior or acts which are incompatible

1 with or inimical to, or in any way provide harm to, the public service (§ 520(B)(20)); and/or  
2 dishonesty (§ 520(B)(5)). The threat of violence made by Mr. Luman against Mr. McCurry on  
3 October 3, 2011, and Mr. Luman's subsequent misleading statements regarding the meaning  
4 of that threat are conduct proscribed by the above provisions and the zero tolerance policy  
5 and, accordingly, constitute cause for discipline.

6  
7 B. The Department did not meet its burden to show that Mr. Luman engaged in mutual  
8 combat, fighting, or other physical violence.

9 As with its other allegations, the Department has the burden to show, by a  
10 preponderance of the evidence, that Mr. Luman engaged in mutual combat (or fighting) in  
11 violation of the County's zero tolerance policy and related personnel rules. Evidence and  
12 testimony presented throughout the hearing was in conflict regarding the physical altercation  
13 between Mr. McCurry and Mr. Luman on October 3<sup>rd</sup> and the Board does not find that the  
14 Department has demonstrated that it is more likely than not that its version of the incident is  
15 accurate.

16 C. The County should have acted sooner to address Mr. McCurry's inappropriate conduct  
17 in the workplace.

18 Mr. McCurry behaved inappropriately in the workplace. He yelled, used profanities,  
19 and invaded the personal space of employees beneath him in the chain of command. Mr.  
20 McCurry's behavior created an environment that was uncomfortable and perceived as hostile  
21 by several employees. Complaints were not addressed thoroughly, and affected staff  
22 seemed to believe that complaining was pointless, or that they were not allowed to bring their  
23 complaints beyond their immediate supervisor, Mr. VandeBrake. If a chain of command is  
24 established for complaints, then employees should be clearly informed that they are to go up  
25 that chain if complaints are not adequately addressed. And employees need to have the  
26 confidence to do so. Mono County supervision has failed over time to properly and  
27 thoroughly address Mr. McCurry's behavior in the workplace and bears some responsibility  
28 for the negative experiences of employees in dealing with Mr. McCurry. Nevertheless,  
neither Mr. McCurry's conduct, nor the failure to properly address it, excuses Mr. Luman's

1 conduct in making a threat of violence in the workplace and subsequently providing  
2 misleading information about that threat.

3 D. The level of discipline imposed by the County is affirmed by the PAB.

4 The County terminated Mr. Luman for his involvement in the events of October 3<sup>rd</sup> and  
5 for his subsequent misleading statements about that incident. This level of discipline is  
6 affirmed for the following reasons. First, Mr. Luman made a threat of violence in the  
7 workplace which was a contributing cause of the subsequent physical altercation between  
8 himself and Mr. McCurry. This is a serious offense and violation of the County's zero  
9 tolerance policy, which justifies the level of discipline imposed. Second, to modify the  
10 discipline imposed for such conduct would set an unacceptable precedent in Mono County,  
11 leading other employees to believe that they could commit varying acts of workplace violence  
12 without serious consequence. The County's professed commitment to its zero tolerance  
13 policy could be brought into question, thereby sending the wrong message to employees.  
14 Third, the County should have the ability to impose discipline which it believes is warranted  
15 and necessary in order to discourage, and hopefully prevent, all types of violence in the  
16 workplace -- provided that appropriate policies and procedures are consistently followed.

17 IV. ORDER

18 For all of the foregoing reasons, the final disciplinary action imposed by Mono County  
19 on appellant Richard Alan Luman is hereby AFFIRMED. The time in which judicial review of  
20 this decision must be sought is governed by Code of Civil Procedure Section 1094.6.

21  
22 I, Kenneth Goode, join as to all portions of this written decision.

23 

24 Kenneth Goode, Member

23 7-11-12  
24 Date

25  
26 I, Ralph Obenberger, join as to all portions of this written decision, with the exception of  
27 Section III.B. I dissent from that Section because it is my conclusion that the Department  
28 met its burden of proof with respect to the allegation that Mr. Luman engaged physical

1 violence in the workplace on October 3, 2011, in violation of County policies and rules.

