

SHEBOYGAN COUNTY ORDINANCE NO. 06 (2011/12)

Re: **Creating a County Employee Grievance Procedure**

WHEREAS, Wis. Stat. § 66.0509(1m) requires counties to adopt a grievance system for its employees; and

WHEREAS, the Human Resources Committee has considered various grievance models and believes that the model as provided hereinafter best serves the County's interests, is fair to the County's employees, and complies with the statutory requirements.

NOW, THEREFORE, the Sheboygan County Board of Supervisors does ordain as follows:

Section 1. **Creation of Code.** There is created a Chapter 48 of the Sheboygan County Code as follows:

CHAPTER 48
EMPLOYEE GRIEVANCE PROCEDURE

48.01 POLICY AND PURPOSE.

- (1) It is the County's policy to treat all employees fairly and equitably.
- (2) An employee has the right to bring a grievance to the County's attention without fear of reprisal. Filing a grievance will not reflect unfavorably on an employee's loyalty or adversely affect an employee's employment status.
- (3) An earnest effort shall be made to settle the grievance amicably through the oral and written processes provided for herein.
- (4) Nothing in this Chapter abrogates any legal means of redress available to an employee, including the right to seek redress in a court of law.
- (5) It is the purpose of this Chapter to establish a grievance system for its employees as required by Wis. Stat. § 66.0509(1m) as created by 2011 Wisconsin Act 10.

48.02 DEFINITIONS.

- (1) **Arbitrary and Capricious** – means lacking any reasonable basis or logical justification for the decision.
- (2) **County** – means Sheboygan County.

- (3) **Days** – means calendar days. In counting days, the day of the act, event, or occurrence from which the designated period of time begins to run shall not be included. The last day of the period so counted shall be included unless it is a day County offices are closed, then the last day shall be the next calendar day County offices are open. Saturdays, Sundays, and holidays shall be counted. Days end at 5:00 pm. central time.
- (4) **Employee** – means a person employed by Sheboygan County as a regular full-time or regular part-time employee. **Employee** does not mean a person employed by the County on a limited term, casual, or a contract basis.
- (5) **Employee discipline** – means suspension or termination from employment for violation of a work rule. **Employee discipline** does not include verbal notices, counseling, reminders, or warnings or written notices, counseling, reminders or warnings. Verbal or written notices, counseling, reminders, and warnings will be documented but are not subject to the grievance procedure. The purpose of these notices, counseling, reminders, or warnings is to alert the employee that failure to correct the behavior may result in employee discipline.
- (6) **Grievance** – means an employee complaint regarding employee discipline or workplace safety.
- (7) **Law enforcement officer** – means a person employed by the County for the purpose of detecting and preventing crime and enforcing laws or ordinances who is authorized to make arrests for violations of the laws or ordinances which he or she is employed to enforce.
- (8) **Preponderance of the evidence** – means the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.
- (9) **Supervisor** – means the management-level employer who directly supervises the employee and evaluates the employee. The supervisor may be a Department Head.
- (10) **Suspension** – means the employee is involuntarily suspended from employment for a period of time without compensation as employee discipline. **Suspension** does not include any administrative leave with pay, voluntary leave of absence, furlough, layoff, workforce reduction, job transfer, or demotion, medical leave, or military leave.

- (11) **Termination** – means the employee is involuntarily dismissed from employment as employee discipline. **Termination** does not include voluntary termination, layoffs, workforce reduction, job transfers, or demotions, action taken as a result of an employee failing to meet the qualifications of a position, actions taken as a result of reorganization, end of employment due to disability or retirement, or end of employment due to the completion of a contract.
- (12) **Time limits** – means that all time limits set forth herein are to be strictly adhered to unless both parties mutually agree to waive the applicable time limit. In addition, an impartial hearing examiner may permit exceeding a time limit for conducting a pre-hearing conference or final hearing for good cause.
- (13) **Workplace safety** – means a condition of employment related to the physical health and safety of an employee. It includes but is not limited to the safety of the physical work environment, provision of protective equipment, safety training, the safe operation of workplace equipment and tools, and accident risk and workplace violence prevention. It does not include conditions of employment related to general working conditions that are not directly related to physical health or safety, such as compensation, performance reviews, work schedules, hours of work, breaks, overtime, sick leave, family or medical leave, or vacation scheduling.

48.03 LIMITATIONS.

- (1) A grievance that may be brought by or on behalf of a law enforcement officer using the procedure specified in Wis. Stat. § 59.26(8) and Section 2.08 of this Code may not be brought under this Chapter.
- (2) A grievance that may be brought by or on behalf of an employee under a grievance procedure that is contained in a collective bargaining agreement in effect may not be brought under this Chapter.
- (3) The County Administrator, Department Heads, and the Assistant to the County Administrator who are appointed by the County Administrator pursuant to Wis. Stat. §§ 59.18(2)(b) and 59.18(3) may not bring a grievance under this Chapter regarding termination or discipline with respect to his or her employment.

