

IN THE SUPREME COURT OF OHIO

RONALD ROYSE,)	CASE NO. 2011-1477
)	
Petitioner-Appellee,)	On Appeal from Montgomery County Court
)	of Appeals, Second Appellate District
vs.)	
)	Court of Appeals Case No. 24172
CITY OF DAYTON,)	
)	
Respondent-Appellant.)	
)	

NOTICE REGARDING JURISDICTIONAL STATUS

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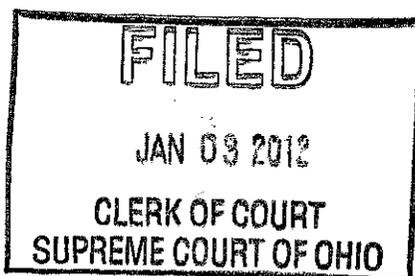
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I. INTRODUCTION

On November 16, 2011, this Court accepted jurisdiction over the instant case, which involves a City of Dayton (“Dayton”) firefighter (Mr. Royse) terminated after a hearing before the Dayton Civil Service Board. The Civil Service Board, at the time of the hearing, was governed by a rule stating that “admission of evidence” is “governed by the rules applied by the Courts of Ohio in civil cases.”

At Mr. Royse’s hearing before the Civil Service Board (pertaining to drug test results), Dayton introduced the tests, performed by a third party, by claiming they were admissible under a hearsay exception as business records. While the Civil Service Board and the trial court agreed that the records were admissible, the Second District Court of Appeals did not.

Dayton sought review before this Court, proposing three propositions of law. Amicus Ohio Municipal League (“OML”) also raised two propositions of law.

Apparently as a consequence of this case, Dayton has since amended the relevant rule to eliminate the reference to being “governed” by anything, and the rule now expressly states that “The Board or Hearing Officer shall not be bound by the Rules of Evidence.”

With respect, this amendment leaves this case as an orphan. Neither Dayton nor the OML cited a similar rule from any other Civil Service Board. In fact, a review of the Civil Service Board Rules of Akron, Cincinnati, Cleveland, Columbus, Findlay, and Toledo do not show that any of these municipalities obligated themselves to be “governed” by the “rules applied by the Courts of Ohio in civil cases.” The State Employee Personnel Board of Review (the Ohio equivalent to a municipal Civil Service Board) does agree to be governed by the Rules of Evidence, but alters those rules to expressly permit hearsay in limited circumstances. The State Industrial Commission and State Department of Job and Family Services expressly reject any application of the Rules of Evidence in its hearings.

As a result of Dayton's modification of Rule 14 of the Civil Service Board, pursuant to Section 2(B)(2)(e), Article IV of the Ohio Constitution and S.Ct. Prac. R. 12.1, Mr. Royse respectfully posits that no constitutional question or issue of great general or public interest remains and the case should be dismissed as improvidently accepted. Any decision issued in this case would only affect the parties to this case.

II. BACKGROUND

A. The Facts of this Case

Mr. Royse was terminated from his position as a Dayton firefighter after failing two drug tests. He plead no contest to the administrative termination proceeding (*Royse v. City of Dayton*, Second Dist. No. 24172, 2011-Ohio-3509, ¶ 3, hereinafter "Decision") and sought a de novo review before the Civil Service Board. *Id.*, ¶ 4.

At the hearing before the Civil Service Board, only two Dayton employees testified. *Id.* The employees testified regarding the drug test results performed by a third party and received by Dayton, *Id.*, ¶ 5, and in fact "no person testified regarding the methodology of the test performed . . . or the results of these tests . . ." *Id.* Before the Civil Service Board, Mr. Royse objected to the admission of the test results as inadmissible hearsay. *Id.*, ¶ 6.

The entire legal issue in this case is premised on Dayton Civil Service Board Rule 14. During the hearing before the Dayton Civil Service Board, that rule stated at Section 5(A): "The admission of evidence shall be governed by the rules applied by the Courts of Ohio in civil cases." A certified copy of the amended Dayton Civil Service Board Rule 14, which includes the previous text in ~~strikeout~~, is attached as "Exhibit A." The Civil Service Board overruled Mr. Royse's objections and affirmed his termination. Decision, ¶ 6.

Mr. Royse sought review before the common pleas court, which affirmed the Dayton Civil Service Board hearing. *Id.* Mr. Royse then sought review before the Second District Court of Appeals. The Second District held that it was “undisputed” that the drug test results were inadmissible hearsay unless they qualified as an exception, but that no exception applied. Decision, ¶¶ 22, 30.

