

City of Albuquerque

P.O. Box 1293 Albuquerque, New Mexico 87103

Proposed Rules and Regulations for The Personnel Board of the City of Albuquerque

ARTICLE 1 - MEETINGS

1. Regular Meetings.

- A. Regular meetings of the Personnel Board take place at 2:30 p.m. on the second Wednesday of each month. Meetings are normally held at the Office of Administrative Hearings, 7th floor, 600 2nd NW Albuquerque NM 87102. Meetings can be held virtually in special circumstances.
- B. In January or as early as possible each calendar year, the Personnel Board Chair shall introduce a resolution in compliance with the Open Meetings Act, Section 10-15-1 et seq., NMSA 1978, specifying the date and time for the regular meetings. If these meetings need to be changed, such action should be taken as soon as it becomes clear that a change is appropriate.
- C. Regularly scheduled public meetings will be conducted with a prepared agenda that will be available at least 24 72 hours prior to the meeting from the City Hearing Monitor. Agendas will be posted on the City Council Notice Board in the lobby of the first floor, City Hall. Written notice will also be mailed by the City Hearing Monitor to those broadcast stations licensed by the FCC and newspapers of general circulation that have requested such notice of public meetings
- D. Each Board meeting agenda will include an item entitled "public comment".

2 Special Meetings.

- A. Special meetings may be called by the Chair or by a majority of members upon three days notice. Notice shall include an agenda or information on how members of the public may obtain copies of the agenda. The agenda shall be publicly available at least twenty-four hours in advance.

3. Closed Sessions

- A. The Personnel Board may have closed sessions or close an open meeting only if the subject matter of such discussion/action is exempted from the open meeting requirement under section 10- 15-1 (H) of the Open meetings Act.

- B. Such closed sessions shall be approved by a majority vote of a quorum of the Board taken during the open meeting. Authority for closing the meeting and subjects to be discussed shall be stated with sufficient clarity and a motion to close and the vote of each member shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in closed session.
- C. The minutes of an open meeting that was closed or the minutes of the next open meeting shall state whether matters discussed in closed session were limited only to those specified in the motion for closure.
- D. Except as provided in section 10-15-1 (H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by a vote of the Board in open session.

4. Emergency Meetings.

- A. Emergency meetings will be called only under unforeseen circumstances that demand immediate action.
- B. These meetings will include an agenda or information on how the public may obtain a copy of the agenda.
- C. These meetings will comply with the New Mexico Open Meetings Act.

5. Quorum.

A majority of Personnel Board members shall constitute a quorum thereof.

6. Records.

Unless otherwise provided, the City Hearing Monitor shall serve as the clerk for the Board. The clerk shall keep the minutes of all Board proceedings; prepare and distribute the agenda; and keep all other records as may be necessary.

7. Records Retention

- A. Minutes of Board meetings shall be retained permanently.
- B. Records of adversarial proceedings before the Personnel Board involving dismissals, demotions, and other adverse employment actions, shall be retained for 10 years.
- C. Retention periods shall be extended until six months after all current or pending litigation, claims, audit exceptions, or court orders involving a record have been resolved or concluded.

8. Attendance.

A. Board members are expected to regularly attend meetings. When an absence is necessary, members will endeavor to provide the ~~Chairman~~ Chair and City Hearing Monitor 24 hours' notice of absence.

B. A member of the Board may participate in a meeting by means of a conference telephone, computer, or other similar communications equipment when it is otherwise difficult or impossible to attend a meeting in person, provided that each member participating by phone can be identified when speaking; all participants can hear each other at the same time; and members of the public are able to hear any member speak.

9. Disturbing Meetings.

- A. It shall be unlawful to disturb any Personnel Board meeting or to behave in a disorderly manner at any such meeting.
- B. Any person who disturbs meetings may be asked to leave at the request of the ~~Board member~~ **Chair** for the remainder of that meeting.

