

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2012-0034

Sponsored by: <b>County Executive FitzGerald on behalf of Human Resource Commission</b>	<b>An Ordinance</b> amending the Administrative Rules for the Cuyahoga County Human Resource Commission, and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, Article IX of the Charter of Cuyahoga County creates a Human Resource Commission consisting of three electors of the County having experience in personnel matters or personnel administration and who are supportive of equal opportunity considerations; and,

WHEREAS, the Human Resource Commission has determined that it requires the amendment of its administrative rules that were adopted in Ordinance No. 02011-0034; and,

WHEREAS, Section 9.01 of the Charter of Cuyahoga County states that the County's human resources policies and systems shall be established by ordinance and shall be administered in such a manner as will eliminate unnecessary expense and duplication of effort, while ensuring that persons will be employed in the public service without discrimination on the basis of race, color, religion, sex, national origin, sexual orientation, disability, age or ancestry; and,

WHEREAS, it is necessary that this Ordinance become immediately effective to insure the efficient operation of the Human Resources Commission.

### **NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** Council hereby adopts the amended Human Resource Commission Administrative Rules attached as Exhibit A to this Ordinance as the administrative rules for the Cuyahoga County Human Resource Commission.

**SECTION 2.** It is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a county commission. Provided that this Ordinance receives the affirmative vote of eight members of Council, this Ordinance shall become immediately effective upon the signature of the County Executive.

**SECTION 3.** It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Ms. Conwell, seconded by Mr. Schron, the foregoing Ordinance was duly adopted.

Yeas: Germana, Gallagher, Schron, Conwell, Jones, Rogers, Simon, Greenspan, Miller, Brady and Connally

Nays: None

\_\_\_\_\_  
County Council President                      \_\_\_\_\_  
Date

\_\_\_\_\_  
County Executive                                      \_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk of Council                                      \_\_\_\_\_  
Date

First Reading/Referred to Committee: November 13, 2012  
Committee(s) Assigned: Human Resources, Appointments & Equity

Committee Report/Second Reading: December 11, 2012

Exhibit A Amended on the Floor: January 8, 2013

Journal CC009  
January 8, 2013

Attachment A

# Cuyahoga County Human Resource Commission



## Administrative Rules

323 W. Lakeside Avenue, Suite 400  
Cleveland, Ohio 44113

Phone: 216-443-5675 Fax: 216-443-3694

<http://hrc.cuyahogacounty.us>

Initial Adoption: Ordinance 02011-0034 9.13.11

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# Section 1

## Definitions

### 1.01 Definitions

- (1) *Abolishment* – The permanent deletion of a position from the organization or structure of an Appointing Authority due to lack of continued need for the position, due to reorganization for efficient operation, economy or lack of work, or other lawful purpose.
- (2) *Appointment* – Placement of an employee in a position.
- (3) *Appointing Authority* – Means the same as defined in Section 9.04 of the Cuyahoga County Charter.
- (4) *Charter* – The Cuyahoga County Charter.
- (5) *Classification* – Means any one of the following:
  - a. A group of positions of sufficiently similar duties that the same title and specification may be assigned to each;
  - b. The act of assigning a classification title to a position(s) based upon the duties performed.
- (6) *Commission* – The Cuyahoga County Human Resource Commission.
- (7) *County* – As defined in the Charter.
- (8) *County Executive* – The Cuyahoga County Executive.
- (9) *County Council* – The Cuyahoga County Council.
- (10) *Demotion* – The act of placing an individual in a position, at the request of an Appointing Authority or the employee, the classification for which carries a lower salary range than that of the classification the employee currently holds.
- (11) *Director* – The Director of the Cuyahoga County Human Resources Department as appointed by the County Executive.
- (12) *Human Resources Department* – The Cuyahoga County Department of Human Resources.



- (13) *Layoff* – A suspension of employment due to either a lack of work or a lack of funds, or other lawful purpose.
- (14) *Meeting* – Any prearranged discussion of the public business of the HRC by a majority of its members.
- (15) *Pay* – The annual, non-overtime compensation due an employee.
- (16) *Pay Range* – The pay grade assigned to a position or classification.
- (17) *Position* – The name that applies to a group of duties intended to be performed by an employee.
- (18) *Promotion* – The appointment of an employee to a different position assigned a higher pay range than the employee’s previous position.
- (19) *Reassignment* – The assignment of an employee to a different classification.
- (20) *Reclassification* – The assignment of a different classification to a position.
- (21) *Reduction in Pay* – An action that diminishes an employee’s pay. The ending of supplemental pay shall not be considered a reduction.
- (22) *Reduction in Position* – An action that diminishes an employee’s duties or responsibilities to the extent an audit of the employee’s position would result in a reclassification to a classification assigned a lower pay range.
- (23) *Removal* – Termination of an employee’s employment.
- (24) *Suspension* – The interruption of an employee’s employment and compensation for a fixed period of time.