- (4) Circuit Court Commissioners who are appointed pursuant to Wis. Stat. § 757.68 may not bring a grievance under this Chapter regarding termination or discipline with respect to his or her employment.
- (5) Corporation Counsels who are appointed pursuant to Chapter 42 of this Code may not bring a grievance under this Chapter.
- (6) Registers in Probate who are appointed pursuant to Wis. Stat. § 851.71(1) may not bring a grievance under this Chapter regarding the suspension or termination of his or her employment.
- (7) County Supervisors, elected constitutional officers, and members of boards and commissions are not subject to the grievance procedure under this Chapter.

48.04 ADMINISTRATION.

- (1) The Human Resources Director shall supervise and administer the grievance process.
- (2) Department Heads, Managers, and Supervisors shall keep the Human Resources Director informed of the status of all employee discipline actions, and grievances relating thereto.

48.05 EMPLOYEE DISCIPLINE PROCEDURE.

- (1) Any employee who violates any work rule, engages in misconduct related to the workplace or to the employee's position, or engages in poor work performance may be subject to discipline including suspension or termination. The employee's immediate Supervisor shall be responsible for imposition of discipline. A Supervisor may utilize verbal or written notices, reminders, or warnings that the Supervisor determines to be appropriate. The Supervisor is encouraged but is not required to follow a specific pattern of progressive discipline, including verbal or written notices, reminders, or warnings prior to suspension or termination, but the absence or presence of verbal or written notices, reminders, or warnings may be considered in the determination of whether the discipline subject to a grievance was arbitrary and capricious.
- (2) Any employee discipline will be accompanied by a written statement which states at least one reason for the discipline and the date or dates it will take effect.

- (3) Prior to issuing any suspension or discharge, the Supervisor or Department Head must consult and obtain the approval of the Human Resources Director.
- (4) Conduct subject to employee discipline includes conduct as described in the Sheboygan County Personnel Policy and Procedure Manual, as it may be amended from time to time.
- (5) Nothing in this Chapter shall be construed to require a Supervisor to impose discipline in a sequential or progressive manner. A Supervisor has discretion to impose discipline that he or she determines is appropriate under the circumstances.

48.06 ORAL GRIEVANCE PROCESS.

- (1) An employee with a grievance must orally first present the grievance to his or her Supervisor within ten (10) calendar days of the action or event that gives rise to the grievance. Failure to present the grievance orally within this time frame shall render any subsequent grievance null and void.
- (2) The Supervisor shall promptly notify the Human Resources Director and the Department Head of any oral grievance, provide the name of the employee and the nature of the grievance, and keep the Human Resources Director and the Department Head informed of the status of the grievance.
- (3) The Supervisor shall meet with the employee to discuss the grievance and attempt to resolve the grievance. This attempt shall be completed within ten (10) days of the presentation of the grievance.
- (4) The Supervisor shall prepare a written report documenting all of the facts and circumstances regarding the grievance within three (3) calendar days of the meeting and shall provide a copy of the report to the Department Head, the Human Resources Director, and the employee.

48.07 WRITTEN GRIEVANCE PROCESS.

- (1) If a grievance is not resolved to the employee's satisfaction within ten (10) calendar days after it is first discussed with the employee's Supervisor, the employee may submit the grievance in writing to the employee's Department Head. A written grievance must be filed no

later than ten (10) calendar days after it is discussed with the employee's Supervisor.

- (2) The written grievance must contain a statement explaining the reason for the grievance, provide any information that the employee wants the Department Head to consider in connection with the grievance, and describe the remedy that is being sought.
- (3) The Department Head shall promptly notify the Human Resources Director of any written grievance, provide a copy of any written materials received in connection with the grievance, and keep the Human Resources Director informed of the status of the grievance.
- (4) The Department Head shall within ten (10) calendar days of receipt of a written grievance meet with the employee to discuss the grievance and attempt to resolve the grievance whenever possible.
- (5) The Department Head shall provide a written reply to the employee within ten (10) calendar days following the meeting and shall provide a copy of the written reply to the Human Resources Director at the time it is provided to the employee.

48.08 IMPARTIAL HEARING.

- (1) An employee may within ten (10) calendar days of receipt of the Department Head's reply request a hearing before an impartial hearing examiner by filing a written hearing request with the Human Resources Director.
- (2) The Human Resources Director shall upon receipt of a written hearing request appoint an impartial hearing officer to hear the matter. The impartial hearing officer shall be selected by the Human Resources Director with the approval of the County Administrator from among the Department Heads but shall not be a person who supervises the employee. Alternatively, in the discretion of the Human Resources Director, with the approval of the County Administrator, the Human Resources Director may select a person who is not affiliated with the County.
- (3) The hearing examiner shall be impartial and may not have any prior knowledge of the grievance.
- (4) A hearing will be scheduled within thirty (30) calendar days of receipt of the hearing request. The hearing examiner may reschedule the hearing with the mutual consent of the parties.