The Second District noted that this outcome was mandated by the fact “the Board itself chose to adopt a rule that requires it to apply the fundamentals of the rules of evidence in its proceedings.” Decision, ¶ 20. The Second District reversed the termination.

B. The Change to Rule 14

Apparently in response to this case, Dayton successfully legislated an amendment to Rule 14. *See* Exhibit A. The first rule change deletes Section 5(A) (“the admission of evidence shall be governed by the rules applied by the Courts of Ohio in civil cases”) and replaces it with the previous Section 5(B).

The second change of relevance amended the former Section 5(D) (discussing the authority of the Board or Hearing Officer in conducting a hearing) to add “the Board or Hearing officer shall not be bound by the Rules of Evidence.” Exhibit A, Section 5(C).

These changes completely vitiate the underpinning of the Second District’s Decision: that the Civil Service Board had agreed to be governed by the Rules of Evidence.

C. Entities Around the State

In their Memoranda in Support of Jurisdiction, both Dayton and the OML decry the Second District’s decision as now requiring the Rules of Evidence in any administrative hearing. A review of the application of these issues around the state shows the fallacy of those statements, and in fact, Dayton’s isolation in the language of its former rule.

Chart of Administrative Agencies and Application of Evidentiary Rules

Entity	Rule	Language Regarding Evidence	Governed by Rules of Evidence
Akron Civil Service Commission	Rule 10(4)(3) ¹	“the Commission need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the matter through oral testimony and records presented at the hearing”	No (express rejection)
Cincinnati Civil Service Commission	Rule 17(5)(b) ²	“the admission of the evidence shall be governed by the decision of the Civil Service Commission or trial hearing board.”	No
Cleveland Civil Service Commission	Rule 9.70 ³	“The Commission shall announce its decision after reviewing all of the testimony, exhibits, briefs and arguments of counsel.”	No
Columbus Civil Service Commission	Rule 14(A)(3)(c) ⁴	“The Commission shall rule on all matters of evidence. In so doing, the Commission shall not be strictly bound by the Rules of Evidence.”	No (express rejection)
Findlay Civil Service Commission	Rule IX(3)(d) ⁵	“The introduction of evidence on the hearing of appeals and the Commission’s decision thereof shall be governed in general by the burden of proof applied by courts in civil cases. Court rules of evidence shall be a useful guide but may be relaxed by the Commission for its hearing.”	No (express relaxation)

¹ A copy of the relevant portion of the Rule is attached as “Exhibit B.” In fact, the Ninth District has held that this rule does not require the formal rules of evidence to apply before the Akron Civil Service Commission. *Steiner v. City of Akron*, Ninth Dist. App. No. 19978, 2000 Ohio App. LEXIS 3080.

² Available online at <http://www.cincinnati-oh.gov/cityhr/pages/-6061-/>.

³ The Rules document is available for download at <http://www.cleveland-oh.gov/CityofCleveland/Home/Government/CityAgencies/CivilServiceCommission/CivilServicePublications>.

⁴ Available online at http://csc.columbus.gov/rule_pdf/RULE_XIV.pdf.

⁵ Available online at <http://www.ci.findlay.oh.us/uploads/File/CivilServiceCommission/FORMS/Civil%20Service%20Rules%20and%20Regulation%202009.pdf>.

Chart of Administrative Agencies and Application of Evidentiary Rules			
Entity	Rule	Language Regarding Evidence	Governed by Rules of Evidence
Toledo Civil Service Commission	Rule 110.03 ⁶	“the commission need not strictly follow the rules of evidence usually applied by the courts in civil cases.”	No (express relaxation)
State Personnel Board of Review	O.A.C. 124-9-02	“The board may permit the introduction of evidence otherwise excludable as hearsay. A foundation, establishing both the reliability of the testimony and its necessity, shall be laid before hearsay may be admitted.”	Yes, “except as modified by these rules” (OAC 124-9-01)
State Industrial Commission	R.C. 4123.10 ⁷	“The industrial commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure.”	No (express rejection)
State Department of Job and Family Services (Unemployment)	R.C. 4141.281(C)(2)	“Hearing officers are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure.”	No (express rejection)

As far as can be reasonably ascertained, Dayton was the **only** civil service employer to expressly codify that the admission of evidence before the Civil Service Board “shall be governed by the rules applied by the Courts of Ohio in civil cases.”

