

2022 FEB 25 PM 2:37

IN THE COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

JEANNE M. STEPHEN  
CLERK OF COURTS

STATE OF OHIO, EX REL.,

RICHARD P. HOMRIGHAUSEN  
110 East Third Street  
Dover, Ohio 44622

Plaintiff-Relator,

-vs-

CITY OF DOVER, OHIO,  
110 East Third Street  
Dover, Ohio 44622

and

DOUGLAS O'MEARA, in his Official  
Capacity as Law Director, City of Dover,  
Ohio,  
339 Oxford Street  
Dover, Ohio 44622

Defendants-Respondents.

CASE NO.:  
**2022 CV 02 0104**  
JUDGE:

MICHAEL J. ERNEST, JUDGE  
TAXPAYER'S VERIFIED  
COMPLAINT FOR WRIT OF  
MANDAMUS AND OTHER  
RELIEF IN LAW AND EQUITY

NOW COMES Plaintiff-Relator, Mayor Richard Homrighausen, ("Plaintiff" or "Mayor")  
and states for his Verified Complaint as follows:

**INTRODUCTION**

1. Plaintiff-Relator Richard Homrighausen brings this taxpayer action for a writ of mandamus pursuant to Ohio Revised Code ("O.R.C.") § 733.58, to enforce the clear legal rights established by O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover (attached hereto as Exhibit A) by compelling Defendants-Respondents to comply with their clear legal duties set forth therein.

As required by O.R.C. § 733.59, Plaintiff is filing security for the costs required by way of the filing fee with the Clerk for the Tuscarawas County Court of Common Pleas.

### PARTIES AND VENUE

2. Mayor Homrighausen is a citizen of the State of Ohio and a taxpayer in the City of Dover, Ohio. He is also the duly-elected Mayor of the City of Dover, Ohio. He serves as the Appointing Authority for the City of Dover, Ohio.

3. As a taxpayer of the City of Dover, Ohio, Mayor Homrighausen institutes this action pursuant to O.R.C. §§ 733.58 and 733.59, on behalf of the City of Dover and the State of Ohio.

4. Defendant-Respondent City of Dover, Ohio ("City") is a municipal corporation established and operating pursuant to the laws of the State of Ohio.

5. Defendant-Respondent Douglas O'Meara ("Law Director O'Meara") is the duly-elected Law Director of the City of Dover, Ohio ("City"). Pursuant to the Ohio Revised Code as well as the City's Codified Ordinances, and as reflected on his webpage for the City, Law Director O'Meara is charged with the duty to "serve[] as the legal representative and advisor to the City of Dover. He is in constant contact with the Mayor and City Council to provide guidance for all legal issues appearing in civic offices including contracts, ordinances, litigation, court cases and all other issues concerning the law. When requested, the Law Director also gives his opinion concerning the legal powers and duties of the Mayor and City Council." *See* Exhibit B. Law Director O'Meara is required to perform such duties as required by the City of Dover's Ordinances and the laws of the State of Ohio.

6. Pursuant to O.R.C. § 733.51, "The city director of law shall ... serve the **several directors and officers** provided in Title VII of the Revised Code as **legal counsel and attorney.**"

One of the “several directors and officers” referenced in O.R.C. § 733.51 indisputably includes the Mayor.

7. Chapter 137 of the Codified Ordinances of Dover specifically references “O.R.C. § 733.51 et seq.” as the source of the Law Director’s “powers and duties.”

### **PARTIES AND VENUE**

8. In or around December 2021, Mayor Homrighausen removed three City employees from their respective positions due to a loss of confidence in their ability to perform the essential functions of their positions. The three employees include: David Douglas (former Service Director), Eva Newsome (former Executive Assistant to the Mayor), and Gerry Mroczkowski (former safety/human resources director). All three employees were members of the unclassified service (i.e., “at will”) at the time of their respective removals.

9. Mayor Homrighausen possesses the ability to effectuate employment terminations in his capacity as the City’s Appointing Authority.

10. On or about January 7, 2022, the three City employees appealed their removals to the State Personnel Board of Review, and alleged that Mayor Homrighausen violated Ohio’s Whistleblower Statute (O.R.C. § 124.341) in terminating their employment. The State Personnel Board of Review assigned the following case numbers to the appeals (each employee filed a “removal” appeal as well as a “whistleblower” appeal):

2022-REM-01-0005  
2022-WHB-01-0006  
2022-REM-01-0007  
2022-WHB-01-0008  
2022-REM-01-0009  
2022-WHB-01-0010

In violation of his duty of representation to Mayor Homrighausen, Law Director O'Meara failed to inform him that the appeals had been filed.

11. Law Director O'Meara again violated his duty of representation to Mayor Homrighausen by entering into settlement discussions with counsel for the three employees.

12. Law Director O'Meara again violated his duty of representation to Mayor Homrighausen by excluding him from executive sessions conducted by the City Council of Dover in which the potential settlement of the cases was deliberated and/or discussed. Mayor Homrighausen has been excluded from executive sessions for approximately two years. Settlement discussions between the three employees' legal counsel and Law Director O'Meara began at least the first week of February 2022, if not sooner, unbeknownst to Mayor Homrighausen. *See* Exhibit C, February 9, 2022 Article from [www.thebargainhunter.com](http://www.thebargainhunter.com), p. 2.

13. Due to this lack of communication, on or about February 8, 2022 at 9:33 a.m., Mayor Homrighausen was forced to send a public records request to Law Director O'Meara, Auditor Nichole Stoldt, Council President Shane Gunnoe, Clerk of City Council requesting "the proposed settlement agreement between the city and appellants/former employees.....mentioned at city council meeting on February 7, 2022." *See* Exhibit D. The mention of the settlement agreement was made after the City Council executive session, which did not include the Mayor. On or about February 8, 2022 at 2:42 PM, Mayor Homrighausen received an email from Law Director O'Meara with an attached copy of a settlement agreement which was to be considered by Appellee's City Council less than five hours later at a City Council meeting.<sup>1</sup> *See* Exhibit E, Email

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<sup>1</sup> The draft settlement agreement was entered into the public domain by City Council releasing it to the press. It is a publicly available document. *See* Exhibit F, WJER Radio Article published February 9, 2022, at: <https://www.wjer.com/news/dover-council-bringing-back-fired-employees-against-mayors-will/>.

from Law Director O'Meara to Mayor with Settlement Agreement. The email states in its entirety, "See attached settlement agreement."

Prior to receiving this email, Mayor Homrighausen had no knowledge of the proposed settlement terms which are potentially binding on him in his capacity as City Mayor and City Appointing Authority.

14. Law Director O'Meara again violated his duty of representation to Mayor Homrighausen by presumably participating in settlement discussions with legal counsel for the three employees that resulted in a settlement agreement that contains highly unusual terms. Law Director O'Meara did not share, review or vet these terms with Mayor Homrighausen.

15. The settlement agreement contains highly unusual terms and may be the most bizarre settlement agreement drafted in Ohio's history. Instead of abiding by his statutory duty to act in Mayor Homrighausen's best interest, Law Director O'Meara has instead admitted liability on behalf of Mayor Homrighausen. Such terms include:

- An **admission** that "the Mayor's decision to terminate the employment of all three Appellant Employees was so obviously motivated by illegal retaliation..." (p. 2).
- **Numerous admissions** that removing the three employees was "unlawful." (pp. 2 & 4).

16. Instead of abiding by his statutory duty to act in Mayor Homrighausen's best interest, Law Director O'Meara exposed Mayor Homrighausen to potential future claims and potential future damages, explicitly calling him out by name. This term includes:

- A statement that all Appellants are "further evaluating additional legal action against Dover and its employees, representatives, and agents, **including the Mayor**, seeking additional compensatory damages, attorneys' fees, punitive damages, and any other available remedies arising out of the termination of their employment" but **without** a waiver and release of all claims against the Mayor in his personal capacity, which, of course, is a customary settlement agreement provision. (p. 2).

17. Instead of abiding by his statutory duty to act in Mayor Homrighausen's best interest, Law Director O'Meara usurped Mayor Homrighausen's power as Appointing Authority and made *ultra vires* employment decisions regarding current employees as well as the three terminated employees in question. These terms include:

- Terminating the employee that currently holds one of the Appellant's former positions and a statement that this employee "will not be entitled to wages or benefits from the City as the terminated employees." (p. 4, Section (1)(viii)).
- A **guarantee of employment** for all three (unclassified) Appellants through December 31, 2023, which just so happens to be the same day that the Mayor's current term ends. (p. 4, Section (1)(viii); p. 5, Section (4)).
  - This includes a provision specifying that in the event any of the Appellants are terminated following their reinstatement, the City will **guarantee the continuance of all wages and benefits** through December 31, 2023 regardless of the reason for the Appellants' termination. (p. 5, Section (4)).

18. Instead of abiding by his statutory duty to act in Mayor Homrighausen's best interest, Law Director O'Meara even fired a proverbial "warning shot" at him by cautioning him (explicitly by name, no less) not to make any future employment decisions regarding the three terminated employees in question, irrespective of his status as appointing authority. These terms state:

- A statement that the City agrees "that compensatory damages may not be [an] adequate remedy to the Appellant Employees should any Dover official or employee seek to interfere with the Appellant Employees' employment relationship in any way," which is a clear signal to the Mayor that he should not even attempt to address the employment situations of the three employees, despite his status as appointing authority. (p. 4, Section (3)).
- A provision giving Appellants a **clear contractual right** to seek a temporary restraining order against Appellee and/or the Mayor as a further guarantee of Appellants' continued employment. (p. 4-5, Section (3)).
- A **blatant accusation** that "**Dover's Mayor**, or those working at his direction, may seek to interfere with the Appellant Employees' employment relationship with Dover, and/or seek to interfere with the execution and administration of this Agreement." (p. 5, Section (4)).

