

IN THE STATE PERSONNEL BOARD OF REVIEW  
COLUMBUS, OHIO

David Douglas, et al.

*Appellant*

v.

City of Dover,

*Appellee*

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

**APPELLANTS' RESPONSE IN OPPOSITION TO MOTION TO STAY PROCEEDINGS  
AND MOTION TO INTERVENE BY RICHARD P. HOMRIGHAUSEN; MOTION TO  
ENFORCE FEBRUARY 14, 2022 PROCEDURAL ORDER**

Now come Appellants David Douglas, Eva Newsome, and Gerald Mroczkowski (collectively referred to herein as "Appellants"), and hereby respond to oppose the Motion to Stay Proceedings and Motion to Intervene, both filed by Richard P. Homrighausen (hereinafter referred to as "Mayor Homrighausen"). For the reasons set forth herein, these Motions should be denied. The State Personnel Board of Review should proceed with the adjudication of this matter which includes the enforcement of the settlement agreement that has been reached between the only proper parties to this proceeding: Appellants and the City of Dover.

Additionally, this Board should move forward with the enforcement of its February 14, 2022 Procedural Order which allowed Mayor Homrighausen 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." He has failed to do so.

To permit Mayor Homrighausen to indefinitely drag these proceedings out with continuing delays is unduly prejudicial to the Appellants. Mayor Homrighausen clearly is attempting to "run out the clock" on these proceedings to the detriment of the three Appellants, all of whom find themselves unemployed as the result of a blatantly illegal decision by Mayor Homrighausen.

- A. Pursuant to Ohio Revised Code Section 124.341(D), this proceeding is “the sole and exclusive remedy” available to the Appellants arising out of their unlawful termination on the basis of a whistleblower violation.**

As this Board is aware, until their employment was suddenly terminated, all three Appellants were unclassified civil servants that were employed by the City of Dover. All three Appellants had participated in an investigation initiated by Dover City Council with regard to Mayor Homrighausen. All three Appellants provided written statements by way of affidavits regarding various issues of misconduct. On December 21, 2021, Mayor Homrighausen gave separate written notice to all three Appellants that they were being terminated with various effective dates. All three Appellants then timely initiated these appeal proceedings in accordance with Ohio Revised Code Section 124.341. None of that evidence is disputed by anyone.

R.C. §124.341(D) provides in relevant part as follows:

(D) If an appointing authority takes any disciplinary or retaliatory action against a classified or unclassified employee as a result of the employee's having filed a report or complaint under division (A) of this section, **the employee's sole and exclusive remedy, notwithstanding any other provision of law, is to file an appeal with the state personnel board of review within thirty days after receiving actual notice of the appointing authority's action.**

Accordingly, there is no doubt that the Appellants have no other legal recourse to obtain reinstatement to their prior employment with the City of Dover based upon a claim that the Appellants' appointing authority took disciplinary / retaliatory action against them as a result of them filing a report in accordance with §124.341(A).

- B. The Board provided Mayor Homrighausen with the ability to submit evidence; he chose not to do so and there should be no further delay in these proceedings to enforce the settlement agreement that has been reached between Appellants and the City of Dover regarding Appellants' employment.**

Mayor Homrighausen has had notice of these proceedings. He filed a Motion to Intervene in these proceedings. On February 14, 2022, the Board's Administrative Law Judge issued a Procedural Order that provided Mayor Homrighausen with leave to submit an affidavit and any

supporting documents that he wanted to submit for consideration in this matter. The deadline to do so expired on February 24.

Rather than comply with the Procedural Order, Mayor Homrighausen now seeks to stall all proceedings in this matter until legal counsel is appointed for him. Mayor Homrighausen has no automatic right to have the appointment of legal counsel in these Board proceedings. If Mayor Homrighausen wanted legal counsel, he certainly has the right to hire legal counsel to represent him, just as all three Appellants did. If Mayor Homrighausen does not wish to pay for legal counsel, then he can and should proceed pro se. Ohio Administrative Code §124-11-05(A) specifically provides that any person may represent himself or herself before the Board.

The City of Dover, through its City Council, has made the determination that there should be a settlement of this dispute. City Council has approved a settlement agreement, and although Mayor Homrighausen seeks to delay and stall that agreement, this Board can and should take action to approve that agreement. This is especially true when a prima facie case of illegal discrimination has been made, Mayor Homrighausen was given the opportunity to submit evidence on his behalf to rebut that case, and he has failed to do so.

There is no just reason for further delay. All three of the Appellants should be reinstated to their positions with an order of back pay, bridged benefits, and reinstatement of all their rights as though they had not been terminated.

Respectfully submitted,

**PLAKAS | MANNOS**



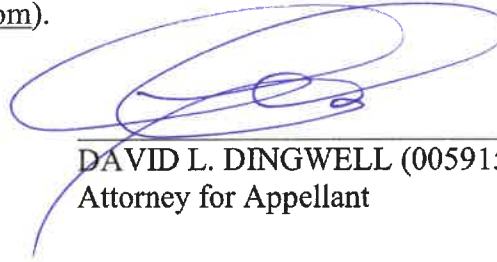
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Tue, 03/01/2022 10:48:55 AM SPBR

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served on this 1<sup>st</sup> day of March, 2022 via electronic mail upon Douglas O'Meara ([doug.omeara@doverohio.com](mailto:doug.omeara@doverohio.com)) and Richard Homrighausen ([Richard.Homrighausen@doverohio.com](mailto:Richard.Homrighausen@doverohio.com)).



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