

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: ILLINOIS DEPARTMENT OF ) OEIG Case #17-00682  
TRANSPORTATION )

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General, and the Illinois Department of Transportation.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

**I. ALLEGATIONS**

On April 11 and 12, 2017, the Office of Executive Inspector General (OEIG) received complaints alleging that because Illinois Department of Transportation (IDOT) probationary Highway Maintainer [Employee 1] reported incidents of misconduct to IDOT management, he was given a negative performance evaluation, placed on administrative leave pending a pre-disciplinary meeting, and ultimately was forced to resign.<sup>1</sup>

**II. BACKGROUND**

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<sup>1</sup> The second complaint was given case number 17-00684 and was closed into this investigation.

Permanent IDOT employees work a six-month probationary period upon beginning their jobs.<sup>2</sup> At the successful conclusion of this probationary period, the employee is certified for full-time employment.<sup>3</sup>

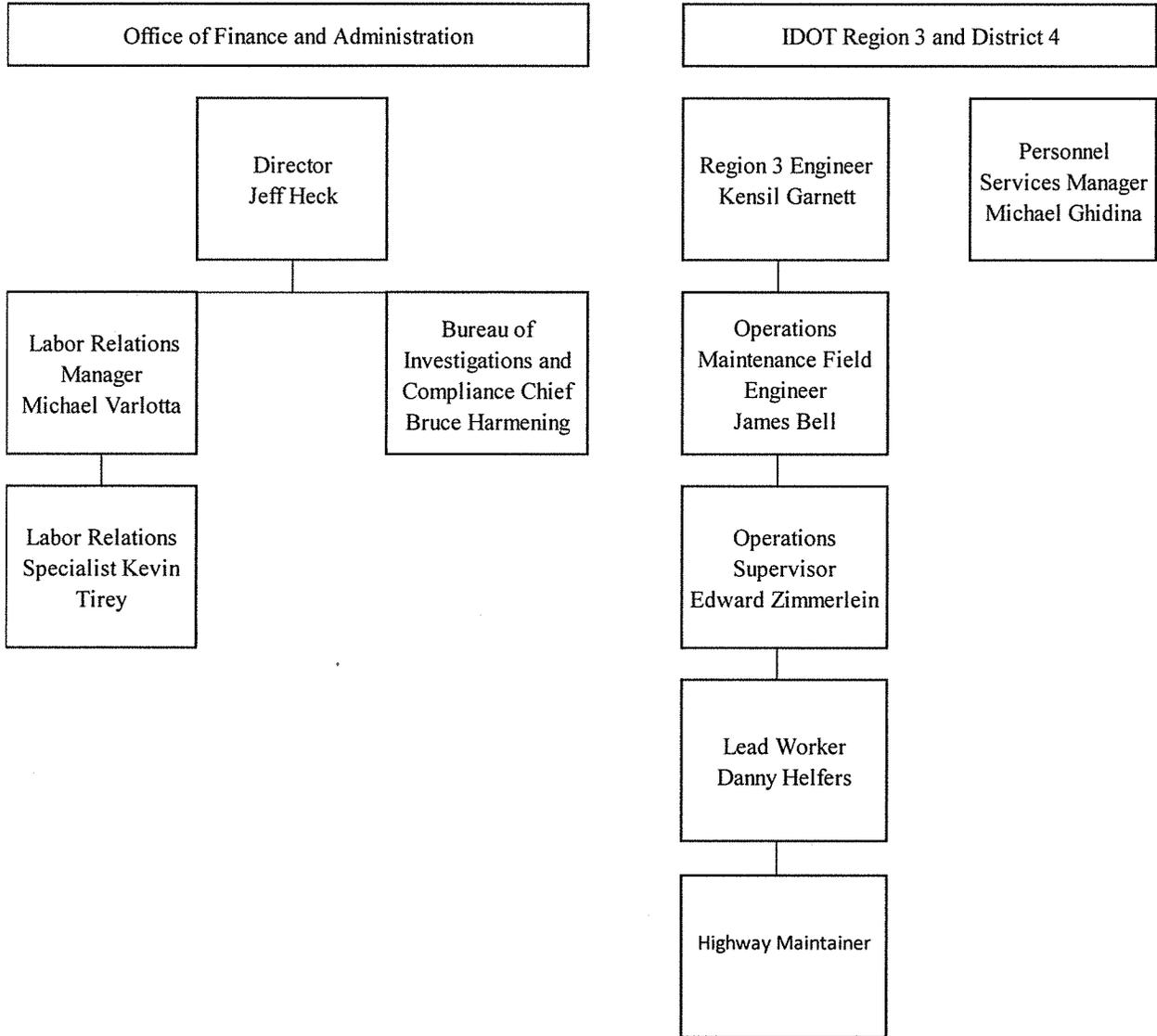
[Employee 1] was hired as a probationary Highway Maintainer at IDOT's El Paso Yard on September 16, 2016. On February 8, 2017, [Employee 1] was placed on paid administrative leave pending a pre-disciplinary hearing. [Employee 1] resigned from his position on February 22, 2017.

The following chart reflects the reporting structure of the employees discussed in this report and the positions they held during the relevant time frame:

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<sup>2</sup> See Illinois Department of Transportation Personnel Policies Manual Chapter 6-3(D) (June 3, 2014) (obtained from the OEIG library).

<sup>3</sup> See *id.*



**III. INVESTIGATION**

**A. Summary Of Relevant Events, February 2-8, 2017**

As discussed in greater detail below, the following chart outlines the chronology of events relevant to the investigation, as reflected by the interviews conducted and documents obtained.

September 15, 2016	Highway Maintainer [Employee 1's] probationary appointment began.
December 23, 2016	[Employee 1] received his three-month evaluation, and was given a satisfactory rating.

January 26, 2017	[Employee 1] called Operations Supervisor Edward Zimmerlein to discuss the work environment at the El Paso Yard and a new job opportunity.
February 2, 2017 (Thursday)	<p>A meeting was held at the El Paso Yard to discuss the prohibition on wearing headphones.</p> <p>After this meeting, [Employee 1] filed incident reports alleging various policy violations by his co-workers.</p> <p>[Employee 1] met with Lead Worker Danny Helfers, Mr. Zimmerlein, and Operations Maintenance Field Engineer James Bell.</p> <p>[Employee 1] told IDOT managers that he intended to contact, or had contacted, the OEIG.</p>
February 3, 2017 (Friday)	<p>Telephone calls occurred between [Employee 1] and Personal Services Manager Michael Ghidina; between Mr. Zimmerlein and Mr. Ghidina; and between Mr. Ghidina and Bureau of Investigations and Compliance Chief Bruce Harmening.</p> <p>Mr. Zimmerlein told Mr. Ghidina that [Employee 1] seems to go off on his own to try to do something instead of going through the proper channels and letting his direct supervisors handle things. Mr. Ghidina then spoke with [Employee 1], who indicated that he ([Employee 1]) had talked to a neighbor who works for the OEIG.</p> <p>[Employee 1] filed another incident report. Mr. Ghidina forwarded [Employee 1's] incident reports to Mr. Harmening, and spoke with Mr. Harmening about [Employee 1] being an "unmanageable employee."</p>
February 6, 2017 (Monday)	<p>Mr. Zimmerlein emailed his supervisor, Mr. Bell, and Mr. Ghidina stating that there was "an outstanding issue . . . of [Employee 1] operating outside of standard procedures and going over his supervisor's and the Department in the chain of command that needs to be addressed."</p> <p>Mr. Ghidina then advised IDOT Labor Relations Specialist Kevin Tirey that he wanted to move to terminate [Employee 1]. Mr. Ghidina sent Mr. Tirey a draft statement of disciplinary charges, which Mr. Tirey approved.</p>
February 7, 2017 (Tuesday)	[Employee 1] filed another incident report.

	Region 3 Engineer Kensil Garnett requested IDOT Office of Finance and Administration Director Jeff Heck's approval to place [Employee 1] on paid administrative leave pending a pre-disciplinary meeting. In his request, Mr. Garnett noted that "[Employee 1] is just causing problems and writing incident reports." Mr. Heck approved Mr. Garnett's request.
February 8, 2017 (Wednesday)	[Employee 1] was placed on paid administrative leave, and he was directed to appear for a pre-disciplinary meeting on February 14.  [Employee 1] was also given a performance evaluation recommending that he not be certified as a permanent employee. The evaluation, which was signed by Mr. Zimmerlein and Mr. Bell, stated that [Employee 1] had recently reported incidents, and that "[i]nstead of reporting these instances to his supervisors and allow us to do our job to determine the correct course of action he has stated that he has gone over our heads to the Office of the Executive Inspector General and called the Whistleblower hotline."
February 14, 2017	A pre-disciplinary meeting was held.
February 22, 2017	[Employee 1] resigned.

**B. [Employee 1's] Work Performance Prior To February 2, 2017**

**1. Interviews of Former IDOT Highway Maintainer [Employee 1]**

OEIG investigators interviewed former El Paso Yard Highway Maintainer [Employee 1] on April 28 and June 7, 2017. [Employee 1] confirmed that he worked as a Highway Maintainer from September 15, 2016 through February 22, 2017.

According to [Employee 1], he received an evaluation in December and Mr. Zimmerlein did not document any issues with [Employee 1's] work performance on his first evaluation. [Employee 1] said that before he received his second performance evaluation in February 2017, he was never counseled on a rule violation and that no one ever told him that he was being disruptive.<sup>4</sup> [Employee 1] stated that he "absolutely" believed that he followed policy while at work, other than one incident when he wore headphones while working on the interstate. [Employee 1] said he accepted responsibility for that incident.

<sup>4</sup> Investigators confirmed that [Employee 1's] December 2016 evaluation indicated that no disciplinary reports had been issued during the rating period of September 15, 2016 through December 16, 2016. In addition, other than to note "current situation under review," his February 2017 evaluation also did not identify any disciplinary reports that had been issued during the rating period of December 17, 2016 through February 7, 2017.

In his interview, [Employee 1] also discussed safety concerns he observed at the El Paso Yard prior to February 2, 2017 regarding El Paso Yard employees not adhering to safety policies and procedures. For example, [Employee 1] relayed that employees were loading a chipper incorrectly and without safety gloves. According to [Employee 1], he reported some of these “safety incidents” to his supervisor, El Paso Yard Lead Worker Danny Helfers, but felt that nothing was done about it.

In addition, [Employee 1] stated that on approximately November 21 or 22, 2016, the day after the incident with the chipper, an IDOT employee jumped into a truck and drove it across the yard without conducting an inspection or speaking with [Employee 1], who was doing maintenance on the vehicle. [Employee 1] stated he told Mr. Helfers and Mr. Helfers’ supervisor, Region 3 Operations Supervisor Edward Zimmerlein, about the incident, and mentioned that he was going to contact the IDOT Inspector General. [Employee 1] stated that Mr. Zimmerlein asked him what this “contacting the Inspector General” was “all about.” [Employee 1] said he repeated that there had been a pattern of issues and that nothing was being done, and said he asked Mr. Zimmerlein whether he needed to contact the Inspector General.

[Employee 1] said he did not have documentation supporting every time he reported an issue to Mr. Helfers, but stated that he had a conflict regarding these issues every time. [Employee 1] stated that when he noticed there was no resolution to the issues he reported or change in the work environment, he started reporting these issues to Mr. Zimmerlein.

## **2. Interview of IDOT Lead Worker Danny Helfers**

Investigators interviewed [Employee 1’s] direct supervisor, Lead Worker Danny Helfers, on September 27, 2017. Mr. Helfers said that he has worked for IDOT for almost five years, and that he has been the Lead Worker at the El Paso Yard since November 2016. Mr. Helfers stated his duties include ensuring that his Highway Maintainers complete their assigned job orders adequately and in a timely manner. Mr. Helfers said 10 Highway Maintainers report to him, and that he reports to Operations Supervisor Edward Zimmerlein.

Mr. Helfers told investigators that [Employee 1] was a Highway Maintainer who reported to him. Mr. Helfers stated that [Employee 1] was able to perform his duties as a Highway Maintainer. Mr. Helfers described [Employee 1] as “argumentative” and “very defensive,” but when asked about [Employee 1’s] job performance, Mr. Helfers stated, “[m]ost of the time when he did a job, he did it right. He’d do what he was told . . . I mean I didn’t have any problems with his job performance as far as doing what he was told.”

