

BEFORE THE STATE PERSONNEL BOARD OF REVIEW

David Douglas et. al.,	:	Case Nos.:	2022-REM-01-0005
	:		2022-WHB-01-0006
Appellants,	:		2022-REM-01-0007
	:		2022-WHB-01-0008
-vs-	:		2022-REM-01-0009
	:		2022-WHB-01-0010
City of Dover,	:		
	:	Raymond M. Geis	
Appellee.	:	<i>Administrative Law Judge</i>	
	:		

RICHARD P. HOMRIGHUASEN’S OMNIBUS REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS PENDING THE APPOINTMENT OF COUNSEL

I. INTRODUCTION

Now comes City of Dover Mayor and Appointing Authority, Richard P. Homrighausen, in support of his Motion to Stay Proceedings and hereby replies to Appellants’ and Appellee’s Responses in Opposition. Mayor Homrighausen filed his Motion to Stay on February 24, 2022. Appellants (the three terminated employees in question) filed their Memorandum in Opposition on March 1, 2022, and Law Director O’Meara filed a Memorandum in Opposition on behalf of Appellee the City of Dover later the same day.

With respect to Appellants’ Memorandum, it misconstrues the purpose of the Mayor’s request for a stay in this matter. Mayor Homrighausen is not asking “to indefinitely drag these proceedings out,” nor is he attempting to “run out the clock” on these proceedings. Rather, Mayor Homrighausen is asking for something simple: a temporary hold on these proceedings until legal counsel (which he has a recognized statutory right to) is appointed to represent him in this quasi-judicial forum.

With respect to Appellee's Memorandum, it was filed by the attorney that *should* be representing Mayor Homrighausen but refuses to do so. (See Exhibits A & B to Mayor Homrighausen's Motion to Stay as well as Law Director O'Meara's ostensible admission in his Memorandum). Appellee's Memorandum is mostly off-topic and contains perplexing "arguments" to support its opposition to Mayor Homrighausen obtaining the legal representation to which he is statutorily entitled to. One such confounding "argument" from Appellee's Response states that the Mayor should have asked Law Director O'Meara to represent him despite O'Meara's actions over the past two years and despite his public statements that he "do[es] not and will not represent the Mayor." See Exhibit B to Mayor Homrighausen's Motion to Stay.

Mayor Homrighausen has filed an action with the Tuscarawas County Court of Common Pleas seeking statutorily-guaranteed legal representation and one of his arguments in that forum is that it would be a futile act to request representation from Law Director O'Meara. This most certainly is the case as Law Director O'Meara has admitted liability on behalf of his client and memorialized this in a settlement agreement which will soon be passed by Dover City Council. Another absurd suggestion provided by Law Director O'Meara is that he would represent the City and would hire an Assistant Law Director to represent the Mayor. Such arguments are nonsensical and will not be addressed in this Reply.¹ The remainder of Appellee's Response rehashes a disputed factual timeline which transpired due to Law Director O'Meara's own deliberate breach of his duty of representation. As such, Mayor Homrighausen's Reply in Support will focus on addressing the Appellants' Response in Opposition.

¹ Suffice it to say, but one attorney in a two-attorney City Law Department cannot admit liability on behalf of the Mayor (the Law Director), while the other attorney advocates on behalf of the Mayor (Assistant Law Director), in director conflict with his supervisor's position. The number of legal and ethical issues this raises is astounding.

II. ARGUMENT

A. Appellants' Response Attempts to Sidestep the Issue Presented in the Mayor's Motion

Rather than addressing Mayor Homrighausen's statutory arguments for why legal counsel should be appointed for him, Appellants' Response simply restates disputed facts in an attempt to distract this Board from the true issue at hand: an unrepresented Mayor is trying to make his voice heard and defend his interests despite the Mayor's legal counsel (Law Director O'Meara) breaching his legal duty to represent the Mayor (and instead actively working against him). That is it. The first part of Appellants' Response regarding whether R.C. § 124.341(D) provides the exclusive remedy for Appellants is irrelevant to the Mayor's Motion and as such will not be addressed herein. The second part of Appellants' Response accuses the Mayor of impropriety, misinterprets the applicable law, and should not be well taken by this Board.

B. Mayor Homrighausen is Entitled to Legal Representation

Appellants open their Response by stating that Appellants and the City of Dover are "the only proper parties to this proceeding." This statement ignores plain law. The unclassified Appellants claim that this Board has jurisdiction over their appeals through Ohio's Whistleblower Statute, R.C. § 124.341(D). As explained by the Mayor in his Motion to Intervene, 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). Neither Law Director O'Meara nor City Council serve as appointing authority for the City of Dover. The City's appointing authority is Mayor Homrighausen, which makes Appellants and Mayor Homrighausen the only proper parties to this proceeding. The Administrative Law Judge assigned to these matters apparently recognizes this by virtue of the issuance of a Procedural Order directed only to the Mayor.

Appellants' Response goes on to state that the Mayor "has no automatic right to have the appointment of legal counsel" (an incorrect legal conclusion) and further states that the Mayor "can and should proceed *pro se*." These statements are nonsensical. Had counsel for the Appellants or Law Director O'Meara (the Mayor's statutorily appointed legal counsel) made Mayor Homrighausen aware of these appeals when they were first filed instead of attempting to enter into an illegal settlement agreement behind closed doors, there would be no need for the Mayor to file his recent Motions. However, that is not what happened.

What happened is this: Law Director O'Meara breached his duty of representation to his client, admitted liability on behalf of his client in what he believed to be a legally binding agreement, and left the client that he is statutorily required to represent to fend for himself. Mayor Homrighausen cannot and will not proceed *pro se* in this quasi-judicial forum when he is statutorily entitled to legal representation. *See* R.C. § 733.51. Appellants' claim that "[t]here is no just reason for further delay" is absurd. Mayor Homrighausen is currently unrepresented and should not be punished for the improper and unethical actions taken against him by his statutorily appointed attorney. Rather, he should be given leave to obtain an attorney that will actually represent his best interests (someone other than the Assistant Law Director) before he is required to submit legal testimony before this Board.

Mayor Homrighausen is not asking for a permanent delay in these proceedings nor is he asking for this Board's procedural order to be ignored. The Mayor has no incentive to prolong the instant proceedings as potential backpay liability continues to accrue, which he may be on the hook for according to the settlement agreement that the Dover City Council will presumably pass in the very near future. Rather, he is asking for a temporary stay in these proceedings so that he can be adequately represented by an attorney before he submits legal testimony to this Board, or a

settlement agreement is entered into admitting liability on his behalf (which was reviewed and approved of, if not drafted, by his statutorily-appointed counsel). Appellants seek “reinstate[ment] to their positions with an order of back pay, bridged benefits, and reinstatement of all their rights as though they had not been terminated.” Accordingly, a short delay in these proceedings to ensure that Mayor Homrighausen receives adequate legal representation will not prejudice Appellants in the slightest, and Appellants have not claimed otherwise.

III. CONCLUSION

For the foregoing reasons, Mayor Homrighausen’s motion 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 should be granted.

Respectfully Submitted,

/s/Richard P. Homrighausen

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*Mayor and Appointing Authority for the
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CERTIFICATE OF SERVICE

I certify that a copy of the above *Reply in Support* was filed with the State Personnel Board of Review and served by electronic mail this 2nd day of March, 2022 upon:

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/s/Richard P. Homrighausen
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