- (5) The hearing examiner may with consent of the parties use his or her best efforts to mediate the grievance.
- (6) The employee has the right to be represented at the hearing, at the employee's expense, by a person of the employee's choosing. The employee has no right of discovery except the employee is entitled to his or her personnel files to the extent allowed by Wis. Stat. § 101.13.
- (7) The hearing shall be conducted using the procedures set forth in Wis. Stat. §§ 68.11(2) and (3), as applicable.
- (8) The employee has the burden of proof in an employee discipline grievance to show that the County's discipline was arbitrary and capricious. The County has the burden of proof in a workplace safety grievance. The standard required of the party with the burden of proof in all cases is a preponderance of the evidence.
- (9) The hearing examiner has the authority to overturn the Department Head's determination and to order back pay or reinstatement or both.
- (10) The hearing examiner shall provide a written decision to the parties within twenty (20) calendar days following the close of the record. The written decision should include a case caption, the parties and appearance, a statement of the issue(s) and findings of fact, any necessary conclusions of law, the final decision and order, and any other information the hearing examiner deems appropriate.
- (11) The hearing examiner's records shall be preserved, held, and sealed as may be legally required by the Human Resources Director. Any appeal of the hearing examiner's decision shall be deemed a waiver of any rights that the employee might otherwise have to keep the records sealed.

48.09 COUNTY BOARD APPEAL.

- (1) An employee may within ten (10) calendar days of receipt of the hearing examiner's decision appeal the decision to the County Board by filing a written notice of appeal with the County Clerk.
- (2) The written notice of appeal must contain a statement explaining the reason for the appeal, include a copy of the written grievance filed with the Department Head, and

include a copy of the hearing examiner's decision. The notice of appeal may include a copy of the hearing transcript or exhibits or both but may not contain any information that was not admitted into evidence at the hearing.

- (3) The County Clerk shall promptly notify the Human Resources Director of any written notice of appeal that has been filed. The Human Resources Director shall determine whether the appeal is timely filed. If the appeal is determined by the Human Resources Director to have been timely filed, the Human Resources Director shall notify the Clerk to place the appeal on the Agenda as provided for hereafter and shall furnish to the Clerk any portion of the hearing examiner's record that was not included with the notice of appeal.
- (4) The appeal will be placed on the agenda for the first County Board meeting that is held at least ten (10) calendar days after the County Clerk receives a written notice of appeal. If related to a matter of employee discipline, the appeal will be noticed for consideration as a potential closed session pursuant to Wis. Stat. § 19.85(1)(b) pertaining to the dismissal, demotion, licensing, or suspension of a public employee. The County Clerk will provide a copy of the meeting notice to the employee and the employee may request that an open session be held.
- (5) The employee may submit written arguments in support of the appeal with the notice of appeal or at any time up to seven (7) calendar days prior the County Board meeting at which the appeal will be heard. The Clerk shall distribute such written arguments to the County Board.
- (6) The employee has the right to representation by a person of the employee's choosing and at the employee's expense. The employee and the employee's representative may attend the closed session. The employee and the employee's representative may address the County Board in support of the appeal. However, the employee and the employee's representative will be excluded from any closed session during the County Board's discussion or deliberation.
- (7) The Human Resources Director or his or her designee may address the County Board in support of the hearing examiner's decision after the employee and the employee's representative. However, the Human Resources Director or designee will be excluded from any

closed session during the County Board's discussion or deliberation.

- (8) The County Board will not receive any additional testimony or evidence into the record. The County Board's consideration of the appeal will be limited to a review of the record and any oral or written arguments to determine whether there was any procedural error or any abuse of discretion.
- (9) The County Board may reverse the hearing examiner's decision, remand the decision for further proceedings, substitute a lesser discipline, or affirm the hearing examiner's decision.
- (10) The County Board Chairperson shall prepare and sign a written determination reflecting the County Board's decision. The County Board Chair may enlist the assistance of the County Clerk or the Corporation Counsel or both in preparing the determination. A copy of the determination will be provided to the employee within ten (10) calendar days following the County Board's decision.
- (11) The County Board's decision is final and may not be appealed.

48.10 COSTS. Each party shall bear its own costs for witnesses, transcripts, exhibits, attorneys' fees, and all other out-of-pocket expenses incurred in investigating, preparing, and prosecuting a grievance or appeal. The County shall bear the costs of any hearing examiner.

48.11 POLICIES AND PROCEDURES MANUAL. This Chapter shall be incorporated into the County's Policies and Procedures Manual. All other provisions of the Policies and Procedures Manual shall be applicable to the grievance procedure outlined herein. To the extent that any other provisions of the Policies and Procedures Manual conflict with the provisions of this Chapter, the provisions of this Chapter shall prevail.

Section 2. **Effective Date.** This Ordinance shall take effect upon enactment.

Respectfully submitted this 18th day of October, 2011.

HUMAN RESOURCES COMMITTEE

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