III. DISCUSSION

This Court’s “role as a court of last resort is not to serve as an additional court of appeals on review, but rather to clarify rules of law arising in courts of appeals that are matters of public or great general interest.” *State v. Bartrum* (2008), 121 Ohio St.3d 148, 153 (O’Donnell, J., dissenting). This is the same mandate provided in Section 2(B)(2)(e), Article IV of the Ohio

⁶ A copy of the relevant portion of the Rule is attached as “Exhibit C.”

⁷ See *State ex rel. Domjancic v. Industrial Comm’n* (1994), 69 Ohio St. 3d 693, 695 (where this Court acknowledged that the Rules of Evidence do not apply in hearings before the Industrial Commission).

Constitution (the Supreme Court may direct a court of appeals to certify its record “[i]n cases of public or great general interest”).

If after accepting jurisdiction, the Court concludes that the case no longer presents a question of public or great general interest, this court should dismiss the appeal as having been improvidently accepted. *Williamson v. Rubich* (1960), 171 Ohio St. 253, 259 (dismissing the appeal as having been improvidently accepted “where [the] case presented on the merits is not the same case as presented on motion to certify”).

Similarly, S.Ct. Prac. R. 12.1 contemplates dismissal under the instant circumstances (“When a case has been accepted for determination on the merits pursuant to S.Ct. Prac. R. 3.6, the Supreme Court may later find that there is no substantial constitutional question or question of public or great general interest, or that the same question has been raised and passed upon in a prior appeal. Accordingly, the Supreme Court may sua sponte dismiss the case as having been improvidently accepted, or summarily reverse or affirm on the basis of precedent”).

The Dayton Civil Service Board **previously had** a rule indicating that admission of evidence was “governed” by the Rules applicable in the courts of Ohio in civil cases. This fact was dispositive in the Second District’s Decision. Apparently as a result of the Decision, and to bring its Civil Service Board Rules in line with the rest of the major municipalities and state agencies, Dayton has changed that rule to eliminate the Rules of Evidence from consideration.

Neither Dayton nor the OML cite any other municipality with a similar rule. In fact, as highlighted above, no major municipality incorporates any Rules of Court as “governing.” Several (Akron, Columbus, Findlay, and Toledo) expressly contemplate the Rules of Evidence as **not** governing the proceeding. The protestation by the OML that the Decision “requires state and local governments to apply the Ohio Rules of Evidence in administrative hearings”

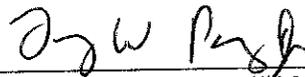
(Memorandum in Support of Jurisdiction, 1) is patently shown to be false given these rules.⁸

There is no longer a question of great general or public interest, as the Decision (and any subsequent ruling by this Court) will now only apply to these parties.

IV. CONCLUSION

This is clearly a case that no longer presents a question of great general or public interest. Dayton was entitled to change its rule to bring it in line with civil service commissions and state agencies, and did so. At this point, continuing this action would cause the Court to serve as a “court of last review” for only these two parties, a function not permitted under the Ohio Constitution or this Court’s Rules of Practice. Mr. Royse respectfully suggests that at this point, the proper course of action is for the Court to dismiss the instant action as improvidently accepted.

Respectfully submitted,



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Counsel for Petitioner-Appellee Ronald Royse

⁸ And all the more false given that the State Employee Personnel Board expressly incorporates the Rules of Evidence, with exceptions, and that the State Industrial Commission and Department of Job and Family Services expressly reject the Rules of Evidence.

CERTIFICATE OF SERVICE

I certify that on December 30, 2011, I served a copy of the foregoing by regular U.S.

mail, postage prepaid, upon:

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EXHIBIT

A

CERTIFICATE OF CLERK OF THE COMMISSION

STATE OF OHIO,
COUNTY OF MONTGOMERY, SS:
CITY OF DAYTON.

The undersigned, Clerk of the Commission of said City, hereby certifies that the foregoing
is a true and correct copy of Emergency Ordinance No. 31123-11

passed as an emergency measure by the Commission of said City December 14, 2011.

In Testimony Whereof, witness my hand and official seal, this Nineteenth
day of December, 2011.


Clerk of the Commission of the City of Dayton, Ohio

By MR. Williams

No 31123-11

AN ORDINANCE

Approving Proposed Amended Civil Service Rule
14: Procedure on Appeal, Repealing Existing Civil
Service Rule 14 and Declaring an Emergency.

