

**SHEBOYGAN COUNTY ORDINANCE NO. 04 (2014/15)**

Re: **Modifying Employee Grievance Procedure**

*\*Printed as amended*

**WHEREAS**, as required by Wis. Stat. § 66.0509(1m) as created by 2011 Wisconsin Act 10, the Sheboygan County Board in October 2011 enacted Chapter 48 of the Sheboygan County Code creating an employee grievance procedure, and

**WHEREAS**, through the creation of this new procedure, Sheboygan County, along with all other counties in the state, was required to replace a grievance procedure that had evolved over a period of nearly 40 years of collective bargaining, and

**WHEREAS**, Wis. Stat. § 66.0509(1m) provided a wide latitude to counties in establishing their grievance procedures, and

**WHEREAS**, the procedure established by Sheboygan County under Chapter 48 was first fully tested to a final disposition in January 2014, and

**WHEREAS**, the application of the procedure to an actual grievance revealed that improvements could be made to the process to streamline and clarify it, and

**WHEREAS**, at the direction of the Executive Committee, the County Administrator was charged with crafting improvements to the grievance process, and

**WHEREAS**, the changes as proposed herein would go a long way to improving the grievance process;

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

Section 1. **Modifying Grievance Procedure**. Chapter 48 of the Sheboygan County Code of Ordinances is hereby amended as follows (deletions indicated by strikeouts; additions by redlining):

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) Nothing in this Chapter creates an employment contract. Employment, as applicable, is at-will, subject to the laws of the United States and the State of Wisconsin. There is no definite or ascertainable term of employment. An employee may be terminated at any time, with or without cause.
- (56) 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 and as interpreted by *Dodge County Prof'l Employees v. Dodge County*, 2014 WI App 8.

#### 48.02 DEFINITIONS.

- (1) **Arbitrary and Capricious Standard** – means ~~lacking any reasonable basis or logical justification for the decision~~ the standard to be used by any reviewing entity in considering whether or not the action taken by the employer was appropriate or arbitrary and capricious. To change the employer's action, the reviewer must find the employer's action was arbitrary and capricious which means that the employer's action was one which lacked any rational basis or which was the result of unconsidered willful or irrational choice. It must have been an action with no rational basis.
- (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, demotion, reduction in pay, or loss of benefits for violation of a work rule. **Employee discipline** does not include verbal notices, counseling, reminders, or warnings or written notices, counseling, reminders or warnings, or demotions, reductions in pay, or loss of benefits attributable to reorganization or budget limitations. 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, termination, 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, end of employment due to disability or retirement, end of employment due to the completion of a contract, or end of employment resulting from a Department reorganization approved by the County Board, but **does** include ~~other layoffs, workforce reduction, job transfers, or demotions, or~~ 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.~~ Termination **does** include discipline-based termination
- (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~~ consult with, as appropriate, the Human Resources Director ~~informed of the status of all~~ prior to taking any employee discipline and termination actions, and grievances relating thereto.

#### 48.05 EMPLOYEE DISCIPLINE AND TERMINATION 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 rising to the level of being a work rule violation 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 in lieu of discipline. The Supervisor is encouraged but is not required to follow a specific pattern of progressive discipline responses to work rule violations, 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 discharged discipline, 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.
- (6) Discipline resulting in termination shall be subject to the foregoing provisions.
- (7) An employee termination for reasons other than discipline will be accompanied by a written statement which recites at least one reason for the termination.

#### 48.06 ~~ORAL~~ INITIAL GRIEVANCE PROCESS.

- (1) An employee with a grievance, including a workplace safety-based grievance, must orally first present the a written grievance to his or her Supervisor together with a copy to the Department Head, if different from the 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. The written grievance must contain a statement explaining the reasons

for the grievance, provide any information that the employee would like the Supervisor and the Department Head to consider in connection with the grievance, and describe the remedy that is being sought.

- (2) The Supervisor and Department Head shall promptly notify the Human Resources Director and the ~~Department Head~~ County Administrator of any ~~oral~~ written grievance, provide the name of the employee and the nature of the grievance, and keep the Human Resources Director and the ~~Department Head~~ County Administrator informed of the status of the grievance.
- (3) The Supervisor and Department Head 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 written grievance.
- (4) If the attempt to resolve the grievance through the employee meeting is unsuccessful, ~~the~~ Supervisor and Department Head shall arrange a meeting within ten (10) days of the meeting provided in Subsection (3), above, with the Human Resources Director and County Administrator to discuss the grievance in full to determine the merits of the grievance and to consider whether to grant the remedy sought by the employee. After the meeting, upon making a determination on the grievance, the Department Head shall prepare a written report documenting all of the facts and circumstances regarding the grievance and the determination on the grievance which shall be signed by the Department Head and the Human Resources Director within ~~three (3)~~ ten (10) calendar days of the meeting hereunder, and shall provide a copy of the report to ~~the Department Head, the Human Resources Director, and~~ the employee.
- (5) The initiation of a grievance does not stay the imposition of discipline or termination except at the discretion of the Department Head.

