



**RULES AND REGULATIONS  
PERSONNEL BOARD OF REVIEW  
DUBLIN, OHIO**

**I. GENERAL PROVISIONS**

**1.01- Jurisdiction**

The jurisdiction of the City of Dublin Personnel Board of Review (“Board”) is derived from Article 7.05 of the City Charter. The Board shall have the power and duty to hear appeals from administrative determinations made pursuant to the Code of Personnel Practices and Procedures, and such other powers, duties and functions as provided by Council.

**1.02 – Contracting with Public Entities**

The City may from time to time contract with other public entities, such as the Dublin City Schools, to provide the services of the Board.

**1.03 – Scope of Rules**

These rules govern practice and procedure in all proceedings before the Board. No rules shall be construed so as to conflict with any statute or other rule of law. Judicial invalidation of one rule shall not be considered to invalidate any other rule.

**1.04 – Quorum**

- (A) Two members of the Board constitute a quorum at any scheduled meeting.
- (B) The Board cannot act on any substantive issue without the concurrence of at least two members.
- (C) Any member of the Board may write a concurring or dissenting opinion.
- (D) The Board Chairperson may act upon his/her own prerogative regarding issues related to scheduling, extensions of time or continuances.

**1.05 – Records**

The Board shall maintain, in accordance with the Board’s retention schedule, records of all appeals filed, together with the dates of pending hearings, final action on the appeals and the dates on which the most recent filings, hearings or final actions occurred.

## **II. FILING AN APPEAL**

### **2.01 - Denomination of Parties**

The party filing an appeal is denominated "appellant." All other parties are denominated "appellee."

### **2.02 - Filing and Contents of Appeals**

(A) An appeal is filed when it is received in writing and time stamped by the office of the Director of Human Resources for the City of Dublin. Any appeal received after five p.m. on a business day, or received at any time on a non-business day, including facsimiles so received, shall be considered to be filed on the next business day and shall be entered accordingly. The date and time of receipt for facsimiles shall be evidenced by the receipt date generated by the City's facsimile machine.

(B) Notices of appeal shall include the following information:

- (1) The appellant's name, address, and telephone number;
- (2) The name, address, and telephone number of the employer; and
- (3) A description or summary of the action which is being appealed.

(C) Appellants shall notify the Board in writing of any change of address during the pendency of an appeal.

### **2.03 - Time Limits for Filing Appeals**

Appeals to the Board shall be in writing and shall be filed with the Board or postmarked no more than ten (10) calendar days after receipt of the notice of the action. A copy of the notice of the action shall be attached to the appeal.

## **III. HEARING PROCEDURES**

### **3.01 - Notice of Hearings**

Hearing notices shall be mailed to the parties and their representatives by ordinary United States mail within thirty (30) calendar days following the filing of the notice of appeal. Hearing dates

shall not be scheduled less than sixty (60) days following the mailing of the notice of hearing without mutual consent of the parties.

### **3.02 - Continuances**

(A) Upon its own motion or upon the motion of any party, the Board may continue a hearing.

- (1) Requests for continuance shall be addressed to the Chairperson of the Board. A request for continuance will not automatically stay the hearing, but must be expressly granted.
- (2) Requests for continuance shall be made in writing at least ten (10) calendar days prior to a scheduled hearing date, unless good cause is shown for failing to do so. Exceptions to this rule may be made at the discretion of the Board. If a party requests a continuance less than ten (10) calendar days prior to the hearing, then that party shall inform the Board of the opposing party's consent or opposition to the continuance request.
- (3) If a continuance is granted, each party shall contact its subpoenaed witnesses and inform them of the continuance. Failure to notify the opposing party or opposing party's counsel of a continuance which has been granted may be treated as a failure to appear by the party requesting the continuance if the opposing side appears for the hearing.
- (4) The Board will not re-issue subpoenas when a hearing has been continued, unless specifically requested to do so in writing.