## Section 2

# Purpose and Authority

### 2.01 Origin

On November 3, 2009, the citizens of Cuyahoga County, Ohio, adopted a County Charter pursuant to the authority granted to them in Article 10, Section 3 of the Ohio Constitution. Section 9.01 of the Charter requires the creation of a Human Resource Commission:

*The County Executive, subject to confirmation by the Council, shall appoint the members of a Human Resource Commission, consisting of three electors of the County having experience in personnel matters or personnel administration and who are supportive of equal opportunity considerations.*

[Reference –Charter §9.01]

### 2.02 Purpose

Pursuant to Section 9.01 of the Charter, the Commission (“the Commission”) is responsible for administering, for and in cooperation with the officers, agencies, boards and commissions of the County, an efficient and economical system for the employment of persons in the public service of the County according to merit and fitness.

[Reference –Charter §9.01]

### 2.03 Authority / Jurisdiction

Pursuant to Section 9.02 of the Charter, the Commission shall have:

- (1) Responsibility for the resolution or disposition of all personnel matters, with authority to appoint hearing officers to hear all employee appeals previously under the jurisdiction of the State Personnel Board of Review;
- (2) Responsibility for administration of countywide compliance with federal and state laws regarding personnel matters for which the County is the reporting unit and for maintenance of records required by such laws;





- (3) Authority to ensure:
- a. Pay equity for like positions;
  - b. Standardization of benefits;
  - c. Approval of qualifications;
  - d. Consistent discipline;
  - e. Training of management in personnel practices;
  - f. Training of employees in job functions;
  - g. Training for total quality management;
  - h. Consistent administration of performance management system;
  - i. Coordination of recruitment;
  - j. Compliance with ethics resolutions or ordinances as passed by the Council; and

(4) Such other functions as may be deemed necessary by the Council for the Commission to carry out its mission and purpose.

*[Reference –Charter §9.02]*

## **2.04      Relationship to Collective Bargaining Agreements**

If an employee’s collective bargaining agreement provides for a final and binding arbitration of grievances, such employee and union are subject solely to that grievance procedures and the Commission shall have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedures.

*[Reference – O.R.C. §4117.08(B) & §4117.10]*

# **Section 3**

# **Powers and Duties of the Commission**

## **3.01      General Powers**

The Commission shall exercise the powers designated to them by the Charter and any ordinances or resolutions adopted by County Council.



### **3.02 Appellate Powers and Duties**

The Commission shall hear appeals of employees in the classified service of the County from final decisions of Appointing Authorities, the County Executive or the Director relative to the following employment actions:

- (1) Reduction in pay or position;
- (2) Job abolishment / layoff;
- (3) Suspension of more than forty (40) work hours for FLSA exempt employees;
- (4) Suspension of more than twenty four (24) work hours for FLSA non-exempt employees;
- (5) Discharge (removal from employment);
- (6) Assignment or reassignment to a new or different position classification;
- (7) Refusal of the Director to reassign an employee to another classification or to reclassify the employee's position with or without a position audit;
- (8) Determination of classified or unclassified status of an employee;
- (9) Other appeals as provided for by Council ordinance.

For purposes of this section, "discharge" includes disability separations.

Determination of the classified or unclassified status of an employee shall be done in accordance with general law.

The Commission may affirm, disaffirm, or modify the decision of the Appointing Authority, County Executive or the Director, as the case may be, and its decision is final. The decisions of the Commission shall be consistent with the applicable classification specifications.

The Commission has authority to appoint hearing officers to hear such employee appeals.  
[Reference – Charter §9.02(1), O.R.C. 124.03 & 124.34]

### **3.03 Classification Plans**

The Commission shall administer a clear, countywide classification and salary administration system in accordance with the requirements set forth in the Charter.

[Reference – Charter §9.03]



### **3.04            Subpoena Powers**

The Commission has authority to subpoena and require the attendance and testimony of witnesses and the production of books, papers, public records, and other documentary evidence pertinent to any matter it has authority to investigate, inquire into, or hear.