WHEREAS, The City of Dayton Charter provides that the Civil Service Board, subject to the approval of the Commission, shall adopt, amend and enforce a code of rules and regulations, providing for appointment and employment in all positions in the classified service; and

WHEREAS, An amendment to Civil Service Rule 14 was proposed by the Civil Service Board on October 27, 2011 and adopted by the Board on November 17, 2011; and

WHEREAS, In order to provide for the usual daily operations of the City of Dayton departments affected by the modification to the Civil Service Rule, and for its timely approval by this Commission, it is necessary that this Ordinance take effect immediately; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

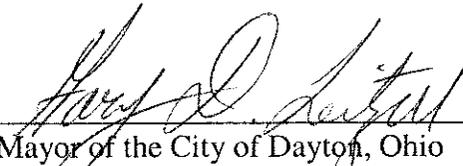
Section 1. That this Commission hereby approves proposed amended Civil Service Rule 14: Procedure on Appeal, which proposed rule is attached hereto and incorporated herein by reference.

Section 2. That existing Civil Service Rule 14 is repealed.

Section 3. For the reasons set forth in the preamble hereof, this Ordinance is declared to be an emergency and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION DECEMBER 14, 2011

SIGNED BY THE MAYOR DECEMBER 14, 2011



Mayor of the City of Dayton, Ohio

ATTEST:

Rashella Lavender
Clerk of the Commission

APPROVED AS TO FORM:

John J. Wamuk
City Attorney

CIVIL SERVICE RULES AND REGULATIONS
City of Dayton, Ohio

TITLE PROCEDURE ON APPEAL **RULE** 14

Section 1. DEFINITIONS.

- A. "Disciplinary Authority" means the officer, commission, board, or body having the power to dismiss, suspend, or reduce in rank any employee in the classified service.
- B. "Disciplinary Action" means the dismissal, reduction, or suspension of any employee in the classified service.
- C. "Appellant" means any employee in the classified service appealing a disciplinary action to the Civil Service Board.

Section 2. NOTICE OF APPEAL.

- A. Any employee in the classified service against whom disciplinary action is taken by the Disciplinary Authority may appeal therefrom to the Civil Service Board no later than ten *calendar* (10) days from the effective date of such disciplinary action.
- B. *An Appeal Request form, (which is written notice of appeal), shall be filed with the Civil Service Board office. Such notice of appeal shall contain the name and current mailing address of the Appellant, the name of the Disciplinary Authority, the disciplinary action appealed, and the effective date of the disciplinary action. The Board will, on application, furnish to the Appellant a copy of the Charges and Specifications, and Findings, filed against him/her.*
- C. When any employee of the City of Dayton in the classified service who has been suspended, reduced in rank, or dismissed from the service, appeals to the Civil Service Board, the Board shall schedule a hearing no later than forty-five (45) calendar days from the date of receipt of the appeal, or at such other time as may be agreed to by the Appellant and the Civil Service Board.

APPROVED BY COMMISSION	DATE ISSUED	SUPERSEDES ISSUE DATED August 13, 1984	PAGE 1 of 4
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CIVIL SERVICE RULES AND REGULATIONS
City of Dayton, Ohio

TITLE PROCEDURE ON APPEAL

RULE 14

D. Such hearing shall be open to the public unless otherwise requested by the Appellant and approved by the Board.

E. The appeal may be heard by the Board or a Hearing Officer appointed by the Board, either by direct employment or by contract. The Hearing Officer shall be an Attorney at Law. Appeals of disciplinary actions resulting in dismissals may be heard by a Hearing Officer only with the express consent of the Appellant.

Section 3. CONTINUANCES. The Board, or its Hearing Officer conducting the hearing, may grant continuances for good cause shown.

Section 4. CHARGES AND SPECIFICATIONS. The Board or its Hearing Officer shall hear the evidence upon the Charges and Specifications as filed with it by the Disciplinary Authority. No material amendment of or addition thereto will be considered. Charges that have been dismissed by the Disciplinary Authority shall not be considered.

Section 5. PROCEDURE AT HEARINGS.