(B) Absent compelling circumstances, hearings shall not be continued due to the unavailability of a subpoenaed witness. The Board may hold the record open or accept a testimonial deposition. The cost of testimonial depositions taken under this rule shall be borne by the requesting party.

### **3.03 - Consolidations**

If two or more appeals involve substantially identical issues of fact and law, the Board may consolidate them into a single hearing upon its own motion or upon the motion of either party.

### **3.04 - Appearances**

(A) Any person, unless prohibited by law, may represent himself or herself.

- (B) Any party who has a statutory representative must be represented by the designated representative, unless the party submits to the Board a letter from the statutory representative authorizing other representation.
- (C) All parties are required to appear personally at the hearing. Employers shall appear through a designated representative.
- (D) Representatives shall enter their appearances in writing.
- (E) One who has entered an appearance as the representative of a party is that party's representative of record unless and until a written withdrawal is filed with the Board.
- (F) If more than one person enters an appearance as a party's representative, communications shall be sent as follows:
  - (1) If one of the representatives entering an appearance has been designated, in writing, to receive communications from the Board, all communications shall be sent to that representative.
  - (2) If no representative has been designated to receive communications from the Board, all communications shall be sent to the representative who last entered an appearance.
  - (3) If it is impossible to determine who last entered an appearance, all communications shall be sent to the representative whose name is first in alphabetical order.

### **3.05 - Substitution of Parties**

- (A) If an appellant dies during the pendency of an appeal, the executor or administrator of appellant's estate shall, upon motion, be substituted for appellant. An appeal shall be held open for a reasonable time to permit this substitution.
- (B) If the employer changes during the pendency of an appeal, the new employer is automatically substituted without formal motion or order.

### **3.06 - Motions**

- (A) All motions shall state, with particularity, both the relief sought and the basis for such relief.
  - (1) All motions, and any supporting documentation, shall be served on the opposing party.

- (2) Motions to dismiss an appeal shall be supported by affidavits, made on personal knowledge, setting forth facts as would be admissible in evidence. Affidavits shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers referred to in an affidavit shall be attached thereto. When a motion is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials. An adverse party's response, by affidavit or otherwise, shall set forth specific facts showing there is a genuine issue in dispute.
- (B) Procedural motions, not determinative of the final outcome of an appeal, may be acted upon at any time after receipt by the Board without awaiting a response from the opposing party.
- (C) Within ten (10) calendar days of service of a non-procedural motion, a party shall serve a written response on the opposing party and file a copy of that response with the Board. The Board may rule on any non-procedural motion once the time to respond has run. Upon motion of the affected party, the Board may extend the time to reply to a non-procedural motion.
- (D) The Board may rule on any non-procedural motion at a record hearing, even if the ten (10) calendar days have not elapsed since service. Provided the time for response to a non-procedural motion has not run, an oral response may be presented at the record hearing.

### **3.07 - Briefs**

- (A) At any time prior to the issuance of a final order, the Board may require briefs from the parties. Briefs shall address questions put to the parties by the Board and shall be filed within the time limits set by the Board.
- (1) The Board may limit both the number of reply briefs and the time for their preparation and filing.
- (2) If a party fails to submit a brief within the time limit, the Board may exclude appellant's brief from its consideration.
- (B) Upon motion, the Board may hold the record open for receipt of briefs.
- (C) The Board can request the parties prepare briefs in lieu of or in addition to presenting closing arguments at the hearing.

### **3.08 – Filing of Documents, Briefs or Motions**

- (A) A document is filed when it is received in writing and time stamped by the office of the Director of Human Resources for the City of Dublin. Any document received after five p.m.

on a business day, or received at any time on a non-business day, including facsimiles so received, shall be considered to be filed on the next business day and shall be entered accordingly. The date and time of receipt for facsimiles shall be evidenced by the receipt date generated by the City's facsimile machine.