19. These settlement agreement provisions referenced in Paragraphs 15-18 were either drafted or approved (or both) by Law Director O'Meara as they were included in the draft settlement agreement emailed to Mayor Homrighausen by Law Director O'Meara on February 8, 2022. A draft of the proposed settlement agreement was circulated to City Council members the previous week.

20. On February 8, 2022, City Council unanimously approved the settlement agreement. City Council President Shane Gunnoe admitted publicly that “[Law Director O’Meara] looked at this very closely.” *See* Exhibit C, p. 3.

21. Recognizing that Law Director O’Meara was not protecting his legal interests (to the contrary, he admitted liability on behalf of Mayor Homrighausen), on February 11, 2022, Mayor Homrighausen filed a Motion to Intervene in the State Personnel Board of Review cases filed by the three employees. *See* Exhibit G.

22. On February 14, 2022, the State Personnel Board of Review Administrative Law Judge assigned to the cases issued a Procedural Order permitting Mayor Homrighausen to submit an “an optional affidavit (with documents in support) articulating his purported legitimate non-discriminatory business reasons for terminating the employment of the three Appellants, if any” by February 24, 2022. *See* Exhibit H.

23. The State Personnel Board of Review is a quasi-judicial agency that possesses the power to reinstate terminated public employees under certain circumstances, including instances of whistleblower retaliation.

24. Typically, public officials involved in quasi-judicial legal matters seek the counsel and input from their statutorily designated legal counsel before submitting sworn testimony, such as an affidavit.

25. Mayor Homrighausen cannot and will not utilize Law Director O'Meara's legal services to craft the affidavit due to Law Director O'Meara's explicit undermining of him and attempt to admit liability on his behalf, not to mention Law Director O'Meara's public recognition that he does not and will not represent Mayor Homrighausen. Trust, which is of paramount importance in the attorney-client relationship, has been eroded to say the least.

26. Furthermore, Law Director O'Meara has publicly stated that he does not represent the Mayor (and instead attempts to admit that he violated the whistleblower statute in question), despite the Ohio Revised Code as well as the City's Codified Ordinances dictating otherwise.

- In a February 18, 2022 article, Law Director O'Meara was quoted as saying, ““The law anticipates there will be times when the interests of the people of Dover, its Council and its administration can vary,”” O'Meara said. **‘I’ve made it crystal clear from the word go that I represent the city of Dover in this matter, and I don’t represent the mayor.’**” See Exhibit I, WJER Radio Article published February 9, 2022, at: <https://www.wjer.com/news/dover-council-bringing-back-fired-employees-against-mayors-will/>.
- In a February 22, 2022 article, Law Director O'Meara was quoted as saying, **“I do not and will not represent the mayor.** There is no doubt these employees have whistleblower protection under Ohio Revised Code 124.341. The remedy in the settlement agreement comports with the law and is the right thing to do. I will not support any misconduct under the Ohio Revised Code, Section 124.341.” See Exhibit J, February 22, 2022 Article from [www.thebargainhunter.com](http://www.thebargainhunter.com), p. 2.

27. Due to the undisputed fact that Law Director O'Meara refuses to represent him, Mayor Homrighausen is not comfortable submitting an affidavit to a quasi-judicial entity without input and counsel from legal counsel, which he is statutorily entitled to. Accordingly, along with the instant Verified Complaint, Mayor Homrighausen filed a Motion to Stay Proceedings with the State Personnel Board of Review on February 24, 2022. See Exhibit K.

28. On February 17, 2022, Mayor Homrighausen vetoed Emergency Resolution 7-22, which, as referenced above, was unanimously passed by City Council to approve the settlement agreement. See Exhibit L.



29. City Council has ten (10) days from the date of the veto, or until February 27, 2022, to potentially override Mayor Homrighausen's veto of Emergency Resolution 7-22.

### COUNT ONE – WRIT OF MANDAMUS

30. Plaintiff-Relator incorporates Paragraphs 1-29 of his Verified Complaint as if fully rewritten herein.

31. O.R.C. § 733.58 (Writ of Mandamus) provides: "In case an officer or board of a municipal corporation fails to perform any duty expressly enjoined by law or ordinance, the village solicitor or city director of law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of the duty."

32. Pursuant to O.R.C. § 733.51, "The city director of law shall ... serve the several directors and officers provided in Title VII of the Revised Code **as legal counsel and attorney.**" One of the "several directors and officers" referenced in O.R.C. § 733.51 indisputably includes the Mayor.

33. Chapter 137 of the Codified Ordinances of Dover specifically references "O.R.C. § 733.51 et seq." as the source of the Law Director's "powers and duties."

34. O.R.C. § 733.59 (Taxpayer's suit) provides: "If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation. Any taxpayer of any municipal corporation in which there is no village solicitor or city director of law may bring such suit on behalf of the municipal corporation. No such suit or proceeding shall be entertained by any court until the taxpayer gives security for the cost of the proceeding."

35. Mayor Homrighausen has not served a prior written request upon Law Director O'Meara asking him to institute suit on behalf of the City, as referenced in O.R.C. § 733.59. Mayor Homrighausen is not required to do so when such a request would be "futile." *See, e.g., State ex rel. Lally v. City of Cleveland*, 2021-Ohio-2513, ¶¶19-31, 2021 Ohio App. LEXIS 2473 (8<sup>th</sup> Dist.).

36. Any request from Mayor Homrighausen to Law Director O'Meara to represent him in this matter pursuant to his statutory obligation is futile for any number of independently sufficient reasons, including:

- Law Director O'Meara's multiple public statements that he does not and will not represent the Mayor; instead, he represents the interests of the City of Dover.
- Law Director O'Meara drafting/approving a settlement agreement that contains any number of terms that are contrary to Mayor Homrighausen's best interests. This includes, but is not limited to: an express statement admitting that Mayor Homrighausen engaged in whistleblower retaliation and other "unlawful" acts, an express statement limiting his duties as the City's Appointing Authority (and revoking his employment decisions, including both hirings and terminations), an express statement prohibiting him from exercising duly-provided powers in the future, an express statement subjecting the Mayor to potential legal liability and future potential legal liability, and not including him as a released entity in the four corners of the settlement agreement.
- Had Mayor Homrighausen submitted a written request to Law Director O'Meara, Law Director O'Meara would presumably not "make an application" to himself to represent Mayor Homrighausen, or otherwise take legal action against himself for failing to appropriately represent Mayor Homrighausen in these matters.

37. By failing to represent Mayor Homrighausen's legal interests, Law Director O'Meara willfully violated O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover.

38. By drafting and/or approving a settlement agreement that plainly does not protect Mayor Homrighausen's interests, Law Director O'Meara willfully violated O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover.

39. Law Director O'Meara has a duty to comply with O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover by representing Mayor Homrighausen's legal interests.

40. Law Director O'Meara has violated his duty to comply with O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover by failing to represent Mayor Homrighausen's legal interests. To the contrary, Law Director O'Meara has admitted liability on behalf of his statutorily-recognized client.

41. To date, Law Director O'Meara has not discussed or reviewed the terms of the settlement agreement with his statutorily-recognized client, including terms that admit liability on Mayor's Homrighausen's behalf.

42. To date, Law Director O'Meara has refused to represent Mayor Homrighausen's interests relating to the terminations of the three employees in question, including in proceedings conducted before the State Personnel Board of Review. Law Director O'Meara has publicly and explicitly stated that he does not and will not represent Mayor Homrighausen, despite his statutory obligation to do so.

43. Because of Law Director O'Meara's refusal to represent Mayor Homrighausen, Mayor Homrighausen was left with no other option than to file a Motion to Intervene in the cases presently pending before the State Personnel Board of Review related to the three employees in question.

44. Because of Law Director O'Meara's refusal to represent Mayor Homrighausen, Mayor Homrighausen cannot and will not submit sworn testimony to the State Personnel Board of Review as requested in the presently pending cases related to the three employees in question without proper and appropriate legal representation. Mayor Homrighausen is left with no other option than to file a Motion to Stay with the State Personnel Board of Review so that his statutorily identified right to legal counsel is honored by Defendant-Respondents.

45. Mayor Homrighausen has a recognized right to legal representation by and through O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover, which is not being provided to him.

WHEREFORE, Plaintiff-Relator prays for a writ of mandamus to issue an order mandating Defendant-Respondents to comply with O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover by providing him with statutorily-recognized legal counsel at the City's expense.

WHEREFORE, Plaintiff-Relator prays for a writ of mandamus to issue an order mandating Defendant-Respondents to comply with O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover by providing him with statutorily-recognized legal counsel as required by law, including, but not limited to, the following matters:

1. The negotiation of potential settlement terms related to the three employees in question.
2. The cases filed by the three employees before the State Personnel Board of Review.
3. The instant writ of mandamus before the Tuscarawas County Court of Common Pleas.
4. Any other matters as needed/requested going forward.

Since the City has a statutorily-recognized right to provide legal counsel to the Mayor, and it has admittedly not done so by and through the public statements of Law Director O'Meara as well as the plain terms contained in the settlement agreement, the City shall appoint legal representation for Mayor Homrighausen at the City's expense.<sup>2</sup>

WHEREFORE, Plaintiff-Relator further demands reasonable attorney fees (as applicable) and the costs of bringing this action.