A. *The Disciplinary Authority shall be represented by the City Attorney or other counsel appointed by the City Attorney. The Appellant may represent him/herself or may be represented by any person of his/her own choosing.* ~~The admission of evidence shall be governed by the rules applied by the Courts of Ohio in civil cases.~~

B. ~~The Disciplinary Authority shall be represented by the City Attorney or other counsel appointed by the City Attorney. The Appellant may represent him/herself or may be represented by any person of his/her own choosing.~~

**APPROVED BY
COMMISSION**

DATE ISSUED

SUPERSEDES ISSUE DATED

PAGE

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CIVIL SERVICE RULES AND REGULATIONS
City of Dayton, Ohio

TITLE PROCEDURE ON APPEAL

RULE 14

B.C. The order of proof shall be as follows:

- 1) The Disciplinary Authority shall present its evidence in support of the Charges and Specifications and disciplinary action taken.
- 2) The Appellant may then present such evidence as he/she may wish to offer in his/her defense to the Charges and Specifications and disciplinary-action taken.
- 3) The Disciplinary Authority shall then present rebuttal evidence to issues raised by the Appellant in the presentation of his/her defense.
- 4) The Board or its Hearing Officer may, in its or his/her discretion hear arguments.

C.D. The Board or Hearing Officer conducting a hearing shall have full authority to control the procedure of the hearing, *including the authority* to admit or exclude testimony or other evidence *and*; to rule upon all objections. *In so doing, the Board or Hearing Officer shall not be bound by the Rules of Evidence. The Board or Hearing Officer conducting the hearing shall have the authority to take any*, ~~and take such other~~ actions *that it deems* ~~as are~~ necessary and proper for the conduct of such hearing. In cases heard by the Board, the Board shall designate one of its members as the presiding member.

D.E. All testimony shall be taken under oath or affirmation, and shall be recorded by a certified stenographic reporter. All testimony shall be subject to cross-examination by the party against whom it is offered.

E.F. Where an appeal is heard by a Hearing officer, said Officer shall, upon due consideration of the evidence adduced at the hearing, oral argument, and/or briefs of the parties, submit to the Board within thirty (30) days of the completion of the hearing or the submission of written arguments or briefs whichever occurs later, a written report setting forth his/her findings of fact and conclusions of law, and a recommendation of action to be taken by the Board.

**APPROVED BY
COMMISSION**

DATE ISSUED

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CIVIL SERVICE RULES AND REGULATIONS
City of Dayton, Ohio

TITLE PROCEDURE ON APPEAL

RULE 14

Section 6. DECISION OF THE BOARD.

- A. A majority of the Board, after due consideration of the record and, when applicable, the report of the Hearing Officer, shall, within thirty (30) days after the hearing or filing of the Hearing Officer's report, whichever is later, issue a decision on the appeal in writing, which decision may be to affirm, disaffirm, or modify the disciplinary action of the Disciplinary Authority. In such decision, the Board shall state its findings of fact found separately from its conclusions of law.

- B. The ~~d~~Decision of the Board shall be filed with the Secretary and Chief Examiner, who shall forthwith serve copies thereof upon the Appellant and his/her representative and the Disciplinary Authority. The decision of the Board shall be a final order, and may be appealed by either the Appellant or by the Disciplinary Authority, as provided by general law.

**APPROVED BY
COMMISSION**

DATE ISSUED

SUPERSEDES ISSUE DATED

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THE
CIVIL SERVICE
COMMISSION

CIVIL SERVICE RULES



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JUNE, 2011

EXHIBIT

B

RULE 10. DISMISSAL, SUSPENSION, DEMOTION, SEPARATION, RESIGNATION

SECTION 1. DISCIPLINARY ACTION. Any officer or employee in the classified service who has completed the probationary period may be dismissed, suspended or demoted for just and reasonable cause and upon specific written charges by the appointing authority.

SECTION 2. CAUSES FOR DISCIPLINARY ACTION. Causes for dismissal, suspension, or demotion shall include, but are not limited to:

- (a) Excessive absenteeism or tardiness.
- (b) Incompetency or inefficiency.
- (c) Misconduct toward other City employees, or officials, or the public.
- (d) Insubordination or other failure to obey any lawful and reasonable rule, regulation, or direction.
- (e) Solicitation or acceptance of any valuable given in hope or expectation of favored treatment.
- (f) Conviction of a criminal offense involving moral turpitude.
- (g) Willful or negligent conduct which causes waste or damage to public property.
- (h) Conduct unbecoming an officer or employee of the City.
- (i) Absence without leave.
- (j) Refusal to terminate outside employment which is incompatible with or detrimental to job performance, or is a discredit to the City of Akron.
- (k) Strong evidence of violation of a felony statute where retention of such employee is not in the public interest.

