

# STATE OF OHIO

## MUNICIPAL CIVIL SERVICE COMMISSIONS: GUIDELINES FOR CONDUCTING EMPLOYEE HEARINGS



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# MUNICIPAL CIVIL SERVICE COMMISSIONS: GUIDELINES FOR CONDUCTING EMPLOYEE HEARINGS

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**These guidelines are a supplement to the statutes and administrative rules governing civil service employees. These guidelines are not a replacement for those statutes and rules and, if there is any conflict between the statutes and rules and these guidelines, then the statutes and rules prevail.**

## I. JURISDICTION

- A. Assumption: Statutory Civil Service System (R.C. Chapter 124.)
- B. R.C. 124.40 provides: “. . . The municipal civil service commission shall prescribe, amend, and enforce rules not inconsistent with this chapter for the classification of positions in the civil service of such city and city school district, and all the positions in the city health district; for examinations and resignations therefor; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements therein . . . The municipal civil service commission shall exercise all other powers and perform all other duties with respect to the civil service of such city, city school district, and city health district, as prescribed in this chapter and conferred upon the director of administrative services and the state personnel board of review with respect to the civil service of the state . . . . The procedure applicable to reductions, suspensions, and removals, as provided for in section 124.34 of the Revised Code, shall govern the civil service of cities . . . . “ (See Appendix B: R.C. 124.40)
- C. Personnel Functions (Department of Administrative Services)
  - 1. Testing: R.C.124.09, R.C. 124.23
  - 2. Classification Plan: R.C. 124.14
  - 3. Appointments: R.C. 124.27 to 124.30
  - 4. Layoffs and Abolishments: R.C. 124.32 to 124.328
  - 5. Provisions Specific to Municipal Civil Service Commissions include R.C. 124. 41 - 124.50

D. Adjudicatory Functions (State Personnel Board of Review)

1. R.C. 124.03(A) states, in part: “. . . Hear appeals, . . . of employees in the classified . . . service from final decisions of appointing authorities relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification . . . .” (See Appendix B: R.C. 124.03)

E. Classified and Unclassified Service

1. Classified service includes most government employees. (See Appendix B: R.C. 124.01(C), R.C. 124.11)
2. Employees can be classified even if they were appointed without formal examination pursuant to R.C. 124.30.
3. Listed below are a number of provisions in R.C. 124.11(A) that contain unclassified positions falling under civil service commissions’ potential review authority:
  - a. R.C. 124.11(A)(1)
  - b. R.C. 124.11(A)(3)
  - c. R.C. 124.11(A)(5)
  - d. R.C. 124.11(A)(7)
  - e. R.C. 124.11(A)(8)
  - f. R.C. 124.11(A)(10)
  - g. R.C. 124.11(A)(11)
  - h. R.C. 124.11(A)(12)
  - i. R.C. 124.11(A)(15)
  - j. R.C. 124.11(A)(28)
  - k. R.C. 124.11(A)(29)

II. ADJUDICATIONS

A. Practice and Procedure

1. Rules of evidence. (See Appendix C: O.A.C. 124-9-01)
2. Hearsay may be permitted with proper foundation. (See Appendix C: O.A.C. 124-9-02)
3. Cumulative testimony may be limited. (See Appendix C: O.A.C. 124-9-03)

4. Prior discipline inadmissible to prove allegations, but can be used to prove: 1) Notice. 2) Justification for discipline. (See Appendix C: O.A.C. 124-9-04)
5. Questionnaires may be used. (See Appendix C: O.A.C. 124-9-05)
6. Stipulations are encouraged. (See Appendix C: O.A.C. 124-9-06)
7. Witnesses. (See Appendix C: O.A.C. 124-9-07)
8. Conviction of a crime. (See Appendix C: O.A.C. 124-9-08)
9. Disparate treatment. Evidence of disparate treatment may be introduced at hearing. (See Appendix C: O.A.C. 124-9-11)
10. Continuances. Written requests must be made ten days in advance of hearing stating cause. (See Appendix C: O.A.C. 124-11-03).
11. Appearances. Party may be represented by attorney or representative. (See Appendix C: O.A.C. 124-11-05)
12. Motions must be written and supported by affidavits or other admissible evidence. (See Appendix C: O.A.C. 124-11-07)
  - a. Procedural motions may be acted upon without a response,
  - b. Non-procedural motions shall have a response within 10 days of service
13. Written briefs may be required. (See Appendix C: O.A.C. 124-11-08)
14. Filing is complete when document is received. (See Appendix C: O.A.C. 124-11-09)
15. Service may be in person or by mail. (See Appendix C: O.A.C. 124-11-10)
16. Extensions of time available for good cause upon request. (See Appendix C: O.A.C. 124-11-12)
17. Procedural orders may be issued by the adjudicating body at any time prior to issuance of final order. (See Appendix C: O.A.C. 124-11-13)
18. Procedure in record hearings. (See Appendix C: O.A.C. 124-11-14)
  - a. The adjudicating body 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 adjudicating body may require, limit, or eliminate opening statements and closing arguments.
19. Record of hearings. All record hearings shall be recorded. (See Appendix C: O.A.C. 124-11-15)
  20. Transcripts. Commission must supply a written transcript and copies of all documents considered at the commission hearing. (See Appendix C: R.C. 2506.02)
  21. Subpoenas may be issued in one of two ways: 1) Supplied to parties for completion and service, or 2) adjudicating body sends regular mail (See Appendix C: O.A.C. 124-11-17)
  22. Failure to appear may result in dismissal. (See Appendix C: O.A.C. 124-11-19)
  23. Settlements and withdrawals permitted with proper authority. (See Appendix C: O.A.C. 124-11-20)
  24. Exchange of documents and witness lists. If request for documents and witness lists made, must be supplied or may result in exclusion. (See Appendix C: O.A.C. 124-13-01)
  25. Depositions and interrogatories available by motion. (See Appendix C: O.A.C. 124-13-02)
  26. Motion to make definite and certain available; failure to respond bars evidence which is subject of motion. (See Appendix C: O.A.C. 124-13-03)
  27. "Final order, adjudication, or decision" regarding decision in a hearing. (See Appendix D: R.C. 2506.01)

B. Disciplinary Appeals

1. Removals, suspensions, fines, reductions in pay/position.
2. Pre-disciplinary hearings are required to be conducted by an impartial individual who does not serve as the employee's supervisor. If parties do not raise issue of lack of a pre-disciplinary hearing, the adjudicating body may choose not to pursue this issue.
  - a. Pre-disciplinary hearing need not be elaborate and should not be confused with an appeal and a full evidentiary hearing before an adjudicating body.

(Loudermill v. Cleveland Board of Education (1983) 721 F.2d 550) In a pre-disciplinary hearing, employee only entitled to:

- i. Prior oral or written notice of the charges against him/her before hearing (benchmark notice: 72 hours).
  - ii. An explanation of the employer's evidence.
  - iii. An opportunity to present his/her side of the story.
3. Consider requirements of "Section 124.34 Orders." (See Appendix C: O.A.C. 124-3-01) If appointing authority fails to meet requirements, adjudicating body may want to disaffirm action. "Section 124.34 Orders" available on SPBR's webpage at and Appendix E contains a "Section 124.34 Order" to copy and distribute to appointing authorities.
4. Notice of Appeal
  - a. Employee must file notice of appeal with commission within ten (10) calendar days following the date the disciplinary order is served on the employee. If no disciplinary order is served on the employee, the employee has thirty (30) calendar days from actual notice of disciplinary action to file an appeal with CSC. (See Appendix C: O.A.C. 124-1-03(A),(I))
5. Burden of Proof
  - a. Appointing authority must prove by a preponderance of the evidence that employee committed sufficient R.C. 124.34 offense(s) to justify the discipline received. No evidence may be heard on any infraction not listed on a "Section 124.34 Order." (See Appendix B: R.C. 124.34)
  - b. Appointing authority must comply with procedural requirements of issuing disciplinary order as found in R.C. 124.34 and O.A.C. 124-3-01. (See Appendix C: O.A.C. 124-3-01)
  - c. Appointing authority must prove, with regard to each infraction alleged:
    - i. Appointing authority had established standard of conduct.
    - ii. Standard of conduct was communicated to employee.
    - iii. Employee violated the standard of conduct.
    - iv. To determine appropriateness of discipline, consider:

1. Seriousness of infraction.
  2. Employee's prior work record/disciplinary history.
  3. Employee's tenure.
  4. Any disparate treatment – that similarly situated employees were not disciplined in the same manner.
- d. Employee then allowed to rebut appointing authority's evidence.
- i. Employee may present any contrary or mitigating evidence.
  - ii. Merger and Bar: If appointing authority knew of prior incidents by employee which could have resulted in discipline, those incidents are merged into the discipline currently under appeal. Incidents occurring after the incident currently under appeal, but prior to the issuance of the disciplinary order, are not merged and may form the basis for subsequent discipline. (See Appendix C: O.A.C 124-3-05)
  - iii. Once discipline is imposed for a particular incident, that incident shall not be used as the basis for subsequent discipline, although it can be considered for prior and progressive discipline.
  - iv. Laches: Employees cannot be disciplined for acts which have been known or should have been known to the appointing authority more than two years prior to the issuance of a disciplinary order. (See Appendix C: O.A.C. 124-3-04) Case law references a "rule of reasonableness."
- e. If appointing authority meets burden of proving by a preponderance of the evidence the allegations in a disciplinary order, and the discipline is appropriate, commission should affirm the disciplinary action. If appointing authority proves some, but not all allegations, commission may modify the disciplinary action. If appointing authority fails to prove any allegations, then commission should disaffirm disciplinary action and instruct the appointing authority to rescind discipline and compensate employee accordingly.
- f. "No Order Reduction"
- i. Employee must appeal within ninety (90) calendar days of notice of reduction. (See Appendix C: O.A.C. 12-1-03(E); O.A.C. 124-1-02(X) and (Y) for definitions of reduction; O.A.C. 124-1-02(L), for definition of "notice.")