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<sup>2</sup> The City certainly has the funds to provide said representation, as it has spent \$346,389.15 on legal expenses to the law firm of Ulmer & Berne LLP for the time period of September 2020 – January 2022 at the rate of \$325/hour. See Exhibit M.

WHEREFORE, Plaintiff-Relator further demands any and all relief which the Court may deem just, reasonable and equitable.

Respectfully Submitted,

/s/ Richard P. Homrighausen  
Richard P. Homrighausen  
110 East Third Street  
Dover, Ohio 44622  
Phone: 330-243-6726  
Email: mayor.homrighausen@doverohio.com

*Plaintiff-Relator*

**INSTRUCTIONS FOR SERVICE**

Please serve the Defendant-Respondents at their above-captioned addresses by certified mail, return receipt requested.

/s/ Richard P. Homrighausen  
Richard P. Homrighausen

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WENDIE M. STEPHEN  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

STATE OF OHIO, EX REL.,  
RICHARD P. HOMRIGHAUSEN

Plaintiff-Relator,

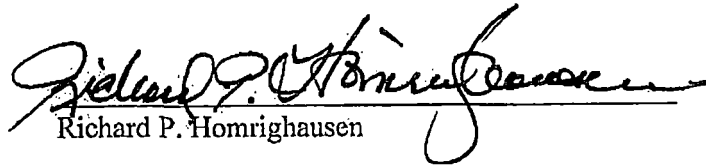
-vs-

CITY OF DOVER, OHIO, et al.,

Defendants-Respondents.

VERIFICATION OF  
PLAINTIFF-RELATOR  
RICHARD P. HOMRIGHAUSEN

I, Richard P. Homrighausen, being first duly sworn according to law, depose and state that the information contained in the foregoing Verified Complaint in this action is true and correct to the best of my information, knowledge, and belief.

  
Richard P. Homrighausen

Sworn and subscribed before me this 24 day of February, 2022.



TIFFANY SICA  
Notary Public, State of Ohio  
My Commission Expires  
January 3, 2024

  
NOTARY PUBLIC

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# Section 733.51 | Powers and duties of city director of law.

Ohio Revised Code / Title 7 Municipal Corporations / Chapter 733 Officers

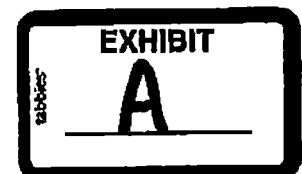
*Effective: November 1, 1977 Latest Legislation: House Bill 219 - 112th General Assembly*

The city director of law shall prepare all contracts, bonds, and other instruments in writing in which the city is concerned, and shall serve the several directors and officers provided in Title VII of the Revised Code as legal counsel and attorney.

The director of law shall be prosecuting attorney of the mayor's court. When the legislative authority of the city allows assistants to the director of law, he may designate the assistants to act as prosecuting attorneys of the mayor's court. The person designated shall be subject to the approval of the legislative authority.

## Available Versions of this Section

November 1, 1977 – House Bill 219 - 112th General Assembly



CHAPTER 137

Director of Law

EDITOR'S NOTE: There are no sections in Chapter 137. This chapter has been established to provide a place for cross references and any future legislation.

CROSS REFERENCES

Election and term - see Ohio R.C. 733.49

Qualifications - see Ohio R.C. 733.50

Powers and duties - see Ohio R.C. 733.51 et seq.

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City of DOVER, OHIO



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Government (<https://www.doverohio.com/government>) / Law Director (<https://www.doverohio.com/law-director>)

**Law Director**

The Law Director, Douglas O'Meara, serves as the legal representative and advisor to the City of Dover. He is in constant contact with the Mayor and City Council to provide guidance for all legal issues appearing in civic offices including contracts, ordinances, litigation, court cases and all other issues concerning the law.

When requested, the Law Director also gives his opinion concerning the legal powers and duties of the Mayor and City Council.

The Law Director's Office is located at 339 Oxford, Dover. To contact the Law Director, call (330) 432-4006.

The City Prosecutor may be reached at (330) 365-7718.

110 E. Third St., Dover, OH 44622  
Phone: 330-343-6726 (tel:13303436726)  
Contact Us (/contact-us)

Website by EvoGov (<http://www.evogov.com/>)



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## RECENT NEWS

# Dover Council votes to reinstate fired employees

BY LORI FEENEY  
FEBRUARY 9, 2022

In a special session Feb. 8, Dover Council passed an emergency resolution approving a settlement reached between the city and three city employees who were fired by Mayor Richard Homrighausen in December.

In approving the settlement, the resolution calls for the reinstatement of Eva Newsome, Gerry Mroczkowski and Dave Douglas to their former positions as the mayor's executive assistant, safety director and service director, respectively. It also repeals ordinances 2-22 through 5-22 previously passed by council in January.

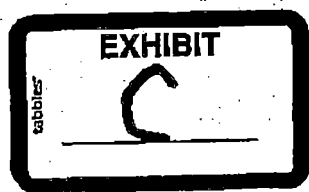
Those ordinances merged the positions of the director of public services and the director of public safety into one part-time 20-hour position, eliminated "the position of the mayor's executive assistant and dealt with compensation and benefits for certain positions for the years 2022 and 2023.

The mayor did not attend the meeting but is reported to have, instead, attended the Dover High School basketball semifinal against the University Hawks. The absence from meetings addressing alleged mayoral misconduct has become a regular pattern for the mayor over the past year.

Shane Gunnoe, council president, said Homrighausen requested a copy of the agreement and has received it but has not responded. The mayor has 10 days to take action by either signing or vetoing the legislation, after which council must wait 10 days to override what they expect to be a veto, should they choose to do so.

"I think it's a good compromise considering the alternative that we could have been facing for these employees," said councilman Justin Perkowski. "They genuinely just want to get their jobs back."

Councilwoman Sandy Moss agreed, saying, "I also think it's saving the city a lot of money rather than having to go to court."



Moss was referring to the fact the fired employees had each filed legal appeals with the State Personnel Board of Review, which they eventually consolidated and which they have agreed to dismiss if the city accepts the proposed settlement.

The agreement also includes protections against retaliation, allowing the employees to seek injunctive relief, including "temporary restraining orders, preliminary injunctions and permanent injunctions" if necessary to enforce the agreement. It specifically states the terms of the agreement shall be carried out "regardless of whether Dover's Mayor or those working at his direction attempt to carry out any termination of employment or other adverse employment decisions."



#### Terms of the settlement

The proposed settlement, signed by the Hon. Raymond M. Geis, administrative law judge for the SPBR, O'Meara and David L. Dingwell, counsel for the employees, said the dismissal of the employees was "unlawful." It calls for the reinstatement of all three employees, complete with back pay, sick time, vacation time, seniority and all other benefits including retirement.

"They're not looking for additional compensation," said Gunnoe. "They're not looking to punish the city or the taxpayers. Essentially, what they're asking for is just to get their jobs back, to be made whole and to move on serving the citizens of Dover."

#### Timing

In addition to approval from city council, the settlement also must be approved by the O'Meara and an administrative law judge representing the SPBR, at which point it will become a legal, binding settlement between the city of Dover and the employees. It's a process which, when added to the 20 days required for city action to culminate, could take until March to be resolved.

Gunnoe said a hearing before the SPBR is tentatively slated for early March. "The hearing officer signs off on it, and their board has to sign off on it, so you're looking at another four-week process at least."

Until then, Aaron Feller remains the city's service director. Feller has yet to attend a council meeting, and Gunnoe said Feller has not reached out to him in any official capacity since being hired.

If the settlement goes through, Gunnoe expects it to hold up against any legal challenges. "Before we took action on this, our attorney looked at this very closely, their attorney looked at it as well, and they had a tentative hearing before the administrative law judge in Columbus. All three of them were of the same mind, and we're all in agreement on the facts. They feel very strongly this is going to hold up."

**Richard Homrighausen**

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DOVER, OHIO

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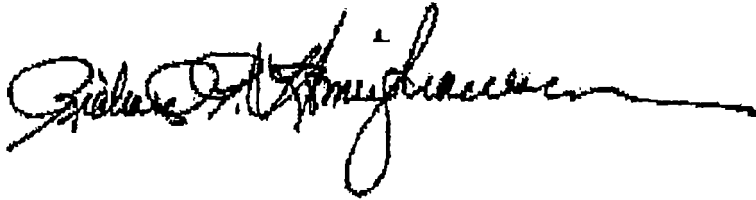
**From:** Richard Homrighausen  
**Sent:** Tuesday, February 8, 2022 9:33 AM  
**To:** Nicole Stoldt; Julie Leggett; Shane Gunnoe; 'doug.omeara@doverohio.com'  
**Subject:** Request for information regarding appeal by former employees

STEPHEN M. STEPHENSON  
CLERK OF COURTS

Please provide me with a copy of the proposed settlement agreement between the city and appellants/former employees. This is regarding the settlement agreement mentioned at the city council meeting on February 7, 2022.

If not yet drafted please provide me with a copy when the draft is made.