ARTICLE 2 - ORGANIZATION OF THE BOARD

1. Appointment of Members of the Personnel Board

- A. Regular members - Two members shall be appointed by the Mayor; they shall have significant management or personnel experience. Two members shall be selected by the employees by election and then appointed by the Mayor. All Board members shall be persons who have resided in the city for a period of at least one year and shall not be elected public officials. All selections shall be subject to the advice and consent of the City Council.
- B. The ~~Chairman~~ **Chair** shall be selected and elected by a majority of the regular members of the Board and shall be subject to the advice and consent of the City Council
- C. Board members shall serve two-year terms that expire ~~September 1~~ **two years from the advice and consent of the City Council.**
- D. Board members shall not serve more than two full consecutive terms.

2. Election of Chair and Vice Chair.

- A. The Board shall elect a Chair and another member to act as Vice-Chair.
- B. The Chair **and Vice-Chair** may not serve more than two full consecutive terms.
- C. The ~~Vice-Chair~~ **Chair and Vice-Chair** shall serve for a term of one year.
- D. The ~~vice-chair~~ **Chair and Vice-Chair** can be removed by a majority vote of the full Board.

3. Powers and Duties of the Chair and Vice-Chair.

- A. The Chair shall call the Board meeting to order, and upon a quorum being present, shall proceed to business.
- B. Having the following powers and responsibilities, the Chair:
 - 1. Shall preserve order and decorum and maintain the general direction of any and all Board meetings.
 - 2. Shall assign agenda items and have the responsibility for ensuring the preparation of the agenda and for proper dissemination of the agenda with the public notice for the meeting.
 - 3. Shall decide all questions of order.
 - 4. May speak, as other Board members, on general matters.
 - 5. Shall call for Executive Sessions in which the Board deliberates the recommendations of the hearing officer(s) and takes a "straw vote" which is formalized in open session.
 - 6. May make a motion in the same manner as other Board members.
 - 7. Shall vote upon all questions in the same manner as other Board members.
 - 8. Shall announce the result promptly on the completion of every vote.

9. Shall call for session closure following a duly executed motion, second and vote of the Board members.
 10. Shall sign all letters in conjunction with the business of the Personnel Board.
- C. In the absence of the Chair, upon the Chair's inability to act, or upon request of the Chair, the Vice-Chair shall preside and shall have all the powers and authority of the Chair.
- D. In the absence of the Chair and Vice Chair, the most Senior Member of the Board shall preside and shall have all the powers and authority of the Chair.

ARTICLE 3 - PROCEDURES

1. General Rules.

Any matter not covered by these rules shall be governed by Roberts' Rules of Order (latest edition), or by a decision of the Chair, subject to discussion with the Board.

2. Order of Business.

- A. The Board shall consider business in the following order:
1. Review and approval of meeting agenda
 2. Review and approval of minutes of last meeting
 3. ~~Presentation of cases~~ **Public comment**
 4. ~~Executive session~~ **Presentation of cases**
 5. ~~Public comment~~ **Executive session**
 6. Other matters
 7. Adjournment
- B. The Chair may, upon the vote of a majority of a quorum of the Board, proceed out of order to any order of business or return to any prior order of business.
- C. A Board member shall withdraw from any matter in which he or she has a direct or indirect conflict of interest or when the Board member does not believe he or she can provide a fair and impartial hearing.
1. Board members should err on the side of caution and withdraw from any proceeding in which there is an appearance of a conflict of interest.

3. Motions

No motions shall be entertained or debated until announced by the Chair, and every motion shall be seconded. The Chair may make motions or second motions.

4. Presentation of Cases by the City, Grievants and/or their Representatives

The Chair shall recognize appropriate representatives from the ~~City and grievants and/or their representatives~~ **City, hearing officers, grievants** and/or their representatives in order that they may present their case.

B. Such representatives shall have five minutes to address the Board unless otherwise specified by the Chair following a motion to alter such time limits that has been made, seconded and approved by a vote of a quorum of the Board.

Questions from the Board extend the time for the presentation of a party's case.