With regard to reporting issues, Mr. Helfers said that [Employee 1] never reported another employee or filed any incident reports until there was a “major fallout,” when [Employee 1] reported several incidents. However, Mr. Helfers said that “from pretty much day one” [Employee 1] inquired about the chain of command and asked if he should be reporting issues to Personnel Services Manager Michael Ghidina, Mr. Zimmerlein, or to the inspector general. Mr. Helfers said he responded by telling [Employee 1] that he (Mr. Helfers) was the first person in the chain of command, then Mr. Zimmerlein, “and on up the chain of command.”

### **3. Interview of IDOT Operations Supervisor Edward Zimmerlein**

Investigators interviewed Operations Supervisor Edward Zimmerlein on September 27, 2017. Mr. Zimmerlein stated that he has worked for IDOT since May 16, 2000, and that he has held the title of Operations Supervisor for two to two-and-a-half years. Mr. Zimmerlein said his job duties consist of general oversight of the maintenance areas in three counties, including where the El Paso Yard is located. Mr. Zimmerlein stated he also supervises the employees that are assigned to those areas. Mr. Zimmerlein said he reports to Operations Maintenance Field Engineer James Bell.

When asked to describe [Employee 1] as an employee, Mr. Zimmerlein said that [Employee 1] would come to work, do his job, and would come across as polite, but would simultaneously talk over you. Mr. Zimmerlein said that in terms of job performance, [Employee 1] would do what was asked of him.

When asked about any concerns [Employee 1] raised, Mr. Zimmerlein detailed the November truck incident during which another employee came and drove the vehicle [Employee 1] was working on across the El Paso Yard. Mr. Zimmerlein told investigators that he did not believe this to be a serious situation but when he spoke with [Employee 1] about the incident, [Employee 1] threatened to go above his head to the Peoria office,<sup>5</sup> and even to the OEIG. Mr. Zimmerlein stated that in response, he told [Employee 1] that the situation could be handled at the yard. Mr. Zimmerlein stated that he felt [Employee 1] was “blowing things out of proportion.”

### **4. [Employee 1’s] December 23, 2016 Evaluation (1<sup>st</sup> Evaluation)**

In his first probationary evaluation, dated December 23, 2016, [Employee 1] received all satisfactory ratings in every category for which a rating was provided. The only comments written on this evaluation detail time he missed from work due to an injury.<sup>6</sup> Both Mr. Zimmerlein and Operations Maintenance Field Engineer James Bell signed the evaluation on behalf of IDOT.

### **5. Mr. Zimmerlein’s December 22, 2016 Notes**

In his interview, Mr. Zimmerlein confirmed that his signature was on [Employee 1’s] three-month evaluation. Mr. Zimmerlein stated that he and [Employee 1] discussed issues around the time of his three-month evaluation that were not included in the written evaluation, namely the incident with the truck being driven across the yard. Mr. Zimmerlein stated he did not think it was necessary to document it on the evaluation; however, Mr. Zimmerlein stated that he felt something was not right with the situation, so he wrote about it in his notes.<sup>7</sup>

Investigators obtained handwritten notes dated December 22, 2016, which stated, in part:

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<sup>5</sup> The District 4 office, where Operations Maintenance Field Engineer James Bell and Region 3 Engineer Kensil Garnett are based, is located in Peoria, Illinois.

<sup>6</sup> [Employee 1] was on leave from October 14, 2016 to November 13, 2016.

<sup>7</sup> Although in one email Mr. Zimmerlein referred to the notes as Mr. Helfers,’ Mr. Helfers also confirmed in his interview that Mr. Zimmerlein wrote them.

[Employee 1] has always addressed me with respect. He hasn't been here the entire 3 months and I haven't gotten to spend much time overseeing his work. One area of concern was an issue brought up shortly after [Employee 1] returned to work from his injury. He appeared to feel hypersensitive to what he perceived as disrespect from his coworkers. He seemed bothered & I asked him what was wrong. He explained what was bothering him and I didn't think it was that big of a deal. At least something that couldn't be easily addressed by talking amongst themselves. [Employee 1] did not seem satisfied with my reaction to his issue. **He even threw out that maybe he should call the district office or OEIG with issues in the future. This made me a little uneasy as a new employee generally tries to fit in a little better, instead of trying to force their opinion.**<sup>8</sup> I feel confident in the manner of my supervision so a complaint while unsavory would not worry me. However it does concern me, regarding future issues that could arise questioning my authority as a certified employee.

Mr. Zimmerlein's signature appears on these notes, with a notation at the bottom, "discussed w/ [Employee 1] when presenting his 3 month evaluation."

## **6. Mr. Bell's Interview**

In his interview, Mr. Bell said that during the evaluation process for probationary Highway Maintainers at the El Paso Yard, Mr. Zimmerlein completes the evaluation, and then he (Mr. Bell) reviews the completed evaluations for content and to make sure the evaluations are filled out properly. Mr. Bell stated that he does not make any changes because he does not personally observe the employees. Mr. Bell said that if issues come up with employees he discusses them, but he relies on his subordinates to thoroughly evaluate their subordinates. Mr. Bell told investigators that he did not have any input in [Employee 1's] first evaluation.

### **C. January 26, 2017 Call Between [Employee 1] And Mr. Zimmerlein**

#### **1. [Employee 1's] Interviews**

In his OEIG interview, [Employee 1] relayed that he called his second-level supervisor, Mr. Zimmerlein, in early 2017, about an offer he had received for a job at another State agency. [Employee 1] explained that he had applied because he was concerned with issues occurring at IDOT.

[Employee 1] stated that during his conversation with Mr. Zimmerlein, in addition to talking about the other position, he also told Mr. Zimmerlein he wanted to fit in at the El Paso Yard. [Employee 1] stated he contacted Mr. Zimmerlein instead of Mr. Helfers because Mr. Helfers was always telling [Employee 1's] co-workers whenever [Employee 1] reported issues about them. [Employee 1] said that he felt intimidated and retaliated against by his co-workers.

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<sup>8</sup> Emphasis added. The original notes are in all capital letters.

[Employee 1] stated he turned down the other job offer and chose to stay at IDOT because he had been in communication with IDOT management and believed some of the issues he reported might be resolved.

## 2. Mr. Zimmerlein's Memorandum

In a memorandum dated February 3, 2017, Mr. Zimmerlein detailed a phone conversation he had with [Employee 1] on January 26, 2017. Mr. Zimmerlein wrote, in part, that:

[[Employee 1]] stated as soon as I answered that he wanted the call to be confidential and that he would deny that if [sic] happened if asked. I told him that I would keep the topics discussed confidential. The first and probably main topic was that he had been offered another job from a different state agency today . . . He said before he made his decision that he wanted to converse with me about his job as a Highway Maintainer . . . He then started to give "for instance" "hypothetical" instances that he wanted to get my opinion on as to what I would do if these things had happened. I told him that unless he came forward and documented these that I really couldn't proceed with them. With each situation I felt there were issues that would need to be addressed. They were all things that I could handle myself as a supervisor. I told [Employee 1] that I would try to stay vigilant for these things without calling him out as the one who brought them to my attention. **He mentioned again that he has an acquaintance who works for the OEIG. I told him I didn't think any of the issues he brought up would warrant their involvement.**<sup>9</sup> He asked my opinion of how he was doing in his job. I told him that I have heard that he works hard at the assignments he is given. However his interaction with some of his coworkers has brought concerns, none serious yet, but concerns. I said that he seemed to be "hypersensitive" about what he considered disrespect and that maybe it might be wise to observe before asserting judgement and taking action. . . .

## 3. Mr. Zimmerlein's Interview

In his interview, Mr. Zimmerlein recalled that [Employee 1] called him one night, right after work, and that the two spoke for over an hour. Mr. Zimmerlein stated that [Employee 1] had mentioned some incidents he ([Employee 1]) believed were violations of IDOT policy. Mr. Zimmerlein said that when he asked [Employee 1] if he was going to come forward and report the issues, [Employee 1] responded by saying something to the effect of, "[n]o, I don't want to be incriminated." According to Mr. Zimmerlein, he told [Employee 1] that he would try to witness these issues personally and try to be around more, so that he could address the issues without identifying [Employee 1] as the person who reported the issues.

### D. Thursday February 2, 2017 IDOT Meetings

As discussed in greater detail below, on February 2, 2017, there was a meeting at the El Paso Yard during which Mr. Helfers discussed a prohibition on wearing headphones on the

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<sup>9</sup> Emphasis added.

highway. [Employee 1] subsequently talked to Mr. Helfers, and then met with Mr. Helfers and Mr. Zimmerlein. Later that day, [Employee 1] met with Mr. Helfers, Mr. Zimmerlein, and Mr. Bell.

## **1. Initial Meeting at the El Paso Yard**

### **a. [Employee 1's] Interviews**

[Employee 1] told investigators that he wore headphones one day while he was working on the interstate. He said that the next day, Mr. Helfers held a meeting where he discussed a rule prohibiting employees from wearing headphones at work, and brought out copies of the electronics policy. [Employee 1] said that although he was not singled out by name, he felt like he was being attacked by his co-workers and Mr. Helfers, and that he had been baited multiple times. [Employee 1] said he was “disgusted” that he was confronted about the headphones even though he had reported many issues that IDOT had not addressed. [Employee 1] said that he took accountability for his actions but said to Mr. Helfers, “if we’re going to follow policies and procedures from this point forward, let’s follow policies and procedures.” [Employee 1] said an argument ensued about what policies were going to be followed and which ones were not and [Employee 1] told Mr. Helfers that he wanted to fill out incident reports.

### **b. Mr. Helfers’ Interview**

Mr. Helfers also spoke of the events of February 2, 2017 during his OEIG interview, stating that after he distributed work orders he told the employees about a complaint he had received the day before. Mr. Helfers said that as soon as he said “earbuds,” [Employee 1] stood up and said, “[i]f we’re going to start singling out people I’ve got several incidents I’d like to report right now.” Mr. Helfers said he told [Employee 1] to calm down, and that he needed to file incident reports to document his allegations.

## **2. February 2, 2017 Incident Reports**

Investigators obtained three IDOT incident reports dated February 2, 2017, which indicate that they were completed by [Employee 1].<sup>10</sup> These reports described the following:

- an incident in which an employee smoked in a State vehicle;<sup>11</sup>
- an undated incident in which an employee worked on his personal vehicle on the El Paso Yard grounds; and
- an undated incident when an employee drove a State vehicle to visit his wife.

## **3. [Employee 1's] Discussion with Mr. Helfers**

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<sup>10</sup> The OEIG also obtained an additional undated incident report, which indicated it was completed by [Employee 1], and described a February 1, 2017 incident in which an employee used a racist term.

<sup>11</sup> The incident was described in the report as occurring on February 27, 2017 which appears to be a typographical error.

Mr. Helfers stated that shortly after adjourning the meeting at which the earbuds were discussed, [Employee 1] came into Mr. Helfers' office and asked if he should go out with his crew on their work assignment, stating he had about 10 more incident reports to file. Mr. Helfers stated that he called Mr. Zimmerlein, told him about the matters, and asked him to come to the El Paso Yard.

During his OEIG interview, when shown copies of the incident reports [Employee 1] filed, Mr. Helfers stated that he had not heard about the incidents until [Employee 1] filed the written reports, except incidents where he was present and he believed [Employee 1] took "out of context." Mr. Helfers said that [Employee 1] had not voiced concerns to him before filing these incident reports.

Mr. Helfers stated that after [Employee 1] filled out the incident reports, he told Mr. Helfers that he was going to contact the OEIG. Mr. Helfers stated that contacting the OEIG is "absolutely [[Employee 1's]] right, but our concern was he never even gave us a chance to address any of this until the day" the earbuds were mentioned. Mr. Helfers stated that he has never discouraged any employee from contacting the OEIG or any investigative agency, and that he told [Employee 1] that it was his right to contact the OEIG.

#### **4. [Employee 1's] Meeting with Mr. Zimmerlein**

[Employee 1] stated that he met with Mr. Zimmerlein twice on February 2, 2017, and that at the beginning of the first meeting he asked Mr. Zimmerlein for Weingarten rights and whistleblower protection.<sup>12</sup> He said he attempted to hand Mr. Zimmerlein two incident reports, but Mr. Zimmerlein said, "let's talk about this."