Mayor Rick



Mayor Richard P. Homrighausen  
Municipal Building  
110 East Third Street  
Dover, Ohio 44622-2922

Office Phone: 330-343-6726  
City Cell: 330-243-6726  
Fax: 330-343-7336  
Home Phone: 330-364-5515

[mayor.homrighausen@doverohio.com](mailto:mayor.homrighausen@doverohio.com)



FILED  
COURT OF COMMON PLEAS  
NEWARK COUNTY, OHIO

**Richard Homrighausen**

2022 FEB 25 PM 2: 37

**From:** Doug OMeara  
**Sent:** Tuesday, February 8, 2022 2:42 PM  
**To:** Richard Homrighausen; Dover council members and president of council; Nicole Stoldt; Kelly Elliott  
**Subject:** settlement agreement  
**Attachments:** Settlement Agreement - Final Clean 2 4 2022.docx

**Mayor:**  
See attached settlement agreement.  
Doug O'Meara  
Dover Ohio Law Director



## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into as of the last date reflected on the signature page attached hereto, by and among Eva L. Newsome ("Newsome"), David F. Douglas ("Douglas"), and Gerald L. Mroczkowski ("Mroczkowski"), and the City of Dover, Ohio ("Dover"), an Ohio municipal corporation. Newsome, Douglas, and Mroczkowski are sometimes hereinafter referred to collectively as "Appellant Employees." Appellant Employees and Dover are hereinafter referred to collectively as the "Parties."

WHEREAS, until January 3, 2022, Newsome was employed by Dover as the Executive Assistant to Dover Mayor Richard Homrighausen ("Mayor");

WHEREAS, until January 3, 2022, Douglas was employed by Dover as the City Service Director;

WHEREAS, until December 21, 2021, Mroczkowski was employed by Dover as the City Safety Director / Human Resource Director;

WHEREAS, Appellant Employees Newsome and Douglas were both full-time, non-classified civil service employees employed by Dover;

WHEREAS, Appellant Employee Mroczkowski was a part-time, non-classified civil service employee employed by Dover;

WHEREAS, all three Appellant Employees had exceptional work histories with Dover, never experienced any disciplinary actions during their tenures with Dover, and served Dover faithfully;

WHEREAS, based upon concerns that came to the attention of Dover City Council representatives, Dover City Council enacted legislation on March 12, 2021 by overriding the Mayor's veto of Resolution 3-21. This Resolution, attached hereto as Exhibit A, authorized the investigation of the Mayor as a result of those concerns that came before Dover City Council;

WHEREAS, all three Appellant Employees were requested by Dover City Council to produce information relative to the investigation of the Mayor;

WHEREAS, despite the Mayor's efforts to discourage and prevent Appellant Employees from participating in the investigation, all three Appellant Employees cooperated with the City Council investigation, provided sworn written statements and other information that set forth various facts known to each of them that were relevant to the City Council's investigation, including information and reports that were specifically protected by Ohio Revised Code 124.341;

WHEREAS, the Mayor ultimately discovered that all three Appellant Employees had cooperated with the City Council investigation, and that they provided written statements and other information that was specifically protected by Ohio Revised Code 124.341;

WHEREAS, on December 21, 2021, the Mayor gave sudden and unexpected written notice to all three Appellant Employees that their employment with Dover was terminated. No reason

was stated in these notices, and there was absolutely no cause for terminating any one of the three Appellant Employees;

WHEREAS, the Mayor's decision to terminate the employment of all three Appellant Employees was so obviously motivated by illegal retaliation, Dover's City Council promptly enacted Ordinance 1-22 (a copy of which is attached hereto as **Exhibit B**) determining that the Mayor acted illegally and in violation of Ohio Revised Code Section 124.341;

WHEREAS, the Mayor vetoed Ordinance 1-22, and City Council then unanimously overrode the Mayor's veto on January 31, 2022, thus enacting Ordinance 1-22;

WHEREAS, all three Appellant Employees filed timely appeals with the State Personnel Board of Review ("SPBR") that sought to overturn their unlawful removals;

WHEREAS, Newsome's appeals were assigned case numbers 2022-REM-01-0007 and 2022-WHB-01-0008;

WHEREAS, Douglas' appeals were assigned case numbers 2022-REM-01-0005 and 2022-WHB-01-0006;

WHEREAS, Mroczkowski's appeals were assigned case numbers 2022-REM-01-0009 and 2022-WHB-01-0010;

WHEREAS, the SPBR consolidated all of the various appeals into one proceeding for all three Appellant Employees;

WHEREAS, in addition to the SPBR proceedings, the Appellant Employees are further evaluating additional legal action against Dover and its employees, representatives, and agents, including the Mayor, seeking additional compensatory damages, attorneys' fees, punitive damages, and any other available remedies arising out of the termination of their employment;

WHEREAS, the Parties are all in agreement that it is in their mutual best interests to resolve their dispute amicably, request that the SPBR issue a dismissal of the SPBR proceedings pursuant to this Settlement Agreement, and direct the full reinstatement all three Appellant Employees to their prior positions, reimburse all three Appellant Employees for their lost wages during the time that they were unemployed, reinstate all of the benefits, wage rates, vacation benefits, sick pay benefits, and bridge any benefit periods that all three Appellant Employees had accrued for purposes of any retirement benefits, insurance benefits, seniority privileges, or any other benefits associated with the Appellant Employees' employment with Dover;

WHEREAS, Administrative Law Judge Raymond Geis has been assigned to preside over the SPBR consolidated appeals, has conducted two pre-hearing conferences, has discussed this proposed settlement with legal counsel for the Parties, and he is prepared to recommend to the full Board of the SPBR that the SPBR consolidated appeals should be dismissed pursuant to the terms set forth in this Agreement with the intent that this Agreement be fully binding on all Parties and that it be enforceable in the Tuscarawas County Court of Common Pleas should any person attempt to breach this Agreement or interfere with the execution of its terms.



NOW, THEREFORE, for and in consideration of the Parties' request to the SPBR to dismiss the SPBR proceedings in accordance with the terms of this Agreement, as well as the Appellant Employees' release of other claims associated with their terminations as set forth herein, and for the mutual promises and benefits contained in this Agreement, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties represent, warrant, covenant, and agree as follows:

1. *Reinstatement of Appellant Employees.* In exchange for the promises made by Appellant Employees in this Agreement, including, but not limited to their agreement to request that the SPBR dismiss their SPBR appeals in accordance with the terms of this Agreement, and their release of any and all claims arising out of the December 21, 2021 termination of their employment, the Parties agree as follows:

- (i) Dover shall immediately reinstate and re-install all three Appellant Employees to the same positions that they held prior to the unlawful termination of their employment and from which they have been wrongfully denied since the dates of their respective removals from those positions.
- (ii) Dover shall cause its Auditor, or other appropriate personnel, to pay to each of the Appellant Employees his or her wages, subject to applicable tax and other payroll withholding, all salary and wages that each Appellant Employee would have earned from the date of their termination to the date that each Appellant Employee is reinstated and re-installed to his or her full-time position (Newsome and Douglas) and part-time position (Mroczkowski).
- (iii) Dover shall cause its Auditor, or other appropriate personnel, to reinstate any and all employment benefits that each Appellant Employee received at the time of his or her termination in order that all benefits be reinstated and bridged in a manner that there is no interruption of benefits or service discontinuation of any kind that may have been caused by the termination of the employment.
- (iv) Dover shall cause its Auditor, or other appropriate personnel, to communicate and authorize all appropriate agencies and departments, including the State of Ohio, the Ohio Public Employees Retirement System, and any other pension funds, retirement funds, or other benefit administrators that Appellant Employees' benefits and service under any of those systems, funds, and/or plans should not suffer any interruption or break in service as a result of any termination of Appellant Employees.
- (v) Dover shall cause its Auditor, or other appropriate personnel, to reinstate any and all vacation time, sick time, comp time, or any other paid time off benefits or entitlements that would have accrued to Appellant Employees

had they not been terminated and which would have been available to Appellant Employees but for their unlawful removal from their positions.

- (vi) Dover shall cause its Auditor, or other appropriate personnel, to reinstate any and all seniority classifications to Appellant Employees and further granting them the seniority service they would have enjoyed had they not been terminated.
- (vii) For purposes of clarity, it is the Parties' intent that all three Appellant Employees be restored to their employment with Dover, and that all wages, compensation, and any benefits of employment be restored to all three Appellant Employees as though none of them had been terminated.
- (viii) The city of Dover concurrent with the approval of this agreement by council through the enactment of a Resolution approving this settlement, shall enact and pass concurrent ordinances that shall repeal ordinances 2-22, 3-22, 4-22, and 5-22 and reinstate ordinances 3-21 and 4-21. The resolution approving the settlement and the ordinances repealing 2-22, 3-22, 4-22 and 5-22 shall be effective on the same date. The employees are specifically restored to their prior positions of employment – Eva Newsome, the Mayor's Executive Assistant, Dave Douglas, Service Director, and Gerry Mroczkowski, Safety Director/Human Resources Director. The persons temporarily inserted into these positions shall no longer be permitted to occupy those positions and shall be deemed no longer employed by the city in those positions and will not be entitled to wages or benefits from the city as the terminated employees. Eva Newsome, Dave, Douglas, and Gerry Mroczkowski will occupy and hold those positions through December 31, 2023.

2. *Agreement to Request SPBR Dismissal of Consolidated Appeals Pursuant to this Agreement and Release of Claims by Appellant Employees.* In consideration of the agreements and promises herein, the Parties agree that they will jointly request the SPBR to dismiss the consolidated appeals of Appellant Employees in accordance with the terms of this Agreement. Appellant Employees further hereby release Dover, and any related organizations, their employees, former employees, officers, officials, agents, insurers, attorneys, and representatives (collectively, "Releasees"), from all claims or demands that Appellant Employees may have against any of the Releasees based on the December 21, 2021 terminations of the employment of the Appellant Employees.

