

**TITLE 2 – GOVERNMENT ADMINISTRATION  
PART IV – COMMISSIONS; BOARDS  
CHAPTER 4-1—EMPLOYEE RELATIONS REVIEW BOARD**

**TABLE OF CONTENTS**

<b>SUBCHAPTER A</b>		<b>GENERAL PROVISIONS</b>	
Section 10	Purpose .....		1
Section 20	Definitions .....		1
Section 30	Confidentiality .....		1
Section 40	Severability .....		1
<b>SUBCHAPTER B</b>		<b>BOARD MEMBERSHIP</b>	
Section 50	Minimum Qualifications to be a Board Member .....		2
Section 60	Eligible Employee List .....		2
Section 70	Chair .....		2
Section 80	Vice Chair .....		2
Section 90	ERRB Coordinator .....		3
Section 100	Terms .....		3
Section 110	Termination/Vacancies of Board Membership .....		3
<b>SUBCHAPTER C</b>		<b>BOARD SELECTION FOR APPEAL PANEL</b>	
Section 120	Three-member Appeal Panels .....		3
Section 130	Disqualification of Board Member from Serving on a Panel .....		4
<b>SUBCHAPTER D</b>		<b>PROCEDURES TO FILE AN APPEAL</b>	
Section 140	Applicability .....		4
Section 150	Procedures .....		4
<b>SUBCHAPTER E</b>		<b>PRE-HEARING PROCEDURES</b>	
Section 160	Notice to Parties .....		5
Section 170	Notice of Alleged Conflicts of Interest .....		5
Section 180	Hearing Scheduling .....		6
Section 190	Pre-hearing Exchange of Documentation, Witnesses and Representation .....		6
<b>SUBCHAPTER F</b>		<b>BOARD HEARING PROCEDURES</b>	
Section 200	General Conduct of the Hearing .....		7
Section 210	Parties to the Hearing .....		8
Section 220	Evidence and Disqualifications from the Board Hearing .....		8
Section 230	Presentation and Questioning of Witnesses .....		8
Section 240	Default Decision .....		9
Section 250	Deliberation .....		9
Section 260	Panel Decision .....		9
<b>SUBCHAPTER G</b>		<b>REMEDIES</b>	
Section 270	Reversal of Termination Action .....		10
Section 280	Backpay .....		10
<b>SUBCHAPTER H</b>		<b>ERRB REPORTING AND AUDIT REQUIREMENTS</b>	
Section 290	Reporting .....		11
Section 300	Internal Audit .....		11

**TITLE 2 – GOVERNMENT ADMINISTRATION  
PART IV – COMMISSIONS; BOARDS  
CHAPTER 4-1 – EMPLOYEE RELATIONS REVIEW BOARD**

*Legislative History: Originally enacted September 20, 2006 by Resolution No. C09-319-06 & Ordinance No. 09-06.*

**SUBCHAPTER A GENERAL PROVISIONS**

**Section 10 Purpose (2 PYTC § 4-1-10)**

There is hereby established an Employee Relations Review Board, whose purpose is to provide an administrative mechanism for resolving appeals of adverse employment action taken against employees of the Pascua Yaqui Tribe government.

**Section 20 Definitions (2 PYTC § 4-1-20)**

Unless otherwise defined, the following definitions apply to this Ordinance:

- (A) “Adverse employment action” means a suspension, or termination.
- (B) "Department" means any executive branch department, division, office, agency, responsible for the operations, administration, or business of the executive branch of the Tribal Government.
- (C) “Director” refers to either the director or designee of any Department as defined above.
- (D) “Employee” means the employee who has been the subject of an adverse employment action
- (E) “Employee Handbook” means the Pascua Yaqui Tribe Employee Handbook effective May 17, 2004, and any amendments or revisions adopted thereafter by the Tribal Council.
- (F) “Employee Relations Review Board” means the board created and authorized by the Tribal Council to hear and resolve formal grievance appeals. Also referred to as the “Board” or “ERRB,” it consists of employees of the Pascua Yaqui Tribe who are appointed by the Tribal Chairperson in accordance with these Procedures.
- (G) “Irrelevant” means unrelated to the adverse employment action being appealed.
- (H) “Parties” means the Employee and Department Director or designee.

