

**Article VIII — Suspensions, Removals, and Reductions in Rank**

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## **Article VIII — Suspensions, Removals, and Reductions in Rank**

### **§ 13-801 Grounds for Disciplinary Action.**

(a) **In General.** No person who has received a permanent appointment to a position in the Police Department pursuant to these Rules and Regulations or prior to the creation of the Commission shall be suspended without pay or removed from office, and no person who has been promoted in rank and received a permanent appointment to such position pursuant to these Rules and Regulations or who has received a permanent appointment to a ranking position prior to the creation of the Commission shall be reduced in rank, except for the following reasons:

- (1) physical or mental disability affecting the officer's ability to continue in service, in which case the officer shall receive an honorable discharge from service;
- (2) neglect or violation of any official duty;
- (3) violation of any law which provides that such violation constitutes a misdemeanor or felony;
- (4) inefficiency, neglect, intemperance, disobedience of orders or conduct unbecoming an officer;

(5) intoxication while on duty;

(6) engaging or participating in the conduct of a political or election campaign while on duty or in uniform or while using Borough property otherwise than to exercise the person's own right of suffrage; or

(7) engaging or participating in the conduct of a political or election campaign for an incompatible office as provided in Borough Code § 1104(f), 8 PA. CONS. STAT. § 1104(f).

**(b) Prohibited Grounds.** No Police Officer shall be suspended, removed, or reduced in rank for religious, racial, or political reasons.

### § 13-802 Furloughs.

If for reasons of economy or other reasons, it shall be deemed necessary by Borough Council to reduce the number of Police Officers in the Police Department, the Borough Council shall effect the reduction by furloughing the person(s) (including probationers) last appointed to the Police Department. Such removal shall be accomplished by furloughing in numerical order commencing with the person last appointed until such reduction shall have been accomplished. In the event that the Borough Council decides to increase the size of the Police Department, the furloughed officers shall be reinstated in order of their seniority in the Police Department if the furloughed officer accepts reinstatement in writing within thirty (30) days of receiving notice of the opening. These reduction in force provisions are not applicable to the Chief of Police.

### § 13-803 Notice of Suspension, Removal, or Reduction in Rank.

**(a) Statement of Charges.** Whenever a Police Officer is suspended, removed, or reduced in rank by the Mayor or Borough Council for cause under § 13-801, the Mayor or Borough Council shall file a written statement of the charges made against the Police Officer with the Commission. The charges shall be stated clearly and in sufficient detail to enable the Police Officer to understand and respond to the charges. The charges shall specify the particular cause(s) for disciplinary action invoked under § 13-801, and give a brief description of the factual circumstances upon which the Mayor or Borough Council relied in finding cause for disciplinary action.

**(b) Service.** The Borough shall serve a copy of the charges and a copy of the rights of appeal set forth in § 13-804 to the Police Officer within five days after the charges are filed. Service may be effected by handing the material to the Police Officer in person, or by certified or registered mail addressed to the Police Officer's last known address. Service shall be complete upon mailing.

### § 13-804 Hearings on Suspensions, Removals, and Reductions in Rank.

**(a) Request for Hearing.** A Police Officer suspended, removed, or reduced in rank for cause under § 13-801 may request a hearing before the Commission on the charges filed by the Mayor or Borough Council. The request must be in writing, and must either be delivered in per-

son to the Borough Manager (or any person in charge of the office of the Borough Manager during normal business hours) as agent for the Commission, or by U.S. mail addressed to the Commission at the principal offices of the Borough (Borough Hall). The Police Officer may make written answers to any charges filed not later than the date fixed for the hearing. Failure of the Police Officer to provide written answers to any of the charges shall not be deemed an admission by the Police Officer.

**(b) Hearing.** The Commission shall schedule a hearing to be held within ten days from the Police Officer's written request for a hearing unless continued by the Commission for cause at the request of the Commission, the Police Officer, or the party which filed the charges against the Police Officer (the Borough Council or the Mayor). The failure of the Commission to hold a hearing within ten days from the filing of the written charges shall not result in the dismissal of the charges filed. The hearing shall be conducted in accordance with the provisions of the Local Agency Law, 2 PA. CONS. STAT. § 101 *et seq.*, and all other applicable laws. The person against whom the charges are made may be present in person and by counsel. All testimony shall be given under oath administered by the Chair, or in absence of the Chair, the vice chair. The Commission shall have power to issue subpoenas as set forth in § 13-411. The hearing shall be conducted in closed executive session that shall not be open to the public, unless a public hearing is required by law or requested by the Police Officer or Borough Council prior to the commencement of the hearing. The deliberations of the Commission, including interim rulings on evidentiary or procedural issues, may be held in private and shall not be subject to a request by the Police Officer or Borough Council for being open to the public. The Commission's disposition of the matter shall constitute official action which shall occur at a public meeting held pursuant to 65 PA. CONS. STAT. chapter 7 (relating to open meetings). A stenographic record of all testimony shall be taken at every hearing and preserved by the Commission. In the event the charges are dismissed, the records shall be sealed and not be available for public inspection.

**(c) Standard of Review; Decision.** In conducting the hearing, the Commission's standard of review shall be to determine whether sufficient evidence has been presented to support the statutory reason(s) for the disciplinary action. If the Commission finds that sufficient evidence has been introduced to support the charge, the Commission shall not modify the penalty imposed by the Borough Council or the Mayor unless it finds that the penalty imposed was arbitrary, discriminatory or an abuse of the Borough Council's or the Mayor's discretion. In considering the appropriateness of the discipline, the Commission shall not substitute its judgment for that of the Borough Council or the Mayor. However, when the more serious charges brought are not fully substantiated, and/or the penalty imposed is severely disproportionate to any charges which are sustained, the Commission has authority to modify the penalty. The Commission may request posthearing briefs, and shall issue a written decision containing specific findings of fact and conclusions of law within sixty (60) days after receipt of the hearing transcript. No order of suspension shall be made by the Commission for a period longer than one year.

**(d) Appeal of Decision.** All parties shall have an immediate right of appeal to the Court of Common Pleas of Lehigh County, and the case shall there be determined as the court deems proper. The appeal shall be taken within thirty (30) days after the date of entry by the Commission of its final order, and shall be by petition. As provided by law, upon the appeal being taken and docketed, the court of common pleas shall schedule a day for a hearing and shall proceed to hear the appeal on the original record and additional proof or testimony as the parties concerned may desire to offer in evidence.

(e) **Reinstatement.** In the event that the Commission fails to uphold the charges, then the person sought to be suspended, removed or demoted shall be reinstated with full pay for the period of the suspension, removal, or demotion, and no charges related to the suspension, removal or reduction in rank shall be officially recorded in the Police Officer's record.