

**IN THE STATE PERSONNEL BOARD OF REVIEW
COLUMBUS, OHIO**

David Douglas, et al.

Case Number: 2022-REM-01-0005

Case Number: 2022-WHB-01-0006

Appellant

Case Number: 2022-REM-01-0007

v.

Case Number: 2022-WHB-01-0008

City of Dover,

Appellee

Case Number: 2022-REM-01-0009

Case Number: 2022-WHB-01-0010

Appellee, city of Dover, memorandum in opposition to motions to intervene and to stay proceedings.

Appellee joins in the memorandum of Appellants in opposition to the self-styled motions filed by Richard P. Homrighausen, personally or as mayor.

Richard P. Homrighausen was entitled to submit any evidence he has and appear pro se to submit that evidence. The Board, through its Administrative Law Judge (ALJ), afforded that opportunity. Richard P. Homrighausen decided not to submit evidence. It is obvious that Richard P. Homrighausen is attempting to extend the clock against the inevitable finding that he discharged these employees for the prohibited reasons as stated in ORC 124.341.

Appellee further states:

The mayor has never to this day requested the appointment of counsel by the Law Director or the city to represent the mayor of Dover in this matter. He belatedly filed a self-styled taxpayer complaint that is deficient for many reasons. Among those reasons, are the failure to request representation in this matter from the Law Director. Council authorized the hiring of an assistant Law Director last year. If requested that person was available to represent the mayor. It is also deficient because it was filed by Richard P. Homrighausen as the mayor of Dover. He is engaging in the unlawful practice of law. That complaint will be addressed in a timely fashion and will include other basis that the city of Dover believes will manifest over the next couple of weeks.

It is also obvious to all that he has had an attorney prepare the pleadings before this board and submitted those pleadings as his personal work product. If that is the case, he has effectively appeared by counsel, albeit improperly. Whether he is attempting to appear as the mayor of Dover or as an interested party to the discipline is certainly not clear. If he appeared as a person, he did so pro se. If he appeared on behalf of the mayor of Dover, this is the unlawful practice of law. Nonetheless, it is apparent that an attorney participated in the preparation of these documents.

The ALJ order provided reasonable time for the mayor to respond. He simply chose not to respond by February 24, 2022.

It is obvious that all the misconduct that occurred in this instance is by the mayor. If there were any evidence to the contrary, Richard P. Homrighausen or the mayor through his unsigned counsel had ample opportunity to provide that evidence.

He did not provide any evidence because the record shows there is none.

The mayor's notice of termination of said employees on December 21, 2022, stated no reason.

Council met in open session on January 3, 2022, with the mayor present. He was provided the opportunity by council to provide a reason. As mayor, he chose not to give any reason.

Council passed ordinance 1-22 to state council's support for these employees.

The mayor vetoed this ordinance and provided no reason other than his claim they were at will employees that he could fire. It is axiomatic that the mayor cannot fire employees for illegal reasons: including race, religion, national origin, age, disability, sex, or as whistleblowers provided protection under ORC 124.341.

The parties agree that the employees were fired for ORC 124.341 protected reasons. The city of Dover again states that there is absolutely nothing in the record other than the unlawful intent of the mayor to fire these three employees because they provided the most compelling evidence against the mayor to the Law Director, the Ethics Commission (Ethics), and the criminal fraud unit of the Auditor of State (AOS) of the criminal violations enunciated in ORC 124.341, and by the process stated in ORC 124.341.

Council passed resolution 7-22 approving the settlement on February 7, 2022. The mayor waited for 10 days and the vetoed resolution 7-22. When the mayor disapproves an ordinance or resolution, or any part thereof, and returns it with his objections, the legislative authority may, after ten days, reconsider it, and if such ordinance, resolution, or item, upon such reconsideration, is approved by a two-thirds vote of all the members elected, it shall then take effect as if signed by the mayor. ORC 731.27, mayor's veto in cities.

Council waited the statutory ten days and has scheduled a reconsideration on March 7, 2022. It is anticipated that council will override that veto on March 7, 2022.

The city of Dover requests that the ALJ recommend the settlement and that the board approve the settlement. Delay simply causes further injury to both these employees and the city. Front pay and benefits accrue with each passing day. The work performed by these employees is also needed on a day-to-day basis.

Respectfully submitted,
DOUGLAS J. O'MEARA
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Service

A copy of this memorandum was served on David Dingwell at ddingwell@lawlion.com, Richard P. Homrighausen at Richard.homrighausen@doverohio.com, and the Administrative Law Judge Raymond Geis at Raymond.geis@serb.ohio.gov, and spbr@spbr.ohio.gov on the 1st day of March, 2022.

Douglas J. O'Meara
Dover Ohio Law Director