C. The Federal Department of Transportation's (DOT) Office of Drug and Alcohol

Policy and Compliance, 49 C.F. R. § 40.323(b), provides that information regarding drug and alcohol test results pertaining to safety sensitive employees, as designated by DOT Regulations, cannot be disclosed in an open meeting without first obtaining permission from a grievant to disclose the results.

(1) In the event that such permission is not granted by a grievant, the drug or alcohol test results of a grievant shall be released only to the parties in the proceeding and to the hearing officer. The hearing officer shall review the test results *in-camera*.

(2) Audio recordings and minutes taken during testimony pertaining to a grievant's drug or alcohol test shall be taken separately from the public record and subsequently sealed. Such recordings shall not be considered public record in accordance with the Inspection of Public Records Act, 1979 NMSA § 14-2-1(b)(12). The evidence containing test results shall be separated from the public record and shall be sealed. The test results shall remain sealed unless a court of proper jurisdiction orders otherwise.

5. Discussion.

- A. Any Board member wishing to speak, make a motion, submit a report, or conduct other business shall address the Chair and shall not proceed further until recognized by the Chair.
- B. If two or more Board members seek recognition at the same time, the Chair shall name the one who shall speak first.
- C. Any Board member may ask questions of grievants, their representatives, or hearing officers.

6. Voting by Members of the Board

- A. The chair shall call for a vote on each motion that has been made and seconded by the Board.
- B. A majority vote of a quorum of the Board will carry any and all motions. In the event of tie votes, the Appeal fails.
- C. Voting shall be in the form of “Yea” or “Nay”. Every Board member who is within the room shall vote upon each question, except those who have disqualified themselves due to a conflict of interest or the appearance thereof.

7. Deliberating and Recording Case Decisions

- A. Following the presentation of cases and discussion in open session, the Board shall deliberate in Executive Session following a motion to go into Executive Session, which is duly seconded and voted upon by a majority of a quorum of the Board.
- B. Only Board members and the City Attorney advising the Board attend deliberations conducted in Executive session.
- C. During Executive Session, a “straw poll” is taken by the Chair regarding proposed decisions in each case.
- D. In open session, a motion stating the decision of the Board will be made separately for each case and when duly seconded and passed by a vote of a majority of a quorum of the Board, such decision is formally entered into the record as final.

8. Decisions of the Board.

A. The employee or the city may appeal the final decision of the Personnel Board to the District Court within 30 days after the date of the decision voted on by a quorum of the Board, by following the Rules of Civil Procedure for the District Courts.

B. The Board may consider only the following in rendering a decision regarding a hearing officer's recommendation

1. The hearing record
2. The hearing officer's findings, proposed conclusions and recommendations
3. Note: the Board shall *not* consider matters not in the record before the hearing officer
4. If the Board determines that the credibility of a witness is at issue, the Board may review at least as much of the record as is necessary to support its decision.
5. A request to submit a brief by any party shall be presented to the Chair no less than five (5) working days prior to the scheduled hearing.

C. Final decisions of the Board are voted on in open session and recorded in the minutes by the hearing monitor. The Board may vote to:

- (1) Accept the recommendation of the hearing officer by accepting the hearing officer's Proposed Findings of Fact and entering conclusions of law consistent with the findings;
- (2) Reverse or modify the recommendation of the hearing officer by making its own Findings of Fact consistent with the evidence and entering conclusions of law consistent with the findings; or
- (3) Remand the matter to a hearing officer for further hearing.

9. Attendance:

A. Board members ~~shall~~ **are expected to** attend all scheduled Board meetings.

B. Board members shall advise the Office of Administrative Hearings with reasonable advance notice of the need to arrive late to or depart early from a scheduled Board meeting.

C. Board members must obtain pre-approval from the Board Chair or designee for any excused absence. Any Board member who has three unexcused absences from Board meetings may be removed from the Board.

D. Board members shall be removed pursuant to the Charter of the City of Albuquerque.

10. Report of Decisions:

When the Board renders a final decision in an appeal, the Board's decision including the hearing officer's recommended decision will be available to the public pursuant to the Inspection of Public Records Act, NMSA 1978, Section 14-2-1. The Orders and recommended decisions shall be available to the public when provided to the parties. All privileged and confidential information pursuant to state and federal law shall be redacted prior to release from any document requested pursuant to the Inspection of Public Records Act.