SECTION 3. DEMOTION FOR CAUSES OTHER THAN DISCIPLINARY ACTION. The reduction of an employee from a position in a class to a position in another class for which the maximum rate of pay is lower, shall be called a "Demotion."

- (1) **PHYSICAL OR MENTAL INCAPACITATION.** When an employee becomes physically or mentally incapacitated in the performance of the duties of a position, the appointing authority on its own initiative or at the request of such employee may, with the consent of the Personnel Director, reduce the employee to a vacant position in a lower grade which the employee has the ability to fill.
- (2) **FAILURE TO MEET THE MINIMUM QUALIFICATIONS.** When an employee fails to continue to meet the minimum qualifications of the class, the appointing authority on its own initiative or at the request of such employee may, with the consent of the Personnel Director, reduce the employee to a vacant position in a lower grade which the employee has the ability to fill.
- (3) **OTHER VOLUNTARY CAUSES.** Such a reduction may be made for any reason upon the written request of the employee and the approval of the appointing authority and with the consent of the Personnel Director.

SECTION 4. DISMISSAL, SUSPENSION, AND DEMOTION PROCEDURE.

- (1) **NOTICE.** The discharge, suspension, or demotion of a permanent employee shall not become effective until such employee has been served with a written notice of charges, and a copy of the notice has been filed with the Commission.

The notice shall contain grounds for the action and such specifications of facts as will enable the employee to make explanation.

- (2) **APPEAL TO THE COMMISSION.** A discharged, suspended, or demoted employee may appeal in writing to the Commission within ten (10) days of the service of charges. The Commission shall hear such an appeal within thirty (30) days commencing from the date of receipt of the employee's written timely appeal. Where the employee is to be represented by counsel, the Personnel Director may request that stipulations, depositions, and like documents be prepared prior to the hearing.

Written notice of the time and place of the hearing shall be sent by first class mail to the charged employee.

- (3) **HEARING.** The hearing shall be open to the public. The Commission shall hear the evidence upon the charges and specifications as filed with it by the appointing authority. No material amendments of or addition to the charges or specifications will be considered by the Commission. The proceedings shall be as informal as is compatible with the requirements of justice, and the Commission need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the matter through oral testimony and records presented at the hearing, which is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit and provisions of the Charter. The testimony taken at the hearing shall be under oath. The Commission shall have the power to subpoena and require that attendance of witnesses and the production of pertinent records, and to administer oaths and, if necessary, to continue the hearing from time to time. It may also order stipulations, depositions, and like documents to be prepared by the parties. If the employee or the appointing authority or both shall fail to appear at the time set for the hearing, the Commission may hear the evidence and render judgment.

- (4) **DETERMINATION.** The Commission may affirm, disaffirm, or modify the action of the appointing authority. It shall report its findings and decision to the appointing authority. Final disposition of the matter shall be made by the appointing authority as so determined by the Commission.

- (5) **FURTHER APPEAL.** Either the employee or the appointing authority may appeal the Commission's action to the Court of Common Pleas within the time period allowed, pursuant to Ohio Revised Code Chapter 2506.

The Personnel Director shall have an appeal directly to the Court of Common Pleas.

SECTION 5. DISABILITY SEPARATION. An appointing authority may separate from employment an employee who has a permanent or chronic physical or mental illness or defect which seriously interferes with the proper performance of duties.

SECTION 6. RESIGNATION.

- (1) To resign in good standing an employee must submit a written resignation to the appointing authority at least two (2) weeks prior to the date the employee intends to leave. This two (2) week notice requirement may be waived by the appointing authority.
- (2) If an appointing authority accepts the resignation of an individual who has been served with a dismissal notice, and such notice has been filed with the Commission, the acceptance of the resignation constitutes resignation in bad standing. Such individual shall not be eligible for vacation pay or terminal leave pay. The charges shall be deemed withdrawn and the proceedings shall be dismissed without judgment. The resignation shall be effective immediately and may not be withdrawn.
- (3) Absence without leave for five (5) consecutive work days shall constitute resignation in bad standing.

Upon submission of sufficient evidence that the employee was physically or mentally unable to notify the appointing authority in person or through another person of the reason for such absence, the appointing authority may request the individual's reinstatement. This reinstatement is subject to the approval of the Personnel Director. Such evidence must be submitted to the appointing authority within five (5) days of the effective date of the resignation in bad standing.

This rule does not preclude dismissal action for a shorter period of absence if the absence is of sufficient seriousness.