All officers in the civil service of the County shall attend and testify when summoned to do so by the Commission. Depositions of witnesses may be taken by the Commission or designee, or any member of the Commission, in the manner prescribed by law for like depositions in civil actions in the courts of common pleas. In case any person, in disobedience to any subpoena issued by the Commission, or any member of the Commission, fails or refuses to attend and testify to any matter regarding which the person may be lawfully interrogated, or produce any documentary evidence pertinent to any investigation, inquiry, or hearing, the court of common pleas of any county, or any judge of the court of common pleas of any county, where the disobedience, failure, or refusal occurs, upon application of Commission, or any member of the Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court.

Parking fees and mileage shall be allowed to witnesses and, on their certificate, duly audited, shall be paid by the Cuyahoga County Treasurer.

[Reference – O.R.C. 124.03(A)(7) & O.R.C. 124.09(G)]

### **3.05            Recordkeeping**

The Commission shall maintain a record that shall be open to public inspection, in which it shall keep records of all of its proceedings and of the vote of each of its members upon every action taken by it.

The Commission shall properly adopt a records retention schedule in accordance with Chapter 149 of the Ohio Revised Code. All records described above shall be retained in accordance with the retention schedule.

[Reference – O.R.C. §124.03(5)]



## Section 4

# Meetings / Rule Making

### **4.01      Public Meetings**

The Commission shall hold meetings as often as necessary to complete Commission business. All meetings of the Commission shall be public meetings open to the public.

All meetings shall include time at the beginning of the meeting for public comment related to the agenda for that day's meeting. Every such meeting shall also include time for public comment related to the Commission's purposes but not necessarily related to that day's agenda. Such comments may be heard either at the same time as comment related to that day's agenda or at a later time during the meeting.

The Commission's conducting of quasi-judicial hearings and its deliberations when acting in its quasi-judicial capacity are not "meetings" for purposes of this Section or Section 121.22 of the Ohio Revised Code.

*[Reference – O.R.C. §121.22; TBC Westlake, Inc. v. Hamilton County Board of Revision (1997), 81 Ohio St.3d 58]*

### **4.02      Notice**

The schedule for regular meetings shall be posted under the "Public Notices" section of Cuyahoga County's main webpage (<http://www.cuyahogacounty.us>). In addition, notices of meetings, meeting agendas and minutes shall be posted on the Commission's webpage (<http://hrc.cuyahogacounty.us>). The Commission may also choose to post notices in any additional manner that it deems will further allow the public to determine the time and place of meetings.

Notices of special meetings shall be posted in the manner described above. When a special meeting is held to discuss particular issues, the statement of the meeting's purpose must specifically indicate those issues, and only those issues may be discussed at that meeting. The Commission shall not hold a special meeting unless it gives at least twenty-four (24) hours advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the Commission's Administrator shall notify the news media that have requested notification immediately of the time, place and purpose of the meeting.



Any person, upon written request to the Commission and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.

[Reference – O.R.C. §121.22; *Jones v. Brookfield Twp. Tr.* (June 30, 1995), 11<sup>th</sup> Dist. No. 92-T-4692]

#### **4.03 Quorum**

The physical presence of two members of the Commission at any scheduled meeting constitutes a quorum. The Commission cannot act without a quorum.

[Reference – O.R.C. §121.22]

#### **4.04 Executive Session**

The members of the Commission may hold an executive session only after a majority of a quorum of the Commission determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the purpose of considering one of the authorized matters provided in Section 121.22 of the Ohio Revised Code. The motion and roll call vote to hold the executive session shall state which one or more of the approved matters are to be considered at the executive session and the vote must be recorded in the minutes. The Commission may not take any formal action in an executive session.

[Reference – O.R.C. §121.22]

#### **4.05 Minutes**

The minutes of any meeting of the Commission shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions.

[Reference – O.R.C. §121.22]

#### **4.06 Rule-Making Procedure**

For purposes of this Section, “rule change” includes addition of a new rule, or rescission or amendment of an existing rule. In addition, for purposes of this Section, the word “rule” includes HRC Administrative Rules, Cuyahoga County Administrative Rules, Cuyahoga County Personnel Policies and Procedures Manual and employee classifications.