11. Maintenance of Records:

Copies of the Board's final Order and the hearing officer's recommended decision shall be stored in any available format, at the City's office of Administrative Hearings for 10 years after an adverse action case has been finalized. "Finalized" anticipates the completion of any appellate proceeding before the Courts.

**ARTICLE 4-POWERS, DUTIES AND
GENERAL ADMINISTRATION OF THE BOARD**

1. Power and Duties:

A. The Personnel Board shall serve in an advisory capacity in the administration of the city's Personnel Program and shall have the following powers:

1. To advise and assist the Chief Administrative Officer or ~~his or her~~ **their** designated representative and the Director of Human Resources in adopting such Personnel Rules and Regulations as are considered necessary, appropriate or desirable to carry out the provisions of this article;

2. To advise and assist the Chief Administrative Officer or ~~his or her~~ **their** designated representative and the Director of Human Resources in the improvement of personnel standards in the classified service;

3. To advise the Chief Administrative Officer or ~~his or her~~ **their** representative and the Director of Human Resources upon problems concerning personnel administration and recommend corrective action; and

4. To inquire, after consultation with the Chief Administrative Officer, into any matter which it may consider desirable concerning the administration of affairs of personnel.

B. The Personnel Board shall render a decision upon the appeal of classified employees of the city who have been suspended ~~without pay~~ for **more than five days**, demoted for disciplinary reasons or discharged, as provided in § 3-1-25.

C. Meetings of the Personnel Board, including hearings, shall comply with the New Mexico Open Meetings Act, §§ 10-15-1 et seq. NMSA 1978.

D. The Personnel Board shall establish rules and regulations governing the conduct of its meetings and its grievance hearings.

2. Complaints about Board members.

A. The Chair will meet at his/her discretion with any member to attempt to address concerns voiced by other members, the public, City representatives or grievants/their representatives regarding behavior during meetings, lack of attendance or participation and related matters. Matters involving the Chair will be addressed by the Mayor or the Mayor's representative.

B. The Board will not formally address complaints against a Board member or the Chair. All Complaints of this nature will be forwarded, **in writing**, to the Mayor's office.

C. If an objection relates to a possible conflict of interest, Board members will consider the objection and decide whether an appearance of a conflict of interest exists and act accordingly.

3. Indemnification of Board members.

A. The city shall provide a defense, including costs and attorneys' fees, for a member when liability is sought for any tort alleged to have been committed by the member while acting within the scope of the member's duties, responsibilities and service on the Personnel Board.

B. The City shall provide Personnel Board members with legal representation including, if appropriate, outside counsel. The City will hold members of the Board harmless for any liability or claim, which is or may be asserted while the members act on behalf of and in service to the city in their capacity of Personnel Board members.

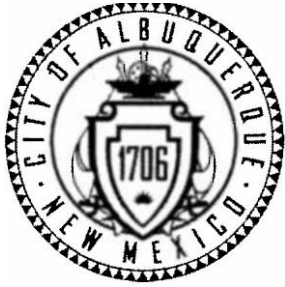
ARTICLE 5 - AMENDMENT OR SUSPENSION OF THESE PROCEDURES

1. Amendment of these Operating Procedures. These Procedures, or any part thereof, may be amended, repealed, altered or rescinded by a vote of a majority of the Board.

2. Suspension of these Operating Procedures. Except for charter, statutory, or ordinance provisions, these procedures, or any part thereof: may be temporarily suspended by a majority vote of the Board. When the suspension of a procedure is requested and no objection is offered, the Chair shall announce the procedure is suspended and the Board may proceed accordingly.

ARTICLE 6- INCORPORATION BY REFERENCE

1. Rules of Procedure ~~F~~or Appeals of Disciplinary Actions. The Personnel Board's Rules of Procedure for Appeals of Disciplinary Actions as amended are hereby incorporated into these Rules and Regulations adopted on November 13, 2013.