In a memorandum to "Supervisory File" dated February 3, 2017, Mr. Zimmerlein wrote about his first February 2, 2017 meeting with [Employee 1], stating, in part:

On the morning of 2/2/17 I was in the Wenona yard conducting day to day business. At around 7:30 AM I received a call from Dan Helfers, the Lead Worker in El Paso, requesting that I come down to El Paso to see what procedures needed to be followed regarding several instances that were brought up in front of the shed during the daily orders that morning. I arrived at the El Paso yard at approximately 8:00 AM and walked into Dan Helfers' office. [Employee 1] was sitting in a chair in the office and was writing on a piece of paper. I asked him how he was doing. The first thing that [Employee 1] said was "I am asking for my Weingarten Right's and Whistleblower [sic] Protection". I briefly said OK and [Employee 1] began talking. I let him continue talking as I could not find a place to break in. Finally I was able to ask him if he would like Dan Helfers to be in the room. Dan is not only the Lead Worker in El Paso but is also the union steward. [Employee 1] said he did not care. Dan came in the room and we closed the door. [Employee 1] started the conversation by stating that he broke a policy. He was wearing ear bud head

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<sup>12</sup> [Employee 1] may have been referring to *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), a United States Supreme Court case which upheld a National Labor Relations Board decision that employees have a right to union representation at investigatory interviews.

phones on I-39 yesterday while patching potholes with the crew in the driving lane. [Employee 1] believes that someone from the crew complained to Dan Helfers about the ear buds and that he was being persecuted by his fellow co-workers when he knows that not everyone follows policy every day. So he felt that when Dan Helfers brought this up at the morning meeting that he would need [sic] to defend himself by bringing to light several policy violations that he had observed over the past few months . . . Dan Helfers stated that after the initial outburst that morning that he told [Employee 1] to start filling out incident reports regarding those instances . . . The subject of chain of command was brought up. [Employee 1] stated that he did not feel comfortable speaking to Dan Helfers about these instances because he felt that Dan was a member of the "Pack". . . .

In his interview, Mr. Zimmerlein stated that on the morning of February 2, 2017, [Employee 1] had an "outburst" at the El Paso Yard, and that Mr. Helfers called him when the situation did not resolve. Mr. Zimmerlein said this caused him to travel to the El Paso Yard. Mr. Zimmerlein said he explained to [Employee 1] that he could only take action if [Employee 1] reported infractions to him or if he (Mr. Zimmerlein) witnessed infractions personally.

#### 5. [Employee 1's] Meeting with Mr. Helfers, Mr. Zimmerlein, and Mr. Bell

In his OEIG interview, [Employee 1] said that after lunch, he met with Mr. Helfers, Mr. Zimmerlein, and District 4 Engineer James Bell. [Employee 1] said that during that meeting he was emotional. [Employee 1] told investigators that he never wanted things to rise to this level.

Mr. Zimmerlein's February 3, 2017 memorandum regarding his interactions with [Employee 1] on February 2, 2017, in part, described this meeting as follows:

Later around 11:15 AM after the safety award presentation, James Bell came into Dan Helfers' office. We began talking about the meeting earlier that morning. Shortly after beginning to talk, [Employee 1] knocked and I let him into the room. Right away in [Employee 1's] first few sentences he began to shed tears as he was talking. He again brought up all of the instances that we had discussed in the morning. He kept insisting that there [sic] is some sort of alliance in the El Paso yard that he will not be a part of and that he wants to help dismantle. **He said that he called the OEIG office and the Whistle Blowers phone number this morning after our 1<sup>st</sup> meeting to lodge complaints.** He repeated in front of James that if he wanted to report policy violations in the future that he would not bring them to Dan Helfers as he does not feel comfortable with him. I reaffirmed that if he would have come to Dan in the first place on the issues that he had brought forward today there would have been no need to go over his head as Dan would have had the chance to bring them up to me if he did not feel he could handle something himself . . . [Employee 1] stated that he would only bring these issues to myself or James Bell. **[Employee 1] has threatened before to go above even my head to Peoria and the OEIG over issues that were not in my opinion serious enough to warrant higher authority than myself to handle.** I confronted

[Employee 1] about this for his 3 month evaluation. **I told him that his immediate supervisors need to have given him reason they let him down before he goes over their head . . .** The entire time we had been talking to [Employee 1] about these issues, all of which I felt I could look into and get figured out fairly quickly, [Employee 1] had tears. James Bell assured [Employee 1] that the incident reports that he had submitted would be fully investigated. We ended the conversation and had [Employee 1] go help in the shop. After [Employee 1] left the room James Bell and I agreed that there seemed to be something wrong with the situation. We both agreed that we felt the issues that were being brought forward were not serious enough to warrant such an emotional reaction. . . .<sup>13</sup>

In a statement dated February 3, 2017, Mr. Bell wrote about the February 2, 2017 meeting with [Employee 1], Mr. Helfers, and Mr. Zimmerlein, stating, in part:<sup>14</sup>

Subsequent to the safety awards presentation, I met with Mr. Helfers and Mr. Zimmerlein in their office to further the discussion about [Employee 1]. . . At approximately 11:15 a.m. [Employee 1] entered the office. I noticed that [Employee 1] appeared to be distraught and began to become overwhelmed with emotion as his eyes began to tear up.

[Employee 1] began by asserting that he believes Mr. Helfers and Mr. Zimmerlein are “out to get me and get me charged with insubordination”. [Employee 1] demanded that his whistle blower protection rights be invoked and he went on to acknowledge his understanding of departmental policies . . .

[Employee 1] then discussed the ear phone incident. He admitted to wearing the ear phones . . .

[Employee 1] feels that he is being singled out. He then enumerates alleged incidents that he states he and others witnessed . . . [Employee 1] asserted that he has never felt safe in his working environment and once again invoked his whistle blower protection rights.

[Employee 1] stated that he is afraid of co-worker retaliatory actions . . . I asked [Employee 1] why he never reported any of this to his supervisor. [Employee 1's] response was that he does not trust Mr. Helfers (his direct supervisor) because of a prior alleged comment made by Mr. Helfers . . .

Mr. Zimmerlein asserted that during a prior performance appraisal interview with [Employee 1], Mr. Zimmerlein explained to [Employee 1] that he needs to improve in the area of works well with others. [Employee 1] became defensive to the remarks and again referenced the unsafe and inappropriate environment that he alleges exists.

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<sup>13</sup> Emphasis added.

<sup>14</sup> This statement was emailed to District 4 Personnel Services Manager Michael Ghidina on February 6, 2017.

As I observed the conversation between Mr. Helfers, Mr. Zimmerlein and [Employee 1], it manifested that [Employee 1] is contemptuous and dismissive of Mr. Helfers . . . [Employee 1] explained that he does not respect the leadership of Mr. Helfers . . . [Employee 1] often became agitated and confrontational while interacting with Mr. Helfers.

. . . [Employee 1] was not receptive to Mr. Helfers or Mr. Zimmerlein's responses. He just remained combative and argumentative as nothing appeared to be resonating with him. [Employee 1's] anti-establishment perspective along with a manifestation of unstable emotional and mental state, during the meeting, has concluded the situation to currently be irreconcilable. . . .

During his OEIG interview, Mr. Bell described his February 2, 2017 meeting with [Employee 1]. Mr. Bell said that during the meeting, [Employee 1] said he felt he was being singled out, and that as a result he wanted to report other incidents that occurred at the El Paso Yard. Mr. Bell said [Employee 1] also told him that he was going to contact the OEIG. Mr. Bell said he did not recall how he responded, but stated that he did not discourage [Employee 1] from contacting the OEIG.

In a February 2, 2017 email to District 4 Personnel Services Manager Michael Ghidina,<sup>15</sup> Mr. Zimmerlein wrote:

Mike, Can you please give me a call whenever you get a chance? I was wondering if you were busy tomorrow morning? There are some issues that I need to start investigating in regards to complaints brought forward by [Employee 1] this morning. Myself and Dan Helfers sat down and spoke with him this morning and then James sat in with us around noon as he was out here for Safety Awards. I am wondering how to proceed with anything with [Employee 1] as he appears to be inconsolable. **He has said that he called the whistleblower number this morning and that he has contacted the OEIG office this morning.**<sup>16</sup> I am proceeding to investigate and get witness statements regarding the incident reports that he filled out this morning. They are attached.

## **E. Friday February 3, 2017 (The Next Day) Events**

### **1. Mr. Zimmerlein's Phone Conversation with Mr. Ghidina**

Mr. Zimmerlein's February 3, 2017 Memorandum to Supervisory File continued, in part:

On the morning of 2/3/17 I received call back from Mike Ghidina @ around 8:15 AM. I gave him a summary of the events of yesterday. I told him that I was working on documenting everything and that I would begin investigating the incidents that [Employee 1] brought forward. **I also mentioned the behavior of [Employee 1] and how he seems to go off on his own to try to do something**

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<sup>15</sup> The email copied Mr. Bell and [Employee 3].

<sup>16</sup> Emphasis added.

**with all of this instead of going through the proper channels and letting his direct supervisors handle things.**<sup>17</sup> I addressed my concern that [Employee 1] seems to be trying to establish some sort of foothold over the chain of command and that if something wasn't done it was going to majorly affect the whole work unit.

In his OEIG interview, Mr. Zimmerlein explained that if an employee believes there is a problem, it should be reported to first-line supervisors. Mr. Zimmerlein then stated, "if you think that we're not handling it, report it higher . . . but if you don't give the person a chance . . . the first person a chance to do their job, how are you supposed to exist in that job and how are you going to go forward in that job?" Mr. Zimmerlein acknowledged that Highway Maintainers and other employees are allowed to contact the OEIG.

Mr. Zimmerlein said he told others at IDOT that he did not know what to do with [Employee 1] and that he did not know if having [Employee 1] at the yard with others would be the best course of action, but that the Peoria office made the decision to put [Employee 1] on leave.<sup>18</sup> Mr. Zimmerlein explained that he believed it was not in the best interest for [Employee 1] to be around people at the yard because they were aware [Employee 1] was filling out complaints against them. Mr. Zimmerlein said he relayed the information but that he was not involved in the decision to schedule a pre-disciplinary meeting for [Employee 1].<sup>19</sup>

## **2. [Employee 1's] Phone Conversation with Mr. Ghidina**

[Employee 1] stated that on the same day he submitted the incident reports, he left a voicemail message for Mr. Ghidina. [Employee 1] said Mr. Ghidina returned his phone call the next day.

Mr. Ghidina wrote a report regarding the telephone conversation he had with [Employee 1] on February 3, 2017. The report provided, in part:

I returned a phone call to [Employee 1] to see what he needed. For the record, I had already talked with Ed Zimmerlein the Operations Supervisor for the El Paso Maintenance Yard which is where [Employee 1] works and was aware of the situation as detailed by Ed. (This call was in the a.m. on 2/3/17) I had also received an e-mail from Ed with 4 incident reports that had been filled out by [Employee 1].

[Employee 1] indicated that he had a meeting with Danny Helfers, Lead Worker at El Paso, and Mr. Zimmerlein yesterday (2/2/17) and that he had wrote out incident reports for major infractions that had occurred. [Employee 1] detailed that he told Ed that he would like to exercise his Weingarten Rights...to which I may not be

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<sup>17</sup> Emphasis added.

<sup>18</sup> As noted above, Mr. Bell and Mr. Garnett are based at the District 4 office in Peoria.

<sup>19</sup> During his interview, Mr. Helfers stated that it was Mr. Zimmerlein's decision to recommend that [Employee 1] not be certified as a Highway Maintainer. Mr. Helfers stated that the decision to not certify his employment was not based on the incident reports or the fact that [Employee 1] stated he may contact the OEIG. When asked if [Employee 1] would still be a Highway Maintainer today if he did not fill out complaints in February 2017, Mr. Helfers responded, "[t]hat had nothing to do with it."

entitled to because I've not been here 6 months....and I want Whistle Blower protection. [Employee 1] stated that Ed told him that he would investigate accordingly. . . .

. . . [Employee 1] said that also during that time (previous to this situation) he had called Mr. Zimmerlein and talked to him off the record asking Ed hypothetically what he would do. I asked [Employee 1] if Ed had told him that he would address the issue. [Employee 1] said that Ed said he would look into it.

. . . [Employee 1] said that when Danny [Helpers] addressed the crew about not wearing ear buds yesterday (2/2/17)....I sat there and thought about it....and I knew they were calling me out even though Danny didn't say my name. I finally had enough and I told [Redacted] that if that's the case then you aren't smoking in trucks anymore and I said other things to other guys. I understand reciprocation. I put things into writing. Mr. Helpers became agitated....hostile....he uses intimidation. I asked if this meeting is over. Mr. Helpers said this meeting is over when I say it's over . . .