- (B) A party must file an original and three (3) legible copies of any document. When more than one case file is involved in a proceeding, then the above required documentation must be submitted for each case file.
- (C) All documents to be filed with the Board shall be on 8 ½ x 11 inch paper. This rule does not apply to exhibits or original documents not contained on 8 ½ x 11 inch paper.

### **3.09 - Service**

- (A) All documents filed with the Board shall be served upon the opposing party. Failure to comply with this rule may result in the Board striking the document from the record.
- (B) Any document required by these rules to be served upon a party may be served either personally by mail or facsimile. Parties are encouraged to also serve courtesy copies by electronic mail, if possible. When a party is represented by a representative who has entered an appearance, service shall be made upon that representative. Service is complete on the date of mailing or upon the date of personal transmission of the document.
- (C) All motions and briefs shall contain the name, address, and telephone number of the person submitting the motion or brief.
- (D) A motion shall be considered by the Board only if a certificate of service appears on it. Any statement, signed by either the moving party or the party's representative, is an acceptable certificate of service so long as it contains all of the following information:
  - (1) Date of service;
  - (2) Method by which service was made,
  - (3) Address where service was made;
  - (4) Name of the person or authority who was served.

### **3.10 - Communications to Representatives and Parties**

Communications regarding scheduling shall be sent to all parties and their representatives.

### **3.11 - Computation and Extension of Time**

- (A) The date of occurrence of the event causing time to run is not counted in the computation of any time limit under these rules. The last day of a time period is included in the computation of time under these rules. If the last day of a time period is not a regular business day, then the time period shall extend to the end of the next regularly scheduled business day.
- (B) The Board may extend the time for filing or responding to motions and briefs.
  - (1) Requests for extension of time shall be made in writing.
  - (2) Requests for extension of time shall be directed to the Chairperson of the Board.

### **3.12 - Procedural Orders**

- (A) Procedural orders may be issued by the Board at any time prior to the issuance of a final order.
- (B) If a party fails to comply with a procedural order, the Board may dismiss the appeal or grant other appropriate relief to the opposing party.

### **3.13 - Procedure in Hearings**

- (A) The Board shall determine the order in which a hearing shall proceed.
- (B) Either party may call the opposing party to testify as if on cross-examination.
- (C) The Board may require, limit, or eliminate opening statements and closing arguments.
- (D) Copies of exhibits shall be made available to the Board as they are identified. If the hearing is heard by the full Board, three (3) copies of all exhibits must be submitted to the Board. At the request of either party, the Parties shall exchange documents and exhibits prior to the hearing. Hearings will not be delayed to facilitate an exchange or review of the exhibits.
- (E) The parties are encouraged to discuss stipulations and settlement prior to the start of a hearing.
- (F) All parties, witnesses and attorneys are required to arrive at the hearing location at the scheduled hearing time.
- (G) During the hearing the Board shall permit all parties to:
  - (1) Present the party's position, arguments and contentions;

- (2) Offer and examine witnesses and present evidence in support of the party's positions;
- (3) Cross-examine witnesses purporting to refute the party's position, arguments, and contentions;
- (4) Offer evidence to refute evidence and testimony offered in opposition to the party's position, arguments, and contentions; and
- (5) Proffer any evidence offered pursuant to division (G)(4) of this section into the record if the admission of it is denied by the Board.

### **3.14 - Record of Hearings**

All record hearings shall have a stenographic record.

### **3.15 - Transcripts**

- (A) The Board may obtain a written transcript of each hearing.
- (B) Transcripts for a party's own use may be obtained through the Board's stenographer. The cost of the transcript is to be paid by the party requesting the transcript.
- (C) Transcripts must be requested within sixty (60) days following the mailing of the final order.