**Section 30 Confidentiality (2 PYTC § 4-1-30)**

All ERRB proceedings and records including, but not limited to, all documents and reports, deliberations, investigation results, and all aspects of the process are strictly confidential and must be maintained as such by the Board members, the parties, witnesses, and other participants, in accordance with the Employee Handbook.

**Section 40 Severability (2 PYTC § 4-1-40)**

The provisions of this Ordinance shall be severable and if any phrase, clause, sentence or provision of the ordinance is found to be contrary to the Pascua Yaqui Constitution or held to be invalid by a court of competent jurisdiction, the validity of the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

## **SUBCHAPTER B BOARD MEMBERSHIP**

### **Section 50 Minimum Qualifications to be a Board Member (2 PYTC § 4-1-50)**

To be eligible for membership on the Board, an employee must:

- (A) Be a regular employee status for a minimum of 12 consecutive months; and
- (B) Not have any adverse employment actions within the past two years.

### **Section 60 Eligible Employee List (2 PYTC § 4-1-60)**

- (A) The Board shall consist of up to 15 eligible employees of the Pascua Yaqui Tribe, who have volunteered to serve on the Board provided that (1) no more than two employees from any department may serve on the Board at any one time; for departments with fewer than 20 employees, no more than one employee from the department may serve on the Board at any one time; and (2) no employees of the Human Resources Department, Office of the Attorney General (public defenders, prosecutors, and legal services employees are excluded from this restriction and may serve as members of the ERRB), Internal Audit Department, Tribal Court, or any elected or appointed official, including Department Directors, shall serve on the Board. The Human Resources Department shall recruit and screen for eligible employees in accordance with this Procedure and shall submit a list of eligible applicants to the Human Resources Oversight Committee (“Committee”). The Committee shall nominate eligible employees to the Tribal Chairperson. The Tribal Chairperson shall appoint Board members to all vacant positions.
- (B) Board members who are hourly employees are entitled to overtime pay in accordance with the Salary Administration Provisions of the Employee Handbook for any overtime they spend on Board activities. Board members remain subject to the Employee Handbook and all other applicable tribal employment policies and procedures.

### **Section 70 Chair (2 PYTC § 4-1-70)**

- (A) In the month of September, from the list of eligible Board members the Tribal Chairperson shall appoint or reappoint a Board Chair to serve a one-year term. In the event a timely appointment is not made, the Chair shall continue to serve until such time that an appointment or reappointment is made.
- (B) The Board Chair shall serve in office until expiration of the term, or sooner if the Board Chair’s membership is terminated as provided for in these Procedures. Upon a vacancy of the Chair position, the Vice Chair will serve until such time as a Chair is appointed by the Tribal Chairperson.

### **Section 80 Vice Chair (2 PYTC § 4-1-80)**

- (A) In the month of September, from the list of eligible Board members the Tribal Chairperson shall appoint or reappoint a Board Vice Chair to serve a one-year term. In the event a timely appointment is not made, the Board Vice Chair shall continue to serve until such time as an appointment or reappointment is made.
- (B) The Board Vice Chair shall serve in office until expiration of the term, or sooner if the Board Vice Chair’s membership is terminated as provided for in these Procedures. Upon a vacancy of the Vice Chair position, the Tribal Chairperson will appoint a new Vice Chair from the list of eligible Board members.

**Section 90       ERRB Coordinator (2 PYTC § 4-1-90)**

A coordinator, assigned by the Tribal Chairperson, shall be assigned to the ERRB and s/he shall be responsible for ERRB administrative duties such as: the issuance of notices, scheduling hearings, reporting requirements and recordkeeping in accordance with these rules. In the event of a vacancy in the ERRB Coordinator position, the Tribal Chairperson will immediately designate a replacement to handle the responsibilities until the position is filled.

**Section 100       Terms (2 PYTC § 4-1-100)**

- (A) Board members shall serve a term of two years and may be reappointed. In the event a timely appointment is not made, the Board member shall continue to serve until such time as an appointment or reappointment is made. Board members shall serve until expiration of the term, or sooner if the Board member's membership is terminated in accordance with these Procedures. If the Chair or Vice-Chair is not reappointed as Chair or Vice-Chair, s/he shall complete the remainder of their term as a board member.
- (B) There is no limit to the number of terms a Board member may serve.