Rule changes may be proposed to the Commission by the Director or by an individual Commission member. Proposed rule changes shall be provided to the Commission at least twenty (20) days prior to the date of the Commission meeting where the rule changes will be



acted upon by the Commission. If a proposed Rule Change involves a proposed ordinance that requires the Commission's approval **recommendation**, the Commission may ~~suspend~~ **modify** the time requirements for posting and acting upon such proposed ordinance, **but in no case shall the proposed rule change be presented and posted less than three (3) days prior to the Commission acting on such proposed ordinance**. Proposed rule changes shall be submitted with a coversheet containing the following information:

- (1) A statement declaring the intention to consider adopting, amending or rescinding the rule;
- (2) A synopsis of the proposed rule change a general statement of the subject matter to which the proposed rule change relates; and
- (3) A statement of the reason or purpose for the rule change.

Upon receipt, the Commission shall post the proposed rule changes and the coversheet on its webpage (<http://hrc.cuyahogacounty.us>). The posting should include the date, time and place of the Commission meeting where the proposed rule change will be heard.

The agenda for any Commission meeting where a rule change will be presented shall clearly designate a portion of the meeting for consideration of the proposed rule changes. During this portion of the meeting, the Commission shall read the synopsis for each proposed rule change. The public shall then be permitted to comment in accordance with Section 4.01 of these Rules.

Upon closing of the public comment, the Commission shall have an opportunity to discuss the matter. The Commission may submit amendments to the proposed rule change during this meeting, so long as the final rule change is consistent with the synopsis that was posted prior to the meeting. The Commission shall then either (1) vote to table the matter to a subsequent meeting, or (2) vote whether to recommend the proposed rule change be submitted to County Council for approval. If a majority of the members of the Commission vote in the affirmative, the proposed rule(s) will be referred to County Council as an ordinance. A vote to reject the proposed rule change(s) does not preclude resubmittal of all or part of the rule change(s) at a subsequent meeting.

## Section 5

# Administrative Functions

### 5.01 Delegation of Administrative Functions

The Commission delegates the following administrative functions to the Human Resources Department, which shall serve under the day-to-day direction of the Director:



- (1) Administration of an efficient and economical system for the employment of persons in the public service of the County according to merit and fitness;
- (2) Administration of Countywide compliance with federal and state laws regarding personnel matters for which the County is the reporting unit and for maintenance of records required by such laws; and
- (3) Administration of policies and systems designed to ensure:
  - a. Pay equity for like positions;
  - b. Standardization of benefits;
  - c. Approval of qualifications;
  - d. Consistent discipline;
  - e. Training of management in personnel practices;
  - f. Training of employees in job functions;
  - g. Training for total quality management;
  - h. Consistent administration of performance management system; and
  - i. Coordination of recruitment.

The Commission shall also delegate additional administrative functions that are assigned by County Council to the Commission. Such assignment may be made through motion by the Commission.

The Commission shall retain an oversight role regarding all powers and duties delegated under this Section.

[Reference - Charter §9.02, §9.05]

## **5.02      Ethics**

Pursuant to Section 9.02 of the Charter, the Commission shall have the authority to ensure compliance with ethics resolution(s) as passed by County Council. Pursuant to Section 1 of Article VIII of the Cuyahoga County Ethics Code (“the Ethics Code”), the Commission shall be the ethics compliance and training body for the County pertaining to the Ethics Code. More specifically, the Commission shall:

- 1) Provide copies to all employees of Ohio and County laws relating to ethics and related policies and manuals in accordance with Section 14 of Article 2 and Section 3 of Article 7 of the Ethics Code;
- 2) Ensure that employees acknowledge in writing that they have received the materials provided for in the above paragraph;
- 3) Conduct ethics training programs and classes for County employees, lobbyists and contractors; and
- 4) Take other actions necessary to perform its responsibilities for ethics compliance and training for the County pertaining to the Ethics Code, except for actions specifically assigned to another unit of Cuyahoga County government.



Within fifteen (15) days of a public official's or employee's, lobbyists' or contractor's initial date of service, reappointment, reelection, rehire or re-registration, whichever is applicable and annually, the Commission shall furnish the public official, employee, lobbyist or contractor with a copy of all current Ohio and County laws and polices relating to ethics. In addition, all public officials and employees shall personally attend ethics training programs and classes. The public official or employee shall sign an ethics statement indicating that they have read, understood and agreed to the Ethics Code and acknowledge their receipt of materials and attendance to all programs and classes in writing to the Commission.

