SUBJECT: **DISCIPLINE & GRIEVANCE PROCEDURE**

1. This Procedure is established for an employee to use for matters concerning discipline, termination or workplace safety. An employee subject to a contractual grievance procedure shall follow the contractual grievance procedure to the extent those procedures cover the matters referenced in this procedure (for example, Police Union). This procedure does not create a legally binding contract. The City of Menasha reserves all rights and this procedure does not create a contract of employment. Employees of the City of Menasha are employed at-will and may resign with our without reason. The City of Menasha may terminate the employment relationship at any time with or without reason and without violation of applicable law.

2. Definitions:
   A. For purposes of this policy, workplace safety means the conditions of employment related to physical health and safety of employees, as long as such conditions are not unenforceable under federal or state law, related only to: safety of the physical work environment, the safe operation of workplace equipment and tools, provision of protective equipment, training and warning requirements, workplace violence and accident risk.
   B. A "grievant" is an employee as defined by state statutes governing this grievance procedure.
   C. Termination means a separation from employment by the employer for disciplinary or quality of performance reasons.

3. Every reasonable effort should be made by supervisors and employees to resolve any questions, problems or misunderstandings that have arisen. Accordingly, employees should first discuss complaints or questions with their immediate supervisor.

4. If the problem cannot be resolved with the employee's immediate supervisor, a written grievance may be filed with the department head, or designee in the absence of the department head, no later than five (5) working days from the date that the employees first became aware, or should have reasonably been aware of the condition or circumstance giving rise to the grievance. The department head, or designee, may schedule a meeting to review the matter within ten (10) working days of receiving the grievance. The department head, or designee, will provide a written response within ten (10) working days of receiving the grievance or within ten (10) working days of the meeting, whichever is later. In the event that the department head is also the immediate supervisor, the written grievance shall be filed with the Human Resources Director and the same time periods for response will apply.

5. The written decision provided in paragraph 4. above shall be final unless the employee files a written request with the Human Resources Director no later than five (5) working days of the date of the response required by paragraph 4. above. The Human Resource Director, or designee in the absence of the Director, may schedule a meeting to review the matter within ten (10) working days. The Human Resources Director, or designee, will provide a written response within ten (10) working days of receiving the grievance or within ten (10) working days of the meeting, whichever is later. In the event that the Human Resources Director has already reviewed the matter as required by paragraph 4. above, the provisions of this paragraph do not apply and the next step is before an impartial hearing officer.

6. The written decision shall be final unless the employee files a written request with the Human Resources Director no later than five (5) working days of the date of the response under paragraph

5. above for a hearing before an impartial hearing officer (IHO). The City will provide an examiner who shall not be a City of Menasha employee. The employee may be represented at the hearing by an attorney at the employee's own expense. The hearing shall be conducted as soon as practicable and may or may not be transcribed, subject to the IHO's discretion. Subject to the IHO's discretion, witnesses may also present information but only in person and under oath or affirmation, and written documents may also be submitted. The appealing party carries the burden of production of evidence and the burden of proof which shall be a preponderance of the evidence. The sole issue before the IHO shall be: Based on the evidence presented, is the written decision of the Human Resources Director, or designee, arbitrary and capricious? The examiner shall provide a written decision.

7. The decision of the impartial hearing officer shall be final unless the employee files with the City Clerk a request for the decision to be reviewed by the Common Council of the City of Menasha no later than five (5) working dates of the date of the decision issued under paragraph 6. above. The Council shall review the matter as soon as practicable and in accordance with its procedures for public participation. The Council shall examine any records produced at the hearing before the IHO and determine whether a rational basis exists for the IHO's written decision. Findings of fact shall be upheld unless they are clearly erroneous. The Council shall not conduct a de novo hearing, nor substitute its judgment for that of the hearing examiner. A simple majority vote of the Council membership shall decide the appeal and shall be final.

8. Failure to process a grievance by the grievant within the time limit, or agreed upon extensions, shall constitute termination of the grievance. Failure of management representative to meet the time limits shall cause the grievance to move automatically to the next step in the procedure. Time limits may be extended by agreement in writing of the parties at any step of the procedure.