**Section 110       Termination/Vacancies of Board Membership (2 PYTC § 4-1-110)**

- (A) A Board member's term shall immediately terminate upon any of the following: 1) the member's tribal employment terminates; 2) the member submits their resignation; 3) the member is the subject of an adverse employment action; 4) the member fails to maintain satisfactory performance evaluations; 5) the member violates any of the provisions of these Procedures; 6) the member is the subject of a criminal prosecution or license suspension; or 7) the member is removed by the Tribal Chairperson. The Tribal Chairperson may remove a Board member at any time by providing written notice to the Board.
- (B) The Human Resources Director shall immediately provide written notification to the Chair and ERRB Coordinator of terminable events to ensure that the Board member's participation ceases immediately. In the event of a vacancy, the Human Resources Director will commence recruitment of a new Board member.

**SUBCHAPTER C       BOARD SELECTION FOR APPEAL PANEL**

**Section 120       Three-member Appeal Panels (2 PYTC § 4-1-120)**

- (A) All Board members are required to complete ERRB Training, which will include review of the Employee Handbook, and take the Oath of Office prior to sitting on a Panel. The ERRB Coordinator shall maintain a list of eligible and trained Board members.
- (B) The Board shall convene an Appeal Panel ("Panel") of three qualified Board members for each individual appeal. Board members are subject to disqualification in accordance with Part IV of these Procedures. The Board members serving on any given Panel will vary depending upon Board members' availability and disqualification. In the event a Panel member is disqualified, the Board Chair shall appoint an alternate.
- (C) The Board Chair may serve as the Panel Chair or the Board Chair may appoint the Vice Chair or other Panel member as the Panel Chair. The Chair and the Vice Chair shall alternate as Panel Chair and shall not serve on a Panel together to ensure that either the Chair or the Vice Chair is available to review a default request.
- (D) In the event that the ERRB is unable to constitute a panel due to conflicts of interest or for any other reason, the Tribal Chairperson will appoint either an administrative hearing officer or

appoint substitute panel member(s) who meet the eligibility requirements of these Procedures to hear the appeal. Such appointments shall expire at the end of the specific grievance appeal.

**Section 130 Disqualification of Board Member from Serving on a Panel (2 PYTC § 4-1-130)**

(A) Conflicts of Interest

Board members are disqualified from participating on a panel for an appeal involving any of the following: 1) close family relationships (the Board member's father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, spouse, brother, brother-in-law, sister, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew), 2) close personal relationships (the Board member's godparent or godchild, domestic partnership or another member of the Board member's household), 3) the Board member's department; 4) business, financial, or romantic association with either of the parties; 5) any case in which the Board member has a conflict as defined in the applicable PYT Employee Handbook, or 6) any case in which the Board member cannot act in a fair and impartial manner.

Board members MUST disclose all conflicts of interest to the ERRB Coordinator and disqualify themselves immediately. Failure to disclose such conflicts may result in removal from the Board by the Tribal Chairperson and adverse employment action up to and including termination of employment. The ERRB Coordinator must disclose any violation of this policy to the Tribal Chairperson, Board Chair and Vice Chair in writing within 24 hours of discovery of such violation. Board Members may seek the opinion of the Board's attorney for clarification if there is any uncertainty of whether a conflict of interest exists.

(B) Board members are disqualified from serving on any Panel while the member is a party or witness in a current or pending appeal to the Board.

**SUBCHAPTER D PROCEDURES TO FILE AN APPEAL**

**Section 140 Applicability (2 PYTC § 4-1-140)**

(A) The appeal process applies only to adverse employment actions taken against a regular employee of the Pascua Yaqui Tribe. The following employees do not have appeal rights under these Procedures:

- (1) Initial probationary employees;
- (2) Temporary employees;
- (3) Commissioned peace officers;
- (4) Key employees; and
- (5) Appointed employees.

(B) The appeal process and these Procedures do not apply to gaming licensing decisions; lost or suspension of licensing or certification required for professional position, performance evaluations; demotions, separation of employment due to reduction in force, layoff, or furlough; or termination of special assignments.

**Section 150 Procedures (2 PYTC § 4-1-150)**

(A) In accordance with the Employee Handbook, an Employee must file a written appeal with the ERRB Coordinator within 10 days of the adverse employment action. Failure to use appropriate

forms will not disqualify the appeal, provided the appeal is filed in a timely manner. Failure to file a written appeal within 10 days of the effective date of the adverse employment action will automatically result in upholding the Department's action and bar any further appeals.

