

OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM
277 EAST TOWN STREET, COLUMBUS, OH 43215-4642
1-800-222-PERS (7377)
www.opers.org

MEMORANDUM

DATE: April 4, 2007

TO: OPERS Board Members

FROM: Julie E. Becker, General Counsel
Laura E. Parsons, Assistant Attorney General

RE: **IV. Action Items:**
B. Ohio Administrative Code 145-1-09, Staff authority and 145-1-11, Appeal of staff membership determination

Action requested: _____ moved, _____ seconded, to approve Rules 145-1-09 and 145-1-11 for submission as an emergency to the Joint Committee on Agency Rule Review (JCARR) and the Legislative Service Commission (LSC), as set forth in this memorandum.

The suggested revisions to Rules 145-1-09 and 145-1-11 codify current practice relative to membership determinations and clarify process particularly regarding the personal appearance before the board.

The changes include establishing a time limit within which parties may appeal a senior staff membership determination to the board; codifying the representation by and role of the Ohio Attorney General's office; establishing parameters around the personal appearance before the board; and clarifying the record.

We will discuss the suggested revisions to the rules at the April board meeting. Christopher McNeil, our current administrative hearing examiner, will also be present to address the board and answer any questions. A copy of his curriculum vitae is attached for your information.

145-1-09 Staff authority

- (A) The public employees retirement board authorizes its staff to make determinations required under Chapter 145. of the Revised Code, including, but not limited to, membership, exemptions or exclusions from membership, earnable salary, benefits, and employer reporting. Membership Determinations may be appealed to the retirement board pursuant to rule 145-1-11 of the Administrative Code. Determinations mandated by statute may not be appealed to the board.
- (B) The public employees retirement board authorizes its staff to establish payment plans with public employers within staff's discretion to satisfy employer billings issued pursuant to Chapter 145. of the Revised Code.

Promulgated Under: 111.15.

Statutory Authority: 145.09.

Rule Amplifies: 145.01, 145.012, 145.03, 145.32, 145.33, 145.331, 145.34, 145.35, 145.36, 145.361, 145.38, 145.382, 145.383, 145.40, 145.45, 145.46, 145.47, 145.48, 145.51.

Rule Review Date: 9/29/10; 9/29/05.

Effective Date History: 6/20/03; 1/1/03; 11/2/00; 9/27/97; 11/2/91; 3/17/76.

145-1-11 Appeal of staff ~~membership~~ determination

- (A) ~~Except as provided in rule 145-2-23 of the Administrative Code, a~~Any affected person may appeal a ~~final senior staff membership determination of the staff of the public employees retirement made pursuant to the staff's authority provided in rule 145-1-09 of the Administrative Code to the retirement~~ board as provided in this rule.
- (B) An appeal shall be submitted to the executive director in writing ~~not later than sixty days after the date of the senior staff membership determination~~. It shall state the ~~senior staff membership~~ determination to be reviewed and the basis for the review.
- (C) (1) ~~Unless the staff determination is mandated by statute, t~~The retirement board may delegate its authority to hear an appeal to an independent hearing examiner prior to the retirement board making its final decision on the appeal.
- (a) The independent hearing examiner must be licensed to practice law in the state of Ohio. The independent hearing examiner shall conduct a hearing and issue a report and recommendation to the retirement board.
- (b) There shall be a transcript of the hearing. At the hearing, parties to the appeal and staff are permitted to submit evidence in the form of witness testimony and any form of documentation. ~~At the hearing, P~~parties to the appeal may be represented by counsel or other representative. ~~at the hearing, and staff may be represented by the Office of the Attorney General.~~
- (c) The original report and recommendation shall be sent to the retirement board. Copies of the report and recommendation shall be provided to the parties to the appeal and to staff. Within fifteen days of the date of issuance of the report and recommendation by the hearing examiner, the parties to the appeal and staff may submit written objections to the report and recommendation. The written objections shall be submitted to the retirement board. Copies of the written objections shall be sent to the parties to the appeal and to staff.
- (2) The retirement board may permit the ~~person requesting an appeal parties to the appeal and staff~~ to make a personal appearance before the ~~retirement~~ board prior to the ~~retirement~~ board's final review of the appeal.
- (a) If a personal appearance is permitted, the parties to the appeal shall be notified in writing by certified mail, return receipt requested, of the time and place of such appearance.
- (b) A party to the appeal may be represented by counsel or other representative ~~in~~ at the retirement board meeting at which the personal appearance is scheduled, ~~and staff may be represented by the Office of the Attorney General.~~

- (c) Each party and staff will be given the opportunity to make final arguments, not to exceed five minutes, to the retirement board, and answer any questions of the retirement board.
 - (d) No additional testimony or documentation from the parties or staff will be accepted by the retirement board during the personal appearance.
- (3) The record of any appeal shall consist of the information ~~in the member or employer file~~ submitted by the parties and staff to the hearing examiner; the report and recommendation, the transcript of the hearing, ~~and~~ any objections to the report and recommendation, and the minutes of any personal appearance.
- (4) The retirement board shall review the report and recommendation and, any objections to the report and recommendation, ~~and submitted documentation~~ in determining whether ~~to uphold the staff determination. The retirement board may~~ accept, reject, or modify the report and recommendation and may remand to the hearing examiner for further findings before making its final decision.
- (5) The parties to the appeal and their representatives shall be notified in writing by certified mail, return receipt requested, of the retirement board's final decision.
- (D) The retirement board's decision on any determination conducted pursuant to this rule shall be final and determinative and may be summarily applied to all similarly situated employees of the same employer.
- (E) The executive director or the director's designee shall notify the parties to the appeal in writing of any notice required by this rule.

Promulgated Under: 111.15.

Statutory Authority: 145.09.

Rule Amplifies: 145.09.

Rule Review Date: 9/29/10; 9/29/05.

Replaces: 145-21-03.

Effective Date History: 1/1/03; 6/15/02; 3/25/02 (Emer.); 1/5/01; 2/3/00; 11/2/91; 11/17/76.