City of Albuquerque

P.O. Box 1293 Albuquerque, New Mexico 87103

CITY OF ALBUQUERQUE PERSONNEL BOARD RULES OF PROCEDURE FOR APPEALS OF DISCIPLINARY ACTIONS

1. Purpose

A. The purpose of these rules is to provide uniform procedures for the conduct of grievance hearings by Personnel hearing Officers and the recommendation of hearing officers to the Personnel Board.

B. These rules are made pursuant to specific authority granted to the Personnel Board by the Merit System Ordinance and the Personnel Rules and Regulations and shall not be interpreted to amend or supersede that authority. In the event of any conflict or inconsistency, the language of those provisions shall control.

C. These rules shall apply only to the conduct of grievance hearings wherein the management action questioned by the classified employee resulted in the dismissal, demotion, or suspension of the classified employee for more than five (5) working days.

D. A current version of these rules shall be maintained at the offices of the Clerk of the City of Albuquerque.

2. Request for Hearing and Notice of Setting

A. An employee aggrieved by ~~his or her~~ **their** dismissal, demotion or suspension of more than five (5) working days, ~~shall file a written request for a hearing with the City Clerk~~ **shall file and submit their appeal in writing to the Chief Administrative Officer** within ten (10)

Adopted by Personnel Board 9/8/93

Revised 1/ 10/95

Revised 5/23/95

Revised 7 / 14 / 10

Revised 11/ 13/ 13

City business days. The written request for hearing shall be sent via Certified Mail- Return Receipt Requested, faxed, emailed, or hand-delivered and date stamped within ten (10)

City business days of the issuance of the disciplinary decision. Such request for hearing shall identify the action taken and the reasons why the action should not have been taken.

B. The party requesting the hearing shall provide the ~~City Clerk~~ Chief Administrative Officer with a mailing address and, if available, an e-mail address. A request for hearing is not valid until received by the City Clerk. Upon receipt of the request for hearing and within ten (10) City business days of receipt, the City Clerk shall designate a hearing officer and schedule the time and place for the hearing. The City Clerk shall mail or hand deliver the notice of hearing to the parties and also shall e-mail a copy of the notice to each party that has provided an e-mail address or whose e-mail address is posted on the City of Albuquerque website. The mailing of the notice to the address provided by the party requesting the hearing constitutes receipt of the notice on the third day after the mailing date. Hand delivery of the notice constitutes receipt of the notice on the date of delivery. Transmission or receipt of an e-mailed copy of the notice shall not change any deadline that applies to a party.

C. As used herein, "City business day" means those days in which the City's administrative offices are open for general business, typically Monday-Friday except for designated City holidays.

D. If a notice period is ten (10) City business days or less, notices transmitted after 4:00 p.m. on City business days or at any time on non-City business days are deemed transmitted on the next City business day.

Adopted by Personnel Board 9/8/93

Revised 1/ 10/95

Revised 5/23/95

Revised 7 / 14 / 10

Revised 11/ 13/ 13

3. Disqualification of Hearing Officer

A. General rules.

(1) Multiple parties with a common interest in the matter constitute a single party for purposes of this section.

(2) Hearing officers are required to disclose any matter to the parties that could be considered a conflict of interest with their duty to render fair and impartial decisions. Once such a disclosure has been made on the record, the parties to that proceeding may, but are not obligated to, waive such a potential or apparent conflict. If the parties do not waive the potential or apparent conflict, the hearing officer shall recuse ~~himself~~ **themselves** unless the hearing officer rules that the conflict will not prevent a fair hearing. If the hearing officer recuses ~~himself~~ **themselves**, the City Clerk shall select an alternate hearing officer and mail or deliver a notice of alternate assignment and resetting to the parties.