- ii. Burden on employee to prove his/her duties, pay and/or classification has been reduced.
- iii. Appointing authority has the right to rebut.
- iv. If employee meets burden, appointing authority will be ordered to reinstate employee's duties, pay and/or classification.
- v. If employee fails to meet burden, case should be dismissed.

**Please note that civil service commissions should be sensitive to certain circumstances that may arise when or because civil service commissions exercise both personnel and adjudicatory powers. In order to better manage these circumstances, we suggest contacting your legal counsel for assistance.**

#### C. Non-Disciplinary Appeals

- 1. Layoffs, abolishments, reclassifications, transfers, .
- 2. Layoffs and Abolishments.
  - a. Layoffs must be done in accordance with R.C. 124.321 and O.A.C.123:1-41. (Case Law: "Substantial compliance" with procedural requirements for layoffs.)
  - b. Employee's appeal must be filed or postmarked within ten (10) calendar days after receipt of notice of layoff.
  - c. Layoff is temporary (less than 1 year). (R.C. 124.321)
  - d. Abolishment generally refers to a long-term reduction in force.
  - e. Layoffs result from:
    - i. Lack of funds.
    - ii. Lack of work.
    - iii. Abolishment.
  - f. Hearing procedures for appeal from layoff.

- i. Substantial compliance with procedural aspects found in O.A.C. 123:1-41-10.
  - ii. Appointing authority must file statement of rationale with commission to support layoff.
  - iii. Burden on appointing authority to prove rationale for layoff. (i.e. lack of funds, lack of work, abolishment)
  - iv. Employee has opportunity to rebut and/or prove bad faith on part of appointing authority.
  - v. If appointing authority meets burden, then layoff affirmed.
  - vi. If appointing authority fails to meet burden, then employee should be reinstated.
- g. Abolishments result from:
- i. Reasons of economy.
  - ii. Lack of work expected to last more than 1 year.
  - iii. Reorganization for efficient operation.
- h. Hearing for abolishments.
- i. Appointing authority determines if abolishments necessary – statement of rationale must be filed with commission.
  - ii. Burden on appointing authority to prove above elements by a preponderance of the evidence.
  - iii. Employee has opportunity to rebut and/or prove bad faith on part of appointing authority.
  - iv. If appointing authority meets burden, then abolishment affirmed.
  - v. If appointing authority fails to meet burden, then employee reinstated.
- i. Hearing for reclassification.
- i. Appeal from reclassification must be filed in writing within thirty (30) calendar days after receiving notice from final audit result.

- ii. Assumes formal class plan exists.
  - iii. Requires determining how an employee spends his/her time and matching that to the class plan's specifications.
  - iv. Non-adversarial de novo hearing. The examination of the witnesses is conducted by the adjudicating body. (See Appendix C: O.A.C. 124-7-02)
  - v. Adjudicating body determines what duties employee performs by hearing testimony from employee and immediate supervisor.
  - vi. Adjudicating body reviews and makes determination as to proper classification.
- j. Transfers.
- i. Appeal must be filed within ten (10) calendar days after employee's receipt of notice of transfer.
  - ii. Definition: Movement of an employee between different offices or positions as set forth in R.C. 124.32 and R.C. 124.33. (A change in job location within the same classification, the same appointing authority and same county is not appealable. (See Appendix C: O.A.C. 124-1-02(EE))
  - iii. Employee cannot appeal a temporary transfer unless it is a second temporary transfer within a six month period.
  - iv. Appointing authority must prove that transfer is necessary for efficient operation or that position, by its nature, is subject to systematic changes.
  - v. Employee can also appeal permanent transfer (excess of thirty (30) days).
  - vi. Appointing authority must first obtain approval of the transfer from the commission.
  - vii. Appointing authority must prove transfer necessary for efficient operation and if permanent change in residence is required.
  - viii. If appointing meets burden of proof, transfer upheld; if appointing authority fails to meet burden of proof, transfer disaffirmed.

### III. JUDICIAL REVIEW

- A. Governed by R.C. Chapter 2506.
- B. Procedure is analogous to R.C. 119.12, which governs SPBR.
  - 1. Local Court of Common Pleas sits as an appellate court. Generally, court must confine its review to the record submitted by the commission unless it is incomplete or appears the appellant did not receive a fair administrative hearing. (See Appendix D: 2506.03)
  - 2. The commission must supply a written transcript and copies of all documents considered at the commission hearing. (See Appendix D: R.C. 2506.02)
  - 3. Standard of Review: The reviewing court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. (See Appendix D: 2506.04)
  - 4. Consistent with the reviewing court's findings, it may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the body appealed from with instructions. (See Appendix D: R.C. 2506.04)

**“Municipal Civil Service Commissions: Guidelines for Conducting Employee Hearings” is provided by the State Personnel Board of Review to raise awareness regarding Ohio’s civil service laws. The contents of this document should not be considered legal advice. Please contact SPBR at 614/466-7046 with specific questions.**

## **APPENDIX A**

**A QUICK REFERENCE LIST FOR  
EMPLOYEE APPEAL/HEARING PROCESS**

## A QUICK REFERENCE LIST FOR EMPLOYEE APPEAL/HEARING PROCESS

### Consider Jurisdiction:

#### Over parties:

- ✓ Is employee in the classified service? (Outline p. 2/Appendix B: R.C. 124.01(C), R.C. 124.11)

#### Over action:

- ✓ Is subject-matter underlying appeal one enumerated in R.C. 124.03/R.C. 124.40? (Outline pp. 1, 2/Appendix B)
- ✓ Is appeal timely? (Outline pp. 5, 6, 7, 8, 9/Appendix C: R.C. 124-1-03)
- ✓ If appeal is disciplinary, has appointing authority followed requirements of O.A.C. 124-3-01? (Outline p. 5/Appendix C: O.A.C. 124-3-01)

### Consider Practice and Procedure Throughout Appeal/Hearing Process:

- ✓ Motion practice. (Outline pp. 3, 4, 5/Appendix C)
- ✓ Discovery. (Outline pp. 3, 4, 5/Appendix C)
- ✓ Depositions and interrogatories. (Outline p. 4/Appendix C)
- ✓ Subpoenas. (Outline p. 4/Appendix C)
- ✓ Witnesses. (Outline p. 3/Appendix C)
- ✓ Appearances. (Outline p. 3/Appendix C)
- ✓ Procedural orders. (Outline p. 3/Appendix C)
- ✓ Procedure in record hearings. (Outline pp. 3, 4/Appendix C)
- ✓ Record of hearings. (Outline p. 4/Appendix C)
- ✓ Transcripts. (Outline p. 4/Appendix D)

### Disciplinary Hearings:

- ✓ If appeal is disciplinary, has appointing authority conducted a pre-disciplinary hearing or has employee waived pre-disciplinary hearing? (Outline pp. 4, 5)
- ✓ Burden of Proof. (Outline pp. 5, 6, 7)
- ✓ Standard of Conduct. (Outline p. 5)
- ✓ Rebutting Evidence. (Outline p. 6)
- ✓ Merger and Bar. (Outline p. 6)
- ✓ Laches. (Outline p. 6)
- ✓ Decision by Adjudicating Body. (Outline p. 6)
- ✓ "No Order Reduction" Appeals. (Outline p. 6)

### Non-Disciplinary Hearings:

- ✓ Layoffs/Abolishments. (Outline pp. 7, 8)
- ✓ Reclassifications. (Outline pp. 8, 9)
- ✓ Transfers. (Outline p. 9)

### Judicial Review:

- ✓ Transcript of Hearing/Documents (Outline p. 10)
- ✓ Standard of Review (Outline p. 10)

## **APPENDIX B**

### **SELECTED SECTIONS OF CHAPTER 124. OF THE OHIO REVISED CODE**

**R.C. 124.01  
R.C. 124.03  
R.C. 124.11  
R.C. 124.34  
R.C. 124.40**

## **§ 124.01 Definitions.**

As used in Chapter 124. of the Revised Code:

(A) "Civil service" includes all offices and positions of trust or employment in the service of the state and the counties, cities, city health districts, general health districts, and city school districts thereof.

(B) "State service" includes all such offices and positions in the service of the state, the counties, and general health districts thereof, except the cities, city health districts, and city school districts.

(C) "Classified service" means the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, city school districts thereof, and civil service townships.

(D) "Appointing authority" means the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution.

(E) "Commission" means the municipal civil service commission of any city, except that when in reference to the commission that serves a city school district, "commission" means the civil service commission determined under section 124.011 [124.01.1] of the Revised Code.

(F) "Employee" means any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer.

(G) "Civil service township" means any township with a population of ten thousand or more persons residing within the township and outside any municipal corporation, which has a police or fire department of ten or more full-time paid employees, and which has a civil service commission established under division (B) of section 124.40 of the Revised Code.

(H) "Flexible hours employee" means an employee who may work more or less than eight hours on any given day so long as he works forty hours in the same week.

(I) "Classification series" means any group of classification titles that have the identical name but different numerical designations, or identical titles except for designated levels of supervision, except for those classification series established by the director of administrative services in accordance with division (A) of section 124.14 of the Revised Code.

(J) "Classification change" means a change in an employee's classification in the job classification plan.

### **§ 124.03 Powers and duties of state personnel board of review.**

The state personnel board of review shall exercise the following powers and perform the following duties:

(A) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations. The board may affirm, disaffirm, or modify the decisions of the appointing authorities or the director, as the case may be, and its decision is final. The board's decisions shall be consistent with the applicable classification specifications. The board shall not be deprived of jurisdiction to hear any appeal due to the failure of an appointing authority to file its decision with the board. Any final decision of an appointing authority or of the director not filed in the manner provided in this chapter shall be disaffirmed. The board may place an exempt employee, as defined in section 124.152 [124.15.2] of the Revised Code, into a bargaining unit classification, if the board determines that the bargaining unit classification is the proper classification for that employee. Notwithstanding Chapter 4117. of the Revised Code or instruments and contracts negotiated under it, such placements are at the board's discretion.

In any hearing before the board, including any hearing at which a record is taken that may be the basis of an appeal to a court, an employee may be represented by a person permitted to practice before the board who is not an attorney at law so long as the person does not receive any compensation from the employee for such representation.