SECTION 7. ATTAINMENT OF AN ILLEGAL OR FRAUDULENT APPOINTMENT. An appointment found, upon investigation by the Commission, to have been obtained through fraud or material misrepresentation is void ab initio (from the beginning) and a position obtained in this manner shall be deemed to be vacant. Such illegal or fraudulent appointment confers no rights or benefits of that position upon the appointee.

SECTION 8. LIABILITIES OF DISMISSED EMPLOYEES AND THOSE WHO HAVE RESIGNED IN BAD STANDING. Any permanent employee who has been dismissed or who resigns in bad standing shall be removed from all eligibility lists. The employee shall also be disqualified for a two (2) year period from taking any Civil Service examinations and from reemployment unless, in the judgment of the Personnel Director, the cause of the dismissal or the circumstances of the resignation in bad standing will not adversely affect the individual's ability to perform some other type of employment.

SECTION 9. HEARING OFFICER.

- (a) The Civil Service Commission shall appoint a hearing officer and two alternate hearing officers. The individuals appointed shall be persons of recognized attainment in the field of labor relations or arbitration, and shall be thoroughly in sympathy with the application of merit principles to the administration of personnel. No person may be appointed or serve as hearing officer while holding another position in the City service. These hearing officers will serve under the direction and at the pleasure of the Commission. The Commission retains the power to hear any matter without using the hearing officer if, in their discretion, the circumstances of the matter so warrant.

- (b) When it is necessary to hold a hearing on an appeal, the Personnel Director shall notify the primary hearing officer. If the primary hearing officer is not available, the Personnel Director shall notify one of the alternates. As soon as practical, the hearing officer shall schedule dates and proceed with the hearing. The time and place of the hearing shall be announced publicly in the same manner in which Civil Service Commission meetings are announced and shall be held in a public building.
- (c) The hearing officer shall have the same powers and authority in conducting hearings as granted to the Civil Service Commission. The hearing officer shall be responsible for the fair and orderly conduct of the hearing and the preservation of the record. All testimony shall be taken under oath and shall be recorded under the supervision and control of the hearing officer and shall become the property of the Civil Service Commission.
- (d) The hearing officer shall submit to the Commission a written report setting forth the findings of fact and a recommendation of the action to be taken by the Commission. The hearing officer shall also immediately send a copy of this report to the party or the representative of the party by certified mail or personal service. Each party may, within five (5) calendar days of receipt of the copy of the report, file with the Commission and the other party any objections to the report and recommendation. If a party files an objection, the other party may, within five (5) calendar days, file an answer with the Commission and the adverse party. These objections shall be considered by the Commission before approving, modifying, or disapproving the recommendation.
- (e) The Commission may order additional testimony or require further documentary evidence of either party. However, the Commission shall consider only newly discovered evidence which is material and which the party making the request could not, with reasonable diligence, have discovered and produced before the hearing by the hearing officer.
- (f) The order of the Commission based on the report, objection of the party, and additional testimony and documentary evidence, shall have the same effect as if such hearing had been conducted by the Commission. The recommendation of the hearing officer shall not be final until approved by the Commission as indicated by its record of proceeding; and if the Commission modifies or disapproves the recommendation of the hearing officer, it shall include in the record of its proceedings the reason for such modifications or disapproval.

City of Toledo

Toledo Civil Service Commission

RESOLUTION OF AMENDMENT OF RULES

The rules of the Civil Service Commission which are attached hereto and made part of this resolution are hereby adopted to become effective January 17, 1987 and the Administrator-Civil Service is hereby directed to cause the said rules to be published in their entirety in the Toledo City Journal.

William M. Connelly
President

Fran Darcy
Member

Jan K. M. Scotland
Member

Attest: **Kenneth J. Robie**
 Administrator
 Civil Service Commission

Spread upon the minutes of: December 16, 1986

Effective: January 17, 1987

EXHIBIT

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Except that any original appointee who does not perform his duties to the satisfaction of the Appointing Authority, or who is guilty of any act or omission, which would be grounds for dismissal of a regular classified employee may be dismissed during his probationary period without right of appeal. The Appointing Authority may notify the Commission in writing of the dismissal and the reasons therefor. The name of the dismissed person shall be removed from the eligible list and he shall not be permitted to take an examination for the same position for a period of two (2) years. Provided, however, if the Commission finds sufficient justification, the name of the dismissed person shall be restored to the eligible list.