- (B) An Employee's appeal must be a written statement explaining the adverse employment action being appealed, the action desired, and the reasons supporting it. The employee must also provide a residential address (no post office boxes) where the employee can receive notices and the name and address of the employee's lay advocate or attorney, if the employee has obtained representation. The Employee is responsible for providing any changes in residential address or telephone number to the ERRB Coordinator.
- (C) At the time of appeal, an Employee may submit a written request to obtain a copy of the documents relied upon by the Department in taking the adverse employment action. Human Resources will provide such documents to the Employee within five days after receiving the employee's written request.
- (D) Any adverse employment action subject to review by the ERRB may be settled and the appeal withdrawn at any time prior to the hearing.

## **SUBCHAPTER E            PRE-HEARING PROCEDURES**

### **Section 160        Notice to Parties (2 PYTC § 4-1-160)**

- (A) Within five days of receipt of the Employee's appeal, the ERRB Coordinator shall issue notification to the Employee via electronic mail, personal service, or first class mail to the employee's last known address that the appeal has been received and is being processed. The notice shall include a copy of these ERRB Procedures.
- (B) The Board shall schedule the hearing within 30 days from the date of receipt of the Employee's appeal, or as soon thereafter as practicable.
- (C) At least 20 days prior to the hearing, the ERRB Coordinator for the Board shall notify the parties as identified in these Procedures of the date, time and place of the hearing, the names of Panel members who are scheduled to hear the appeal, the deadline date for the pre-hearing exchange of information, that failure to appear at the hearing may result in a default decision, and the procedure for claiming a conflict of interest. The Employee shall be notified via mail delivery confirmation to the Employee's last known address, via electronic mail with receipt, personal service or other means of verifiable actual notice of receipt.
- (D) At least five days before the hearing, the ERRB Coordinator shall forward the appeal and all attachments, to the Board Panel members and its attorney, and all parties involved including: the Employee, his/her attorney and the Employee's Department Director or designee, and the Office of the Attorney General, in the event the employee is represented by legal counsel.

### **Section 170        Notice of Alleged Conflicts of Interest (2 PYTC § 4-1-170)**

- (A) Any party claiming that one of the scheduled panel members has a conflict of interest must file a written objection with the ERRB Coordinator within five days of receiving the notification of the hearing. Such objection shall specify in detail the basis for claiming a conflict of interest.
- (B) Upon receipt of a written objection, the ERRB Coordinator will immediately forward the objection to the ERRB Chair and to the ERRB attorney who, after consultation, will make a written determination whether a conflict of interest exists. The decision is final and not appealable.

- (C) If a conflict of interest is found to exist, the panel member with the conflict will be disqualified and a new panel member will be assigned to hear the appeal. If no conflict is found to exist, the panel will remain as identified in the notice.
- (D) If a party raises an allegation in writing to the ERRB Coordinator within 30 days of the hearing that a conflict of interest was discovered after the hearing which could not have been reasonably identified prior to the hearing, the ERRB Chair will consult with the Board's attorney and issue a written determination of whether a conflict existed. If a conflict was found to exist, the Party is entitled to a rehearing.
- (E) If, at any time, the ERRB Chair alleged to be the subject of a conflict, the Vice Chair shall be delegated the authority to consult with the Board's attorney and make a determination in accordance with these provisions.

**Section 180 Hearing Scheduling (2 PYTC § 4-1-180)**

- (A) The hearing should take place within 60 days from the date of receipt of the Employee's timely appeal, unless the time is extended by the ERRB, or unless the ERRB is unable to hear the appeal within that time, or for other good cause. In no event shall the hearing take place sooner than 21 days from the date of the hearing notice nor later than 90 days from the date the employee files the appeal, unless agreed to by the parties, or there are extraordinary circumstances as determined by the ERRB Chair.
- (B) To continue or reschedule a hearing once a hearing date has been set, a party must file a written request with the ERRB Coordinator explaining the basis for the request prior to the hearing date. A Panel may reschedule a hearing for extenuating circumstances provided the rescheduled hearing is held within 30 days from the date of the original hearing, and the Employee receives adequate notice. All hearings should be scheduled no more than 90 days from the date the employee filed the appeal request, unless agreed to by the parties, or unless there are extraordinary circumstances as determined by the ERRB Chair.
- (C) In the event of extraordinary circumstances, the Tribal Chairperson shall be notified to appoint an administrative hearing officer or a special panel to hear that appeal, (See Section III A (4)). All such appeals shall be scheduled as soon thereafter as practicable.