### **3.16 - Subpoenas**

- (A) A party may request the Board to issue subpoenas for documents and subpoenas for witnesses. The party shall submit a written list of witnesses and a summary of each witness's testimony prior to the issuance of the subpoenas. If a party deems it necessary to subpoena more than five (5) witnesses, prior approval is required and the Board will rule on the need to call any of the witnesses the party requests to be subpoenaed.
- (B) Subpoenas shall be issued in either of two ways:
  - (1) The Board shall supply subpoenas to the parties who are responsible for completing the subpoenas. A party may serve a subpoena. A subpoena is deemed served when:

- (a) It is personally served upon the person; or



- (b) It is received by the person at the person's last known address by certified mail, return receipt requested; or
- (c) It is left at the usual place of residence, or last known address of the person, with an adult residing therein; or
- (d) If the service by certified mail under paragraph (B)(1)(b) of this rule is returned with an endorsement showing the service was refused or unclaimed, then the subpoena may be sent by ordinary mail, evidenced by a certificate of mailing; and
- (e) The party serving the subpoena shall file a copy of the subpoena, properly endorsed as to service, at or prior to the hearing for which the subpoena was issued.

(2) The Board shall mail subpoenas by ordinary United States mail to the last known address of the person as directed by the party requesting the subpoena.

- (a) The Board shall not mail subpoenas fewer than fourteen (14) calendar days in advance of a hearing. If subpoenas cannot be mailed more than fourteen (14) calendar days in advance of a hearing, the Board shall, on request, provide the subpoenas so they can be served on the witness at pursuant to paragraph (B)(1).
  - (b) If the Board is requested to serve the subpoena by ordinary mail, then the subpoena is deemed delivered.
- (C) To be enforceable, witnesses shall receive their subpoenas at least seven (7) calendar days prior to the hearing. Subpoenas *duces tecum* shall be received at least ten (10) calendar days prior to the record hearing. Absent proof a witness has received a subpoena in a timely manner, the Board shall not enforce the subpoena nor hold the record open for the testimony of an unsubpoenaed non-appearing witness.
- (D) Hearings shall not be continued due to the absence of a witness subpoenaed under this rule.
- (E) The Board will not re-issue subpoenas when a hearing has been continued unless specifically requested to do so in writing.
- (F) Upon motion and for good cause, the Board may quash any subpoena. Motions to quash shall be raised, in writing, prior to a hearing. Unless a motion to quash has been granted, a witness shall attend the hearing to which he or she was subpoenaed subject to the provisions contained within paragraph (C) of this rule.

(G) Witnesses may not be subpoenaed to prehearings.

(H) No character witness shall be subpoenaed to attend hearings. This prohibition does not pertain to witnesses testifying to the credibility of another witness.

### **3.17 - Mileage Reimbursement and Subpoenaed Witness Fees**

(A) Employees of the City of Dublin or Dublin City Schools may be paid witness fees only if they were subpoenaed to a hearing which they attended at a time they were not scheduled to work. Employees of the City of Dublin or Dublin City Schools then currently employed shall be paid by their employer for the time they are absent from their jobs to attend hearings before the Board, provided they were subpoenaed to the action.

(B) Mileage, up to 20 miles, shall be paid to any subpoenaed witness, not a party, who works or resides outside a 30 mile radius from the City of Dublin Municipal Building, 5200 Emerald Parkway, Dublin, Ohio 43017, and who incurs unreimbursed travel expense to attend hearings before the Board. Mileage will be reimbursed at the current IRS standard mileage rate. Neither parking costs nor food and lodging are reimbursable.

(C) Parties may not subpoena themselves.

(D) Mileage and witness fees shall not be paid to anyone who fails to attend the hearing.

### **3.18 - Failure to Appear**

(A) If neither the appellant nor appellant's authorized representative appears at a hearing, the Board may dismiss the appeal.

(B) If neither the appellee nor appellee's authorized representative appears at a hearing, the Board may grant appropriate relief, including disaffirmance of the order.

(C) If neither party appears at a hearing, the Board may, based upon the information available to it, resolve the appeal in the manner it deems appropriate.