2 Accordingly, I would have sustained that allegation.

3 R. Oberberger  
4 Ralph Oberberger, Member

07/11/2012  
Date

5  
6 I, Timothy Hansen, join only in Sections I, II, III.B., and III.C. of this written decision and  
7 dissent from the remainder of the decision, and in particular from Section III.D., for the  
8 reasons specified in the attached dissenting opinion.

9 Timothy S. Hansen  
10 Timothy Hansen, Chair

7-11-2012  
Date

11  
12  
13  
14  
15 ATTEST:

16 Lynnda Roberts  
17 By: Clerk of the Personnel Appeals Board

July 11, 2012

## Mono County Personnel Appeals Board

Dissent statement to the findings of the Mono County Personnel Appeals Board in the matter of Appeal of Disciplinary action by Richard Luman:

In my opinion there have been many irregularities and questionable rule changes in these proceedings, but will limit my dissent only to those findings used to affirm the final disciplinary action by Mono County against Richard Luman.

The personnel board based their findings solely on the alleged threat against Mr. Mc Curry. Two of the four persons in the room said that they thought it was a threat and two did not. It is clear from the Sheriff's report, Supplement 2, Jerry Vande Brake changed his testimony, making his testimony lack credibility.

The following transcribed remarks reference to the alleged threat:

### Category 1: "falling down stairs" remark

#### Dick's York Interview, Pg. 19 Line 2 & Lines 10-13:

Dick Luman's Testimony: "All I was doing was making an analogy to him"; "All I meant is he'd have to be drunk on his ass. That's all that was—an analogy or whatever you want to call it. There was no was I was threatening him. I'm 59 frickin' years old."

#### Day 4 (4/9/12)

##### Dick Luman's Testimony:

(1:59:50) Re: falling down stairs" – Dick was letting Brett know he knew different what Brett was telling everyone about his accident, never raised his voice – was a wisecrack

(2:02:58) Never was Dick's intention that he would cause Brett to fall down stairs; never was Dick's intention he would do harm to Brett if he called him a "MF'R"; was his intention to out Brett in his place that day

(2:15:38) Dick looks at both Jerry & Brett wondering where they are getting "threat" from – as he never raised his voice- Dick would assume threatening people would raise their voices

#### Day 4 (4/19/12)

##### Mike Rhode's testimony:

(4:44:08) States he heard Brett say. "You threatened me"; heard Dick say, "No, I didn't threaten you" (also stated in his transcript, Pg 10, Lines 24-25)

#### Day 6 (4/18/12):

##### Deputy Hanson's testimony:

(3:25:35) Question: Re: Lumans's transcript, Pg 18, Lines 23-24—in what context did you think this was a threat?

Answer: If you're reading it in black & white, yes – if you had no background or history or explanation as to the way it was said, then there may be some more stuff to it other than just saying black & white.

(3/26/26) Question: In your investigation, you had background info from Luman that there had been joking about McCurry having been drunk & falling down stairs?

Answer: Correct

Question: Cause you to consider that the statement was not a threat, possibly a rude remark?

Answer: Yes, possibly a rude remark

Category 2: "Crack not Threat"

Day 4 (4/19/12)

Dick Luman's Testimony:

(57:23) Heard Brett had been drinking from Harry Bryan when he fell down his stairs

(2:02:58) When Dick referenced "falling down the stairs", he was referring to him calling him out on his story he'd been telling about the dog tripping him

Day 4 (4/19/12)

Jerry Mosley's Testimony:

(5:42:55) He was heard at work about Brett falling down some stairs; heard people say he was probably drinking & tripped over his dog; says sometimes Brett talked about how he liked to drink

The statement in the written decision page 9, "it is not logical to believe that such a comment was intended (or could be interpreted) as a wisecrack is inconclusive and not agreed upon by eyewitnesses. Other employees affirmed it was a longstanding joke in the workplace. To use this alleged threat as a reason to prove Mr. Luman engaged in conduct justifying termination does not come close to meeting the burden of proof. The personnel rules state that discipline used when employees engage in violence, etc. "may be subject to legal action by law enforcement authorities as well as disciplinary action by the County, up to and including termination of employment. The zero tolerance policy could have been applied to the letter without termination using other discipline.

Regards,



Tim Hansen