I asked [Employee 1] if he had a conversation with Mr. Helpers about his comments. He said no . . . I asked [Employee 1] if he had any conversations with any of the employees he mentioned in the incident reports. [Employee 1] said no....it wouldn't have done any good . . . I explain the role we have as employees to report these types of incidents when they happen so that management has an opportunity to address them. [Employee 1] stated again....Mr. Ghidina....I'm requesting for Whistle Blower protection....this is a hostile work environment . . . [Employee 1] stated that Mr. Helpers told me that I'm not able to take constructive criticism.

. . . I tried multiple times to explain to [Employee 1] how we handle these types of issues/incidents and that management does not ignore them when they are brought to our attention. [Employee 1] was never satisfied with my responses. He would continually talk over me and I would have to try to slow him down to try to explain our processes/procedures for dealing with these types of issues . . . When I would ask him why he didn't bring them up at the time if he felt they were major incidents he would refer back to the culture in the El Paso Yard and that Mr. Helpers is intimidating. I asked him if he had ever been disciplined by Mr. Helpers. He said no.

[Employee 1] stated that he had a very good meeting with Mr. Bell and Mr. Zimmerlein after the meeting with Mr. Helpers and Mr. Zimmerlein. [Employee 1] indicated that Mr. Bell assured him that the incidents that he documented would get looked into. [Employee 1] continually stated that Mr. Bell was very professional but he didn't like/trust Mr. Zimmerlein or Mr. Helpers. [Employee 1] again started talking about Mr. Helpers and the morning ready room meeting on 2/2/17 . . .

[Employee 1] then went on to say that the meeting with Mr. Helpers and Mr. Zimmerlein was dragging on and after I was telling my side....Mr. Helpers said

you're unable to take direction...you're insubordinate. I said how have I been. [Employee 1] then said that is when Mr. Helfers yelled at him to go sweep the shop.

...

[Employee 1] said that after our discussion he was going to fill out another incident report regarding things he brought up in our conversation. **He also indicated that he has talked to a neighbor that works for the OEIG and he has talked to that person and he would like the phone number for OEIG.**<sup>20</sup> I provided that number to [Employee 1] as well. [Employee 1] said several times that yesterday was not the best day in his career but he was not stopping with what he feels are significant problems in the work environment. . . .

### **3. February 3, 2017 Incident Report**

Investigators obtained an incident report dated February 3, 2017, which indicates that it was completed by [Employee 1]. This report described an incident on an "unknown" date in which Mr. Helfers and another employee made a statement directed toward [Employee 1] that he described as "use of intimidation."

### **4. Mr. Ghidina's Other Meetings and Calls on February 3, 2017**

In another report, Mr. Ghidina detailed other conversations he had on February 3, 2017, after his phone call with [Employee 1], beginning with a meeting he had with Mr. Bell. This report provided the following, in part:

James [Bell] stated that he was very concerned with [Employee 1's] emotional stability. James said that when he and Ed met with [Employee 1] yesterday (2/2/17) that [Employee 1] was crying for almost 45 minutes as he talked with them.

After our conversation we decided to contact [Employee 2]<sup>21</sup> in the Central Office to discuss this situation. I forwarded the incident reports to [Employee 2] and her out of office assistant was on. I called her emergency number and James and I talked to her about the situation. She recommended that we document everything and that she would be available to help [Employee 1] with the employee assistant [sic] program if he wanted help[]

We then contacted Kensil Garnett, Regional Engineer for Region 3 and filled him in with the situation. In addition we talked about contacting the Bureau of Investigations and Compliance, Bruce Harmening, and Kensil agreed that we should. . . .

### **5. Mr. Ghidina's Communications with Mr. Harmening on February 3, 2017**

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<sup>20</sup> Emphasis added.

<sup>21</sup> [Identifying information redacted].

In the same statement describing other meetings and conversations he had on February 3, 2017, Mr. Ghidina wrote the following about his phone call with Mr. Harmening:

Bruce called me back at approximately 12:20 p.m. I had forwarded him the incident reports from [Employee 1]. I explained to Bruce how the events had been presented by Mr. Zimmerlein, Mr. Bell, and [Employee 1]. Bruce said that there was absolutely no reason for his office to get involved in this situation. He stated that this was a management issue and there wasn't anything for his office to investigate.

His recommendation was that if everything was as I had presented to him that we had an unmanageable employee and since [Employee 1] was in his probationary period that we should move to terminate him. Bruce said to document everything and by my account of the timeline of events that there is nothing to be concerned about regarding Whistle Blower protection and the OEIG. He reiterated the need to make sure that the timeline of events are documented. Bruce said the [sic] [Employee 1] knew he messed up and that was why he continually kept repeating the Whistle Blower protection.

Investigators interviewed Personnel Services Manager Michael Ghidina on October 2, 2017. Mr. Ghidina said he has worked for IDOT since 1993, and that he has been the Personnel Services Manager of IDOT's Region 3, District 4 since 2002. Mr. Ghidina said that in that position, he is responsible for overseeing the District 4 personnel section, including handling disciplinary actions.

Mr. Ghidina spoke about his February 3, 2017 phone conversation with Mr. Harmening during his OEIG interview. Mr. Ghidina said that when he received information regarding the incident on February 2, 2017, he passed on the information to Mr. Harmening. Mr. Ghidina said that when he spoke to Mr. Harmening, Mr. Harmening told him that they had an "unmanageable employee" and that based on what Mr. Ghidina had told him, IDOT should terminate [Employee 1]. Mr. Ghidina said that Mr. Harmening told him that BIC would not investigate the issues regarding [Employee 1] because it was a management issue, and BIC investigating the complaints would be duplicating work. Mr. Ghidina stated that Mr. Harmening told him that they needed to "move forward."

Investigators interviewed BIC Chief Bruce Harmening on December 6, 2017. Mr. Harmening stated that he had been an employee of IDOT for six years, and that he had been Bureau Chief of BIC for one and one-half years.<sup>22</sup>

Mr. Harmening stated he recalled having one discussion by telephone with Mr. Ghidina regarding [Employee 1], after receiving an email from Mr. Ghidina. Mr. Harmening said he believed [Employee 1's] incident reports were attached to the email. Mr. Harmening said Mr. Ghidina told him that IDOT District 4 was having a pre-disciplinary evaluation for a probationary Highway Maintainer, and he believed that Mr. Ghidina was referring to [Employee 1].

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<sup>22</sup> Mr. Harmening left State employment in March 2018. Mr. Harmening previously was IDOT's Ethics Officer, but was not the Ethics Officer at the time of his conversation with Mr. Ghidina.

Mr. Harmening stated that Mr. Ghidina asked him if BIC would investigate the allegations in the incident reports, and that he responded that BIC would probably not do so. Mr. Harmening said he told Mr. Ghidina that since he (Mr. Harmening) did not have all the facts, BIC would refer the allegations back to District 4 to investigate. Mr. Harmening stated that he recalled telling Mr. Ghidina, "I'm not the advisor for discipline." Mr. Harmening told investigators that he believes that Mr. Ghidina was "picking [his] brain" as a manager. Mr. Harmening stated he told Mr. Ghidina to make sure that the level of discipline is justified.

Mr. Harmening said he did not specifically recall telling Mr. Ghidina that BIC would not investigate [Employee 1's] incident reports because the allegations were a "management issue." Mr. Harmening stated he told Mr. Ghidina that discipline, probation, and whistleblowing are "complicated issues," and that BIC only had two investigators at the time.

Mr. Harmening also said he did not tell Mr. Ghidina that IDOT management should move to terminate [Employee 1] because he was a probationary employee. Mr. Harmening stated that he probably did tell Mr. Ghidina that management should document everything. Mr. Harmening said he has no authority to tell Mr. Ghidina to terminate anyone, and that he did not do so. Mr. Harmening stated that he could not recall discussing the possibility of terminating [Employee 1]; however, Mr. Harmening said that Mr. Ghidina may have taken things he said out of context.

Mr. Harmening said he did not refer to [Employee 1] as an "unmanageable employee." However, Mr. Harmening also stated that the picture that was painted to him by Mr. Ghidina was that [Employee 1] was unmanageable, so he (Mr. Harmening) may have merely repeated Mr. Ghidina's description of [Employee 1] as an unmanageable employee.<sup>23</sup> Mr. Harmening said he had very limited information regarding [Employee 1], and thus would not have labeled him or made any judgment. Mr. Harmening stated that he does not view writing multiple incident reports "in and of itself" as being an "unmanageable employee," but that he may need more context.

## **6. Email from Mr. Ghidina to [Employee 2]**

In a February 3, 2017 email to [Employee 2], Mr. Ghidina wrote, in part:

Bruce Harmening said that they would not investigate because it's all a management issue. He said that we should document everything and move to terminate [Employee 1] as he is a probationary employee. He said no need to do a fitness for duty....we have an unmanageable employee.

I will get everything together and forward it to Labor Relations for review. If anything changes I will let you know.

## **F. Monday February 6, 2017 Initiation Of Termination Proceedings Against [Employee 1]**

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<sup>23</sup> In a follow-up email to the OEIG on December 7, 2017, Mr. Harmening reiterated that he did not "call" [Employee 1] an unmanageable employee, but said he may have "relayed" that to Mr. Ghidina based on the information provided to him in the call.

On February 6, 2017, Mr. Zimmerlein emailed Mr. Bell, Mr. Ghidina, and [Employee 3] his Memorandum to Supervisory File dated February 3, 2017, regarding his interactions with [Employee 1] on February 2, 2017, stating:

In my opinion this situation got out of hand right off the bat. If [Employee 1] had handled constructive criticism well and come to his supervisors about issues he felt needed to be addressed outright, there would have been no need for all of this. **There is an outstanding issue however of [Employee 1] operating outside of standard procedures and going over his supervisor's and the Department in the chain of command that needs to be addressed.**<sup>24</sup>

Mr. Ghidina then emailed IDOT Labor Relations Specialist Kevin Tirey and wrote: "Kevin, Please review. As suggested by Bruce Harmening, we would like move [sic] to terminate [Employee 1]. Please let me know what you think." Mr. Ghidina attached relevant documents to this email. Mr. Tirey replied to Mr. Ghidina's email, "Agreed. Since he started in September this will need to happen quickly."

In another email, that same day, Mr. Ghidina provided Mr. Tirey with the following statement of charges which Mr. Tirey reviewed and which stated:

You are hereby being charged with the following infraction which may result in discipline up to and including discharge:

**Unsatisfactory Work Performance/Conduct (During Probationary Period)**

During your probationary period, starting September 16, 2016, you have failed to achieve expected conduct and performance standards in the position for which you were hired.

You have therefore, failed to successfully complete your probationary period.

**1. Mr. Ghidina's Interview**

Mr. Ghidina stated that the decision not to certify [Employee 1's] employment was based on [Employee 1's] behavior, and explained that due to the circumstances, [Employee 1] became an unmanageable employee. Mr. Ghidina stated that [Employee 1] was submitting incident reports months after the incidents took place, and that management has to be aware of issues in a timely matter in order to address them. Mr. Ghidina stated that [Employee 1] would not listen to Mr. Zimmerlein, Mr. Bell, and himself about how the issues in the incident reports were going to be addressed.

Mr. Ghidina listed the chain of command a Highway Maintainer should follow when filing complaints, but stated that employees can also contact a safety representative, himself, or the Employee Assistance Program. Mr. Ghidina stated that all employees are allowed to contact the OEIG and other investigative bodies, including IDOT's Bureau of Investigations and Compliance.

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<sup>24</sup> Emphasis added.

Mr. Ghidina said the fact that [Employee 1] filed incident reports did not contribute to the decision not to certify him. Mr. Ghidina also said that it was [Employee 1's] right to contact the OEIG, and that [Employee 1] purportedly calling the OEIG was not a determining factor in the decision to not certify his employment.

Mr. Ghidina explained that he acted in this situation as he typically does when an employee is terminated: as an intermediary between the people "on the ground" and Labor Relations. Mr. Ghidina stated that after he collected memoranda and information from those at the yard, he wrote the charges and provided documentation to IDOT Labor Relations. Mr. Ghidina said that Mr. Tirey approved the pre-disciplinary meeting. According to Mr. Ghidina, IDOT Labor Relations and Central Management Services ultimately decide whether to certify an employee for full-time employment.

## **2. Interview of IDOT Region 3 Engineer Kensil Garnett**

OEIG investigators interviewed IDOT Region 3 Engineer Kensil Garnett on September 28, 2017. Mr. Garnett said he has worked for IDOT since 1991, and that he became the Region 3 Engineer in March 2015. Mr. Garnett stated that he oversees 354 employees in District 4 and 299 employees in District 5.