### **3.19 - Settlements and Withdrawals**

(A) An appeal may be withdrawn any time prior to the issuance of the final order of the Board. All withdrawals shall be in writing and shall be signed by either the appellant or appellant's representative.

- (B) An appeal may be settled by the parties thereto any time prior to the issuance of a final order of the Board. The Board will accept signed settlement agreements and incorporate them into its final order. All settlement agreements shall be in writing and shall be signed by all affected parties and their representatives.
- (C) If the Board is notified a case has been withdrawn or settled, and no settlement agreement or withdrawal is filed with the Board within fourteen (14) calendar days of the notification to the Board, then the Board shall schedule the case for a hearing.

#### **IV. DISCOVERY**

##### **4.01 - Exchange of Documents and Witness Lists**

- (A) On written request of the opposing party, a party shall, at least fifteen (15) calendar days prior to the first scheduled record hearing, provide to the requesting party and the Board a list of the documents intended to be introduced at the hearing and a list of witnesses. Such written request for a list of the documents intended to be introduced at the hearing and a list of witnesses must be served upon the opposing party at least forty-five (45) calendar days prior to the first scheduled record hearing.
- (B) In addition to the requirements contained within paragraph (A) of this rule, if a party deems it necessary to call more than five (5) witnesses to testify at hearing, the party shall file with the Board at least seven (7) calendar days prior to the first scheduled record hearing date a list of witnesses to be called and a short summary of the expected testimony of each of those witnesses. If a party fails, without good cause, to comply with this requirement, the Board may exclude the testimony of witnesses whose names would have appeared on the witness list referenced in this paragraph.
- (C) Upon receipt of a written request, and at least fifteen (15) calendar days prior to the first scheduled record hearing, a party shall permit the opposing party to view and copy, at the opposing party's expense, any documents intended to be introduced at a hearing.
- (D) If a party fails, without good cause, to comply with paragraphs (A) and (C) of this rule, such testimony or documents may, upon motion of the adversely affected party, be excluded from a hearing before the Board. Failure to serve requests for documents and a list of witnesses or for the examination of documents at least forty-five (45) calendar days before the first scheduled record hearing waives all right to move to exclude such evidence.
- (E) The Board may continue hearings to permit discovery under this rule.
- (F) Discovery, as it pertains to the exchange of documents and witness lists, may be supplemented as set forth in the applicable Ohio Rules of Civil Procedure.

#### **4.02 - Depositions and Interrogatories**

(A) The Board may order depositions or interrogatories upon motion of any party.

- (1) A motion to take depositions or interrogatories shall be filed, in writing, with the Board at least forty-five (45) calendar days prior to a record hearing. The Board may order interrogatories as an alternative to taking depositions.
- (2) The cost of such deposition shall be borne by the party requesting the deposition.
- (3) If a deposition is to be submitted into evidence as a testimonial deposition, the deposition must be submitted on videotape. As an alternative to videotaping the testimonial deposition, the party requesting the deposition can request the Board to be present at the deposition.

(B) The Board may, on its motion, order depositions taken at a time and place of its choosing. Such depositions shall be recorded on videotape and may be used in the resolution of an appeal.

#### **4.03 - Work Product**

A representative's work product is not discoverable.

#### **4.04 - Prehearings**

(A) At any time prior to a record hearing, the Board may, on its own motion or upon motion of any party, direct the parties or their representatives to participate in a prehearing.

(B) Prehearings may be held for the following purposes:

- (1) To simplify or clarify issues;
- (2) To obtain stipulations and admissions;
- (3) To exchange documents and witness lists; or
- (4) To discuss matters intended to expedite the proceedings.

(C) Final Board orders, procedural orders and reports and recommendations may be issued based upon information obtained at a prehearing.

- (D) All prehearings shall be summarized on the record and may, at the discretion of the Board, be recorded.