(B) Hear appeals, as provided by law, of appointing authorities from final decisions of the director relative to the classification or reclassification of any position in the classified state service under the jurisdiction of such appointing authority. The board may affirm, disaffirm, or modify the decisions of the director, and its decision is final. The board's decisions shall be consistent with the applicable classification specifications.

(C) Exercise the authority provided by section 124.40 of the Revised Code, for appointment, removal, and supervision of municipal and civil service township civil service commissions;

(D) Appoint a secretary, referees, examiners, and whatever other employees are necessary in the exercise of its powers and performance of its duties and functions. The board shall determine appropriate education and experience requirements for its secretary, referees, examiners, and other employees and shall prescribe their duties. A referee or examiner does not need to have been admitted to the practice of law.

(E) Maintain a journal which shall be open to public inspection, in which it shall keep a record of all of its proceedings and of the vote of each of its members upon every action taken by it;

(F) Adopt rules in accordance with Chapter 119. of the Revised Code relating to the procedure of the board in administering the laws which it has the authority or duty to administer and for the purpose of invoking the jurisdiction of the board in hearing appeals of appointing authorities and employees in matters set forth in divisions (A) and (B) of this section;

(G) 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 which it has authority to investigate, inquire into, or hear in the same manner and to the same extent as provided by division (G) of section 124.09 of the Revised Code. All witness fees shall be paid in the manner set forth in that division.

(H) The board shall be funded by general revenue fund appropriations. All moneys received by the board for copies of documents, rule books, and transcriptions shall be paid into the state treasury to the credit of the transcript and other documents fund, which is hereby created to defray the cost of furnishing or making available such copies, rule books, and transcriptions.

## **§ 124.11 Unclassified and classified service.**

The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

(1) All officers elected by popular vote or persons appointed to fill vacancies in such offices;

(2) All election officers as defined in section 3501.01 of the Revised Code;

(3) The members of all boards and commissions, and heads of principal departments, boards, and commissions appointed by the governor or by and with the governor's consent; and the members of all boards and commissions and all heads of departments appointed by the mayor, or, if there is no mayor, such other similar chief appointing authority of any city or city school district; except as otherwise provided in division (A)(17) or (C) of this section, this chapter does not exempt the chiefs of police departments and chiefs of fire departments of cities or civil service townships from the competitive classified service;

(4) The members of county or district licensing boards or commissions and boards of revision, and deputy county auditors;

(5) All officers and employees elected or appointed by either or both branches of the general assembly, and such employees of the city legislative authority as are engaged in legislative duties;

(6) All commissioned, warrant, and noncommissioned officers and enlisted persons in the Ohio organized militia, including military appointees in the adjutant general's department;

(7)(a) All presidents, business managers, administrative officers, superintendents, assistant superintendents, principals, deans, assistant deans, instructors, teachers, and such employees as are engaged in educational or research duties connected with the public school system, colleges, and universities, as determined by the governing body of the public school system, colleges, and universities;

(b) The library staff of any library in the state supported wholly or in part at public expense.

(8) Four clerical and administrative support employees for each of the elective state officers; and three clerical and administrative support employees for other elective officers and each of the principal appointive executive officers, boards, or commissions, except for civil service commissions, that are authorized to appoint such clerical and administrative support employees;

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency and those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided that division (A)(9) of this section shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in division (A)(9) of this section applies to any position in a county department of job and family services created pursuant to Chapter 329. of the Revised Code.

(10) Bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise, or who handle public moneys or secured documents, and such officers and employees of courts of record and such deputies of clerks of the courts of common pleas as the

*continued on next page*

## **§ 124.11 Unclassified and classified service. (continued)**

director of administrative services finds it impracticable to determine their fitness by competitive examination;

(11) Assistants to the attorney general, special counsel appointed or employed by the attorney general, assistants to county prosecuting attorneys, and assistants to city directors of law;

(12) Such teachers and employees in the agricultural experiment stations; such students in normal schools, colleges, and universities of the state who are employed by the state or a political subdivision of the state in student or intern classifications; and such unskilled labor positions as the director of administrative services or any municipal civil service commission may find it impracticable to include in the competitive classified service; provided such exemptions shall be by order of the commission or the director, duly entered on the record of the commission or the director with the reasons for each such exemption;

(13) Any physician or dentist who is a full-time employee of the department of mental health or the department of mental retardation and developmental disabilities or of an institution under the jurisdiction of either department; and physicians who are in residency programs at the institutions;

(14) Up to twenty positions at each institution under the jurisdiction of the department of mental health or the department of mental retardation and developmental disabilities that the department director determines to be primarily administrative or managerial; and up to fifteen positions in any division of either department, excluding administrative assistants to the director and division chiefs, which are within the immediate staff of a division chief and which the director determines to be primarily and distinctively administrative and managerial;

(15) Noncitizens of the United States employed by the state, or its counties or cities, as physicians or nurses who are duly licensed to practice their respective professions under the laws of Ohio, or medical assistants, in mental or chronic disease hospitals, or institutions;

(16) Employees of the governor's office;

(17) Fire chiefs and chiefs of police in civil service townships appointed by boards of township trustees under section 505.38 or 505.49 of the Revised Code;

(18) Executive directors, deputy directors, and program directors employed by boards of alcohol, drug addiction, and mental health services under Chapter 340. of the Revised Code, and secretaries of the executive directors, deputy directors, and program directors;

(19) Superintendents, and management employees as defined in section 5126.20 of the Revised Code, of county boards of mental retardation and developmental disabilities;

(20) Physicians, nurses, and other employees of a county hospital who are appointed pursuant to sections 339.03 and 339.06 of the Revised Code;

(21) The executive director of the state medical board, who is appointed pursuant to division (B) of section 4731.05 of the Revised Code;

(22) County directors of job and family services as provided in section 329.02 of the Revised Code and administrators appointed under section 329.021 [329.02.1] of the Revised Code;

(23) A director of economic development who is hired pursuant to division (A) of section 307.07 of the Revised Code;

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## **§ 124.11 Unclassified and classified service. (continued)**

(24) Chiefs of construction and compliance, of operations and maintenance, and of licensing and certification in the division of industrial compliance in the department of commerce;

(25) The executive director of a county transit system appointed under division (A) of section 306.04 of the Revised Code;

(26) Up to five positions at each of the administrative departments listed in section 121.02 of the Revised Code and at the department of taxation, department of the adjutant general, department of education, Ohio board of regents, bureau of workers' compensation, industrial commission, state lottery commission, and public utilities commission of Ohio that the head of that administrative department or of that other state agency determines to be involved in policy development and implementation. The head of the administrative department or other state agency shall set the compensation for employees in these positions at a rate that is not less than the minimum compensation specified in pay range 41 but not more than the maximum compensation specified in pay range 44 of salary schedule E-2 in section 124.152 [124.15.2] of the Revised Code. The authority to establish positions in the unclassified service under division (A)(26) of this section is in addition to and does not limit any other authority that an administrative department or state agency has under the Revised Code to establish positions, appoint employees, or set compensation.

(27) Employees of the department of agriculture employed under section 901.09 of the Revised Code;

(28) For cities, counties, civil service townships, city health districts, general health districts, and city school districts, the deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals or holding a fiduciary relation to their principals;

(29) Employees who receive external interim, intermittent, or temporary appointments under division (B) of section 124.30 of the Revised Code;

(30) Employees appointed to administrative staff positions for which an appointing authority is given specific statutory authority to set compensation;

(31) Employees appointed to highway patrol cadet or highway patrol cadet candidate classifications.

(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service. Upon the creation by the board of trustees of a civil service township civil service commission, the classified service shall also comprise, except as otherwise provided in division (A)(17) or (C) of this section, all persons in the employ of civil service township police or fire departments having ten or more full-time paid employees. The classified service consists of two classes, which shall be designated as the competitive class and the unskilled labor class.

(1) The competitive class shall include all positions and employments in the state and the counties, cities, city health districts, general health districts, and city school districts thereof, and upon the creation by the board of trustees of a civil service township of a township civil service commission all positions in civil service township police or fire departments having ten or more full-time paid employees, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer, or reduction, as provided in this chapter, and the rules of the director of administrative services, by appointment from those certified to the appointing officer in accordance with this chapter.

(2) The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class shall be filled by appointment from lists of applicants registered by the director. The director or the commission, by

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## **§ 124.11 Unclassified and classified service. (continued)**

rule, shall require an applicant for registration in the labor class to furnish such evidence or take such tests as the director considers proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity, and experience in the work or employment for which application is made. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought, and preference shall be given in employment in accordance with the rating received from such evidence or in such tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the director shall certify from the highest on the list double the number to be employed; from this number the appointing officer shall appoint the number actually needed for the particular work. If more than one applicant receives the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

(C) A municipal or civil service township civil service commission may place volunteer firefighters who are paid on a fee-for-service basis in either the classified or the unclassified civil service.

(D) This division does not apply to persons in the unclassified service who have the right to resume positions in the classified service under sections 4121.121 [4121.12.1], 5119.071 [5119.07.1], 5120.07, 5120.38, 5120.381 [5120.38.1], 5120.382 [5120.38.2], 5123.08, 5139.02, and 5501.19 of the Revised Code.

An appointing authority whose employees are paid directly by warrant of the auditor of state may appoint a person who holds a certified position in the classified service within the appointing authority's agency to a position in the unclassified service within that agency. A person appointed pursuant to this division to a position in the unclassified service shall retain the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment to the position in the unclassified service, regardless of the number of positions the person held in the unclassified service. Reinstatement to a position in the classified service shall be to a position substantially equal to that position in the classified service held previously, as certified by the director of administrative services. If the position the person previously held in the classified service has been placed in the unclassified service or is otherwise unavailable, the person shall be appointed to a position in the classified service within the appointing authority's agency that the director of administrative services certifies is comparable in compensation to the position the person previously held in the classified service. Service in the position in the unclassified service shall be counted as service in the position in the classified service held by the person immediately prior to the person's appointment to the position in the unclassified service. When a person is reinstated to a position in the classified service as provided in this division, the person is entitled to all rights, status, and benefits accruing to the position in the classified service during the person's time of service in the position in the unclassified service.