B. Peremptory excusal. Each party may peremptorily excuse *one* hearing officer within ten (10) City business days ~~of the receipt of the notice of hearing~~ **of notice of the hearing officer's assignment**. The peremptory excusal shall be filed with the City Clerk and served upon the opposition. Upon receipt of a peremptory excusal, the City Clerk shall select an alternate hearing officer and mail or deliver a notice of alternate assignment and resetting to the parties. Except for non-substantive communication involving scheduling or procedure, a party shall not excuse a hearing officer after the hearing has begun or after the hearing officer has performed any discretionary act in the matter.

(Ord. 2012-024)

4. Filing of Pleadings

A. Pleadings shall be considered filed with the hearing officer on the date of delivery to the Clerk of the Personnel Board at the Office of Administrative Hearings.

B. Copies of pleadings shall be served by 1st Class Mail, e-mail, fax, or hand-delivered by the filing party to all parties to the matter.

5. Consolidation and Joinder

The hearing officer may consolidate or join cases for any reason if it would expedite final resolution of the cases and would not adversely affect the interests of any of the parties.

6. Pre-Hearing Conference and Order

A. The hearing officer may conduct a prehearing conference in order to obtain information necessary to the issuance of a prehearing order. The hearing officer may conduct the conference by telephone or direct the parties to submit a stipulated prehearing order rather than appearing for a conference.

~~B. At the request of either party and at the discretion of the Hearing Officer, a prehearing order may be issued. The prehearing order shall address any matter deemed appropriate by the Hearing Officer as described in (C) below.~~ **The hearing officer shall conduct a pre-hearing conference and issue a prehearing order, which will identify the issues and set deadlines for exchange of witness lists, exhibit lists, proposed exhibits, video and telephonic testimony of witnesses, requests for administrative subpoenas of witnesses and the delivering of materials to the Office of Administrative hearings. At the hearing officer's discretion, the pre-hearing order may address stipulations, discovery and pre-hearing motions.**

~~C. At a minimum, the prehearing order shall:~~

- ~~(1) Identify any contested facts and issues;~~
- ~~(2) Secure stipulation of those matters in dispute;~~
- ~~(3) Review any request for discovery and set a deadline for any discovery allowed;~~
- ~~(4) Set a deadline for disclosure of witnesses to be called and exhibits to~~

be introduced;

- ~~(5) Discuss any prehearing motions and determine the manner in which they will be heard or acted upon; and~~
- ~~(6) Determine the approximate length of the hearing and schedule the hearing date(s).~~

7. Discovery

A. Upon written request by any party, and after entertaining any objections to discovery requests, the hearing officer may order either party to produce for inspection and copying any records, papers, documents, or other tangible evidence in the possession of or available to that party.

B. No additional discovery shall be allowed except by order of the hearing officer.

8. Motions

A. Unless pre-hearing Order directs otherwise, any defense, objection, or request that can be determined prior to the hearing on the merits may be raised by filing a written motion at least fifteen (15) calendar days prior to the hearing on the merits

B. Any response to a motion shall be filed within ten (10) calendar days after the filing of the motion.

C. The hearing officer shall rule on all non-dispositive motions as soon as practicable. At the option of the hearing officer, dispositive motions may be reported to the Personnel Board for decision prior to the full hearing on the merits or taken under advisement to be reported as part of the final hearing officer's recommendation.

D. Any motion or response shall not exceed seven (7) pages.

9. Witnesses

A. Witnesses shall be identified in accordance with the prehearing order or other order of the hearing officer. ~~If no prehearing order has been entered, all~~ **All witnesses must be identified in writing at least five (5) calendar days prior to the hearing.** Witnesses not designated in accordance herewith shall not be permitted to testify except at the discretion of the hearing officer for good cause shown.

B. City employees designated by either party as witnesses shall be relieved from their normal duties for a period of time necessary to testify if employee is on duty at the time employee is required to be at the hearing. A party designating a witness who is not a City employee is responsible for the appearance of that witness. **Either party may request that the hearing officer issue an administrative subpoena to compel appearance at the hearing.**

C. ~~The Hearing Officer shall issue subpoenas for witnesses and evidence and shall swear in all witnesses.~~ **The hearing officer shall require all witnesses to swear or affirm the truthfulness of their testimony.**

10. Hearings

A. All reasonable efforts shall be made to conclude the hearing within two (2) consecutive days.

B. A party may appear at the hearing through a representative, provided such representative has given written notice of appearance at least three (3) calendar days prior to the hearing date.