When asked who is involved in the decision to schedule a pre-disciplinary meeting, Mr. Garnett stated that all disciplinary matters are approved by IDOT Labor Relations. Mr. Garnett said that when he and his staff discovered that they had an issue regarding [Employee 1], they contacted Labor Relations. Mr. Garnett said Mr. Ghidina signed a letter to [Employee 1] on Mr. Garnett's behalf, informing him of his pre-disciplinary meeting.

Mr. Garnett stated that [Employee 1] was not certified due to "performance issues," and agreed that any performance issues would be documented in [Employee 1's] performance evaluations. Mr. Garnett stated that he and his staff felt that [Employee 1] was unmanageable and was causing a detriment to the El Paso Yard. Mr. Garnett said the yard is a small place, that information travels fast, and that [Employee 1] remaining in his role would have created an issue.

Mr. Garnett said [Employee 1's] termination had nothing to do with the incident reports he filed. Mr. Garnett acknowledged he had seen and received emails referencing that [Employee 1] said he was going to contact the OEIG, but he denied that [Employee 1's] statement that he may contact the OEIG contributed to the decision not to certify his employment.

## **3. Interview of IDOT Labor Relations Specialist Kevin Tirey**

Investigators interviewed IDOT Labor Relations Specialist Kevin Tirey on December 7, 2017. Mr. Tirey told investigators that he has worked for IDOT for approximately ten years, and had served as a Labor Relations Specialist for approximately eight years.<sup>25</sup> Mr. Tirey stated he reviews discipline at IDOT to make sure that it is consistent with past discipline, and that he is also involved in the grievance process.

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<sup>25</sup> Mr. Tirey stated that he had been the Labor Relations Manager for two years, but was reinstated to his Labor Relations Specialist position when IDOT's administration changed.

Mr. Tirey said that the decision to terminate an employee is not just one person's decision. He said that the District where an employee is employed sends Labor Relations its recommendation for discipline, so that Labor Relations can make sure it is consistent with past practice, and Labor Relations grants approval to have a pre-disciplinary meeting. Mr. Tirey said that he mainly checks to make sure the paperwork is correct, and that Labor Relations relies on management to make employee decisions.

Mr. Tirey said he recalled receiving Mr. Ghidina's February 6, 2017 email regarding [Employee 1], and that Mr. Ghidina was giving him a "heads up" that the District was having issues with a probationary employee. He said Mr. Ghidina also may have provided him a file containing statements from supervisors and other staff regarding [Employee 1]. Mr. Tirey said he did not have input in the decision to recommend not certifying [Employee 1]. However, he said he approved Mr. Ghidina's Statement of Charges against [Employee 1], and noted that the language used in the charges was standard for probationary employees. Mr. Tirey said he also granted approval to schedule a pre-disciplinary meeting with [Employee 1].

Mr. Tirey explained that because Mr. Ghidina's email stated that Mr. Harmening had suggested that IDOT move to terminate [Employee 1], he (Mr. Tirey) assumed that BIC investigated the matter and made a determination. Mr. Tirey said Mr. Harmening's recommendation was a key factor in his agreeing with the decision to move to terminate [Employee 1], and that because of that recommendation there was less review of [Employee 1's] file because "that's where we were going to go."

However, Mr. Tirey said that before a probationary employee is discharged, CMS requires IDOT to conduct a current performance evaluation. Accordingly, Mr. Tirey said, he instructed Mr. Ghidina to make sure to complete a performance evaluation before not certifying [Employee 1's] employment. Mr. Tirey said that because [Employee 1's] discharge was based on work performance, the performance issues needed to be documented on the evaluation.

When asked whether IDOT decided to terminate [Employee 1] because he had filed written complaints, or for contacting the OEIG, Mr. Tirey responded, "not to my knowledge." When asked whether ignoring the chain of command contributed to the decision not to certify [Employee 1's] employment, Mr. Tirey responded, "not on Labor Relations' end." Mr. Tirey said that he believed IDOT moved to discharge [Employee 1] because he had an outburst at a meeting with his supervisor and started calling out his co-workers.

#### **G. February 7, 2017 Incident Report**

Investigators obtained an incident report dated February 7, 2017, which indicates that it was completed by [Employee 1]. This report described an incident on February 6, 2017 in which a coworker made comments to [Employee 1] that caused him to feel baited and taunted.

#### **H. Discussions Regarding Placing [Employee 1] On Administrative Leave**

##### **1. Mr. Ghidina's Interview**

During his interview, Mr. Ghidina stated that employees can be placed on paid administrative leave prior to pre-disciplinary meetings depending on the situation, including for issues such as disruptive conduct, behavioral issues, or violence. Mr. Ghidina said it is best to place employees on administrative leave so “nothing worse happens,” and to avoid having situations escalate. Mr. Ghidina stated that the process does not differ for non-probationary employees.

Mr. Ghidina stated that he initially recommended to place [Employee 1] on paid administrative leave, and that Mr. Garnett then made the recommendation to IDOT Office of Finance and Administration Director Jeff Heck, who approved the decision. Mr. Ghidina stated that [Employee 1] was placed on leave due to “circumstances at the [El Paso] Yard,” namely that [Employee 1] exhibited disruptive conduct, and that his removal from the yard benefited him and his fellow employees. Mr. Ghidina stated that he created a letter notifying [Employee 1] that he was being placed on paid administrative leave, using language from the IDOT Labor Relations Manual, and signed it on Mr. Garnett’s behalf.

## 2. Mr. Tirey’s Interview

Mr. Tirey was asked who was involved in the decision to place [Employee 1] on paid administrative leave. Mr. Tirey said he told Mr. Ghidina and Mr. Garnett that he could not approve paid administrative leave, and then they asked IDOT Office of Finance and Administration Director Jeff Heck for approval. Mr. Tirey said [Employee 1] was placed on paid administrative leave because the District believed that [Employee 1] was a “threat in the workplace.”

## 3. Emails between Mr. Garnett and Mr. Heck

In a February 7, 2017 email to IDOT Office of Finance and Administration Director Jeff Heck, Mr. Garnett wrote:

[Employee 1] is a highway maintainer in District 4 that works out of our El Paso Yard. [Employee 1] is a probationary employee and we are currently in the process of terminating him due to being an “unmanageable employee”. We would like to place [Employee 1] on paid administrative leave after the supervisor gives his evaluation later today. **[Employee 1] is just causing problems and writing incident reports.**<sup>26</sup> The employees in the El Paso yard, both the highway maintainers and the supervisors, are finding it very hard to function with him in the work environment. Can we place [Employee 1] on paid administrative leave? Everything is the [sic] works to complete the Pre-disciplinary hearing.

Mr. Heck replied to Mr. Garnett’s email, in part: “My opinion is we send him home with pay until we can run the process. Management needs to have that ability to make that call.”

### a. Mr. Garnett’s Interview

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<sup>26</sup> Emphasis added.

In his OEIG interview, Mr. Garnett confirmed that he contacted Mr. Heck in order to proceed with placing [Employee 1] on administrative leave. Mr. Garnett explained that Mr. Heck oversees all the personnel relations at IDOT and that he had to obtain Mr. Heck's approval to place [Employee 1] on paid administrative leave. In his interview, Mr. Garnett was referred to his February 7, 2017 email to Mr. Heck, in which he wrote, "[Employee 1] is just causing problems and writing incident reports." Mr. Garnett stated that [Employee 1's] incident reports seemed to be "retaliatory" because they were not filed until after the situation regarding the earbuds.

## **b. Mr. Heck's Interview**

Investigators interviewed Mr. Heck on December 5, 2017.<sup>27</sup> Mr. Heck stated that he administers all financial services for IDOT, and that he had been an IDOT employee for approximately 37 years. Mr. Heck said February 7, 2017 was the first time he heard of [Employee 1], and that at that time he had not heard of any of the incidents at the El Paso Yard. Mr. Heck stated that the "process" he referenced in his February 7, 2017 email to Mr. Garnett involved Mr. Ghidina speaking to Mr. Tirey to see if there was a basis for not certifying [Employee 1]. Mr. Heck stated management should make those types of calls for the good of their staff. Mr. Heck said Mr. Garnett has the leeway to place employees on paid administrative leave, and that he (Mr. Heck) did not have input on the decision to recommend not certifying [Employee 1] for full-time employment.

### **I. [Employee 1's] February 8, 2017 Evaluation (Second Evaluation)**

On February 8, 2017, Mr. Ghidina sent an email to Mr. Zimmerlein with two form letters to give to [Employee 1] with his performance evaluation. The first was a letter notifying [Employee 1] that he was being placed on paid administrative leave as of 10:00 a.m. on February 8, 2017. The second was a letter directing [Employee 1] to attend a pre-disciplinary meeting on February 14, 2017. Both letters had the signatures of Mr. Garnett, with the initials "MDG" next to the signatures. During his interview, Mr. Zimmerlein told investigators that he gave [Employee 1] his second evaluation, along with the letters addressing his paid administrative leave and pre-disciplinary meeting.

#### **1. The Second Performance Evaluation**

A performance evaluation dated February 8, 2017 recommended that [Employee 1] not be certified as a full-time Highway Maintainer. The period of the evaluation was from December 17, 2016 through February 7, 2017. In the Appraisal of Performance of Duties section of the evaluation, [Employee 1] was rated "Satisfactory" or "Insufficient Opportunity to Observe" in every category, except the duty to "[p]romote[] a good working climate by being courteous, respectful and cooperative with the public, co-workers, lead workers and technical staff," in which he was given an unsatisfactory rating. Mr. Zimmerlein and Mr. Bell signed the evaluation.

Above the signature section was the following statement regarding [Employee 1's] performance:

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<sup>27</sup> Mr. Heck left IDOT in May 2018 and became the Executive Director of the Capital Development Board.

[Employee 1] while on the surface addresses his coworkers in a courteous manner, does not necessarily display the respectfull [sic] and cooperative traits listed in the first category of the previous page. [Employee 1] has made the atmosphere appear more as though he should be the policy interpreter and enforcer in this work unit. **[Employee 1] has recently reported several instances in the El Paso yard that he feels are policy violations and acts of “violence in the workplace”. Instead of reporting these instances to his supervisors and allow us to do our job to determine the correct course of action he has stated that he has gone over our heads to the Office of the Executive Inspector General and called the Whistleblower hotline.**<sup>28</sup> I feel that none of the instances brought up were anything that could not have been handled by 1<sup>st</sup> and 2<sup>nd</sup> line supervisors. The reports do not show major evidence of cause for severe discipline. The result of his public accusations in the El Paso yard have caused a rift between himself, his first and second line supervisors and will most definitely cause trust issues with his fellow coworkers moving forward. [Employee 1] has stated that he doesn't feel that he fits in at the El Paso yard and has admittedly interviewed for other positions while working here. While [Employee 1] could most likely perform the accountabilities of a Highway Maintainer, I do not believe his disposition is conducive to making this work unit more productive or safe. From a statement made by [Employee 1] on 2/2/17 with James Bell present, he will not report to his first line supervisor Dan Helfers. I do not believe that stance is warranted. References to this can be found in supporting documentation provided to the office from Supervisory file. I do not believe it is in the best interest of the Department to certify [Employee 1] as a Highway Maintainer.

## 2. [Employee 1's] Interviews

[Employee 1] stated that the February 8, 2017 evaluation was the final evaluation that he received from IDOT, and that he was placed on paid administrative leave the same day he received it. [Employee 1] stated that because IDOT was attempting to terminate his employment, he added an additional page to the evaluation stating that he disagreed with the findings in the evaluation, and asking for whistleblower protection.

[Employee 1] stated he felt like the facts were spun to make him seem like a disruptive employee when he was just trying to report policy infractions and make sure the policies were enforced equally. [Employee 1] said that his evaluation stated that he was unwilling to report to his direct supervisor, Mr. Helfers, which [Employee 1] stated is untrue. [Employee 1] explained that at that point he had lost faith in Mr. Helfers, and that he stopped reporting issues to Mr. Helfers because he felt that Mr. Helfers was “part of the problem,” and that Mr. Helfers condoned misbehavior and did not take action. [Employee 1] also said he had not contacted the OEIG prior to receiving the second evaluation and being placed on administrative leave, and that he did not tell IDOT that he contacted the OEIG during this time period.

When asked if there was anything that happened between his first and second evaluation to cause the downgraded evaluation, [Employee 1] responded that IDOT did not implement any

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<sup>28</sup> Emphasis added.

progressive discipline, and that no one ever told him that he was being disruptive prior to receiving his second performance evaluation. [Employee 1] noted that he was placed on paid administrative leave within a week of filing incident reports to IDOT. [Employee 1] stated, “with me reporting everything they went straight to . . . I mean the timeline on it is so condensed.” He added, “[w]hen I came forward and put the incident reports together, at that point in time, the environment, it just, it all at once they wanted me out of there.”