## **§ 124.34 Tenure of office; reduction, suspension, removal and demotion.**

(A) The tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts of the state, holding a position under this chapter, shall be during good behavior and efficient service. No such officer or employee shall be reduced in pay or position, fined, suspended, or removed, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of this chapter or the rules of the director of administrative services or the commission, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. An appointing authority may require an employee who is suspended to report to work to serve the suspension. An employee serving a suspension in this manner shall continue to be compensated at the employee's regular rate of pay for hours worked. Such disciplinary action shall be recorded in the employee's personnel file in the same manner as other disciplinary actions and has the same effect as a suspension without pay for the purpose of recording disciplinary actions.

A finding by the appropriate ethics commission, based upon a preponderance of the evidence, that the facts alleged in a complaint under section 102.06 of the Revised Code constitute a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code may constitute grounds for dismissal. Failure to file a statement or falsely filing a statement required by section 102.02 of the Revised Code may also constitute grounds for dismissal. The tenure of an employee in the career professional service of the department of transportation is subject to section 5501.20 of the Revised Code.

Conviction of a felony is a separate basis for reducing in pay or position, suspending, or removing an officer or employee, even if the officer or employee has already been reduced in pay or position, suspended, or removed for the same conduct that is the basis of the felony. An officer or employee may not appeal to the state personnel board of review or the commission any disciplinary action taken by an appointing authority as a result of the officer's or employee's conviction of a felony. If an officer or employee removed under this section is reinstated as a result of an appeal of the removal, any conviction of a felony that occurs during the pendency of the appeal is a basis for further disciplinary action under this section upon the officer's or employee's reinstatement.

A person convicted of a felony immediately forfeits the person's status as a classified employee in any public employment on and after the date of conviction for the felony. If an officer or employee is removed under this section as a result of being convicted of a felony or is subsequently convicted of a felony that involves the same conduct that was the basis for the removal, the officer or employee is barred from receiving any compensation after the removal notwithstanding any modification or disaffirmance of the removal, unless the conviction for the felony is subsequently reversed or annulled.

Any person removed for conviction of a felony is entitled to a cash payment for any accrued but unused sick, personal, and vacation leave as authorized by law. If subsequently reemployed in the public sector, such person shall qualify for and accrue these forms of leave in the manner specified by law for a newly appointed employee and shall not be credited with prior public service for the purpose of receiving these forms of leave.

As used in this division, "felony" means any of the following:

- (1) A felony that is an offense of violence as defined in section 2901.01 of the Revised Code;
- (2) A felony that is a felony drug abuse offense as defined in section 2925.01 of the Revised Code;
- (3) A felony under the laws of this or any other state or the United States that is a crime of moral turpitude;
- (4) A felony involving dishonesty, fraud, or theft;

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**§ 124.34 Tenure of office; reduction, suspension, removal and demotion.**  
***(continued)***

(5) A felony that is a violation of section 2921.05, 2921.32, or 2921.42 of the Revised Code.

(B) In case of a reduction, suspension of more than three working days, fine in excess of three days' pay, or removal, except for the reduction or removal of a probationary employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action. The order shall be filed with the director of administrative services and state personnel board of review, or the commission, as may be appropriate.

Within ten days following the date on which the order is served or, in the case of an employee in the career professional service of the department of transportation, within ten days following the filing of a removal order, the employee, except as otherwise provided in this section, may file an appeal of the order in writing with the state personnel board of review or the commission. For purposes of this section, the date on which an order is served is the date of hand delivery of the order or the date of delivery of the order by certified United States mail, whichever occurs first. If such an appeal is filed, the board or commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, the appeal within thirty days from and after its filing with the board or commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority.

In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the state personnel board of review or the commission to the court of common pleas of the county in which the employee resides in accordance with the procedure provided by section 119.12 of the Revised Code.

(C) In the case of the suspension for any period of time, or a fine, demotion, or removal of a chief of police or a chief of a fire department or any member of the police or fire department of a city or civil service township, the appointing authority shall furnish such chief or member of a department with a copy of the order of suspension, fine, demotion, or removal, which order shall state the reasons for the action. The order shall be filed with the municipal or civil service township civil service commission. Within ten days following the filing of the order, such chief or member of a department may file an appeal, in writing, with the municipal or civil service township civil service commission. If such an appeal is filed, the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, the appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority. An appeal on questions of law and fact may be had from the decision of the municipal or civil service township civil service commission to the court of common pleas in the county in which such city or civil service township is situated. Such appeal shall be taken within thirty days from the finding of the commission.

(D) A violation of division (A)(7) of section 2907.03 of the Revised Code is grounds for termination of employment of a nonteaching employee under this section.

## **§ 124.40 Municipal and township civil service commissions.**

(A) The mayor or other chief appointing authority of each city in the state shall appoint three persons, one for a term of two years, one for four years, and one for six years, who shall constitute the municipal civil service commission of such city and of the city school district and city health district in which such city is located. Each alternative year thereafter the mayor or other chief appointing authority shall appoint one person, as successor of the member whose term expires, to serve six years. A vacancy shall be filled by the mayor or other chief appointing authority of a city for the unexpired term. At the time of any appointment, not more than two commissioners shall be adherents of the same political party. Such municipal civil service commission shall prescribe, amend, and enforce rules not inconsistent with this chapter for the classification of positions in the civil service of such city and city school district, and all the positions in the city health district; examinations and resignations therefor; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements therein; and for standardizing positions and maintaining efficiency therein. The municipal civil service commission shall exercise all other powers and perform all other duties with respect to the civil service of such city, city school district, and city health district, as prescribed in this chapter and conferred upon the director of administrative services and the state personnel board of review with respect to the civil service of the state; and all authority granted to the director and the board with respect to the service under their jurisdiction shall, except as otherwise provided by this chapter, be held to grant the same authority to the municipal civil service commission with respect to the service under its jurisdiction. The procedure applicable to reductions, suspensions, and removals, as provided for in section 124.34 of the Revised Code, shall govern the civil service of cities. The expense and salaries of a municipal civil service commission shall be determined by the legislative authority of the city and a sufficient sum of money shall be appropriated each year to carry out this chapter in the city.

All persons who are employed by a city school district, city health district, or city health department when a municipal civil service commission having jurisdiction over them is appointed, or when they become subject to civil service by extension of civil service to include new classifications of employees, shall continue to hold their positions until removed in accordance with the civil service laws.

If the appointing authority of any such city fails to appoint a civil service commission or commissioner, as provided by law, within sixty days after he has the power to so appoint, or after a vacancy exists, the state personnel board of review shall make the appointment, and such appointee shall hold office until the expiration of the term of the appointing authority of such city. If any such municipal civil service commission fails to prepare and submit such rules and regulations in pursuance of this chapter, the board shall forthwith make such rules. This chapter of the Revised Code, shall in all other respects, except as provided in this section, be in full force in such cities.

Each municipal civil service commission shall make reports from time to time, as the board requires, of the manner in which the law and the rules and regulations thereunder have been and are being administered, and the results of their administration in such city, city school district, and city health district. A copy of the annual report of each such municipal civil service commission shall be filed in the office of the board as a public record.

Whenever the board has reason to believe that a municipal civil service commission is violating or is failing to perform the duties imposed upon it by law, or that any member of such municipal civil service commission is willfully or through culpable negligence violating the law or failing to perform his duties as a member of the commission, it shall institute an investigation, and if, in the judgment of the board, it finds any such violation or failure to perform the duties imposed by law, it shall make a report of such violation in writing to the chief executive authority of such city, which report shall be a public record.

Upon the receipt of the report from the board, charging a municipal civil service commissioner with violating or failing to perform the duties imposed by law, or willfully or through culpable negligence violating the law by failure to perform his duties as a member of the municipal civil service commission, along with the

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## **§ 124.40 Municipal and township civil service commissions. (continued)**

evidence on which the report is based, the chief executive officer of the city shall forthwith remove the municipal civil service commissioner. In all cases of removal of a municipal civil service commissioner by the chief executive authority of any such city an appeal may be had to the court of common pleas, in the county in which the city is situated, to determine the sufficiency of the cause of removal. The appeal shall be taken within ten days from the decision of the chief executive authority of the city. Should the court disaffirm the judgment of the chief executive authority, the commissioner shall be reinstated to his former position in the municipal civil service commission. The chief executive authority of such city may at any time remove any municipal civil service commissioner for inefficiency, neglect of duty, or malfeasance in office, having first given to the commissioner a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense.

The mayor has the exclusive right to suspend the chief of the police department or the chief of the fire department for incompetence, gross neglect of duty, gross immorality, habitual drunkenness, failure to obey orders given him by the proper authority, or for any other reasonable and just cause. If either the chief of police or the chief of the fire department is so suspended, the mayor forthwith shall certify such fact, together with the cause of the suspension, to the municipal civil service commission, which within five days from the date of receipt of the notice shall proceed to hear such charges and render judgment thereon, which judgment may affirm, disaffirm, or modify the judgment of the appointing officer, and an appeal may be had from the decision of the commission to the court of common pleas as provided in section [124.34](#) of the Revised Code to determine the sufficiency of the cause of removal.

(B) The board of trustees of a township with a population of ten thousand or more persons residing within the township and outside any municipal corporation and which has a police or fire department of ten or more full-time paid employees may appoint three persons who shall constitute the township civil service commission. Of the initial appointments made to the commission, one shall be for a term ending two years after the date of initial appointment, and shall be for a term ending four years after that date, and one shall be for a term ending six years after that date. Thereafter, terms of office shall be for six years, each term ending on the same day of the same month as did the term which it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office or until a period of sixty days has elapsed, whichever occurs first. At the time of any appointment, not more than two commissioners shall be adherents of the same political party. The board of township trustees shall determine the compensation and expenses to be paid to the members of the township civil service commission. The powers and duties conferred on municipal civil service commissions and the supervisory authority of the state personnel board of review under division (A) of this section shall be applicable to the civil service commission of a civil service township. The board of township trustees has the exclusive right to suspend the chief of the police or fire department of the township in the same manner as provided in division (A) of this section for municipal chiefs.