3. *Specific and Equitable Enforcement of Agreement.* The Parties agree and acknowledge that the Appellant Employees' rights to continued employment with Dover in accordance with this Agreement are specific and unique to the Appellant Employees. The Parties further acknowledge that compensatory damages may not be adequate remedy to the Appellant Employees should any Dover official or employee seek to interfere with Appellant Employees' employment relationship in any way. Therefore, Dover acknowledges and agrees that Appellant Employees will have the contractual right herein to seek immediate injunctive relief, including temporary restraining orders, preliminary injunctions, and permanent injunctions that allow

Appellant Employees to enforce this Agreement, prevent Dover employees or officials from interfering with any of the Appellant Employees' employment relationship, or otherwise causing any one or more of the Appellant Employees to suffer any detrimental or adverse job consequence after their reinstatement in accordance with this Agreement. Dover further agrees that it will consent to such equitable and injunctive relief in order to carry out the terms of this Agreement and the Parties' intent to cure the wrongful nature of the terminations of the Appellant Employees and to prevent any future wrongful or unlawful terminations of any of the Appellant Employees.

4. *Protection of Appellant Employees' Wages / Benefits from Interference.* The Parties further acknowledge that Dover's Mayor, or those working at his direction, may seek to interfere with the Appellant Employees' employment relationship with Dover, and/or seek to interfere with the execution and administration of this Agreement. In consideration for the Appellant Employees' agreements as set forth herein, including the Appellant Employees requesting that the SPBR dismiss their consolidated appeals in accordance with the terms of this Agreement, and the release of claims as set forth above, Dover shall direct its Auditor, and any other appropriate personnel, to continue the payment of all wages to Appellant Employees, the provision of all benefits to Appellant Employees, and all other compensation and benefits available to Appellant Employees regardless of whether Dover's Mayor, or those working at his direction, attempt to carry out any termination of employment or other adverse employment decision against Appellant Employees from the date of the execution of this Agreement until no earlier than December 31, 2023. The employees shall receive all wages and benefits as if they had not been unlawfully terminated by the mayor. They shall have all rights to wages and benefits provided in ordinances 3-21 and 4-21 or any other ordinance enacted to replace those ordinances as if they had not been unlawfully terminated. Therefore, they will be able to use vacation and other benefits as if the termination had not occurred.

5. *Entire Agreement; Severability.* This, including all exhibits referenced herein or attached hereto, is the whole Agreement between the Parties, and all prior agreements and understandings, written or oral, between the Parties are replaced and superseded by this Agreement, and are no longer of any force or effect. If any portion of this Agreement is judicially determined to be unenforceable, then the Parties desire that all other portions that can be separate from it or appropriately limited in scope shall remain fully valid and enforceable, provided that the Agreement then continues to reflect the intent of the Parties in entering into this Agreement. Each party also agrees that, without receiving further consideration, it will sign and deliver such documents and do anything else that is necessary in the future to make the provisions of this Agreement effective.

6. *Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Executed signature pages to this Agreement may be delivered by fax or email, and such fax or email version shall be deemed to constitute a valid and binding original upon receipt.

7. *Governing Law.* This Agreement shall be governed and interpreted in accordance with the laws of the State of Ohio. Employee agrees that any and all proceedings between the Parties arising out of or in connection with this Agreement, or the breach or enforcement hereof, must be commenced in Tuscarawas County, Ohio Common Pleas Court.

8. *Incorporation of Recitals.* The parties hereby incorporate the recitals into this Agreement.

9. *Survival.* The covenants and agreements contained herein shall specifically survive after the execution of this Agreement, as well as the completion of all of the duties required of the Parties to this Agreement.

10. *Assignment.* No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party. Subject to the immediately preceding sentence, this Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, administrators, executors, successors and permitted assigns.

11. *Authority to Execute.* Council authorizes the Law Director or Auditor to execute all documents necessary to effectuate this agreement.

IN WITNESS WHEREOF, the Parties hereby execute the Agreement on the day and year indicated below.

EVA L. NEWSOME

DAVID F. DOUGLAS

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

GERALD L. MROCZKOWSKI

CITY OF DOVER, OHIO

\_\_\_\_\_

By:

Date: \_\_\_\_\_

Its:

Date: \_\_\_\_\_



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COURT OF COMMON PLEAS  
DELAWARE COUNTY OHIO  
2022 FEB 25 PM 2:37  
KAREN H. STEPHENSON  
CLERK OF COURTS

**LOCAL NEWS**

# Dover Council bringing back fired employees against mayor's will

FEBRUARY 9, 2022



Gerry Mroczkowski, in the blue shirt, Dave Douglas, with his back to the camera, and Eva Newsome attend a recent City Council meeting. Council Tuesday approved a settlement to give them back their city jobs.



(DOVER) (WJER) (February 9, 2022) – City Council President Shane Gunnoe is confident three employees fired by the mayor in December will return to their positions in about a month, and the mayor can't stop it.

Council Tuesday unanimously approved a settlement with Dave Douglas, Gerry Mroczkowski and Eva Newsome that gives them back their jobs and back pay and benefits from when Mayor Richard Homrighausen fired them Dec. 21.

Gunnoe says Council members, Dover Law Director Doug O'Meara and the employees agree Homrighausen fired them illegally as retaliation, so it didn't take long to reach a settlement.

"Ohio laws are clear," Gunnoe said. "You can't terminate employees for filing a complaint about something that they reasonably believe to be a crime."

Language in the settlement says the mayor can't fire the employees again or interfere with their employment until Dec. 31, 2023, which is the last day of Homrighausen's current term. If he does, the employees would still be paid as if they worked for the city.

"Our attorney looked at this very closely," Gunnoe said. "Their attorney looked at it as well, and they also had a tentative hearing before an administrative law judge in Columbus. All three of them were of the same mind that, if we're all in agreement on the facts, they feel very strongly this is going to hold up."

The three employees had filed appeals of the mayor's terminations with the State Personnel Board of Review. Through the settlement, they agree to dismiss those appeals and any other claims against the city. It could still take a few weeks to wrap up those proceedings.

Gunnoe says defending the city would have been costly. He says Homrighausen said something similar last year about legislation involving Dover Chemical.

"I'm reading from his veto message: 'It invites more and expensive litigation and costs to the city and possible personal exposure to some individuals.' Those were his words when he decided to veto that piece of legislation," Gunnoe said. "This is exactly what this settlement is trying to prevent."

Homrighausen did not attend Tuesday's meeting. Gunnoe says the mayor went to the Dover boys' basketball game instead.

Homrighausen can veto the settlement agreement, but that would only delay it until Council overrides the veto.

Councilman Justin Perkowski says the settlement should be encouraging for other city employees.

"I think it sends a message to current employees that are working 40, 50, 60 hours a week that they don't have to fear for retaliation or losing their jobs," Perkowski said.

FILED  
COURT OF COMMON PLEAS  
DELAWARE COUNTY, OHIO

2022 FEB 25 PM 2:38

THOMAS STEPHEN  
CLERK OF COURTS

**BEFORE THE STATE PERSONNEL BOARD OF REVIEW**

David Douglas et. al.,

Appellants,

-vs-

City of Dover,

Appellee.

Case Nos.: 2022-REM-01-0005  
2022-WHB-01-0006  
2022-REM-01-0007  
2022-WHB-01-0008  
2022-REM-01-0009  
2022-WHB-01-0010

Raymond M. Geis  
*Administrative Law Judge*

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**MAYOR RICHARD P. HOMRIGHAUSEN'S  
MOTION TO INTERVENE**

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Now comes Intervenor, City of Dover Mayor and Appointing Authority Richard P. Homrighausen, and hereby seeks leave to intervene in the above-captioned appeals as a matter of right as an Appellee. Alternatively, permissive intervention is requested. The reasons for this motion are articulated more fully in the accompanying Memorandum in Support.

Respectfully Submitted,

/s/ Richard P. Homrighausen

Richard P. Homrighausen  
110 East Third Street  
Dover Ohio, 44622  
Phone: 330-243-6726  
Email: mayor.homrighausen@doverohio.com

*Mayor and Appointing Authority for the  
Appellee, City of Dover*





## MEMORANDUM IN SUPPORT

### **I. STATEMENT OF FACTS**

Mayor Richard P. Homrighausen (the “Mayor”) has been the Mayor of the City of Dover for 30 years and is the appointing authority for the Appellee-City. In December 2021, the Mayor removed the three Appellants from their positions due to a loss of confidence in their ability to perform the essential functions of their positions. All three Appellants were indisputably members of the unclassified service at the time of their respective removals.

On or about January 7, 2022, the Appellants appealed their removals to the State Personnel Board of Review and alleged that the Mayor violated Ohio’s Whistleblower Statute (R.C. § 124.341) in terminating their employment. Appellee’s Law Director, Douglas O’Meara (“O’Meara”), failed to inform the Mayor that the three appeals had been filed despite O’Meara’s legal duty to serve as the Mayor’s legal counsel and attorney, (*See* R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover (attached hereto as Exhibit A)) and despite the Mayor’s position as appointing authority for the Appellee City.

Following O’Meara’s willful disregard of his legal duty to serve as the Mayor’s attorney, O’Meara entered into settlement discussions with the three Appellants – again without notifying the Mayor, appointing authority for Appellee. Further, the Mayor has been excluded from executive sessions conducted by the City Council of Dover for nearly two years, and, of course, was not included in recent executive sessions or other meetings in which the potential settlement of these cases has presumably been discussed. *See* Exhibit B, February 9, 2022 Article from [thebargainhunter.com](http://thebargainhunter.com), p. 2.