**Section 190 Pre-hearing Exchange of Documentation, Witnesses and Representation (2 PYTC § 4-1-190)**

- (A) At least ten days before the hearing, the Parties shall disclose to each other and to the ERRB Coordinator the following information: (a) a list of witnesses who have first-hand information relevant to the appeal; (b) a brief statement of each witness' anticipated testimony; (c) supporting documents relevant to the appeal that each Party anticipates presenting to the ERRB such as Department policies and procedures, e-mail, memoranda, prior discipline, etc.; and (d) whether the Party will have legal representation. The department director must disclose a designee, if the director is not going to be presenting the matter to the Board.
- (B) The ERRB Coordinator will prepare a grievance package containing the complaint and appeals form, Parties' witness lists, and all supporting documentation, and shall provide the grievance package to the Panel and Parties, at least five days prior to the scheduled hearing. Disclosure of the grievance package is limited to the Panel and its attorney, the Employee and Employee's representative, the Department Director and designee, and the Office of the Attorney General.
- (C) Each side may call disclosed witnesses who are believed to be relevant. Each party is responsible for securing the attendance of their own witnesses; however, the Tribe will make Tribal employees available for the hearing as long as the employees are identified in the pre-hearing exchange of information.

## **SUBCHAPTER F            BOARD HEARING PROCEDURES**

### **Section 200        General Conduct of the Hearing (2 PYTC § 4-1-200)**

- (A)     The Panel Chair shall conduct all phases of the hearing. At the commencement of the hearing, the Panel Chair shall provide to the Employee and the Director or his/her designee an explanation of how the proceeding will be conducted and each Party's responsibilities during the hearing. The Panel Chair may use these written Procedures in providing such explanation to the parties.
- (B)     The hearing is informal and the technical rules of evidence do not apply. However, the Panel Chair will preside over the hearing in such a manner as will best ensure the receipt of reliable evidence and fairness for the parties within the general guidelines of these procedures. The Panel Chair shall maintain appropriate decorum throughout the conduct of the hearing.
- (C)     The hearing will be limited to the specific cause(s) of the adverse employment action.
- (D)     Each party is entitled (but is not required) to be represented by one of the following: a licensed attorney or tribal court certified lay advocate.
- (E)     In cases of termination, the hearing will be recorded by audio or handwritten means.
- (F)     The Panel may be assisted by the ERRB's attorney at any time during the hearing.
- (G)     No witnesses or documents will be considered by the Panel which were not disclosed during the pre-hearing exchange of information unless the party can show that it was newly discovered and there was prompt disclosure upon discovery, and the evidence is crucial. In addition, the Panel, may, at its discretion, exclude certain witnesses or documents even if timely disclosed, if it finds such evidence to be irrelevant, repetitive, or overly inflammatory.
- (H)     A witness, other than parties identified in Section VI (B), may be present in the hearing only during his/her actual testimony.
- (I)     Relevant documentation that the Panel may consider in making its decision includes, but is not limited to, the following:
  - (1)     Documentation of oral actions and adverse employment actions;
  - (2)     Attendance rosters;
  - (3)     Corrective Action Forms;
  - (4)     Termination Forms;
  - (5)     Suspension Notices;
  - (6)     Recommendation for Dismissal;
  - (7)     Employee Handbook and other applicable tribal laws or policies; and
  - (8)     Departmental policies and procedures, licensing and professional ethics requirements;
  - (9)     Job descriptions;
  - (10)    Resumes/Applications;
  - (11)    Job Postings;

- (12) Administrative Detail Forms;
- (13) Requests to Demote; and
- (14) All testimony of the parties and witnesses related to the action being grieved.

**Section 210 Parties to the Hearing (2 PYTC § 4-1-210)**

Only the following individuals may attend the hearing: the Employee and Employee's attorney or tribal court certified lay advocate; the Department Director or designee, Employee's supervisor, its attorney; the Human Resources Director or designee; the Panel and its attorney; the ERRB Coordinator, staff whose presence is required to assist the Panel with any administrative tasks necessary to carry out its hearing functions; and each witness listed by the parties during his or her testimony.