### **3. Mr. Helfers’ Interview**

When asked if he had any input in [Employee 1’s] second evaluation, Mr. Helfers responded that he provided input as usual, but that it was apparent at that time that [Employee 1] was unable to work with others, including Mr. Helfers. Mr. Helfers also stated that his input was not needed as much because once [Employee 1] stated he had incident reports to file, Mr. Zimmerlein was in every meeting with [Employee 1].

Mr. Helfers stated he believes that [Employee 1’s] second performance evaluation is accurate, saying, “[l]ike I said he did what he was told, it’s just after the ear bud incident, it just everything come unraveled with him.” Mr. Helfers also stated the evaluation was accurate because [Employee 1] “did his job, he did everything, it’s just the working with other people was not there, because it all happened in one day.” Mr. Helfers said that “for the most part,” there were no issues with [Employee 1] until the ear bud incident, which is when the issues began and was the reason for the downgrade in [Employee 1’s] second performance evaluation.

### **4. Mr. Zimmerlein’s Interview**

In his OEIG interview, Mr. Zimmerlein said he was familiar with [Employee 1’s] second performance evaluation, and confirmed his signature on the document. Mr. Zimmerlein stated that this evaluation process was the same as for the first evaluation, but stated that he knew this one would be an unsatisfactory evaluation because [Employee 1] “basically told us” that he would not work for Mr. Helfers anymore.

Mr. Zimmerlein stated that [Employee 1’s] work performance was fine, but that [Employee 1] did not adhere to the criterion of “[p]romot[ing] a good working climate by being courteous, respectful and cooperative with the public, co-workers, lead workers and technical staff.” Mr. Zimmerlein stated that when he believed [Employee ‘s1] attitude would not change, he spoke with Mr. Ghidina, and Mr. Ghidina instructed him to complete the second evaluation. Mr. Zimmerlein stated that he was the only one to write anything on the evaluation and it was then submitted to Mr. Bell, and then further up the chain. Mr. Zimmerlein stated that Mr. Bell is supposed to tell him if there are any inconsistencies with how employees are rated throughout the district, but that he has never made a change. After re-reading the evaluation, Mr. Zimmerlein stated that he believes that the evaluation was accurate, except for [Employee 1’s] written comments.

Mr. Zimmerlein was referred to the following statement in the evaluation:

[Employee 1] has recently reported several instances in the El Paso yard that he feels are policy violations and acts of “violence in the workplace.” Instead of

reporting these instances to his supervisors and allow us to do our job to determine the correct course of action he has stated that he has gone over our heads to the Office of Executive Inspector General and called the Whistleblower hotline.

Mr. Zimmerlein stated that the statement was correct, and that [Employee 1] threatened to go to the OEIG before his three-month evaluation, after the vehicle incident occurred. Mr. Zimmerlein stated that he responded to [Employee 1] that “we can handle” that type of incident.

Mr. Zimmerlein stated that the incident reports [Employee 1] filed had no bearing on the February 2017 evaluation, and that they were not the reason [Employee 1] was not certified. Mr. Zimmerlein said that the complaints led to the conversations and meetings with [Employee 1] and “that was the beginning of everything.” Mr. Zimmerlein stated that it was [Employee 1’s] reaction to the conversations and his demeanor during those conversations that were the reason for his non-certification. Mr. Zimmerlein added that [Employee 1’s] discontent with the fact that Mr. Zimmerlein was not taking [Employee 1’s] suggestions on what should happen also affected his evaluation.

Mr. Zimmerlein further said that [Employee 1] was not removed for contacting the OEIG. Mr. Zimmerlein said that [Employee 1] and any other employee can contact the OEIG; however, Mr. Zimmerlein questioned, “is that the order or chain of command or is that the order of operations that we expect or want from our employees?” Mr. Zimmerlein stated that IDOT should have a chance to “rebut” the complaint and “look into it ourselves.” Mr. Zimmerlein stated that the incidents that [Employee 1] reported were internal matters that did not have to be reported to the OEIG because the issues could have been handled by first-line and second-line management with direction from Labor Relations. Mr. Zimmerlein said that the fact that [Employee 1] ignored the chain of command affected his noncertification, and that “if this is the manner that business is going to be conducted here, boy we ain’t going to get nothing else done.”

## **5. Mr. Bell’s Interview**

Mr. Bell told investigators that he was familiar with [Employee 1’s] second performance evaluation, and stated that the signature under the line for “Next Higher Level Signature” was his. Mr. Bell stated that he did not have any input in the evaluation, and that he could not recall if he read the evaluation before it was signed. Mr. Bell stated that it was hard for him to say if the evaluation was accurate because he was not the appraiser. When asked if there was anything in particular between the first and second performance evaluations that would cause a downgrade in [Employee 1’s] evaluation, Mr. Bell said, “I am not the appraiser so I can’t make that call.”

Because Mr. Bell had previously stated in his interview that he reviews evaluations for content as well as form, investigators referred him back to the second performance evaluation and his signature. Mr. Bell agreed that he signed off on Mr. Zimmerlein’s recommendation to not certify [Employee 1’s] employment. Mr. Bell explained that he signed off on the document to verify that an appraisal had been completed. Mr. Bell said that he signed off on the content of the document, but that he could not attest to the accuracy of the evaluation.

During his interview, Mr. Bell said the fact that [Employee 1] stated he may contact the OEIG did not contribute to the decision not to certify his employment. Mr. Bell stated that he assumed that [Employee 1] was not certified due to performance issues, but then said that he did not know if [Employee 1's] performance issues would be documented on his evaluations. When asked if the fact that [Employee 1] filed incident reports contributed to the decision not to certify his employment, Mr. Bell responded, "I wouldn't link those." Mr. Bell said IDOT does not punish employees for being a whistleblower. Mr. Bell then stated that he did not know why [Employee 1] was not certified because it was "out of my area."

## **6. Mr. Ghidina's Interview**

Investigators also spoke with Mr. Ghidina about [Employee 1's] second evaluation. Mr. Ghidina said the timing of [Employee 1's] evaluation had nothing to do with the incident reports. Mr. Ghidina stated that the second evaluation was administered because [Employee 1's] supervisor was recommending he not be certified. Mr. Ghidina explained that when IDOT moves forward with its pre-disciplinary process it must give the employee their final evaluation, and explained that [Employee 1's] second evaluation took place in February 2017, in advance of the conclusion of his probationary period, because IDOT was following the pre-disciplinary process.

When asked if he had any input in the evaluation, Mr. Ghidina said he told Mr. Zimmerlein that he had to conduct the evaluation and fill out the corresponding form. Mr. Ghidina stated that Mr. Zimmerlein asked him to review the evaluation and first sent him an unsigned version before sending a signed version. Mr. Ghidina said he could not recall if he made changes to the evaluation.<sup>29</sup> Mr. Ghidina stated that Mr. Zimmerlein is the one who ultimately completes the evaluation. When asked if [Employee 1's] second evaluation was accurate, Mr. Ghidina stated, "I'm not the supervisor." Mr. Ghidina further explained that he was aware of issues regarding [Employee 1], and stated that there was a lot going on at that time.

## **7. Mr. Garnett's Interview**

In his interview, Mr. Garnett was referred to [Employee 1's] second performance evaluation, in particular the narrative detailing that [Employee 1] had filed reports and told his superiors he was going to report incidents to the OEIG. When asked if this part of the narrative was correct, Mr. Garnett responded that it was "all about the chain of command." Mr. Garnett stated that complaints should be sent to the Lead Worker, and that ignoring the chain of command is a violation of IDOT's Personnel Policies Manual.<sup>30</sup> Mr. Garnett stated that if you do not let the Lead Worker know about issues at the yard, then it is "not their fault." Mr. Garnett said, "[i]f you want a problem solved, get it to the people who can fix it." When asked if the fact that [Employee 1] "ignored the chain of command" contributed to the decision not to certify his employment, Mr. Garnett responded, "absolutely."

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<sup>29</sup> The documents the OEIG reviewed reflect that Mr. Zimmerlein emailed a draft of the evaluation to Mr. Ghidina for his review on February 7, 2017. Mr. Ghidina responded via email on the same day, "[d]id you mean to mark unsatisfactory in the first box? You checked not applicable."

<sup>30</sup> IDOT's Personnel Policies Manual states that employees are responsible for reporting "to their immediate supervisors or their chain of command any incidents or allegations of misconduct, corruption, conflicts of interest, malfeasance or misfeasance." See IDOT Personnel Policies Manual Chapter 10-3(Q) (June 3, 2014) (obtained from the OEIG library).

Mr. Garnett acknowledged that he had received emails referencing that [Employee 1] said he was going to contact the OEIG. Mr. Garnett stated that Highway Maintainers are “absolutely” allowed to contact the OEIG or other investigative bodies. Mr. Garnett said contacting the OEIG should not come into conflict with the chain of command at IDOT yards, but added “it’s human nature” that some might get offended, even though they should not.

## **8. Mr. Tirey’s Interview**

Mr. Tirey stated that he does not review every performance evaluation, but that he was familiar with [Employee 1’s] second performance evaluation. Mr. Tirey said he did not recall having any input on it, and that he read it after it was signed. Mr. Tirey stated that he probably reviewed this evaluation to make sure it was included in [Employee 1’s] file and to make sure that the “recommending non-certification” box was checked; Mr. Tirey explained that Central Management Services will not approve the discharge unless there are unsatisfactory marks.<sup>31</sup> Mr. Tirey said he also checks evaluations for substance. Mr. Tirey said that IDOT’s decision not to certify [Employee 1] was based on [Employee 1’s] second evaluation, and, he thought, [Employee 1’s] conduct during a meeting with his supervisors.

Mr. Tirey stated that an unsatisfactory marking on an evaluation and an argument with a boss are sufficient to not certify a probationary Highway Maintainer. Mr. Tirey stated he did not know why [Employee 1’s] supervisors mentioned [Employee 1] contacting the OEIG in his second evaluation, and stated that if [Employee 1] did not “get a fair shake” then he would have done the right thing by contacting the OEIG. Mr. Tirey said that Highway Maintainers and all other IDOT employees are allowed to contact the OEIG, and they are not limited in what they can contact the OEIG about. Mr. Tirey said that employees should not be held accountable for contacting the whistleblower hotline because “that’s why it’s there.” Mr. Tirey stated during his interview that he never saw a situation like [Employee 1’s] where it was documented on an evaluation that the employee had contacted the OEIG instead of reporting matters to IDOT management.

## **9. Mr. Heck’s Interview**

Mr. Heck stated he had not seen [Employee 1’s] second evaluation before his interview, but he interpreted the language in the narrative to mean that there were issues reported outside the chain of command that could have been addressed by supervisors. Mr. Heck said he had an issue with the language in the evaluation and with “someone saying that they have a problem with anybody coming to [the OEIG].”

## **J. [Employee 1’s] February 14, 2017 Pre-Disciplinary Meeting**

Mr. Ghidina’s February 22, 2017 notes of the February 14, 2017 pre-disciplinary meeting stated, in part:

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<sup>31</sup> When asked about Central Management Services’ role in approving disciplinary decisions, Mr. Tirey said that a Senior Labor Relations Analyst checks the files for “red flags” and to ensure necessary paperwork is in order, but does not go back to IDOT and request changes be made.

[Individual 1]<sup>32</sup> asked for one week to provide a written rebuttal. Request was granted – rebuttal due by the close of business on February 22, 2017. I asked [Individual 1] if he would like to add anything else. [Individual 1] said no but maybe [Employee 1] does. [Employee 1] said yes....I'd like to make a statement. [Employee 1] said he recalled something about being unlawful. Ed Zimmerlein stated that he recalled telling [Employee 1] that the Inspector General was more for reporting unlawful acts. Ed stated that management issues can be addressed and handled appropriately.

#### **K. [Employee 1's] February 22, 2017 Resignation**

During his interviews, [Employee 1] stated that on February 22, 2017, he met with Mr. Ghidina and asked if there was any chance that he would be able to return to work at IDOT or if there was any additional review regarding his work situation. [Employee 1] stated that Mr. Ghidina responded that he could not return to IDOT, and so he gave Mr. Ghidina his resignation letter. [Employee 1] stated that because he knew that he could never be employed with the State if he was fired while on probation, he decided to resign in the hope of being employed at a different State agency. [Employee 1] said he felt he “was forced to resign” from IDOT.