Then, on February 8, 2022 at 2:42 PM, the Mayor received an email from O’Meara with a copy of a settlement agreement which was to be considered by Appellee’s City Council less than

five hours later.<sup>1</sup> See Exhibit C, Email from Law Director O'Meara to Mayor with Settlement Agreement. Prior to receiving this email, the Mayor had no knowledge of the proposed settlement terms which are potentially binding on him as Appellee's Mayor and appointing authority.

The proposed settlement agreement is a most unusual settlement agreement. Some of its terms include:

- An **admission** that “the Mayor’s decision to terminate the employment of all three Appellant Employees was so obviously motivated by illegal retaliation...” (p. 2).
- **Numerous admissions** that removing the three employees was “unlawful.” (pp. 2 & 4).
- A statement that all Appellants are “further evaluating additional legal action against Dover and its employees, representatives, and agents, including the Mayor, seeking additional compensatory damages, attorneys’ fees, punitive damages, and any other available remedies arising out of the termination of their employment” but **without** a waiver and release of all claims against the Mayor in his personal capacity, which, of course, is a customary settlement agreement provision. (p. 2).
- Terminating the employee that currently holds one of the Appellant’s former positions and a statement that this employee “will not be entitled to wages or benefits from the City as the terminated employees.” (p. 4, Section (1)(viii)).
- A **guarantee of employment** for all three (unclassified) Appellants through December 31, 2023, which just so happens to be the same day that the Mayor’s current term ends. (p. 4, Section (1)(viii); p. 5, Section (4)).
  - This includes a provision specifying that in the event any of the Appellants are terminated following their reinstatement, the City will **guarantee the continuance of all wages and benefits** through December 31, 2023 regardless of the reason for the Appellants’ termination. (p. 5, Section (4)).
- A statement that the City agrees “that compensatory damages may not be [an] adequate remedy to the Appellant Employees should any Dover official or employee seek to interfere with the Appellant Employees’ employment relationship in any way,” which is a clear signal to the Mayor that he should not even attempt to address the employment situations of the three employees, despite his status as appointing authority. (p. 4, Section (3)).

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<sup>1</sup> Under normal circumstances, the Mayor would not release the entirety of a draft settlement agreement in a public filing. However, Appellee’s City Council has already released the agreement to the press, which was published in full. See Exhibit D, WJER Radio Article published February 9, 2022, at: <https://www.wjer.com/news/dover-council-bringing-back-fired-employees-against-mayors-will/>.

- A provision giving Appellants a clear contractual right to seek a temporary restraining order against Appellee and/or the Mayor as a further guarantee of Appellants' continued employment. (p. 4-5, Section (3)).
- A blatant accusation that "Dover's Mayor, or those working at his direction, may seek to interfere with the Appellant Employees' employment relationship with Dover, and/or seek to interfere with the execution and administration of this Agreement." (p. 5, Section (4)).

Exhibit C, pp. 2-6.

These provisions were presumably drafted by Law Director O'Meara (at least in part) and were certainly reviewed by Law Director O'Meara because that was shared with the general public during the February 8, 2022 City Council meeting and is referenced in the newspaper article cited in FN 1. The proposed settlement terms are unenforceable and are contrary to Ohio law. Settlement agreements do not admit liability on behalf of an appointing authority. Settlement agreements involving Cities *should* contain a release on behalf of City employees and elected officials (among others) in their personal capacity. Settlement agreements typically are not piecemeal and do not expressly contemplate further action. Settlement agreements do not terminate employees, especially when there is no legal authority to do so since the Mayor is the appointing authority. Settlement agreements cannot guarantee unclassified employees continued employment through a date certain, again, because this is up to the appointing authority. Settlement agreements do not prohibit "interference" with an employment relationship and cannot because that is the function of the appointing authority. And settlement agreements do not anticipate potential "interference" by an appointing authority. Lastly, and perhaps most importantly, Law Directors typically do not admit legal liability on behalf of their clients, whom they are ethically and statutorily obligated to represent.

The proposed settlement agreement is a not-so-subtle attempt to contravene the Mayor's authority and its terms were not drafted in Appellee's or the Mayor's best interests. Further, neither Law Director O'Meara nor City Council have the authority to enter into the terms of this settlement agreement as neither is Appellee's appointing authority. Many key provisions, as described above, are illegal on their face. Despite these serious concerns, Appellee's City Council approved the settlement agreement on the legal advice of Law Director O'Meara. The Mayor's legal interests are clearly not being protected. Accordingly, the Mayor seeks leave to intervene in Appellants' consolidated appeal to protect his own interests, and by extension, those of Appellee City of Dover.

## II. LAW AND ARGUMENT

This Board was created by statute, and it derives its jurisdiction from Ohio Revised Code Chapter 124. *Ketron v. Ohio Dept. of Transportation*, (1991), 61 Ohio App. 3d 657, 659. Therefore, the Board, "having been created by statute, possesses only such powers and duties as conferred on it by the provisions of the enabling statute\*\*\*." *Id.*, citing *Hansen v. State Personnel Bd. Of Review* (1997), 51 Ohio App. 2d 7. Ohio Revised Code § 124.03 delineates the powers and duties of the Board, which include:

(A)(1) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities. . .

\* \* \*

The state personnel board of review may affirm, disaffirm, or modify the decisions of the appointing authorities. . .

\* \* \*

(A)(2) Hear appeals, as provided by law, of appointing authorities. . .

R.C. §124(A)(1) – (2). Moreover, with regard to whistleblower appeals, the Revised Code mandates that if an employee files such an appeal: "the board shall immediately notify the employee's appointing authority and shall hear the appeal." R.C. § 124.341(D).

Accordingly, the appointing authority is a necessary and proper party to any appeal filed with the Board, particularly when the appeal is a whistleblower action. Despite his position as Appellee's appointing authority, the Mayor was not notified that any of Appellants' appeals had been filed even though these appeals have a direct impact on the Mayor's interests. Those interests are typically protected by a City's Law Director; however, that is not the case here as O'Meara is attempting to enter into a settlement agreement that admits liability on behalf of the Mayor and prohibits him from exercising his rights as the City's appointing authority.

The appeals at issue in this consolidated case are appeals of decisions made by Appellee's appointing authority, Mayor Richard P. Homrighausen. As such, the Mayor is a necessary and proper party to these appeals, the result of which will have a direct impact on both him and the Appellee-City for which he is the appointing authority.

The Mayor recognizes that this is an unusual motion. However, this is an unusual case involving a proposed settlement agreement that is unprecedented in its scope and applicability. It ties the Mayor's hands in his capacity as appointing authority. Although he may think so, Law Director O'Meara is not Appellee's appointing authority. He has plainly taken affirmative actions in this case which are not in the best interest of Appellee, and certainly not in the best interest of his client, the Mayor.

The Mayor has a right to be heard in these matters given his status as appointing authority. His interests are not being protected. Therefore, the Mayor seeks leave to intervene in this action to protect the interests of the Appellee for which he serves as the appointing authority.

### **III. CONCLUSION**

For the reasons stated above, the Mayor respectfully requests leave to intervene in Appellants' consolidated appeal.

Respectfully Submitted,

/s/ Richard P. Homrighausen

Richard P. Homrighausen

110 East Third Street

Dover Ohio, 44622

Phone: 330-243-6726

Email: mayor.homrighausen@doverohio.com

*Mayor and Appointing Authority for the*

*Appellee, City of Dover*

**CERTIFICATE OF SERVICE**

I certify that a copy of the above *Motion to Intervene* was filed with the State Personnel

Board of Review and served by electronic mail this 11th day of February, 2022 upon:

David L. Dingwell  
200 Market Avenue North, Suite 300  
Canton, Ohio 44702  
T: (330) 455-6112  
Email: [ddingwell@lawlion.com](mailto:ddingwell@lawlion.com)  
*Attorney for Appellants*

Douglas O'Meara  
339 Oxford Street  
Dover, Ohio 44622  
T: 330-432-4006  
Email: [doug.omeara@doverohio.com](mailto:doug.omeara@doverohio.com)  
*Attorney for Appellee*

/s/ Richard P. Homrighausen

Mayor Richard P. Homrighausen

2022 FEB 25 PM 2:38

STATE OF OHIO  
JEANNE M. STEPHENSON  
CLERK OF COURTS  
STATE PERSONNEL BOARD OF REVIEW

David Douglas et. al.

Case Nos. 2022-REM-01-0005  
2022-WHB-01-0006  
2022-REM-01-0007  
2022-WHB-01-0008  
2022-REM-01-0009  
2022-WHB-01-0010

*Appellant*

v.

February 14, 2022

City of Dover

*Appellee*

Raymond M. Geis  
*Administrative Law Judge*

**PROCEDURAL ORDER**

This cause comes on for consideration pursuant to City of Dover Mayor Richard Homrighausen's self-styled Motion to Intervene in the above captioned appeals.

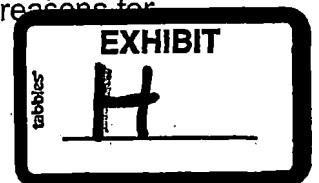
The existing record in these matters establish a rebuttable inference of illegal discrimination under R.C. 124.341 Violation or misuse - whistleblower protection, a.k.a. *prima facie* case of discrimination.

The Mayor apparently opposes full and final settlement of these appeals now underway.

Therefore, the Mayor is hereby permitted to submit his optional affidavit (with documents in support) articulating his purported legitimate non-discriminatory business reasons for terminating the employment of the three Appellants, if any.