**Section 220 Evidence and Disqualifications from the Board Hearing (2 PYTC § 4-1-220)**

- (A) The Panel shall determine what documents and witnesses to consider in making its determination. If a disagreement regarding relevancy arises among the Panel, the decision of the majority of the Panel members shall prevail.
- (B) The Parties and witnesses are strictly prohibited from discussing any issue, matter, person, or document related to an appeal with any Board members outside the hearing.
- (C) If a Party or witness improperly contacts a Board member that Party or witness shall not be permitted to testify at the appeal hearing, and any documents received by the Board member will be excluded. All Board members have a mandatory duty to disclose any contact with a Party or witness or conflicts in accordance with these Procedures to the Board Chair and Panel prior to the hearing.

**Section 230 Presentation and Questioning of Witnesses (2 PYTC § 4-1-230)**

- (A) The Human Resources Director or designee will briefly introduce the case to the Panel and will have the Employee's official personnel file available at the hearing for consideration.
- (B) Next, the Department, and then the Employee may make opening statements, in that order. Opening statements are limited to a concise and brief statement (not to exceed 10 minutes) of the facts that the parties expect to establish through their presentations.
- (C) The Department's Presentation: The Director or his/her designee shall call witnesses and present the documentation and information relied upon to support the adverse employment action that is the subject of the appeal.
  - (1) Witnesses called by the Department during its presentation will be questioned first by the Department (direct examination), then by the Employee (cross examination) and then again by the Department, whose questions will be limited to those areas raised in the employee's cross examination of the witness (redirect examination). The Panel may ask questions of the witness at any time during the presentation.
- (D) The Employee's Presentation: The employee or representative shall call witnesses and present documentation and information to demonstrate that the department did not have a justified reason for taking the adverse employment action that is the subject of the appeal.
  - (1) Witnesses called by the Employee during the Employee's presentation will be questioned first by the Employee (direct examination), then by the Department (cross examination), and then again by the Employee, whose questions will be limited to those areas raised in

the Department's cross examination of the witness (redirect examination). The Panel may ask questions of the witness at any time during the presentation.

- (E) The Panel may in its sole discretion determine whether it wishes to hear from any Party or any other witness again.
- (F) The Parties are prohibited from engaging in disruptive behavior at all times during the hearing. If any prohibited disruption occurs during the hearing, the Panel Chair and any Panel member has the authority to request that the person causing the disruption be removed from the hearing. If prohibited disruption continues, the Panel, upon majority vote, may enter a default judgment against the disruptive Party.
- (G) After all witnesses have been questioned, first the Department, and then the Employee may make closing arguments. Because the Department must establish by the greater weight of the evidence that it had a justified reason for taking the adverse employment action that is the subject of the appeal, it has the right to open and close the argument. Each party's closing will not exceed 15 minutes.
- (H) The Panel, upon majority vote, may extend any time period specified above.

**Section 240 Default Decision (2 PYTC § 4-1-240)**

If, after receiving proper notice, either the Employee or the responsible Department designee fails to appear within fifteen minutes of the time set for the hearing, the Panel may enter a default against the party failing to appear. The ERRB may delegate to the Panel Chair, the authority to reconsider a default decision upon the submission of proof of exigent circumstances made to the ERRB Coordinator within ten days of the party's receipt of the default decision. The Panel Chair's decision is final and not appealable.

**Section 250 Deliberation (2 PYTC § 4-1-250)**

- (A) The Panel shall deliberate in private. The Panel shall base its decisions only upon relevant testimony, documents, and other information presented at the hearing, and provisions in the Employee Handbook or other applicable tribal laws or policies. Decisions shall be made by majority vote of the Panel. The vote shall be confidential.
- (B) After deliberation, the Panel shall return copies of the grievance package including forms, documents and/or files presented during the hearing to the ERRB Coordinator to the ERRB shall destroy copies immediately. The Panel decision, the original grievance packet and all documents, forms and/or files submitted to the Panel, including the audio tape or written notes from the hearing shall constitute the appeal record. The Human Resources Department shall maintain the appeal record due to the strict confidentiality.