[Employee 1's] resignation memorandum, dated February 22, 2017 and addressed to IDOT District 4 Operations,<sup>33</sup> was titled: “Resignation due to working conditions of a Hostile/Whistleblower/Sexual Harassment Work Environment.” The memorandum stated, in part:

Today is a sad day for me. After coming forward with incident reports filed on Feb 2, 2017 and Feb 3, 2017 I have been put on paid administrative leave, attended a pre-disciplinary hearing and now pending potential termination.

I came forward during my first six months as a non-certified employee due to working conditions where I have observed and documented infractions by my coworkers of policies and procedures, safety standards, fraud against the State of Illinois, intimidation, bullying, hostility and other forms of harassment in the IDOT District 4 El Paso Illinois shed.

...

This was not the first time I had reported coworkers for wrongdoing at the El Paso, Illinois shed. I had reported verbally to both Mr. Dan Helfers and Mr. Ed Zimmerlein prior to Feb. 2-3, 2017 and reported minor infractions in the workplace. By coming forward in the past and verbally reporting incidents I had received push back from coworkers and my first line supervisor Dan Helfers . . .

....

I have reached out on multiple occasions in an appropriate manner to bring to light a culture that exists at the El Paso, Illinois IDOT shed that is contrary to the State of Illinois best interest and practices. I wanted nothing more than to be a

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<sup>32</sup> [Individual 1] is a Teamsters Union representative.

<sup>33</sup> Mr. Ghidina was copied on the memorandum.

productive and compliant employee continuing my career as a civil servant. At this time, I see no options being presented to me other than to resign from the Highway Maintainer position effective immediately.

#### IV. ANALYSIS

The State Officials and Employees Ethics Act (Ethics Act) prohibits a State employee or *State agency* from taking any retaliatory action against a State employee because he or she “[d]iscloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any . . . other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation.”<sup>34</sup> Retaliatory actions include “the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any State employee.”<sup>35</sup> An Ethics Act retaliation violation may be established only upon a finding that the protected activity was a contributing factor in the alleged retaliatory action.<sup>36</sup> That is, no Ethics Act violation has occurred if the State employee or agency would have taken the same unfavorable personnel action absent the protected conduct.<sup>37</sup>

This investigation revealed that IDOT retaliated against [Employee 1] for disclosing and/or threatening to disclose misconduct at the El Paso Yard to IDOT management and the OEIG, in violation of the Ethics Act. Although [Employee 1’s] initial written evaluation was satisfactory, and all IDOT staff interviewed in this investigation acknowledged that [Employee 1’s] work performance was satisfactory, IDOT employees placed him on administrative leave and initiated termination proceedings against him immediately after he filed incident reports describing misconduct at the El Paso Yard, and immediately after IDOT managers believed that he had contacted the OEIG. Although most of the IDOT managers interviewed in the investigation maintained that these employment actions were unrelated to [Employee 1’s] complaints, the timing of their actions, along with numerous contemporaneous emails and memoranda that expressed concern about [Employee 1’s] complaints, and the statement in his second evaluation that [Employee 1] had reported misconduct to the OEIG and called the whistleblower hotline, make clear that [Employee 1’s] complaints were a contributing factor in the employment actions.

First, the evidence gathered in this investigation shows that until [Employee 1] began filing incident reports on February 2, 2017, his IDOT supervisors considered his work performance as a Highway Maintainer to be satisfactory. [Employee 1’s] direct supervisor, Mr. Helfers, told investigators that [Employee 1] was able to perform his duties and that “[m]ost of the time when he did a job, he did it right”; Mr. Helfers added that he “didn’t have any problems with [[Employee 1’s]] job performance as far as doing what he was told.” Similarly, Mr. Zimmerlein told investigators that [Employee 1] would do what was asked of him, and Mr. Bell stated that [Employee 1] did “as good a job” as anyone else who had worked for a comparable amount of time.

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<sup>34</sup> 5 ILCS 430/15-10(1). In this context, a “public body” includes any State agency. 5 ILCS 430/15-5.

<sup>35</sup> 5 ILCS 430/15-5.

<sup>36</sup> 5 ILCS 430/15-20.

<sup>37</sup> 5 ILCS 430/15-20.

In addition, [Employee 1's] December 23, 2016 evaluation reflected a satisfactory rating, and did not mention any behavioral issues. Although Mr. Zimmerlein's notes dated December 22, 2016, which he claimed to have shared with [Employee 1] during his first evaluation, indicated that [Employee 1] appeared to feel hypersensitive to what he perceived as disrespect from his coworkers, Mr. Zimmerlein explained that he did not include this concern in [Employee 1's] formal evaluation because he felt at that time that it was something they could move past. Notably, Mr. Zimmerlein's notes also mentioned that he was "uneasy" that [Employee 1] said he might contact the district office or OEIG with his concerns.

Although [Employee 1's] supervisors considered his work performance to be satisfactory, IDOT management initiated termination proceedings and placed him on administrative leave immediately after he filed incident reports and told IDOT supervisors that he intended to or had called the OEIG and the whistleblower hotline. [Employee 1] began filing incident reports on February 2, 2017. According to Mr. Helfers, after [Employee 1] filled out the incident reports he said that he was going to contact the OEIG. Although [Employee 1] told investigators that he did not tell IDOT managers that he had contacted the OEIG prior to his second evaluation, Mr. Zimmerlein said that [Employee 1] told him that he had called the OEIG and the whistleblowers' phone number on February 2, 2017. Mr. Ghidina said that, in a February 3, 2017 phone call, [Employee 1] told him that he had called a neighbor who works for the OEIG; Mr. Ghidina said [Employee 1] also asked him (Mr. Ghidina) for the OEIG's phone number at that time.

On Monday, February 6, 2017 – only two business days after [Employee 1] began filing incident reports on Thursday, February 2, 2017 – Mr. Ghidina wrote Mr. Tirey that "we would like [to] move to terminate [Employee 1]," and asked him to review disciplinary charges that indicated that [Employee 1] had failed to successfully complete his probationary period. In short order, over the days that followed, Mr. Zimmerlein wrote a negative evaluation that included a recommendation not to certify [Employee 1], which Mr. Bell also signed, and which Mr. Ghidina and Mr. Tirey reviewed; in addition, Mr. Garnett secured Mr. Heck's approval to place [Employee 1] on administrative leave. On February 8, 2017, less than one week after [Employee 1] filed his first incident reports, IDOT administered the negative evaluation, placed him on administrative leave, and scheduled a pre-disciplinary meeting. This timing strongly suggests that [Employee 1's] protected activity of filing incident reports and threatening to contact the OEIG contributed to the negative employment actions that followed.

In addition to this suspicious timing, various IDOT managers' written communications and statements immediately before the decision was made to place [Employee 1] on administrative leave and initiate proceedings to terminate him, reflected their concerns about [Employee 1's] complaints and purported contact with the OEIG:

- In a February 2, 2017 email to Mr. Ghidina, Mr. Zimmerlein wrote: "He [[Employee 1]] has said that he called the whistleblower number this morning and that he has contacted the OEIG office this morning."
- In a February 3, 2017 memorandum describing his February 2, 2017 meeting with [Employee 1], Mr. Zimmerlein wrote: "He [[Employee 1]] said that he called the OEIG

office and the Whistle Blowers phone number this morning after our 1<sup>st</sup> meeting to lodge complaints.”

- In a February 3, 2017 memorandum describing his call that day with Mr. Ghidina, Mr. Zimmerlein wrote: “I also mentioned the behavior of [Employee 1] and how he seems to go off on his own to try to do something with all of this instead of going through the proper channels and letting his direct supervisors handle things.”
- In a February 3, 2017 report describing a telephone conversation he had with [Employee 1] that day, Mr. Ghidina wrote: “He [[Employee 1]] also indicated that he has talked to a neighbor that works for the OEIG and he has talked to that person and he would like the phone number for OEIG.”
- In a February 6, 2017 email to Mr. Bell and Mr. Ghidina, Mr. Zimmerlein wrote: “There is an outstanding issue however of [Employee 1] operating outside of standard procedures and going over his supervisor’s and the Department in the chain of command that needs to be addressed.”

Indeed, in one written communication, Mr. Garnett expressed his concern about [Employee 1’s] complaints at the same time that he sought approval to place [Employee 1] on administrative leave. In a February 7, 2017 email to Mr. Heck, Mr. Garnett wrote: “We would like to place [Employee 1] on paid administrative leave . . . [Employee 1] is just causing problems and writing incident reports.”

Even more compelling, IDOT’s second evaluation of [Employee 1] shows that [Employee 1’s] threat to report and/or his reporting incidents to the OEIG was a reason that IDOT sought to terminate his employment. In support of his recommendation to not certify [Employee 1’s] employment, Mr. Zimmerlein wrote in that evaluation: “Instead of reporting these instances to his supervisors and allow us to do our job to determine the correct course of action he has stated that he has gone over our heads to the Office of the Executive Inspector General and called the Whistleblower hotline.” As Mr. Tirey explained, IDOT conducted [Employee 1’s] second evaluation as a required part of the process to not certify his employment. Thus, when Mr. Zimmerlein documented in the evaluation that [Employee 1] had complained to the OEIG, he made clear that that protected activity was a contributing factor in the recommendation to not certify [Employee 1’s] employment.

The IDOT managers interviewed in this investigation agreed that the problem with [Employee 1] began after the earbuds incident on February 2, 2017. Although this coincided with the time when [Employee 1] filed incident reports and mentioned reporting matters to the OEIG, the IDOT managers maintained that employees are free to contact the OEIG, and that [Employee 1’s] termination was unrelated to his filing incident reports and contacting or threatening to contact the OEIG.

According to Mr. Zimmerlein, the decision to not certify [Employee 1] was based on [Employee 1’s] demeanor during the meetings on February 2, 2017, as well as [Employee 1’s] discontent with the fact that Mr. Zimmerlein was not taking [Employee 1’s] suggestions on what

should happen. Mr. Zimmerlein also noted that [Employee 1] had indicated that he would not work for Mr. Helfers anymore. Mr. Ghidina and Mr. Garnett said that [Employee 1] became an “unmanageable” employee at that time, and Mr. Ghidina explained that [Employee 1] exhibited disruptive conduct. Mr. Tirey said he believed IDOT moved to discharge [Employee 1] because he had an outburst at a meeting with his supervisor and started calling out his co-workers.<sup>38</sup>

However, some of the IDOT managers interviewed also characterized the issue with [Employee 1] as a failure to follow the chain of command in reporting incidents. For example, Mr. Zimmerlein said that employees should report a problem to their supervisors, to give them a chance to address it before reporting it higher, and said that the fact that [Employee 1] ignored the chain of command affected his noncertification. Mr. Ghidina said management has to be aware of issues in a timely matter in order to address them. Mr. Garnett said that the fact that [Employee 1] ignored the chain of command “absolutely” contributed to the decision not to certify his employment.

In addition, despite their assurances to OEIG investigators that IDOT employees are free to contact the OEIG, the managers’ stated concerns about [Employee 1] ignoring his chain of command appear to have related at least in part to his act of reporting issues outside IDOT. As Mr. Zimmerlein put it in his email to Mr. Bell and Mr. Ghidina on February 6, 2017, when the managers were discussing terminating [Employee 1], he viewed the “outstanding issue” to be addressed to be [Employee 1’s] “operating outside of standard procedures and going over his supervisor’s *and the Department* in the chain of command.”<sup>39</sup> [Employee 1’s] emotional reactions and demeanor during meetings on February 2, 2017 may well have troubled the IDOT managers; however, given their statements about the significance of [Employee 1’s] disregard of the “chain of command,” there is not clear and convincing evidence that they would have initiated disciplinary action against [Employee 1] absent his written complaints to IDOT management and his statements regarding contacting the OEIG.

Although [Employee 1] was a probationary employee, the decision not to certify him for permanent employment cannot be based on retaliation or any other unlawful basis. Contrary to the IDOT managers’ claim that they did not consider [Employee 1’s] acts of filing incident reports or his talk of contacting the OEIG in deciding to place him on administrative leave and terminate him, the evidence gathered in this investigation clearly shows that his incident reports and discussion of contacting the OEIG were contributing factors in those decisions. Therefore, these negative employment actions were retaliatory actions, in violation of the Ethics Act.