In addition to the above cited duties, Section 2 of Article VIII of the Ethics Code grants the Commission the authority to write and send letters of notification, admonition, and censure regarding ethics law violations, when applicable. The Commission, however, shall not exercise this authority unless one of the following occurs:

- The Inspector General requests assistance from the Commission due to a conflict of interest;
- The Commission, by a majority vote, determines that it is necessary to exercise this authority.

In accordance with Section 21 of Article VII of the Ethics Code, the Commission shall ensure that the whistleblower provisions of the Ethics Code are posted on the Cuyahoga County website and in all physical locations where other human resources policies are posted.

## Section 6

# Employer Requirements

### **6.01      Notice Requirements**

Any action taken by an Appointing Authority, the County Executive or the Director (collectively referred to as “the Employer” for purposes of this Section) that creates a right of appeal for an employee shall be done in the following manner:

- In writing and signed by the Employer or designee;
- The original or a copy of the action shall be served upon the employee on, before or as soon as practicable after the effective date of the action;
- The document should, on its face, indicate the particulars that form the basis for the action; and
- The document should specifically describe the procedures required for the employee to exercise their appellate rights.





The notice document shall be “served upon the employee” when:

- It is personally served upon the employee;
- It is received by the employee at the employee’s last known address, by certified mail, return receipt requested; or
- It is left at the usual place of residence, or last known address of the affected employee, with an adult residing therein.

If the service by certified mail under this Section is returned with an endorsement showing the service was refused or unclaimed, then the notice may be sent by ordinary mail, evidenced by a certificate of mailing (or employee affidavit). Such notice shall be deemed “served” on the third calendar day after the order is mailed.

An action will not be disaffirmed based upon failure of service where the employee has failed to notify the Employer of a change of address. The burden is on the employee to prove the Employer was notified of a change in the employee’s address.

## **6.02 Laches**

Employees shall not be disciplined for acts that have been known or should have been known to the Employer more than two years prior to the effective date of the disciplinary action.

This rule does not bar discipline based upon a criminal conviction, less than two years old, although the incidents giving rise to such conviction occurred more than two years prior to the imposition of discipline.

## **6.03 Merger and Bar**

All incidents that occurred prior to the incident for which a non-oral disciplinary action is being imposed, of which the Employer has knowledge and for which an employee could be disciplined, are merged into the non-oral discipline imposed by the appointing authority. Incidents occurring after the incident for which a non-oral disciplinary action is being imposed, but prior to the issuance of the non-oral disciplinary order, are not merged and may form the basis for subsequent discipline.



# Section 7

## **Appellate Procedure**

### **7.01 Manner of Filing Appeals**

All appeals to the Commission shall be in writing and shall include the following information:

- The Employee's name;
- The Employee's address and telephone number;
- Employee's Appointing Authority (Department); and
- A copy of the action being appealed or a brief summary of the subject of the appeal.

An Initial Appeal form is available on the HRC's website at <http://hrc.cuyahogacounty.us> and in the HRC office. Appeals shall be filed with the Human Resource Commission at the following location:

Human Resource Commission  
323 W. Lakeside Avenue – Suite 400  
Cleveland, Ohio 44113

### **7.02 Time for Filing Appeals**

All appeals shall be filed with the Commission within ten (10) calendar days of the date on which the employee was served with the action in question; however, the date the employee receives the notice is not counted as part of the 10 days. In the event the Human Resource Commission Office is closed due to a holiday or weekend on the 10<sup>th</sup> calendar day, appeals received the following calendar day will be deemed filed timely. Appeals filed after that date will not be considered.

An appeal shall be deemed to be "filed" when one of the following occurs:

- The appeal is received in person and date stamped by the Commission;
- The appeal is postmarked; or
- The appeal is received by facsimile or e-mail (date of filing shall be the date marked on the appeal by the Commission's facsimile machine or e-mail system).



### **7.03 Interim Appeals**

The Commission retains jurisdiction over all applicable employment actions that were taken during the time period from January 1, 2011 through the effective date of these Rules. All employees who properly perfected appeals in accordance with the instruction provided by the Human Resources Department shall be considered to have met all of the filing requirements of this section. Employees who did not properly perfect appeals in accordance with the instruction provided by the Human Resources Department shall be deemed to have waived their right to appeal the underlying employment action.

### **7.04 Docketing**

Upon receipt of an appeal, the Commission shall conduct a preliminary review to determine the following:

- Whether the appeal was properly perfected in accordance with these Rules; and
- Whether the Commission has jurisdiction to hear the appeal.