#### ~~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~~48.07 IMPARTIAL HEARING.

- (1) An employee may within ten (10) calendar days of receipt of the Department Head's ~~reply~~ report and determination under Section 48.06(4) of this Code 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 examiner to hear the matter. In the discretion of the Human Resources Director, with the approval of the County Administrator, the Human Resources Director ~~\*may shall~~ select a person who is not ~~affiliated with~~ employed by the County, such as a retired judge, an attorney mediator, a WERC panel member, or similar person who has the ability to be impartial. Alternatively, for safety-based grievances, the impartial hearing examiner may 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.
- (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 or termination grievance to show that the County's discipline or termination was arbitrary and capricious and/or that the County did not adhere to the time limits or other grievance process requirements established under this Chapter. 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 written determination and to order back pay or reinstatement or both such other remedy deemed appropriate.
- (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 appearances, 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.

#### 48.0948.08 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 and County Administrator 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~~ arrange for the appeal to be placed on the Agenda of the Human Resources Committee as provided for hereafter and shall furnish to the ~~Clerk~~ Committee the Notice of Appeal and supporting documents, and any portion of the hearing examiner's record that was not included with the notice of appeal. The County Board Chairperson and Vice Chairperson shall serve as voting members of the Human Resources Committee for purposes of considering the appeal.

- (4) The appeal will be placed on the agenda for the ~~first County Board~~ Human Resources Committee meeting ~~that is to be held at least ten (10)~~ no more than thirty (30) calendar days after the County Clerk receives a written notice of appeal. If related to a matter of employee discipline, including discipline-based termination, 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~~ Human Resources Committee meeting at which the appeal will be heard. The ~~Clerk~~ Human Resources Director shall distribute such written arguments to the ~~County Board~~ Human Resources Committee.
- (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~~ Human Resources Committee 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~~ Human Resources Committee's discussion or deliberation.
- (7) The Human Resources Director or his or her designee may address the ~~County Board~~ Human Resources Committee 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~~ Human Resources Committee's discussion or deliberation.
- (8) The ~~County Board~~ Human Resources Committee will not receive any additional testimony or evidence into the record. The ~~County Board's~~ Human Resources Committee'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 Human Resources Committee's review is limited to:
  - (a) Whether the hearing examiner kept within his or her jurisdiction;
  - (b) Whether the hearing examiner's action was arbitrary or capricious; and
  - (c) Whether the evidence was such that the hearing examiner might reasonably have made the decision in question.
- (910) The ~~County Board~~ Human Resources Committee, by majority vote, including the vote of the County Board Chairperson and Vice Chairperson ~~may reverse~~ shall decide to affirm the hearing examiner's decision, remand the decision for further proceedings, substitute a lesser discipline outcome, or ~~affirm reverse~~ the hearing examiner's decision.
- (4011) The County Board Chairperson shall prepare and sign a written ~~determination~~ Committee Report reflecting the ~~County Board's~~ Human Resources Committee'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~~ Human Resources Committee's decision. A copy will be submitted to the County Clerk who will place the Report on the next available County Board meeting Agenda for full County Board action on the Report.
- (12) At the following County Board meeting, the Committee Report will be submitted to the full County Board for acceptance or rejection. The County Board shall not take testimony, accept additional e-mails, accept briefing, accept oral argument, or otherwise conduct a hearing of any sort in relation to an appeal.
- (13) The County Board shall evaluate the Committee Report and shall, upon majority vote, accept the Report as the final disposition of the grievance unless the County Board finds the conclusions outlined in the Committee Report to be arbitrary and capricious, in which case the Report will be referred back to the Human Resources Committee to modify the decision contained therein at its next Committee meeting.
- (14) The Human Resources Committee, including the County Board Chairperson and Vice-Chairperson, shall take such further action on the grievance in its sole discretion believes is consistent with the will of the County Board in having referred it back to the Human Resources Committee.

(15) The Clerk shall provide to the employee a copy of the Board minutes reflecting the action of the full County Board on the Committee Report. The Human Resources Director shall notify the employee of any Human Resources Committee action modifying the decision contained in its Committee Report if the Report had been referred back by the full County Board.

(416) The County Board's decision, or the decision of the Human Resources Committee, if applicable, is final and may not be appealed.

~~48.10~~48.09 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~~48.10 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.** The herein Ordinance shall take effect upon enactment.

Respectfully submitted this 15th day of July, 2014.

#### EXECUTIVE COMMITTEE

Roger L. Te Stroete

Roger L. Te Stroete, Chairperson

Thomas Wegner

Thomas Wegner, Vice-Chairperson

William C. Goehring

William C. Goehring, Secretary

George Marthenze

George Marthenze

Edward J. Procek

Edward J. Procek

Opposed to Introduction:

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ENACTED 08.19.2014