The jurisdiction of the civil service township civil service commission is limited to employees of the township fire or police department if the department has ten or more full-time paid employees and does not extend to any other township employees.

## **APPENDIX C**

**SELECTED SECTIONS OF CHAPTER 124.  
OF THE OHIO ADMINISTRATIVE CODE:**

**STATE PERSONNEL BOARD OF REVIEW'S  
ADMINISTRATIVE RULES**

**STATE PERSONNEL BOARD OF REVIEW  
ADMINISTRATIVE RULES 2001**

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**Chapter One**  
*Jurisdiction*

124-1-01 Generally.

- (A) The jurisdiction of the state personnel board of review is derived from Chapter 124. of the Revised Code.
- (B) Unless exempted from the classified service by statute, all positions in the service of the state, the counties and the general health districts are in the classified service. The board has jurisdiction to determine whether any position, not specifically exempted, falls within the general exemptions set forth in division (A) of section 124.11 of the Revised Code.
- (C) A party bearing the burden of proof in an action before the board must prove its case by a preponderance of the evidence.

124-1-02 Definitions.

- (A) The definitions set forth in section 124.01 of Revised Code are incorporated in these rules by reference.
- (B) “Abolishment” means 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.
- (C) “Administrative relationship” generally means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee’s personal judgment and leadership abilities. The average employee would not possess such qualities or be delegated such discretionary authority. Whether one position occupies an administrative relationship to another is a question of fact to be determined by the board.
- (D) “Agency” means any unit of government, including a board or commission, headed by an officer or group having the power to appoint employees.

- (E) "Appointment" means placement of an employee in a position.
- (F) "Board" or "state personnel board of review" means either the members of the state personnel board of review or the agency including its administrative law judges and other employees.
- (G) "Classification" means any of the following:
  - (1) A group of positions of sufficiently similar duties that the same title and specification may be assigned to each.
  - (2) The title assigned to a position or the employee appointed to fill a position.
  - (3) The act of assigning a classification title to a position based upon the duties performed in that position.
- (H) "Displacement" means for the purposes of layoffs and job abolishments the process by which an employee with more retention points exercises his or her right to take the position of another employee with fewer retention points pursuant to the provisions of Chapter 123:1-41 of the Administrative Code.
- (I) "Fiduciary relationship" generally means a relationship where the appointing authority reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of the position. Whether one position occupies a fiduciary relationship to another is a question of fact to be determined by the board.
- (J) "Filed" means received, in writing, and time stamped in the offices of the board.
- (K) "Layoff" means a suspension of employment, expected to last less than twelve months, due to either a lack of work or a lack of funds.
- (L) "Non-competitive examination" means any written device by which a prospective employee's qualifications to hold a position may be determined ( e.g., an application form).

- (M) "Notice" means the date of receipt by the employee, in writing, of the action. If the employee did not receive a written notification, then "notice" means the date of the actual implementation of the action.
- (N) "Order of involuntary disability separation" means an order issued by an appointing authority involuntarily separating an employee from employment in his or her position when the appointing authority has determined that said employee is unable to perform the essential job duties of his or her position due to a disabling illness, injury or condition.
- (O) "Parenthetical subtitle" means a group of positions logically falling within a general classification but distinguished from other positions within that classification by the performance of specific duties requiring specialized skill, knowledge or training.
- (P) "Party" means an individual or agency who participates in and is directly affected by an action brought before the state personnel board of review. As used in these rules, "party" is not limited to the definition in Chapter 119. of the Revised Code.
- (Q) "Pay" means either:
  - (1) The annual, non-overtime compensation due an employee including, when applicable, the cost of the appointing authority's insurance or other contributions, longevity pay, supplemental pay and hazard pay, divided by the product of the number of regularly scheduled hours in a workweek times fifty-two; or
  - (2) The annual compensation assigned to a position including, when applicable, the cost of the appointing authority's insurance, or other contributions, longevity pay, supplemental pay and hazard pay.
- (R) "Pay range" means the salary schedule and level assigned to a position.
- (S) "Position" means a group of duties intended to be performed by an employee.
- (T) "Position description" means a written summary of the duties which comprise a position.

- (U) "Progressive discipline" generally means the act of disciplining an employee in graduated increments and progressing through a logical sequence, such as a written reprimand for a first offense, a short suspension for the second offense, and a longer suspension or removal for the third offense. The severity of the offense may negate the use of progressive discipline.
- (V) "Promotion" means the appointment of an employee to a different position assigned a higher pay range than the employee's previous position.
- (W) "Reassignment" means the assignment of an employee to a different classification.
- (X) "Reclassification" means the assignment of a different classification to a position.
- (Y) "Reduction in pay" means an action which diminishes an employee's pay. When the conditions entitling an employee to supplemental pay end, the ending of supplemental pay shall not be considered a reduction.
- (Z) "Reduction in position" means an action which 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.
- (AA) "Removal" means the termination of an employee's employment.
- (BB) "Representative" means any person who is either admitted to the practice of law in Ohio or a person who is not admitted to the practice of law in Ohio and who does not receive any compensation from the party for such representation.
- (CC) "Section 124.34 order" means an order required by section 124.34 of the Revised Code.
- (DD) "Specification" means a synopsis of the duties and qualifications of an employee assigned to a classification.
- (EE) "Suspension" means the interruption of an employee's employment and compensation for a fixed period of time.

- (FF) "Transfer" means the movement of an employee between different offices or positions as set forth in sections 124.32 and 124.33 of the Revised Code. A change in job location within the same classification, the same appointing authority and the same county is not appealable.

124-1-03 Time limits for filing appeals.

- (A) Except as set forth below, appeals from "section 124.34 orders," including disability separations, shall be filed, in writing, within ten calendar days following the date the order is served on the employee.
- (B) Appeals from layoffs, abolishments, and displacements shall be in writing and shall be filed with the board, or postmarked, not more than ten calendar days after receipt of the notice of the action. A copy of the notice of layoff, abolishment or displacement shall be attached to the appeal.
- (C) Appeals of reclassifications shall be filed, in writing, within thirty calendar days after receiving the notice of the results of the audit. A copy of the audit decision letter shall be attached to the appeal.
- (D) Appeals from transfers shall be filed, in writing, within ten calendar days after receipt of the notice of transfer from the director of the department of administrative services. A copy of the notice of transfer shall be attached to the appeal.
- (E) Appeals from alleged reductions in pay or position which do not involve a "section 124.34 order" shall be filed with the board, in writing, within ninety days after receipt of notice of the reduction or if no notice is given, within ninety days of the actual imposition of the reduction. The appeal time may be extended within the discretion of the board.
- (F) Investigation requests shall be filed, in writing, within six months of knowledge of the alleged violations of Chapter 124. of the Revised Code. This time period may be extended within the discretion of the board where the violation is ongoing or there is a pattern of violation over an extended period of time.
- (G) Appeals from disciplinary or retaliatory actions taken as a result of an employee having filed a report under section 124.341(A) of the Revised

Code shall be filed, in writing, within thirty days after receiving actual notice of the disciplinary or retaliatory action.

- (H) Appeals from actions prohibited by section 4167.13 of the Revised Code shall be filed, in writing, within sixty days after the violation occurs.
- (I) Appeals from all other actions, including denials of reinstatement from disability separations, shall be filed, in writing, with the state personnel board of review not more than thirty calendar days after the time the appellant receives actual notice of the action.

124-1-04 Tenure of improperly appointed employees.

- (A) An appointing authority is estopped to raise the illegal appointment of an employee to defeat the tenure rights which would have been due that employee had he been lawfully appointed.
- (B) After two years of service in a position in the classified service, an employee may become automatically certified under the provisions of section 124.271 of the Revised Code, notwithstanding the impropriety of his appointment.

**Chapter Three**  
*"Section 124.34 Orders" and*  
*Orders of Involuntary Disability Separation*

124-3-01 Requirements of "section 124.34 orders" and orders of involuntary disability separation.

- (A) "Section 124.34 orders" and orders of involuntary disability separation may be affirmed only if each of the following five criteria are satisfied:
  - (1) The copies of the order filed with the state personnel board of review and the director of administrative services or statutory designee and served on the employee shall each bear the original signature of the appointing authority and the date of signature. If an appointing authority is a public body, the order must contain the signatures of a majority of the

members, or in the alternative, a certified copy of the resolution adopting the order shall be attached to each copy of the order; and

- (2) The employer shall serve the employee with a copy of the order on or before the effective date of the action; and
- (3) The employer shall file a copy of the order with the state personnel board of review and the department of administrative services or its statutory designee within ten calendar days after a copy of the order has been served on the employee, in accordance with rule 124-3-02 of the Administrative Code, unless it can be shown that failure to file timely had no adverse effect on the employee; and
- (4) The order shows, on its face, a list of particulars which form the basis for the order; and
- (5) The appointing authority can, if challenged, demonstrate both the authority of the signer and the authenticity of the signature on a "section 124.34 order" or an order of involuntary disability separation.

(B) Disaffirmance of an order under this rule shall not be a bar to filing another "section 124.34 order" or an order of involuntary disability separation, based upon the same allegations.

124-3-02 Service of "section 124.34 orders" and orders of involuntary disability separation.

- (A) A "section 124.34 order" or an order of involuntary disability separation is served on an employee when:
  - (1) It is personally served upon the employee; or
  - (2) It is received by the employee at the employee's last known address, by certified mail, return receipt requested; or
  - (3) It is left at the usual place of residence, or last known

address of the affected employee, with an adult residing therein.

- (B) If the service by certified mail under paragraph (A)(2) of this rule is returned with an endorsement showing the service was refused or unclaimed, then the “section 124.34 order” or the order of involuntary disability separation may be sent by ordinary mail, evidenced by a certificate of mailing. A “section 124.34 order” or an order of involuntary disability separation issued to an employee under the provisions of this subsection shall be deemed served on the third calendar day after the order is mailed.
- (C) Employees shall notify the appointing authority, in writing, of any changes of address throughout their employment. A “section 124.34 order” or an order of involuntary disability separation will not be disaffirmed based upon an appointing authority’s failure to serve the employee with a copy of the order where the employee has failed to notify the appointing authority of a change of address and the appointing authority has attempted to serve a copy of the order to the employee’s last known address. The burden is on the employee to prove the appointing authority was notified of a change in the employee’s address.