Should the Commission determine that the appeal was not properly perfected or the Commission lacks jurisdiction to hear the appeal, the Commission may issue a final order dismissing the appeal. In addition, the Commission may choose to schedule a hearing on either of the above issues. If the Commission dismisses the appeal, the Appellant will be provided notice and rights to object per Rule 7.05. If the Appellant files an objection, the Appointing Authority will be provided notice and rights to file a response to the objection per Rule 7.05.

Once the Commission determines that an appeal shall go forward for hearing, it shall either:

- Assign the appeal to a Hearing Officer for hearing; or
- Retain matter for hearing by full Commission.

When assigning a matter to a Hearing Officer for hearing, the Commission shall transmit the electronic copies of all documents received from the Appellant by the HRC.

### **7.05 Hearings**

#### Scheduling

The Commission (or Hearing Officer) shall notify all parties and known representatives of the time, date, and place of any evidentiary hearing at least twenty-one (21) calendar days in advance of the hearing. Motions for Continuance must be submitted in writing to the Hearing Officer and should be submitted at least ten (10) calendar days before the hearing and may be granted, upon written motion and for good cause shown (e.g., medical reasons, witness unavailability, unavoidable schedule conflict). All other Motions must be submitted in writing and should be submitted at least fourteen (14) days before the hearing and may be granted, upon written motion and for good cause shown. The Commission, or the Hearing Officers, may



modify these timelines when the parties submit motions requiring such modifications or jointly agree to such modifications.

#### Discovery/Subpoenas

The Hearing Officer shall have discretion to set dates for the exchange of documents and both parties must agree to these dates, or the default procedure will require that at least fourteen (14) calendar days prior to the scheduled hearing, the parties shall provide the opposing party copies of the documents intended to be introduced at the hearing and a list of witnesses to be called by the party to testify at the hearing. If a party fails to comply with this requirement, the Hearing Officer has discretion to exclude such testimony or documents from the hearing. In all cases, the Hearing Officers should make every effort to ensure that the appeal record is fully developed.

Prior to the hearing, the parties may make requests to the Commission (or Hearing Officer) to issue procedural orders commanding the opposing party to disclose certain documentation and/or information. The Commission (or Hearing Officer), in their sole discretion, may issue the requested procedural order, issue a modified procedural order or reject the request. If a party fails to comply with a procedural order, the Commission may dismiss the appeal or grant other appropriate relief to the opposing party.

Upon the request of either party made on or before the tenth (10th) calendar day prior to hearing, the Hearing Officer or the Commission may, in its own discretion, issue subpoenas for such persons, documents, and attendance of witnesses as the requesting party deems necessary. Such subpoenas shall be served in the manner described in Section 3.04 of these Rules.

Parties are limited to five (5) subpoenas absent good cause. Discovery depositions shall not be permitted.

#### Failure to Appear

Upon failure of the Appellant to appear for the record hearing within at least 30 minutes of the scheduled hearing time, and on showing of proof of service of the notice of hearing, the Commission (or Hearing Officer) may dismiss the appeal.

Upon failure of the Appellee to appear for the record hearing within at least 30 minutes of the scheduled hearing time, and on showing of proof of service of the notice of hearing, the Commission (or Hearing Officer) may grant appropriate relief, including the disaffirmance of the employment action.

#### Evidence

The parties may offer such evidence as is relevant and material to the appeal. The Hearing Officer or the Commission shall be the judge of the relevancy and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary. The Commission may request offers of proof, and may disregard evidence deemed to be unreliable, and reject evidence deemed to be cumulative, unnecessary, or of slight value.



### Burdens of Proof

With regard to a disciplinary action, the Employer is required to prove by a preponderance of the evidence:

- That the Employer has substantially complied with the procedural requirements detailed in Section 6 of these Rules; and
- That the employee committed a sufficient disciplinary offense(s) to justify the discipline received.

With regard to a job abolishment, the Employer shall demonstrate by a preponderance of the evidence:

- that the Employer substantially complied with the procedural requirements associated with the job abolishment; and
- that the job abolishment was undertaken due to a lack of a continuing need for the position based on: a reorganization for the efficient operation of the appointing authority, reasons of economy, or a lack of work expected to last one year or longer. Certification of lack of funds or lack of work is not required for job abolishments.