The Mayor's optional affidavit is due no later than Thursday, February 24, 2022, and will be filed with this Board at [SPBR@serb.ohio.gov](mailto:SPBR@serb.ohio.gov), with the assigned administrative law judge at [Raymond.Geis@serb.ohio.gov](mailto:Raymond.Geis@serb.ohio.gov) and upon each of the Appellants and the counsel for the Appellants.

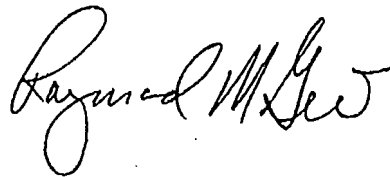
A failure to file the optional affidavit will not be considered an admission of guilt by the Mayor. However, if the Mayor's affidavit and supporting documentation fail to create a genuine issue of material fact as to the reasons for



David Douglas  
Case No. 2022-REM-01-0005  
Page 2

the Appellants' terminations, the Mayor is hereby notified that this could lead to a finding of illegal discrimination by the Mayor under R.C. 124.341 Violation or misuse - whistleblower protection.

It is so **ORDERED**.



---

Raymond M. Geis  
*Administrative Law Judge*

c:  
David L. Dingwell  
Richard Homrighausen  
Doug O'Meara  
Appellants Douglas, Mroczkowski, Newsome





FILED  
COURT OF COMMON PLEAS  
DELAWARE COUNTY, OHIO

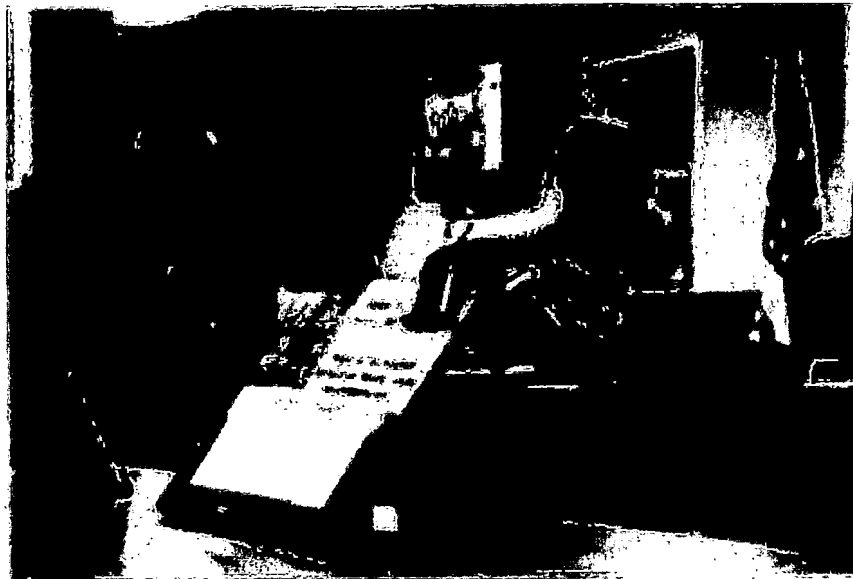
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JEANNE M. STEPHEN  
CLERK OF COURTS

LOCAL NEWS

# Dover mayor attempting to stop employees' reinstatements

FEBRUARY 18, 2022



Dover Mayor Rick Homrighausen, left, and Law Director Doug O'Meara attend a Council meeting last year.



DOVER (WJER) (February 18, 2022) – The mayor has vetoed City Council's plan to bring back three employees he fired. Mayor Rick Homrighausen is also moving to intervene in those employees' appeal of their terminations before the State Personnel Board of Review.

In filings with the review board, Homrighausen claims Council's settlement with the employees is unenforceable, unprecedented, illegal and a "not-so-subtle attempt to contravene" his authority. He claims Law Director Doug O'Meara has a legal duty to represent the mayor but instead is exposing Homrighausen to legal liability.

O'Meara, who is an elected official, says he represents the city.

"The law anticipates there will be times when the interests of the people of Dover, its Council and its administration can vary," O'Meara said. "I've made it crystal clear from the word go that I represent the city of Dover in this matter, and I don't represent the mayor."

Homrighausen fired the three employees in December.

The settlement approved by City Council claims Homrighausen terminated them as retaliation because they reported potentially unlawful actions by the mayor.

Homrighausen, in his filings, says he fired the employees "due to a loss of confidence in their ability to perform the essential functions of their positions."

O'Meara says the matter before the state review board shouldn't impact City Council's plan to return the employees to their jobs.

Council members unanimously agree on bringing the employees back, so they'll likely override the mayor's veto after waiting the required 10 days.

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CARAWAS COUNTY, OHIO

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RECENT NEWS

## Homrighausen files to intervene in fired employees' appeal

BY LORI FEENEY FEBRUARY 22, 2022



Dover Mayor Richard Homrighausen

Dover Mayor Richard Homrighausen filed a motion to intervene in the appeal filed by three employees he fired in December 2021. The motion, filed with the State Personnel Board of Review, comes at the same time Homrighausen vetoed a council resolution to accept a settlement that would reinstate Dave Douglas, former service director; Eva Newsome, former executive assistant to the mayor; and Jerry Mroczkowski, former safety/human resources director, to their former positions. The veto came Thursday, Feb. 17.



The settlement, which was filed Jan. 7 and later approved by council, claims the termination of the employees by the mayor was in retaliation for their reporting what they saw as unlawful behavior on his part. All three gave sworn affidavits to that effect.

While the mayor did not provide council or the employees with a justification for firing the employees at the time, Homrighausen's motion to intervene states they were terminated "due to a loss of confidence in their ability to perform the essential functions of their positions."

In the motion Homrighausen also accused the city law director of failing to inform him the three appeals had been filed, "despite O'Meara's legal duty to serve as the mayor's legal counsel and attorney."

He further said, "O'Meara entered into settlement discussions with the three appellants – again without notifying the mayor, appointing authority for appellee," and he accused council of excluding him from executive sessions for nearly two years, along with other meetings during which the potential settlement "presumably" was discussed.

Homrighausen claims to have received a copy of the agreement less than five hours before it was to be considered by council. However, some may find fault with the mayor, who, on Feb. 8, the meeting during which the agreement was read and voted on, chose to attend the Dover High School basketball game rather than the meeting where he could have voiced objections or an explanation.

Homrighausen, in his motion, called the settlement a "most unusual settlement agreement," saying the following:

- The proposed settlement terms are unenforceable and are contrary to Ohio law.
- Settlement agreements do not terminate employees, in this case referring to Aaron Feller, who Homrighausen hired as service director to replace Douglas.
- The proposed settlement agreement is a not-so-subtle attempt to contravene the mayor's authority, and its terms were not drafted in appellee's or the mayor's best interests.
- The settlement agreement is unprecedented in its scope and applicability. It ties the mayor's hands in his capacity as appointing authority.

In response to the allegations, O'Meara said he represents the people of Dover. "I do not and will not represent the mayor. There is no doubt these employees have whistleblower protection under Ohio Revised Code 124.341. The remedy in the settlement agreement comports with the law and is the right thing to do. I will not support any misconduct under the Ohio Revised Code, Section 124.341."

Homrighausen had until Feb. 24 to file an affidavit, which had to include documentary evidence supporting his case. City council has until Feb. 27 to override the mayor's veto of the resolution approving the settlement, should it choose to do so.

A date has yet to be scheduled for council to meet on the mayor's veto.

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**BEFORE THE STATE PERSONNEL BOARD OF REVIEW**

JEANNE M. STEPHEN  
CLERK OF COURTS

David Douglas et. al.,

Appellants,

-vs-

City of Dover,

Appellee.

Case Nos.: 2022-REM-01-0005  
2022-WHB-01-0006  
2022-REM-01-0007  
2022-WHB-01-0008  
2022-REM-01-0009  
2022-WHB-01-0010

Raymond M. Geis  
*Administrative Law Judge*

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**MOTION TO STAY PROCEEDINGS PENDING THE APPOINTMENT  
OF COUNSEL FOR MAYOR HOMRIGHAUSEN**

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**I. INTRODUCTION**

Now comes City of Dover Mayor and Appointing Authority, Richard P. Homrighausen, and hereby moves to stay these proceedings and set aside this Board's February 14, 2022 Procedural Order pending the appointment of counsel for Mayor Homrighausen. As detailed in the Mayor's *Motion to Intervene*, the Mayor's statutorily appointed legal counsel, Law Director Douglas O'Meara, refuses to represent the Mayor's legal interests and has publicly stated that he does not and will not represent the Mayor. See Exhibits A and B. The Mayor should not be left to defend his own legal interests *pro se* when his statutory legal counsel is actively working against his best interests. For obvious reasons, the Mayor is not comfortable submitting sworn testimony in the form of an affidavit to the State Personnel Board of Review (a quasi-judicial entity) without input and advice from legal counsel, which he is statutorily entitled to and which he simply does not have at this juncture due to Law Director O'Meara's actions/inactions.



## II. BRIEF FACTUAL HISTORY

In December 2021, the Mayor, as appointing authority for the City of Dover, removed three unclassified employees from their positions. On or about January 7, 2022, the three unclassified employees appealed their removals to the State Personnel Board of Review (each employee filed a “removal” appeal as well as a “whistleblower” appeal for a total of six appeals). Law Director Douglas O’Meara, statutorily appointed counsel for Mayor Homrighausen, became aware of these appeals shortly after they were filed but failed to inform the Mayor despite his clear legal duty to serve as the Mayor’s attorney. *See* O.R.C. § 733.51. Instead of working in the best interests of the City and the Mayor, Law Director O’Meara went behind the Mayor’s back and entered into settlement discussions with the three employees through early February.