124-3-03 Amendment or rescission of “section 124.34 orders” and orders of involuntary disability separation.

- (A) An appointing authority may, at any time prior to the first record hearing, delete material contained in a “section 124.34 order.” After the first record hearing has begun, the board may permit the deletion of material from a “section 124.34 order.”
- (B) Material not originally present in a “section 124.34 order” may not be added to the order after it is furnished to the employee or filed with the state personnel board of review, whichever is earlier.
  - (1) Such material, if not barred by rule 124-3-04 of the Administrative Code, may be made the basis of a subsequent order.
  - (2) An appointing authority may correct errors at any time as long as the substance of an allegation is not changed.

- (C) Upon written notice to the employee, an appointing authority may rescind a “section 124.34 order” or an order of involuntary disability separation. Rescission of a “section 124.34 order” or an order of involuntary disability separation under this rule shall not be a bar to filing another order based upon the same allegations.

124-3-04 Laches.

- (A) Employees shall not be disciplined for acts which have been known or should have been known to the appointing authority more than two years prior to the issuance of a “section 124.34 order”
  - (1) Whether an appointing authority knew or should have known of the occurrence of events giving rise to disciplinary action is a question of fact to be determined by the board.
  - (2) The length of time between the occurrence of the action, the appointing authority’s knowledge of the incident, and the imposition of discipline will be factors in the board’s determination of the appropriateness of the disciplinary action.
- (B) 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.

124-3-05 Merger and bar.

- (A) All incidents which occurred prior to the incident for which a non-oral disciplinary action is being imposed, of which an appointing authority 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.

- (1) For purposes of this rule, knowledge of an appointing authority will include knowledge of those persons with authority to impose non-oral discipline for the appointing authority.
  - (2) For purposes of this rule, non-oral discipline includes written reprimands and suspension orders. It does not include a written memorandum or oral counseling or written warnings.
- (B) Except as provided in rules 124-3-01 and 124-9-04 of the Administrative Code, once discipline is imposed for a particular incident, that incident shall not be used as the basis for subsequent discipline.
- (C) Upon written notice to the employee, an appointing authority may rescind non-oral discipline. Rescission of non-oral discipline under this rule shall not be a bar to issuing another non-oral discipline based upon the same allegations.

124-3-06 Appointing authority's burden of proof. The appointing authority shall prove, by a preponderance of the evidence, the factual allegations in a disciplinary order. Failure to prove all of the allegations contained in an order does not, as a matter of law, require disaffirmance of an order.

## **Chapter Five** *Appeals and Appellants*

124-5-01 Filing and contents of appeals.

- (A) All appeals to the state personnel board of review shall be in writing.
- (1) If an appeal is received by United States mail, inter-office mail, or by personal delivery, the appeal is deemed to have been filed as of the date of its receipt as evidenced by the board's time stamp.
  - (2) If an appeal is made by facsimile transmission or by electronic mail, the appeal is deemed to have been filed

as of the date of its receipt as evidenced by the receipt date generated by the board's facsimile transmission or as shown on the electronic mail received by the board.

- (3) Appeals filed pursuant to subsections 1 and 2 of this rule shall be subject to the provisions of rule 124-11-09 of the Administrative Code.

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

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

(C) Appellants shall notify the state personnel board of review, in writing, of any change of address during the pendency of an appeal.

124-5-02 Removals, reductions and suspensions without an order. If a reduction, removal or suspension is alleged and no "section 124.34 order" has been filed with the state personnel board of review, the employee shall prove, by a preponderance of the evidence, that the reduction, removal or suspension occurred.

### **Chapter Seven**

#### *Job Abolishments, Layoffs, Reclassifications and Reassignments, Unclassified Status, and Investigations*

124-7-01 Job Abolishments and Layoffs.

- (A) Job abolishments and layoffs shall be disaffirmed if the action was taken in bad faith. The employee must prove the appointing authority's bad faith by a preponderance of the evidence.
  - (1) The appointing authority shall demonstrate by a preponderance of the evidence that a job abolishment was undertaken due to a lack of 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.

- (2) The appointing authority shall demonstrate by a preponderance of the evidence that a layoff was undertaken due to a temporary lack of work or lack of funds expected to last less than one year.
  - (3) Layoffs and abolishments may only be affirmed if the appointing authority has substantially complied with procedural requirements set forth in section 124.321 of the Revised Code, et seq., and the administrative rules promulgated pursuant to these statutes.
- (B) Certification of lack of funds or lack of work is not required for job abolishments.
  - (C) When a position is abolished or an employee is laid off, displacement rights, as set forth in division (C) of section 124.321 of the Revised Code, shall be afforded the employee.
  - (D) Layoffs are governed by division (C) of section 124.321 of the Revised Code and any layoff rules which apply to a particular appointing authority. In the absence of superseding rules, the layoff rules promulgated by the director of administrative services shall be followed.

124-7-02 Reclassification and reassignments.

- (A) An employee shall not be reduced by reassignment. An employee is reduced if reassigned to a classification assigned a lower pay range.
- (B) The decision of the director of administrative services or the director's authorized designee, to reclassify a position or to retain a current classification, may be appealed by either the appointing authority of the affected employee or by the employee.
- (C) An employee returning to his or her regular position from a temporary work level has not been reassigned, reduced, or reclassified.

124-7-03 Procedure in reclassification appeals.

- (A) The parties in appeals of reclassifications are the employee in the position to be reclassified, the employee's appointing authority, and the authority which conducted the position audit.
- (B) The board shall conduct a fact-finding hearing to determine the duties performed by the employee in the audited position. The witnesses shall be limited to the audited employee, his immediate supervisor, and the designee of the authority who conducted the position audit, unless the board determines that there is substantial disparity in their testimony or other reason to believe their testimony is inaccurate. Examination of the witnesses shall be conducted by the board, subject to further limited examination by the parties.
- (C) The provisions of paragraph (C) of rule 124-11-05 of the Administrative Code shall not apply in reclassification hearings.
- (D) The board shall 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.
- (E) Evidence of disparity in the classification of co-workers is not admissible.

124-7-04 Determination of unclassified status. When an employee has been adversely affected as an unclassified employee, the burden of proving the unclassified status of the employee is on the appointing authority. The board will take evidence of the employee's duties over a reasonable period of time, which is generally defined as one calendar year immediately prior to the adverse action, provided that the employee was in an active work status during that time period.

124-7-05 Investigations.

- (A) Investigations shall be conducted by an exchange of correspondence between the board and the parties. Unless a party can show good cause for its failure to respond, decisions will be based on the information received within the response time allowed. In the board's discretion, investigations may be set for hearing.

- (B) Prior to recommending removal of persons pursuant to section 124.40 or 124.56 of the Revised Code, the board may, as an alternative to removal, order the correction of a violation of Chapter 124. of the Revised Code, or of the rules of the Administrative Code.

**Chapter Nine**  
*Rules of Evidence*

124-9-01 Rules of evidence. The rules of evidence prevailing in civil actions in Ohio courts of general jurisdiction are adopted for use in hearings before the board, except as modified by these rules.

124-9-02 Hearsay. The board may permit the introduction of evidence otherwise excludable as hearsay. A foundation, establishing both the reliability of the testimony and its necessity, shall be laid before hearsay may be admitted.

124-9-03 Cumulative testimony. The board may limit cumulative testimony.

124-9-04 Prior discipline.

- (A) Evidence of prior discipline is inadmissible to prove the existence of any incident alleged in a "section 124.34 order."
- (B) For purposes of this rule, prior discipline consists only of those written reprimands, suspensions, or removals contained in the employee's personnel file.
- (C) 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.

124-9-05 Questionnaires.

- (A) At any time prior to a hearing, the board may order evidence taken in the form of questionnaires.
- (B) The board may require questionnaires to be submitted at a hearing or to be returned by mail.
  - (1) Questionnaires shall be treated as admissions and may be completed with the advice of a party's representative.
  - (2) All questionnaires shall bear the oath or affirmation of the party completing them.
- (C) Questionnaires may be used as the sole basis for deciding any appeal. Failure to respond to a questionnaire may result in dismissal of the case.

124-9-06 Stipulations. Stipulations may be accepted by the board only when both parties consent to the stipulation.

124-9-07 Witnesses.

- (A) All witnesses at any hearing before the board shall testify under oath or affirmation.
- (B) A 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.

124-9-08 Conviction of a crime.

- (A) Conviction of any crime in a court of competent jurisdiction is conclusive evidence of the existence of all of the elements of that

crime. Conviction of any crime is not conclusive evidence that disciplinary action based upon the conviction is appropriate. The appointing authority shall prove the existence of one or more of the grounds set forth in section 124.34 of the Revised Code as the basis for disciplinary action.

- (B) A conviction can be established only through certified copies of the original journal entry from the court in which the conviction was obtained.
- (C) Evidence of conviction of a crime is inadmissible unless a connection is established between the crime and the particulars alleged in a disciplinary order.
- (D) Indictment for or allegation of a criminal offense does not establish a statutory basis for discipline under section 124.34 of the Revised Code.

124-9-09 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.

124-9-10 Administrative notice.

- (A) At any time prior to the issuance of a final order, the board may take notice of the contents of any classification specification filed with the secretary of state.
- (B) This rule does not limit the board's authority to take notice at a hearing of any fact, including the contents of any personnel file maintained by the director of administrative services, when it is lawfully empowered to do so under the "Ohio Rules of Evidence."

124-9-11 Disparate treatment.

- (A) The board may hear evidence of disparate treatment between the appellant and other similarly situated employees of the same appointing authority for the purpose of determining whether work rules or administrative policies are being selectively applied by the appointing authority or to determine whether the discipline of similarly situated employees is uniform. Requests for discovery under this rule shall be limited to information relating to specific incidents or persons known to the employee or his representative.
- (B) Evidence of disparate treatment will be considered in evaluating the appropriateness of the discipline which was imposed.
- (C) Evidence of disparity in the classification of co-workers is not admissible in reclassification appeals.