C. The hearing officer shall clear the room of witnesses not under examination except that parties and their representatives are entitled to remain in the hearing room during the course of the hearing, even if such persons may testify in the hearing.

D. The hearing officer is responsible for the control and decorum of the hearing room. ~~The Hearing Officer~~ **hearing officer** may take any action ~~he deems~~ **they deem** necessary to effectuate a full, fair, impartial and expeditious hearing. ~~Upon written request by the Hearing Officer and for good cause shown, the Board may prohibit any person from appearing before the Hearing Officer for a period of time set by the Board after a full hearing before the Personnel Board.~~

E. In the hearing, the City shall present its case first and shall have the burden of proving by a preponderance of the evidence that discipline was imposed on the grievant for justifiable cause.

F. Prior to presenting its evidence, the ~~Department~~ **City** may present a brief opening statement. The grievant may make an opening statement after the City or before the presentation of grievant's case in chief.

G. Oral evidence shall be taken only under oath or appropriate affirmation.

H. Each party shall have the right to:

- (1) call and examine witnesses;
- (2) cross-examine witnesses;
- (3) introduce exhibits;
- (4) impeach any witness;
- (5) introduce evidence relevant to the choice of discipline;
- (6) present any rebuttal evidence.

I. It is the policy of the Board that hearings operate in accordance with the common law evidentiary standards applicable to administrative hearings. The hearing shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence required in judicial proceedings.

J. The hearing officer may admit and give probative effect to any evidence, including affidavits, as the hearing officer deems appropriate. The hearing officer shall exclude incompetent, immaterial, irrelevant, or unduly cumulative testimony. Documentary evidence may be received in the form of copies or excerpts unless the source of the information or other circumstances indicates lack of trustworthiness.

K. The hearing officer may take judicial notice of matters and shall apply the rules of privilege in the same manner as the court of this state.

L. The hearing officer shall only admit evidence relevant to the grievance and discipline imposed.

M. The hearing shall be open to the public. However, upon motion by either party, and for good cause shown, the hearing officer may order that a hearing be closed to the public.

N. The Federal Department of Transportation's (DOT) Office of Drug and Alcohol Policy and Compliance, 49 C.F. R. § 40.323(b), provides that information regarding drug and alcohol test results pertaining to safety sensitive employees, as designated by DOT Regulations, cannot be disclosed in an open meeting without first obtaining permission from a grievant to disclose the results.

(1) In the event that such permission is not granted by a grievant, the drug or alcohol test results of a grievant shall be released only to the parties in the proceeding and to the hearing officer. The hearing officer shall review the test results *in-camera*.

(2) Audio recordings and minutes taken during testimony pertaining to a grievant's drug or alcohol test shall be taken separately from the public record and subsequently sealed. Such recordings shall not be considered public record in accordance with of the Inspection of Public Records Act, 1979 NMSA § 14-2-1(b)(12). The evidence containing test results shall be separated from the public record and shall be sealed. The test results shall remain sealed unless a court of proper jurisdiction orders otherwise.

O. The hearing officer shall not participate in any adjudicatory proceeding it: for any reason, the hearing officer cannot provide a fair and impartial hearing to either party.

P. No person shall discuss the merits of any pending adjudicatory proceeding with the designated hearing officer or a member of the Personnel Board unless either parties or their representatives are present.

11. Post-Hearing Briefs

The hearing officer may require or permit written closing arguments, post-hearing briefs and proposed findings of fact and conclusions of law. If post-hearing pleadings are allowed, the record of the hearing shall remain open until the pleadings are filed. Unless otherwise agreed to by the hearing officer, such pleadings must be filed within fifteen (15) calendar days of the close of the hearing.

12. Recommended Decision

The hearing officer shall normally submit their findings of fact, proposed conclusions of law and a recommended decision to the Board after the record of the hearing is closed. The hearing officer shall serve a copy of their recommended decision to the parties.