With regard to a layoff, the Employer shall demonstrate by a preponderance of the evidence:

- that the Employer substantially complied with the procedural requirements associated with the layoff; and
- that a layoff was undertaken due to a lack of work or lack of funds.

Job abolishments and layoffs shall also be disaffirmed if the Commission determines that the action was taken in bad faith. The Employee is required to prove the Employer's bad faith by a preponderance of the evidence.

With regard to reclassifications and assignments to classifications: *(Based on SPBR Rule 124-7-03)*

- When an appeal presents the issue of whether an employee is properly classified, or properly assigned to a classification, the Hearing Officer shall conduct a fact-finding hearing to determine the duties performed by the employee in the position at issue. Prior to the hearing, the parties should file with the Hearing Officer a designation of what classification each contends best matches the employee's duties. The Appellant can request a copy of the most recent audit of the employee's position from Human Resources, and parties can access job descriptions or class specifications for the positions that each party has designated, and the class specifications for any adjacent classifications within the same classification series, through the Human Resources' department website. If the Appellant does not have on-line access to these records, the Appellant may request the Human Resources department to provide hard copies of these records.
- If the employee's position has not been audited within two years, or if either the employee or the Appointing Authority contends that the employee's duties significantly



changed since the last audit, the Hearing Officer may recommend to the HRC that the appeal be stayed pending completion of a new position audit.

- In an evidentiary hearing concerning the proper classification of an employee, the witnesses should be limited to the audited employee, the employee's immediate supervisor, and/or the designee of the authority who conducted the position audit. In this type of evidentiary hearing the Hearing Officer might choose to conduct the primary examination of the witnesses, followed by limited examination by the parties.
- The Hearing Officer's Report and Recommendation should compare the duties performed by the audited employee to the appropriate specifications and determine which classification most appropriately describes the duties performed by the employee. It is not anticipated that evidence about whether other employees are properly classified would be relevant.

The standard of proof for all other appeals before the Commission shall be a preponderance of the evidence.

#### Official Record

All hearings shall be recorded by the use of audio electronic recording devices. The audio record is the official record and shall be maintained / destroyed in accordance with the Commission's record retention schedule.

#### Post-Hearing Briefs

The Hearing Officer or Commission, in its own discretion, may allow the parties to a hearing to submit post-hearing briefs. A reasonable briefing schedule shall be established by the Hearing Officer or Commission in such cases. The official record shall be held open in such cases until the time for submittal of the briefs has passed. Any brief submitted within this time period shall be included as part of the official record.

#### Reports and Recommendations

After the official record has been closed, the Hearing Officer or the Commission will consider all evidence and submissions and issue a Report and Recommendation making findings of fact and conclusions of law. The Report and Recommendation shall be sent by certified and regular mail to the last known post office address of the Appellant, and by regular mail to the Appellee.

Either party may file with written objections to the Report and Recommendation with the Commission within fourteen (14) calendar days after the date on which the Report and Recommendation was mailed. For purposes of filing the objection, the written objection must actually be received by the Commission within the fourteen (14) day period. A party filing a written objection must also serve a copy of the objections on the opposing party. The opposing party shall have fourteen (14) calendar days from receipt of the objections to file a written response to the objections. The response to objections must be actually received by the Commission within this fourteen (14) day period.



The Objections and Responses must be received by the Commission at 323 W. Lakeside Avenue – Suite 400, Cleveland, Ohio 44113 within the time periods set forth in the preceding paragraph.

## **7.06      Decisions of the Human Resource Commission**

At the first regular meeting of the Commission following the receipt of objections or responses, if appropriate, the Commission will, as a regular item of business, consider the Report and Recommendation along with any objections or responses received in a timely manner. At that time, the Commission may take the matter under advisement.

At the point in time when the Commission acts upon a Report and Recommendation, it shall perform one of the following actions:

- Vote to affirm the Report and Recommendation as written;
- Vote to disaffirm the Report and Recommendation and submit new decision;
- Vote to modify the Report and Recommendation;
- Vote to remand the matter back to the Hearing Officer to reopen the official record for additional evidence.

All votes taken under this Section shall be done by roll call vote and recorded in the minutes. The Commission shall notify the parties in writing of its decision. The notification shall also inform the parties of their rights (if any) to appeal to the Court of Common Pleas.

## **7.07      Appeals to the Court of Common Pleas**

The decision of the Human Resource Commission shall be a final order, and may be appealed by either the Appellant or by the County, as provided by general law.