**Chapter Eleven**  
*General Procedure*

124-11-01 Denomination of parties. The party filing an appeal is denominated "appellant." All other parties are denominated "appellee."

124-11-02 Notice of Hearings. Scheduling notices shall be mailed to the parties and their representatives by ordinary United States mail or by state of Ohio interdepartmental mail at least thirty calendar days in advance of the hearing.

124-11-03 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 administrative law judge assigned to the appeal or, if the appeal is set before the state personnel board of review, addressed to the executive secretary. 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 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 calendar days prior to hearing, then that party shall inform the board of the opposing party's consent or opposition to the continuance request.
  - (3) 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.

124-11-04 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.

124-11-05 Appearances.

- (A) Any person, unless prohibited by law, may represent himself. An employee may be represented by a person permitted to practice before the board who is not an attorney at law so long as the person does not receive any compensation from the employee for such representation.
- (B) Any party who has a statutory representative must be represented by the designated representative, unless the party submits to this board

a letter from the statutory representative authorizing other representation.

- (C) Provided a party has not been subpoenaed and has authorized his representative to represent him in all facets of a hearing before the board, that party is not required to appear personally at the hearing.
- (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 state personnel board of review.
- (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.

124-11-06 Substitution of parties.

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

124-11-07 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 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 ten 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.

124-11-08 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 his brief from its consideration.
- (B) Upon motion, the board may hold the record open for receipt of briefs.

124-11-09 Filing.

- (A) A document is filed when it is received, in writing, and time stamped by the office of the state personnel board of review. Any document received after five p.m. on a business day, or received at any time on a non-business day, including facsimiles and electronic transmissions so received, shall be considered to be filed on the next business day and shall be entered accordingly.
- (B) In a proceeding before an administrative law judge, a party must file an original and one legible copy of any document required to be served by agency-level 124 of the Administrative Code. In a proceeding before the full board, a party must file an original and two legible copies of any document required to be served by agency-level 124 of the Administrative Code. When more than one case file is involved in a proceeding, then the above required documentation must be submitted for each case file. Such documents and copies must be filed with the board within three calendar days after service.
- (C) All pleadings to be filed with the board shall be on eight-and-one-half inch by eleven-inch paper.

124-11-10 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 or by mail. 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, and
  - (4) Name of the person or authority who was served.

124-11-11 Communications to representatives and parties. Communications regarding scheduling shall be sent to all parties and their representatives.

124-11-12 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 person responsible for handling the appeal.

- (a) Requests for extension of time in appeals assigned to an administrative law judge shall be directed to the administrative law judge responsible for the appeal.
- (b) Requests for extension of time in appeals assigned to the members of the state personnel board of review shall be directed to the executive secretary.

124-11-13 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.

124-11-14 Procedure in record 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 copies of all exhibits must be submitted to the board. 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) In hearings before an administrative law judge, parties shall provide the board two copies of all exhibits.
- (F) The parties are encouraged to discuss stipulations and settlement prior to the start of a hearing.

- (G) All parties, witnesses and attorneys are required to arrive at the board's offices at the scheduled hearing time.

124-11-15 Record of hearings.

- (A) All record hearings shall be recorded on magnetic tape unless the board orders a stenographic record. The magnetic tape recording by the board is the official record.
- (B) Magnetic tape recordings may be erased after:
  - (1) A final board order has been issued; and
  - (2) Ninety calendar days have passed from the mailing of notice of the final order of the board to the parties; or ninety days after a transcript has been received by the board from its official stenographer.
- (C) Any party may tape record or have a stenographer present at the hearing, provided such recording does not interfere with the hearing.

124-11-16 Transcripts/listening to and duplicating magnetic tapes.

- (A) The board shall transmit a written transcript of each hearing appealed to a court of common pleas.
- (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 days following the mailing of the final order.
- (D) Any person may listen to the magnetic tape of a hearing. In order to do so, a person must make prior arrangements with the board and must complete an "acceptance of liability" form. Under no circumstances shall any person remove the magnetic tapes from the board's control. Any person may obtain copies of recorded activity by supplying the

board with the correct amount of ninety minute cassette tapes needed for duplication. The board shall complete the copying of tapes of tape-recorded activity within seven working days.

124-11-17 Subpoenas.

- (A) Consistent with Chapter 124-9 of the Administrative Code, a party may request the board to issue subpoenas for documents and subpoenas for up to five 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 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 and serving subpoenas. 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 calendar days in advance of a hearing. If subpoenas cannot be mailed more than fourteen calendar days in advance of a hearing, the board shall, on request, hold the subpoenas so they can be served on the witness at the hearing subject to the provisions contained within paragraph (C) of this rule.
  - (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 calendar days prior to the hearing. Subpoenas duces tecum shall be received at least ten 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 subpoenaed non-appearing witness.
- (D) Hearings shall not be continued due to the absence of a witness subpoenaed under paragraph (B) of 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.

124-11-18 Mileage reimbursement and subpoenaed witness fees.

- (A) Public employees 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. Public employees shall be paid by their appointing authority for the time they are absent from their jobs to attend hearings before the board, provided they were either subpoenaed or were parties to the action.
- (B) Mileage shall be paid to any subpoenaed witness, not a party, who works or resides outside of Franklin county and who incurs unreimbursed travel expense to attend hearings before the board. 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 register at the hearing attended.

124-11-19 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.

124-11-20 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 calendar days of the notification to the board, then the board shall schedule the case for a hearing.

### **Chapter Thirteen**

#### *Discovery*

124-13-01 Exchange of documents and witness lists.

- (A) On written request of the opposing party, a party shall, at least twenty-eight 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 requests must be served upon the opposing party at least forty-two 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 witnesses to testify at hearing, the party shall file with the board at least seven 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 twenty-eight 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-two 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.

124-13-02 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 fourteen calendar days prior to a record hearing. The board may continue a hearing for depositions. Absent compelling reasons, the board may grant such motions. 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 assigned administrative law judge 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.

124-13-03 Requests to make definite and certain.

- (A) Upon written request of the opposing party, a party shall make definite and certain any factual allegations contained in a "section 124.34 order,"

or any assertion of removal, reduction, or suspension when no “section 124.34 order” has been filed with this board.

- (B) Requests to make definite and certain shall specify, with particularity, what information is sought.
- (C) A party shall serve a written response to the request to make definite and certain at least twenty-eight calendar days prior to the first scheduled record hearing. Such requests must be served upon the opposing party at least forty-two calendar days prior to the first scheduled record hearing. Failure to serve a written request to make definite and certain at least forty-two calendar days prior to the first scheduled record hearing waives all right to move to exclude evidence under this rule.
- (D) If a party fails, without good cause, to respond to an opposing party's request to make definite and certain as provided in paragraphs (A), (B), and (C) of this rule, this board may, upon motion of the opposing party, compel such response.
- (E) Upon proper motion, the board shall determine the adequacy of a party's response to a request to make definite and certain. If a party fails to respond adequately to a request to make definite and certain, the opposing party may move to exclude all evidence which is the subject of the request.
- (F) The board may extend the time to respond to a written request to make definite and certain, continuing the case if necessary.

124-13-04 Work product. A representative's work product is not discoverable.

124-13-05 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;
  - (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.

### **Chapter Fifteen**

#### *Board Action and Appeals to the Court of Common Pleas*

124-15-01 Reports and recommendations. Administrative law judges shall submit a report and recommendation to the board.

- (A) Reports and recommendations shall be sent by certified United States mail to the appellant's representative (or to appellant, if unrepresented) and by state inter-departmental or state accountable mail or regular United States mail to the appellant, appellee, appellee's representative and to any other party.
- (B) Report and recommendations 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. If a report and recommendation is mailed by certified mail and neither the report and recommendation nor the domestic return receipt has been returned to the board by the thirtieth day after the report and recommendation was originally mailed, then the report and recommendation shall be remailed by regular United States mail and will be deemed delivered the third calendar day after mailing.
- (C) Report and recommendations mailed by certified or regular United States mail which are 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 report and recommendation will be remailed.

- (D) A copy of the report and recommendation may be secured in person, in lieu of mailing, from the offices of the board after signing a receipt for the report and recommendation.

124-15-02 Objections to reports and recommendations.

- (A) No objection may be made to any decision of an administrative law judge prior to the submission of the report and recommendation.
- (B) Objections to a report and recommendation shall be filed, in writing, within ten calendar days after appellant's receipt of the report and recommendation. Responses to objections shall be filed, in writing, within ten calendar days after the opposing party's objections have been filed.
  - (1) The board may extend the time to file objections or responses to the report and recommendation.
  - (2) Objections to reports and recommendations should include both a brief statement of the case and a concise statement of each area of disagreement, together with supporting arguments and memoranda. Parties' objections or responses must be limited to evidence presented at hearing. Objections and responses to objections containing arguments based on evidence not already in the record shall be stricken.
  - (3) All objections and responses to objections shall have attached a certificate of service. If none is attached, then the board will not consider the objection or response.

124-15-03 Board action on reports and recommendations.

- (A) The board may accept, reject, or modify, in whole or in part, any report and recommendation.

- (B) The board may take additional evidence, hear arguments, issue a stay order pending the decision of the board on a motion for reconsideration or remand an appeal to an administrative law judge for further consideration or hearing.

124-15-04 Final order of the state personnel board of review.

- (A) If a hearing is held before the members of the state personnel board of review, then they will issue a final order and opinion regarding their decision. Final orders shall be signed by the chairman or vice chairman of the board. 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 state interdepartmental or state accountable mail 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.

124-15-05 Motions 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. After a motion for reconsideration has been filed, and if no appeal has been filed in a court of common pleas, then a stay of the order will be issued pending the reconsideration. 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.

124-15-06 Appeals to the court of common pleas.

- (A) Appeals to the courts of common pleas are governed by the provisions of Chapters 119. and 124. of the Revised Code.
- (B) Notices of appeal shall be filed with both the board and the reviewing court within fifteen calendar days of mailing of the final order of the board and shall include the name of the county in which the appeal to court has been filed. The board is not to be named as a party in any appeal to the court of common pleas filed under the authority of Chapter 119. of the Revised Code.
- (C) A copy of the notice of appeal shall be served upon the opposing party.