13. Decision of the Board

A. A quorum of the Board shall normally act within thirty (30) calendar days of receiving the recommendations of the hearing officer by meeting to deliberate in executive session. When deliberating, the Board may only consider the hearing record and the hearing officer's findings of fact, proposed conclusions of law, and recommended decision. The Board shall not consider any evidence, pleadings or affidavits not in the record before the hearing officer. The Board may ~~request~~ **require** the ~~Hearing Officer's~~ hearing officer's presence to discuss ~~the Officer's~~ **their** recommendation when the Board meets in open session.

B. A final **written** decision shall not be issued until a majority of a quorum of the Board decides to:

- (1) Accept the recommendation of the hearing officer by accepting the hearing officer's Proposed Findings of Fact and entering conclusions of law consistent with the findings;
- (2) Reverse or modify the recommendation of the hearing officer by making its own Findings of Fact consistent with the evidence and entering conclusions of law consistent with the findings; or
- (3) Remand the matter to a Personnel hearing officer for further hearing.

C. Board members in dissent may prepare and attach their own written findings of fact, conclusions and recommendations.

D. **The written** Decision by the Board ~~is the final step in the grievance process~~ **must include its findings of fact and conclusions** and is the final step in the grievance process. Any appeal of an adverse decision shall be taken to the State District Court within thirty (30) calendar days of the decision.

E. A copy of the Board's final decision shall be maintained at the offices of the Clerk of the City of Albuquerque.

F. Copies of the Board's decision shall be emailed to the parties or sent via 1st Class mail if no email exists.

14. Implementation of Decision

A. The Board order shall be implemented as follows:

1. ~~In the event that there is no appeal of the Board's decision to reinstate-~~

~~an employee, the effective date of reinstatement shall be the date of the Board's vote for reinstatement, unless otherwise directed by the Board.~~ **The parties have thirty (30) days to appeal the Board's decision to reinstate an employee. If there is no appeal, the Board's decision shall be implemented on the thirty-first (31st) day.**

2. **Back-Pay:** The City shall tender any back pay awarded to a grievant within ~~seven (7)~~ **fourteen (14)** calendar days of its receipt of the grievant's sworn statement in "B" hereunder.

B. In the event the Board's order includes any back pay, the grievant shall provide the City with a sworn statement of gross earnings and unemployment compensation received since the effective date of the disciplinary action **within seven (7) calendar days**. The City shall be entitled to offset earnings and unemployment compensation received during the period covered by the back pay award against the back pay due.

C. The hearing officer shall retain jurisdiction of the case for the purpose of resolving any disputes regarding back pay. It is the City's position that benefits to be reinstated reasonably ought to include those benefits accrued to an employee as a function of ~~his/her~~ **their** employment with the City in a particular classification and pay grade. These include:

1. Base Pay
2. Vacation Accrual
3. Sick Leave Accrual
4. PERA Co-payments made by the City
5. Health/Life Insurance Payments made by the City
6. Contractual Based Seniority (if applicable)
7. Longevity pay (if applicable)
8. Differential Pay for Shift Assignment
9. Temporary Upgrade Pay

Other remuneration may be distinguished from the previous listing in that it is not guaranteed to employee members of a classification and pay grade, but granted to a limited number of some employees, based upon management's perception of the City's need at a specific time and place. These benefits include:

1. Overtime
2. Standby Time

15. **Hearing Record**

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Adopted by Personnel Board 9/8/93

Revised 1/ 10/95

Revised 5/23/95

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Revised 11/13/13

The official record of any hearing before the hearing officer shall be taken either by stenographic transcript or audio tape, **video**, digital or other reliable means of recording at the discretion of the hearing officer, by a certified court reporter or certified tape monitor. In the event that a party elects to appeal an adverse final decision of the Board, the cost and responsibility for submission of the record on appeal to the appropriate court shall be borne by the party bringing the appeal.



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Revised 1/ 10/95

Revised 5/23/95

14/10

Revised 11/ 13/ 13

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