SECTION 80.09 Resignation

Any employee whose removal is sought may resign at any time and the records of the Commission shall show that the employee resigned while charges were pending against him.

An employee wishing to leave the City service in good standing shall file a written resignation with his department and/or division head at least two (2) weeks in advance. Failure to comply with this requirement may result in denial of future employment with the City of Toledo.

SECTION 80.10 Political Activities

No person in the administrative service shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting, or receiving any assessment, subscription or contribution for any political party or political purpose whatsoever. No person shall orally, or by letter, solicit, or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party from any person holding a position in the classified service. Any violation of this section shall operate to forfeit the office or position held by the person violating the same and shall render any such person ineligible to hold any municipal office or position for a period of one (1) year.

RULE 90.00 - RE-EMPLOYMENT LISTS

SECTION 90.00 Establishment of Re-Employment Lists

Employees separated through no action of their own for such reasons as lack of work, lack of funds, class abolishments or other similar causes shall be placed on a re-employment list for classes of positions for which they are deemed eligible in the reverse order of their layoff.

Permanent employees separated who are qualified and eligible shall be reappointed before certifications are made from regular eligible lists.

A person shall remain on the re-employment list for a period of three (3) years.

RULE 100.00 - PAYROLLS

SECTION 100.01 Payroll Certification

The Commission shall verify the payroll on an annual basis and certify that the persons named therein have been appointed or employed in accordance with the provisions of these rules and the Toledo City Charter.

RULE 110.00 - INVESTIGATION AND HEARINGS

SECTION 110.01 Authority to Investigate

The Commission may make investigations concerning any matter pertaining to the enforcement of the Rules affecting the merit system, the City Charter or City ordinances relating thereto. Should a violation be uncovered, the Appointing Authority and the Mayor shall be notified and/or other appropriate action taken.

SECTION 110.02 Administering Oaths; Subpoena Powers

Any Commission member or the executive head of the Commission Staff shall have power to administer oaths and affirmations to witnesses and to take testimony concerning any matter which the Commission has authority to investigate.

The Commission shall have the power to subpoena and require the attendance of witnesses and the production of documents pertinent to the investigation.

SECTION 110.03 Conduct of Hearings

Hearings before the Commission shall be conducted in an orderly manner. The object of the hearing shall be to ascertain the truth concerning the matters to which such hearing relates and the Commission need not strictly follow the rules of evidence usually applied by the courts in civil cases. Where the subject matter of the hearing is an appeal from a demotion, suspension, or removal, the following procedure shall be followed:

a. Hearings may be public except when the nature of the charge may be offensive to public morality and decency, in which case the Commission may order the hearing closed to the general public.

b. Each party may call witnesses to testify in his behalf. The Commission, on its own initiative, may call witnesses other than those called by either party if, in its judgment, the merits of the case so require. Subpoenas shall be issued for witnesses when requested by either party or by the Commission. In no instance shall more than five (5) witnesses be called by each party without consent of the Commission.

c. Hearings shall commence with a reading of the written statement of charges certified to the Commission. If the appellant has replied in writing to the charges, such reply shall next be read. If the appellant has not made a reply to the charges, he or his counsel may next make an oral statement of his objections to the charges. The removing officer shall begin the introduction of evidence and shall have the final rebuttal. Closing arguments will be permitted only with the permission of the Commission.

d. After notice of appeal is filed with the Commission, no material amendment may be made to the statement of the charges made at the time of demotion, suspension or dismissal. If the appellant files with the removing officer a written reply to the charges, such reply may not be materially amended. In all cases, the issues involved shall be confined to the truth or falsity of the allegations in the statement of charges.

e. In appeals from the order of the Director of Public Safety or Appointing Authority demoting, suspending or removing any classified employee, the complete transcript of testimony taken at the hearing before the Director of Public Safety or Appointing Authority, and filed with the Commission, may be heard as transcript of the testimony, in lieu of an oral hearing.

f. Upon the completion of all evidence introduced, the Commission may render its decision immediately, or may take the matter under advisement and render its decision within a reasonable time thereafter.

g. A copy of the decision shall be transmitted to the Appointing Authority and the appellant.

h. If the appellant shall fail to appear at the time fixed for the hearing, the Commission may hear the evidence and render judgment thereon. If the Appointing Authority or his authorized representative fails to appear at the time fixed for the hearing, and if no evidence be offered in support of his charges, the Commission may render judgment as by default or may hear evidence offered by the appellant and render judgment thereon.