## **V. RULES OF EVIDENCE**

### **5.01 - Rules of Evidence**

The rules of evidence prevailing in civil actions in Ohio courts of general jurisdiction are adopted for guidance in hearings before the Board, except as modified by these rules. The rules of evidence shall not be strictly applied, but deference may be afforded to the rules of evidence.

### **5.02 - Burden of Proof**

A party bearing the burden of proof in an action before the Board must prove its case by a preponderance of the evidence.

### **5.03 - Cumulative Testimony**

The Board may limit cumulative testimony.

### **5.05 - Prior Discipline**

(A) For purposes of this rule, prior discipline consists only of those written reprimands, fines, suspensions, reductions, or removals contained in the employee's personnel file.

(B) The Board may admit evidence of prior discipline if it is offered to prove either:

- (1) Notice to an employee that particular conduct is unacceptable; or
- (2) A continuing problem justifying harsher discipline than might otherwise have been imposed; or
- (3) Progressive discipline.

### **5.06 - Stipulations**

Stipulations may be accepted by the Board only when both parties consent to the stipulation.

### **5.07 - Witnesses**

- (A) All witnesses at any hearing before the Board shall testify under oath or affirmation.
- (B) A non-party witness may be accompanied and advised by legal counsel. Participation by counsel is limited to protection of his client's rights. Counsel for a non-party witness may neither examine nor cross-examine any witness.
- (C) Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the Board may initiate contempt proceedings and/or draw any inference from the lack of such response.

### **5.08 - Best Evidence**

A duplicate may be admitted to prove the content of a document, recording, or photograph unless:

- (A) A genuine question is raised as to the authenticity of the original; or
- (B) The Board determines it would be unfair to admit the duplicate in lieu of the original.

### **5.09 - Administrative Notice**

At any time prior to the issuance of a final order, the Board may take notice of any fact, including the contents of any personnel file maintained by the employer.

## **VI. DECISION OF THE PERSONNEL BOARD OF REVIEW AND APPEAL TO THE COURT OF COMMON PLEAS**

### **6.01 – Final Decision of the Personnel Board of Review.**

- (A) If a hearing is held before the members of the Board, then the Board will issue a final order and opinion regarding its decision. The Board shall only have the authority to decide the issues appealed. Final orders shall be signed by the Chairperson of the Board, indicating all those members joining the decision. The original order shall be journalized and a copy of the order placed in the case file.
- (B) A certified copy of the final order of the Board shall be sent by certified United States mail to the appellant and by the employer's inter-departmental or regular United States mail to the

appellant's representative (if appellant is represented), appellee, appellee's representative and to any other party.

- (1) A copy of the final order mailed by certified mail and returned to the board shall be reissued by regular United States mail and will be deemed delivered the third calendar day after mailing.
  - (2) A copy of the final order mailed by regular or certified United States mail and returned to the Board as undeliverable and addressed to the address on file with the Board shall be placed in the case file and the opposing party shall be notified. If the address is incorrect, the final order will be remailed.
  - (3) A copy of a final order may be secured in person, in lieu of mailing, from the offices of the Board after signing a receipt for the order.
- (C) A final order does not become public record until it has been mailed to or secured in person by all parties.

#### **6.02 – Motion for Reconsideration**

Any party may move for reconsideration of a final order of the Board. Motions for reconsideration shall be filed within ten calendar days of mailing of the final order. If a motion for reconsideration has been filed, and if no appeal has been filed in a Court of Common Pleas, then the Board may issue a stay of the final order pending the reconsideration. If the Board issues a stay of its final order, the opposing party will then have ten calendar days to file a response to the motion for reconsideration. The filing of a notice of appeal divests the Board of jurisdiction to rule on a motion for reconsideration.

#### **6.02 – Appeals to the Court of Common Pleas**

Any final order of the Board can be appealed to the Franklin County Court of Common Pleas pursuant to Chapter 2506 of the Ohio Revised Code.

Adopted by Personnel Board of Review – November 30, 2009  
Amended and Adopted by Dublin City Council - April 12, 2010