**Section 260 Panel Decision (2 PYTC § 4-1-260)**

- (A) The Panel Chair shall issue the Panel's written decision to the Employee, Director, and Human Resources Director within ten days after the hearing. The Panel's written decision shall contain the following:
  - (1) Findings of fact by the Panel;
  - (2) Application of the Tribe's policies to the facts;
  - (3) The Panel's conclusions based upon the facts and law/policies; and
  - (4) The Panel's ruling on the appeal.

- (B) The Panel may take the following actions:
  - (1) Grant the appeal and reverse the action grieved;
  - (2) Deny the appeal and uphold the action; or
  - (3) Modify the action if, after the hearing, a majority of the Panel finds that just cause for the adverse employment action, but determines that the adverse employment action was inappropriate in light of the facts and evidence presented at the hearing. Any such modification must comply with the recommended table of penalties set forth in the Employee Handbook.
- (C) A reversal or modification - shall –ot be deemed an admission of wrongful termination or other wrongful action.
- (D) The Panel’s decision may not be appealed to the Tribal Council or reconsidered by the Panel or Board. The Panel’s decision is not subject to judicial review.

**SUBCHAPTER G        REMEDIES**

**Section 270        Reversal of Termination Action (2 PYTC § 4-1-270)**

In the event the Panel reverses a termination, the Human Resources Director, the Director or designee and the Employee shall meet. At such meeting the Employee may be afforded the opportunity, where administratively feasible, to choose one of the following:

- (A) Reinstatement to the employee’s former position; or
- (B) Reinstatement to another employment position with the Tribe for which the Employee meets the minimum qualifications of the position description, of at least equal pay and responsibilities, once such a position is open.
- (C) If the Parties do not agree, the Human Resources Department shall have the ultimate discretion to place the Employee in a position in which the Employee meets the minimum qualifications of the position description, of at least equal pay and responsibilities, within the same department or another department with the approval of the respective department director, based on the above options.

**Section 280        Backpay (2 PYTC § 4-1-280)**

- (A) The Panel may, in its sole discretion, award backpay to the Employee provided that such an award shall be made in accordance with the following:
  - (1) Backpay may be awarded to an Employee or former Employee only in circumstances where a termination or “suspension without pay” has been reversed or an Employee has been prospectively reinstated to employment with the Tribe.
  - (2) In the event backpay is awarded, the Payroll Department shall calculate backpay from the effective date of the termination or suspension to the date the decision has been reversed, but in no event shall an award of backpay exceed a period of 90 days. The Payroll Department shall calculate the rate of backpay based on the Employee’s or former Employee’s regular rate of pay at the time of the termination or suspension action, and the average hours worked per week, not to exceed 40 hours in a workweek. A workweek may be defined differently for employees and former employees of the Department of Public Safety. To determine the average hours worked per week, the Payroll Department

shall consider the average hours worked per week by the Employee or former Employee for the three months prior to the termination or suspension action.

- (3) The Payroll Department shall deduct from the backpay award any unemployment compensation earned by the Employee or former Employee during the time period over which a backpay award applies.
  - (4) An award of backpay does not entitle the Employee or former Employee to any other rights or benefits under the Tribe's Employee Handbook or employee benefit plans.
- (B) If backpay is awarded to an Employee or former Employee whose compensation is federally funded, the backpay award shall be paid from tribal funds.
- (C) Notwithstanding the above provisions for back pay, this Section does not constitute a waiver of the Pascua Yaqui Tribe sovereign immunity, nor does it allow for other monetary damages or other claims against the Pascua Yaqui Tribe.

## **SUBCHAPTER H        ERRB REPORTING AND AUDIT REQUIREMENTS**

### **Section 290        Reporting (2 PYTC § 4-1-290)**

- (A) The ERRB Coordinator shall be responsible for maintaining ERRB records, including but not limited to the following: ERRB files and records: 1) active grievance files; 2) decisions; 3) correspondence; and 4) statistical information.
- (B) The ERRB Coordinator shall provide a semi-annual report to the Tribal Council, ERRB and the Human Resources Division which will include but not limited to: the number of hearings conducted, department involved, outcome of such appeal, and any other information requested by the ERRB or the Tribal Chairperson.
- (C) Semi-annual reports are due on the 15<sup>th</sup> of th<sup>e</sup> month of April, and October.

### **Section 300        Internal Audit (2 PYTC § 4-1-300)**

The Internal Audit Department shall conduct periodic audits of the Employee Relations Review Board to ensure that compliance with applicable appeal policies and procedures.