As part of these settlement discussions, Law Director O’Meara helped to create an illegal settlement agreement in which he **admits liability on behalf of his client**; an unequivocal breach of the attorney-client relationship and the Law Director’s duty of representation. Unconscionably, Law Director O’Meara did not include a waiver of claims against the Mayor in his personal capacity in the settlement agreement. To the contrary, the settlement agreement explicitly states the Mayor engaged in “unlawful” acts and was “obviously motivated by illegal retaliation” in removing the three employees. The settlement agreement is problematic on any number of levels, and a full explanation of the terms of this bizarre settlement agreement is outlined in the Mayor’s *Motion to Intervene*, which the Mayor hereby incorporates by reference as if fully restated herein.

Such actions by an attorney are unheard of, and Law Director O’Meara’s reasons for abandoning the Oath he took as a legal practitioner are unfathomable. When asked about his legal duty of representation, Law Director O’Meara responded: “I’ve made it crystal clear from the word go that I represent the city of Dover in this matter, and **I don’t represent the Mayor.**” *See* Exhibit



A. Even a cursory glance at O.R.C. § 733.51 and Chapter 137 of the Codified Ordinances of Dover indicates that Law Director O'Meara is obligated to represent the Mayor; and therefore, has willfully and intentionally forsaken his legal duty of representation.

When the Mayor realized that his attorney was actively working against him (instead of trying to help him, which he is statutorily required to do) he took it upon himself to file a *Motion to Intervene* in this matter, identifying all the ways in which his statutorily appointed legal counsel has been working against his best interests. Once Law Director O'Meara read the Mayor's *Motion to Intervene*, he did not change course. Instead, he doubled-down on his dereliction of duty, stating: "**I do not and will not represent the Mayor.**" See Exhibit B.

### III. CONCLUSION

It is abundantly clear that Law Director O'Meara has no intention of abiding by his statutory obligation to provide legal representation to the Mayor, and the Mayor should not be required to provide sworn testimony to a quasi-judicial agency unless and until he can review these matters with legal counsel. There is a reason that Mayors are statutorily afforded legal counsel. Law Director O'Meara refuses to represent the Mayor, and has publicly stated so. Mayor Homrighausen should not be required to "go it alone."

As it stands, the settlement agreement that has been passed by City Council exposes Mayor Homrighausen to great liability. And that settlement agreement emanates from the cases presently before this Board. Due to the undisputed fact that Law Director O'Meara refuses to represent him, Mayor Homrighausen is not comfortable submitting an affidavit to a quasi-judicial entity without input and counsel from legal counsel, which he is statutorily entitled to. Accordingly, along with the instant Motion to Stay Proceedings, Mayor Homrighausen is filing a Verified Complaint for Writ of Mandamus with the Tuscarawas County Court of Common Pleas seeking an order

requiring the City of Dover to provide him with legal counsel he is statutorily entitled to due to Law Director O'Meara's admitted refusal to do so.

In conclusion, Mayor Homrighausen moves to stay these proceedings and set aside the February 14, 2022 Procedural Order until counsel has been appointed to protect the Mayor's legal interests.

Respectfully Submitted,

/s/ Richard P. Homrighausen  
Richard P. Homrighausen  
110 East Third Street  
Dover Ohio, 44622  
Phone: 330-243-6726  
Email: mayor.homrighausen@doverohio.com  
*Mayor and Appointing Authority for the  
Appellee, City of Dover*

**CERTIFICATE OF SERVICE**

I certify that a copy of the above *MOTION TO STAY PROCEEDINGS PENDING THE APPOINTMENT OF COUNSEL FOR MAYOR HOMRIGHAUSEN* was filed with the State Personnel Board of Review and served by electronic mail this 24th day of February, 2022 upon:

Douglas O'Meara  
339 Oxford Street  
Dover, Ohio 44622  
T: 330- 432-4006  
E-mail: doug.omeara@doverohio.com  
*Law Director*

David L. Dingwell  
200 Market Avenue North, Suite 300  
Canton, Ohio 44702  
T: (330) 455-6112  
Email: ddingwell@lawlion.com  
*Attorney for Appellants*

/s/ Richard P. Homrighausen  
Mayor Richard P. Homrighausen

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EMERGENCY RESOLUTION 7-22

JEANIE L. BROWN  
CLERK OF COURT

AN EMERGENCY RESOLUTION APPROVING THE PROPOSED SETTLEMENT BETWEEN THE THREE TERMINATED EMPLOYEES AND THE CITY OF DOVER, REQUESTING THE STATE PERSONNEL BOARD REVIEW APPROVAL OF THE SETTLEMENT, REPEALING ORDINANCES 2-22, 3-22, 4-22 AND 5-22, and reinstating ordinance 3-21 and 4-21.

Whereas, council passed resolution 3-21 to investigate personnel matters within the city administration. The mayor vetoed said resolution. Council unanimously overrode that veto on March 12, 2022; and  
Whereas, the mayor terminated Eva Newsome, the mayor's executive assistant, Dave Douglas, the service director, and Gerry Mroczkowski, the safety director on December 21, 2021; and  
Whereas, council passed resolution 1-22 demanding reinstatement of the three employees terminated by the mayor on December 21, 2021; and  
Whereas, the mayor vetoed this resolution and council unanimously overrode that veto on January 31, 2022; and  
Whereas, the mayor did not reinstate these employees as directed by ordinance 1-22; and  
Whereas, the employees, pursuant to ORC 124.341, appealed this termination to the State Personnel Board of Review (SPBR); and  
Whereas, a status conference was held by the Administrative Law Judge (ALJ) appointed by the SPBR to hear this case; and  
Whereas, the parties, the city of Dover and the employees, entered into a settlement agreement subject to city council approval and the approval of the ALJ and the SPBR; and  
Whereas, council approval of the settlement agreement will facilitate the reinstatement of these wrongfully terminated employees; and  
Whereas, council in conjunction with the passage of 1-22 and to address the situation as presented by the mayor's misconduct in office, passed ordinances 2-22, 3-22, 4-22, and 5-22; and  
Whereas, the settlement agreement as approved in this resolution, restores the three employees to the positions held by these employees on and before the mayor's wrongful acts of December 21, 2021; and  
Whereas, to facilitate the return of the city to efficient operation and to facilitate the settlement whereby Eva Newsome is the mayor's executive assistant, Dave Douglas is the service director, and Gerry Mroczkowski is the safety director, council makes the additional determination to repeal ordinances 2-22, 3-22, 4-22, and 5-22

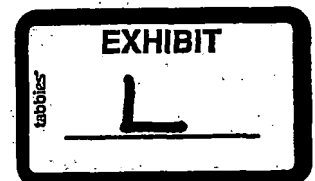
Now therefore be it ordained by Dover city council as follows:

I.

Council incorporates the preambles of this ordinance as if fully restated herein. The settlement agreement is attached as Appendix A to this resolution. Council approves this settlement agreement and requests that the ALJ and the SPBR board approve this settlement. The settlement agreement restores Eva Newsome as the mayor's executive assistant, Dave Douglas as the service director, and Gerry Mroczkowski as the safety director and human resources director.

II.

The restoration of Eva Newsome as the mayor's executive assistant, Dave Douglas as service director, and Gerry Mroczkowski as safety director and human resources director will enable the city to operate with the efficiency and dedication that was demonstrated and exercised by these



employees before their discharge and termination. That determination and efficiency kept the city running while the mayor was absent and not performing his duties. Therefore, council determines that with the restoration of these three employees to their positions, the repeal of ordinances 2-22, 3-22, 4-22, and 5-22 will facilitate the needs of the city and allow for services as performed by these able and dedicated employees to return to the best circumstances presently available to the city of Dover. Council therefore repeals, with the approval of this settlement agreement and restoration of these employees to their prior position, ordinances 2-22, 3-22, 4-22, and 5-22. The repeal of 2-22, 3-22, 4-22, and 5-22 shall reinstate ordinances 3-21 and 4-21 as if not repealed and reenacts those ordinances for the pay and benefits of city employees as denoted in those ordinances.

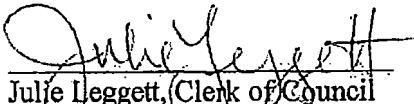
III.

That it is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were taken in conformance with all applicable open meeting laws and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in compliance with all legal requirements including open meeting requirements.

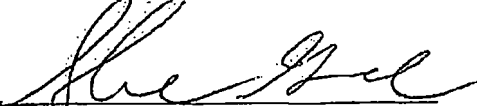
IV.

That this resolution is declared an emergency resolution necessary to preserve the health, safety, and welfare of the citizens of the City of Dover and shall take effect immediately upon its passage. Otherwise, it shall be effective on the earliest date allowed by law. The need to state the council and city approval of this settlement and concurrent reenactment of ordinances 3-21 and 4-21 by the repeal of ordinances 2-22, 3-22, 4-22, and 5-22 constitutes an emergency.

Attest:

  
Julie Leggett, Clerk of Council

Passed this 8<sup>th</sup> day of February 2022

  
Shane Gunnoe, President of Council

Approved:

VETOED 2/17/22   
Mayor Richard P. Homrighausen

Publish summary twice and on the city and state web sites  
Recommended by council sitting as a committee of the whole

Voucher Inquiry

Vendor: 04995 ULMER & BERNE LLP



Voucher	Vendor	Invoice	Inv Date	Amount	Paid	Pd Date	Check	CStat	Bank	Po #	Vendor Name	Disc
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