124-15-07 Certification of the record to court.

- (A) The executive director of the board shall certify only one copy of the record to the court of common pleas in any appeal.
- (B) If a notice of appeal is filed in more than one court, the appealing party shall elect the court to which the board shall certify the record. The notice of election shall be made in writing and filed within ten days of the notice of appeal.
- (C) If there is no election, the record shall be certified to the court in which the appeal was first filed. The board will only certify more than one record upon the request of the appealing party and upon that party's prepayment of all costs for the second and all subsequent records.

124-15-08 Deposit required upon filing an appeal to a reviewing court from a final order of the board.

- (A) When a party files a notice of appeal with this board pursuant to paragraph (B) of rule 124-15-06 of the Administrative Code, the party filing such notice shall deposit with the board a sum in accordance with the following schedule:
  - (1) \$55.00 per tape for magnetically recorded tapes numbered one through five of the proceedings.
  - (2) \$50.00 per tape for magnetically recorded tapes numbered six through ten of the proceedings.
  - (3) \$45.00 per tape for magnetically recorded tapes numbered eleven and above of the proceedings.
  - (4) \$15.00 copy fee.
  - (5) \$10.00 shipping and handling fee.
- (B) After the board has received the deposit, the transcript and copies of the file will be prepared and the cost of those items will be calculated. If the deposit exceeds the costs of these items, then a refund of the excess will be issued; if the deposit does not cover the full amount, then the appealing party will be billed for the outstanding balance.
- (C) If a person alleges the inability to pay the deposit, then an "Affidavit of Indigence" must be completed. Said affidavit is available from the board upon request. Upon the submission of the affidavit, the board will determine if the person is or is not excused from paying the deposit.

**Chapter Seventeen**  
*Internal Regulations*

124-17-01 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.

124-17-02 Procedure for adoption of new or amended rules, or rescission of existing rules.

- (A) A majority of the members of the board shall concur in the adoption of new or amended rules, or the rescission of existing rules. Any opposition by a member of the board to the adoption of a new or amended rule, or the rescission of an existing rule may be noted in the resolution to adopt or rescind.
- (B) A copy of each proposed new, amended, or rescinded rule shall be filed, as required by law, at least thirty days prior to any public hearing on the matter.
- (C) Notice of any such public hearing shall be provided at least thirty calendar days prior to the date of the public hearing.
  - (1) Notice of the hearing shall be published in the register of Ohio pursuant to section 119.037 of the Revised Code.
  - (2) The notice shall contain a statement of the board's intention to consider the adoption of a new or amended rule, or the rescission of an existing rule; the subject matter to which the proposed new, amended, or rescinded rule relates; and the date, time and place of the public hearing.
  - (3) In all other respects, the adoption of a new or amended rule, or rescission of an existing rule shall be governed by the provisions of section 119.03 of the Revised Code.
- (D) The executive director of the board shall make all certifications required by law when making a final filing of any new, amended, or rescinded rules.

124-17-03 Quorum.

- (A) Two members of the board constitute a quorum at any scheduled meeting.
- (B) The board cannot act without the concurrence of at least two members.

- (C) Any member of the board may write a concurring or dissenting opinion.

124-17-04 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.

124-17-05 Notice of meetings and hearings.

- (A) The state personnel board of review regularly meets Monday through Friday.
- (B) The matters to be considered at a particular meeting or the time of a particular hearing of the board may be obtained:
  - (1) By written request to: "The State Personnel Board of Review, Capitol Square, 12th Floor, 65 East State Street, Columbus, Ohio, 43215-4213"; or
  - (2) By telephoning the board at (614) 466-7046.

124-17-06 Duties of the executive director.

- (A) The board shall appoint an executive director to hold office at its pleasure and perform such duties as it prescribes.
- (B) The executive director shall:
  - (1) Serve as the legal custodian of the board's property, papers, and legal and public records;
  - (2) Make appropriate certification of any rules adopted by the board;
  - (3) Serve as the principal administrative officer of the board exercising such powers as are required to fulfill this responsibility; and
  - (4) Rule on any pending non-dispositive motions in a case scheduled before the full board.

124-17-07 Standards of conduct and suspension.

- (A) All representatives appearing before the board shall conform to the standards of ethical conduct required of attorneys practicing before the courts of the state of Ohio.
- (B) The board may bar from participation in hearings before it any representative who refuses to comply with its directions or who engages in dilatory tactics or contemptuous behavior in the course of any proceeding before the board.

124-17-08 Business Day. The board shall be open for business Monday through Friday from 8:00 a.m. through 5:00 p.m. except on legal holidays as determined by the state of Ohio.

## **APPENDIX D**

### **CHAPTER 2506. OF THE OHIO REVISED CODE: JUDICIAL REVIEW**

**R.C. 2506.01**

**R.C. 2506.02**

**R.C. 2506.03**

**R.C. 2506.04**

## **§ 2506.01 Appeal from decisions of any agency of any political subdivision.**

Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code, except as modified by this chapter.

The appeal provided in this chapter is in addition to any other remedy of appeal provided by law.

A "final order, adjudication, or decision" means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding.

## **§ 2506.02 Filing of transcript.**

Within forty days after filing the notice of appeal, the officer or body from which the appeal is taken, upon the filing of a praecipe, shall prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. The costs of such transcript shall be taxed as a part of the costs of the appeal.

### **§ 2506.03 Hearing of appeal.**

(A) The hearing of such appeal shall proceed as in the trial of a civil action, but the court shall be confined to the transcript as filed pursuant to section 2506.02 of the Revised Code unless it appears, on the face of that transcript or by affidavit filed by the appellant, that one of the following applies:

- (1) The transcript does not contain a report of all evidence admitted or proffered by the appellant;
- (2) The appellant was not permitted to appear and be heard in person, or by his attorney, in opposition to the final order, adjudication, or decision appealed from, and to do any of the following:
  - (a) Present his position, arguments, and contentions;
  - (b) Offer and examine witnesses and present evidence in support;
  - (c) Cross-examine witnesses purporting to refute his position, arguments, and contentions;
  - (d) Offer evidence to refute evidence and testimony offered in opposition to his position, arguments, and contentions;
  - (e) Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.
- (3) The testimony adduced was not given under oath;
- (4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from or the refusal, after request, of such officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body;
- (5) The officer or body failed to file with the transcript, conclusions of fact supporting the final order, adjudication, or decision appealed from;

If any circumstance described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and such additional evidence as may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to such party.

### **§ 2506.04 Finding and order of court.**

The court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

## **APPENDIX E**

**“SECTION 124.34 ORDER” FORM**

# Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation

M \_\_\_\_\_

This will notify you that you are;  removed;  suspended;  suspended (working);  fined;  
 involuntary disability separated;  reduced in pay, from your position of

\_\_\_\_\_ and/or reduced to new position of \_\_\_\_\_  
effective \_\_\_\_\_ (date) (if applicable)

The reason for this action is that you have been guilty of (List relevant R.C. 124.34 disciplinary offense(s)).  
(Section not applicable for involuntary disability separation.)

**Specifically:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice of pre-disciplinary/separation hearing given to employee: \_\_\_\_\_  
(date)

Pre-disciplinary/separation hearing held or waived: \_\_\_\_\_  
(date)

Employee allowed to meet with employer:  Yes  No

Order hand-delivered to employee: \_\_\_\_\_  
(date, if hand-delivered)

If employee is suspended, list dates of suspension: \_\_\_\_\_

Signed at \_\_\_\_\_ Ohio, \_\_\_\_\_  
(city) (date)

Counter signature, if applicable

Signature of Appointing Authority

Counter signature, if applicable

Type Name and Title of Appointing Authority

Counter signature, if applicable

Type Department, Agency, or Institution

## **IMPORTANT INSTRUCTIONS TO THE APPOINTING AUTHORITY**

(1) Actual signature means that each Order served on the employee must contain the actual signature of the Appointing Authority. Appointing Authority means the actual appointing officer of the department or agency as well as any approving officer or board required by law. If the appointment of an employee requires the approval of a board or commission, then a certified copy of the resolution of such board or commission approving the action must accompany this Order unless the actual signatures of the members of the board or commission appear on the front of the Order served on the employee.

(2) The Appointing Authority must set forth in detail the particular acts and circumstances constituting the offense(s) charged. Evidence presented on appeal must be limited to that which relates to the charge(s) made; hence the Appointing Authority must set forth the charges(s) broadly enough to encompass all the evidence the Appointing Authority intends to offer. It is equally important that the Appointing Authority fully state the ground(s) for the action.

(3) The Appointing Authority MUST provide an original of the Order to the employee on or before the effective date. The date on which the Order is served is the date the Order is delivered to the employee by hand or to the employee's last known mailing address by certified United States mail, whichever occurs first.

## **IMPORTANT INSTRUCTIONS TO THE EMPLOYEE**

If you wish to appeal this action, then you must file your written appeal with the State Personnel Board of Review (SPBR) at 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213. **Your appeal must actually be received and time-stamped by SPBR by the tenth calendar day from the date this Order was served.** For the purposes of your appeal, the date on which this Order is served is the date the Order is delivered to you by hand or to your last known mailing address, as maintained by your Appointing Authority, by certified United States mail, whichever occurs first. You may obtain SPBR's Administrative Rules by writing the above office or by telephoning SPBR at (614) 466-7046. You may also obtain the rules at SPBR's website at <http://pbr.ohio.gov>.

### ***Example of deadline to file appeal:***

An employee is given a 40-hour suspension. The suspension is to begin on October 11 and run five working days through October 15. The employee is served with the forthcoming suspension Order on October 8. The employee has until October 18 to file a written appeal (ten days from the date the employee was served with the Order).

**Reminder:** If you are employed by a municipality or township that has a civil service commission, your appeal lies with that commission and not SPBR.

You may contact SPBR at (614) 466-7046 regarding the above information or regarding SPBR's jurisdiction or you may visit our website at <http://pbr.ohio.gov>.