

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
 X Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: Scott Niehaus, Village Manager
DATE: September 28, 2022 (B of T) Date: October 6, 2022
TITLE: Appointment of Charles Hervas as PSEBA Hearing Officer

BACKGROUND/POLICY IMPLICATIONS:

Attached please find information regarding the proposed appointment of Charles Hervas of Hervas, Condon, & Bersani, PC to the position of PSEBA Hearing Officer for the Village of Lombard. Village counsel and staff are recommending approval of the proposed appointment and administrative hearing services agreement.

Please place this item on the September 6, 2022 Board of Trustees consent agenda.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X Scott Niehaus _____ Date 9/28/22

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



#INSERT

MEMORANDUM

TO: Scott Niehaus
Village Manager

FROM: Nicole P. Aranas
Assistant Village Manager

DATE: September 27, 2022

SUBJECT: Appointment of PSEBA Hearing Officer
Charles Hervas - Hervas, Condon & Bersani, PC

Village Ordinance No. 7449 sets forth an administrative procedure for addressing and determining claims under the Public Safety Employee Benefit Act (PSEBA). The ordinance further provides for the appointment of a hearing officer to administer hearings on PSEBA benefit applications coming before the Village. The Village President, upon advice and consent of the Village Board, is asked to consider the appointment of Charles Hervas of Hervas, Condon & Bersani, PC to the position of PSEBA Hearing Officer.

The PSEBA Hearing Officer shall serve, as needed, to conduct PSEBA hearings and shall have the authority to include, but not be limited to:

- Preside over Village hearings involved in PSEBA;
- Hear testimony and accept evidence that is relevant to the issue of eligibility under PSEBA;
- Issue subpoenas to secure attendance of witnesses and production of evidence;
- Rule upon objections to evidence; and,
- Preserve and authenticate a record of hearing and all exhibits in evidence at hearings

Attached please find a proposed Administrative Hearing Officer Agreement and background information regarding Charles Hervas. Mr. Hervas is a licensed attorney specializing in the representation of local government entities and government officials and currently serves as PSEBA Hearing Officer for the Village of Schaumburg. The appointment of Mr. Hervas is recommended by Village Staff and Village Attorney Jason Guisinger.

Please place this item for consideration by the Village Board of Trustees on the agenda for October 6, 2022. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.



Charles E. Hervas

✉ chervas@hcbattorneys.com ☎ (630) 860-4340

Charles E. Hervas graduated from the DePaul University College of Law in 1983. While in law school, Chuck served on the Moot Court Board and represented DePaul on two national moot court teams. After graduation, Chuck has a long history in local government. His government service is highlighted by his appointment and election as an Alderman on the City Council in Des Plaines, Illinois, from 1986 through 1989 and election as a school board member for Itasca School District 10 from 1997 through 2005. He serves as counsel to a variety of governmental bodies, including service as Village Attorney for the Village of Itasca since 1990. Chuck also serves as legal counsel to Northeast Multi-Regional Training, one of the largest police training organizations in the United States.

Chuck is an experienced trial lawyer who concentrates his practice in the defense of government officials and governmental entities in civil rights, employment, and personal injury cases. He has handled a multitude of complex litigation matters in both the federal and state courts. He has argued many important cases in the appellate courts, and he has assisted in the preparation and briefing of two arguments before the United States Supreme Court. He also has substantial experience in the area of fire and police discipline, and he has represented numerous fire and police commissions in complex hearings and the subsequent administrative review process. On the rare occasion in which Chuck has accepted a case on the plaintiff side, he successfully argued a First Amendment retaliation case to a jury which awarded his police officer client 12.5 million dollars. Chuck also is experienced in administrative process and has handled a multitude of cases involving the Equal Employment Opportunity Commission and the Illinois Department of Human Rights.

Chuck is admitted to practice before the United States Supreme Court, the Seventh Circuit Court of Appeals, and in various federal district courts in Illinois, Indiana, and Wisconsin. He has published several works, including his contribution in *Illinois Jurisprudence—Municipal Law*, published by Lawyer's Cooperative Publishing. He is a frequent lecturer in the area of police training, and for several years he was a featured speaker for the FBI-sponsored Midwest Law Enforcement Executive Development Seminar (MLEEDS). Chuck's wife leads a local theater company. Chuck and his wife have three grown children.

Highlights

- NEMRT Annual Meeting Police Training Seminar, Spring 2018
- Public Safety Employee Benefits Act (PSEBA), Fall 2015 Seminar of Illinois Local Government Lawyers Association, Downers Grove, Illinois
- Legal Liability Landscape of Local Governments and Public Officials, Spring 2015 Seminar of American Public Works Association Chicago Metro Chapter, St. Charles, Illinois
- Expert witness (report and deposition testimony) in jail litigation dispute in federal court, *Fox v. Admiral Ins. Co.*, No. 12 cv 8740 (N.D. IL)
- Use of Force Trends, Recent Case Law, and Tips for Avoiding Liability, Illinois Sheriff's Association, 2014 Chief Deputy/Jail Administrator Conference, Springfield, Illinois

ADMINISTRATIVE HEARING OFFICER AGREEMENT
(PSEBA)

THIS AGREEMENT ("Agreement") is entered into between, Hervas, Condon & Bersani, P.C. (hereinafter "HC&B"), and the Village of Lombard (hereinafter "Village").

RECITALS

- A. Village is interested in securing services of an attorney to perform Administrative Hearings (PSEBA) pursuant to the Village Code; and
- B. HC&B concentrates in municipal law services and is experienced in PSEBA hearings and PSEBA litigation; and
- C. The parties desire to enter into this Agreement for Village to secure the services of HC&B.

AGREEMENT

The parties hereto agree as follows:

- 1. Village may request the services of a Hearing Officer, which Officer shall be selected and appointed by the Village to conduct Administrative Hearings pursuant to the Lombard Village Code upon mutually agreed upon dates.
- 2. Village shall be responsible for any costs of the hearing such as reporting services, rental costs, equipment costs, etc.
- 3. The Hearing Officer shall conduct the hearing in a professional manner and follow State law and the Village Code.
- 4. HC&B shall be paid the sum of \$230 per hour for work performed by partners in furtherance of the duties required to conduct a hearing. Associate time is billed at \$195 per hour. Any bill for payment shall be submitted to the Village for payment. Payment shall be made within 30 days of receipt of bill.
- 5. Indemnification - the Village agrees to defend and indemnify Hervas, Condon & Bersani, P.C., and its principals and employees against all claims by reason of suits, liabilities, judgments, costs and reasonable expenses arising as a consequence of any negligence or willful and wanton conduct by the Village, its officials or its employees, except to the extent that such claims are caused by the negligence or willful and wanton conduct of HC&B.

Dated: _____

Hervas, Condon & Bersani, P.C.

Dated: _____

Village of Lombard