The OEIG recognizes that many IDOT employees were involved in the process and decision to place [Employee 1] on administrative leave and terminate him. Many provided input or recommendations to support the decision while some, because of IDOT’s reporting structure, claimed they were not the ultimate decision makers. Others contradicted each other or suggested

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<sup>38</sup> Mr. Tirey also said his understanding that Mr. Harmening had investigated the matter and recommended [Employee 1’s] termination was a key factor in his own decision to approve it. This understanding appears to be at least partially erroneous: in their OEIG interviews both Mr. Harmening and Mr. Ghidina said Mr. Harmening declined to investigate the issues relating to [Employee 1]. Although Mr. Ghidina recalled that Mr. Harmening nevertheless recommended terminating [Employee 1], Mr. Harmening denied making such a recommendation.

<sup>39</sup> Emphasis added.

that it was someone else's responsibility. What is clear is that all of the below individuals participated in some way, by either providing information, recommendations, or decisions that included a retaliatory basis for the action, or involved review and approval of the handling of this matter without any recognition of the retaliatory basis underlying the decision to terminate [Employee 1]. In addition, various IDOT employees supported and encouraged a culture at IDOT where employees are expected to make complaints only to their direct supervisor, and are discouraged from bringing issues to the attention of the OEIG or others outside this "chain of command." For example:

**Mr. Helfers** Provided input on [Employee 1's] February 2017 evaluation. In response to [Employee 1's] early inquiries about whether to report issues to Mr. Ghidina, Mr. Zimmerlein, or to the Inspector General, Mr. Helfers advised [Employee 1] that he (Mr. Helfers) was the first person in the chain of command, then Mr. Zimmerlein, "and on up the chain of command."

**Mr. Zimmerlein** Told [Employee 1] that his immediate supervisors need to have given him a reason they let him down before he goes over their head. Relayed information to Mr. Ghidina about [Employee 1's] incident reports and contact with the OEIG, and noted that [Employee 1] failed to go through the proper channels and let his direct supervisors handle issues. Advised Mr. Ghidina and Mr. Bell of his view that the "outstanding issue" was [Employee 1] operating outside his chain of command. Drafted and signed the February 2017 evaluation that recommended that [Employee 1] not be certified and noted that [Employee 1] had reported incidents to the OEIG and the whistleblower hotline.

**Mr. Bell** Signed the February 2017 evaluation, which recommended that [Employee 1] not be certified and noted that [Employee 1] had reported incidents to the OEIG and the whistleblower hotline.

**Mr. Harmening** Received [Employee 1's] incident reports from Mr. Ghidina, and discussed with Mr. Ghidina that [Employee 1] appeared to be an unmanageable employee, and the possibility of terminating [Employee 1].

**Mr. Ghidina** Stated that Mr. Harmening recommended terminating [Employee 1] because he was an unmanageable employee. Drafted the charges against [Employee 1] and submitted them to Mr. Tirey for approval. Directed Mr. Zimmerlein to conduct the February 2017 evaluation, and reviewed the evaluation, which recommended that [Employee 1] not be certified and noted that [Employee 1] had reported incidents to the OEIG and the whistleblower hotline. Recommended that [Employee 1] be placed on administrative leave.

**Mr. Garnett** Recommended that [Employee 1] be placed on administrative leave because he "is just causing problems and writing incident reports"; and acknowledged that he had received emails referencing that [Employee 1] had said he was going to contact the OEIG. Stated that [Employee 1's] disregard of IDOT's chain of

command “absolutely” contributed to the decision not to certify his employment.

*Mr. Heck* Approved placing [Employee 1] on administrative leave after Mr. Garnett advised him that [Employee 1] was “causing problems and writing incident reports.”

*Mr. Tirey* Approved the Statement of Charges; reviewed the February 2017 evaluation, which recommended that [Employee 1] not be certified and noted that [Employee 1] had reported incidents to the OEIG and the whistleblower hotline.

Given that so many employees participated in or contributed in varying ways to the ultimate retaliatory actions against [Employee 1], and the existence of a mindset that employees must follow a “chain of command” that can readily lead to such retaliation, the OEIG makes a finding against IDOT as an agency. Accordingly, the allegation that IDOT took retaliatory action against [Employee 1] because he engaged in a protected activity, is **FOUNDED**.<sup>40</sup>

## V. FINDING AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDING:**

- **FOUNDED** – IDOT took retaliatory action against probationary Highway Maintainer [Employee 1] because he engaged in a protected activity, in violation of the Ethics Act, 5 ILCS 430/15-10(1).

The OEIG recommends that IDOT take whatever action it deems necessary with regard to the employees mentioned in this case, and all IDOT employees, to ensure that employees and managers are aware of and understand the various avenues available to them for reporting misconduct, and regarding determinations of employee disciplinary actions.

The OEIG is referring IDOT’s violations of the Ethics Act to the Illinois Attorney General’s Office.

No further investigation is required and this matter is considered closed.

Date: June 12, 2018

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
69 W. Washington St., Suite 3400  
Chicago, IL 60602-3152

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<sup>40</sup> The OEIG concludes that an allegation is “founded” when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

**Angela O. Luning**  
Deputy Inspector General

**Reginald Spears**  
Investigator #124



# Illinois Department of Transportation

Office of Chief Counsel  
2300 South Dirksen Parkway / Springfield, Illinois 62764

CONFIDENTIAL

July 3, 2018

Ms. Susan M. Haling  
Acting Illinois Executive Inspector General  
Office of Executive Inspector General  
69 West Washington Street, Suite 3400  
Chicago, Illinois 60602

Re: OEIG Case No. 17-00682

Dear Ms. Haling:

OEIG Final Report, case number 17-00682, contains a FOUNDED allegation that IDOT violated the Ethics Act by taking retaliatory action against probationary Highway Maintainer because he engaged in a protected activity. IDOT's response is due July 5, 2018. IDOT respectfully disagrees with the finding, and requests an extension of time to provide a more complete response.

The finding appears to overlook or dismiss statements of numerous IDOT employees who, as the report notes, often acted independently of one another. Those statements, and possibly others, demonstrate refusal to comply with IDOT policy by 1) reporting to and interacting with his direct supervisor and 2) reporting what he considered safety and other working-condition issues to his supervisors. IDOT employees must report safety and working condition issues to their supervisors, regardless of whether additional reports are provided to the OEIG, the Attorney General, law enforcement, or any other third party. Permitting an employee to avoid the consequences of clear insubordination by labeling such consequences as retaliatory subverts the purpose and intent of the Ethics Act and its protections.

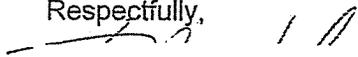
In addition, the OEIG recommends IDOT take whatever action it deems necessary to ensure that employees and managers are aware of and understand the various avenues available to them for reporting misconduct, and regarding determinations of employee disciplinary actions. IDOT seeks additional time to compile the existing practices used to equip its employees with information and opportunity to report misconduct.

Accordingly, IDOT respectfully disagrees with and disputes the OEIG finding, and requests additional time to submit a full response to the report.

Re: OEIG Case No. 17-00682  
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If you have any questions, or if I can be of assistance to you or your staff, please do not hesitate to contact me at (217) 557-5416.

Respectfully,

  
Phillip Kaufmann  
Chief Counsel / Ethics Officer



# Illinois Department of Transportation

Office of Chief Counsel  
2300 South Dirksen Parkway / Springfield, Illinois 62764

CONFIDENTIAL

September 13, 2018

Ms. Susan M. Haling  
Acting Illinois Executive Inspector General  
Office of Executive Inspector General  
69 West Washington Street, Suite 3400  
Chicago, Illinois 60602

**Re: OEIG Case No. 17-00682**

Dear Ms. Haling:

OEIG Final Report, case number 17-00682, contains a FOUNDED allegation that IDOT violated the Ethics Act by taking retaliatory action against probationary Highway Maintainer because he engaged in a protected activity. In June 2018, IDOT requested additional time to submit a more complete response. This correspondence constitutes IDOT's final response.

IDOT's request for extension included a description of IDOT's disagreement with the OEIG's determination that IDOT took retaliatory action. That paragraph provided:

The finding appears to overlook or dismiss statements of numerous IDOT employees who, as the report notes, often acted independently of one another. Those statements, and possibly others, demonstrate refusal to comply with IDOT policy by 1) reporting to and interacting with his direct supervisor and 2) reporting what he considered safety and other working-condition issues to his supervisors. IDOT employees must report safety and working condition issues to their supervisors, regardless of whether additional reports are provided to the OEIG, the Attorney General, law enforcement, or any other third party. Permitting an employee to avoid the consequences of clear insubordination by labeling such consequences as retaliatory subverts the purpose and intent of the Ethics Act and its protections.

(July 5, 2018 IDOT letter to OEIG).

The decision to release as summarized by Operations Maintenance Field Engineer James Bell in his February 3, 2017 statement, resulted from "anti-establishment perspective along with a manifestation of unstable emotional and mental state, during the meeting, has concluded the situation to

currently be irreconcilable." (Final Report, p 13). The anti-establishment perspective is clearly demonstrated by [redacted] behavior, including only reporting incidents of other employees after [redacted] felt singled out and refusing to report incidents or concerns to his immediate supervisor. Below is a non-exhaustive list of multiple examples of [redacted] behavior, all unrelated to the OEIG, that demonstrate why IDOT was prepared to terminate [redacted], including, but not limited to, the following:

- [redacted] was "hypersensitive to what he perceived as disrespect from his coworkers" (noted in December 2016, before [redacted] made any mention of the OEIG) (Final Report, p30)
- [redacted] began filing incident reports about other IDOT employees only after [redacted] felt "singled out" after Lead Worker Danny Helfers discussed a rule [redacted] had violated, even though [redacted] was not mentioned by name (Final Report, p9)
- [redacted] filed incident reports about other IDOT employees as a means to defend himself – not to report improper behavior or safety concerns – from [redacted] perception that he was being singled out (Final Report, p10)
- [redacted] stated he would not report potential rule or policy violations to his immediate supervisor (Helfers), because [redacted] perceived Helfers to be a member of the "Pack", despite the fact Helfers had not mentioned [redacted] by name nor had Helfers ever disciplined [redacted] (Final Report p10, 11, 15)

[redacted] refused to follow IDOT policy and instruction from his supervisors, attempting to use retaliatory protection as a shield from discipline for clear insubordination. [redacted] quest to shield himself from discipline by repeated assertions that he was a "whistleblower" and wanted his "Weingarten rights," documented by IDOT personnel, is clear. The supervisors could have chosen to not include these repeated assertions, but dutifully recorded the statements. The OEIG's conclusion takes the clear documentation of factual events and twists them into motive. This is disappointing. [redacted] refused to follow direction; that, along with other disruptive behavior, was the cause for his termination. The mere inclusion of claims for retaliatory protection in meetings does not establish such reporting as a contributory factor in the decision to terminate [redacted] or a violation of the Ethics Act.

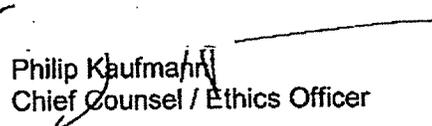
Further, no IDOT employee ever discouraged [redacted] from taking complaints to the OEIG. In fact, IDOT employees assisted [redacted] to file complaints, including when supervisor Helfers told [redacted] it was [redacted]'s "right to contact the OEIG" (Final Report, p10) and when Personnel Manager Mike Ghidina provided the OEIG telephone number to [redacted] (Final Report, p16). In addition, the OEIG appears to stake its opinion on mere timing of the actions by IDOT, which requires a narrow view of events. The timing of [redacted] release ties directly to the insubordinate, unruly, and disruptive behavior. [redacted] refused to report to his immediate supervisor, and stated his intention to continue not reporting to his direct supervisor. (Final Report p10, 11). To determine IDOT acted in retaliation for concurrent reports by [redacted] ignores [redacted] insubordination.

If the OEIG's finding of retaliation is allowed to stand, it could have the consequence of granting disciplinary immunity to every whistleblower. Fear of being labeled "unethical" will chill supervisors from recommending well-warranted discipline against any employee who is known to have filed an OEIG complaint. Misbehaving and underperforming employees will soon learn that the best way to avoid discipline is not by complying with agency rules but by complaining to the OEIG.

Finally, IDOT provides its employees with clear and plentiful direction on methods and means to report actual fraud, waste, abuse, mismanagement, and misconduct. Employees are provided information in the onboarding process, annual electronic (or paper-based) ethics training, through posters and other public material, and through occasional visits to and presentations at worksites. The fact \_\_\_\_\_, a probationary employee, knew all about the OEIG demonstrates IDOT's commitment to informing employees of reporting opportunities.

If you have any questions, or if I can be of assistance to you or your staff, please do not hesitate to contact me at (217) 557-5416.

Respectfully,

  
Philip Kaufmann  
Chief Counsel / Ethics Officer