GRIEVANCE COMPARISON CHART

PROCEDURE

	1035 Union Contract	1035B Union Contract	Personnel Policy (non-reps)	Proposed
1)	Employee to verbally discuss with supervisor (5 working days)	Employee to verbally discuss with supervisor (5 working days)	Employee to verbally discuss with supervisor	Employee to verbally discuss with supervisor
2)	Employee to submit written grievance to supervisor (5 working days)	Employee to submit written grievance to supervisor (5 working days)		
3)	Employee to submit written grievance to Department Head (5 working days)	Employee to submit written grievance to Department Head (5 working days)	Employee to verbally discuss with Department Head	Employee to submit written grievance to Department Head (5 working days)
				Department Head may meet with employee to discuss grievance (10 working days)
4)	Employee to submit written grievance to Personnel Director (5 working days)	Employee to submit written grievance to Personnel Director (5 working days)	Employee to present concern to Personnel Director and/or the Mayor	Employee to submit written grievance to Personnel Director (5 working days)
5)	Personnel Director to meet with employee to discuss grievance (10 working days)	Personnel Director to meet with employee to discuss grievance (10 working days)		Personnel Director may meet with employee to discuss grievance (10 working days)
6)	Employee appeal to arbitrator selected by agreement	Employee appeal to arbitrator selected by agreement	Employee appeal to Personnel Committee	Employee appeal to impartial hearing officer (5 working days) selected by City by statute
7)	Either party can appeal to WERC	Either party can appeal to WERC		Employee (only) appeal to Common Council (5 working days)

OTHER

Parties share cost	Parties share cost		No provision in statute for costs/City to pay
Employees plus union rep paid for processing grievance	Employees plus union rep paid for processing grievance	Employee paid, if working hours	Employee paid, if working hours
Employee plus union rep paid for arbitration hearing	Employee plus union rep paid for arbitration hearing	Employee paid, if working hours	Employee paid, if working hours
Employee witnesses paid for processing grievance	Employee witnesses paid for processing grievance	Employee witness paid, if working hours	Employee witness paid, if working hours
Employee witnesses paid for arbitration hearing	Employee witnesses paid for arbitration hearing	Employee witness paid, if working hours	Employee witness paid, if working hours
Parties pay their own attorney fees	Parties pay their own attorney fees	Parties pay their own attorney fees	Parties pay their own attorney fees
All contract provisions can be arbitrated	All contract provisions can be arbitrated		No contract
Arbitration Hearing - arbitrator limited to interpreting the contract	Arbitration Hearing - arbitrator limited to interpreting the contract		Grievance - limited to discipline, termination for disciplinary or quality of performance and workplace safety
Accident Review Committee			Accident Review Committee

STATUTORY REQUIREMENTS

1. Create a grievance procedure that addresses employee terminations, employee discipline and workplace safety
2. Hearing before an impartial hearing officer

3. Appeal process that includes the common council as the highest level of appeal

ARTICLE XV - GRIEVANCE AND ARBITRATION PROCEDURE

A. Definition of a Grievance. A grievance shall mean a dispute concerning the interpretation or application of this contract.

B. Subject Matter: Only one subject matter shall be covered in any one grievance. A written grievance shall contain the name and position of the grievant, a clear and concise statement of the grievance, the issue involved, the relief sought, the date the incident or violation took place, the specific section of the Agreement alleged to have been violated and the signature of the grievant and the date. Matters involving a union grievance shall be signed and processed by a Union officer or representative.

C. Time Limitation. If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing.

D. Settlement of Grievance. Any grievance shall be considered settled at the completion of any step in the procedure if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.

E. Steps in Procedure.

Step 1. The employee, alone or with his representative shall orally discuss his complaint to his supervisor no later than five (5) working days after he knew or should have known of the cause of such complaint. The employee shall perform his normal work task and present his complaint later unless safety is an issue. If the issue is not resolved during the discussion the employee may file a written grievance as described in Step 2 of this article.

Step 2. If the grievance is not settled at the first step, the employee and/or his representative shall prepare a written grievance and present it to the supervisor within five (5) working days of the Step 1 decision. The supervisor will further investigate the grievance and submit his decision to the employee and his representative in writing within five (5) working days after receiving written notice of the grievance.

Step 3. If the grievance is not settled at the second step, the employee and/or his representative may appeal in writing to the Department Head within five (5) working days of the Step 2 decision. If the Department Head is the immediate supervisor, Step 3 shall be omitted. The Department Head will further investigate the grievance and submit his decision to the employee and his representative in writing within five (5) working days after receiving notice of the grievance.

Step 4. If the grievance is not settled at the third step, the Union may appeal in writing to the Personnel Director, within five (5) working days after receipt of the written decision of the Department Head. The Personnel Director shall discuss the grievance, within ten (10) working days of the appeal, with the employee, and the Union representative shall be afforded the opportunity to be present at this conference.

F. Arbitration.

1. Time Limit: If a satisfactory settlement is not reached in Step 4, the Union must notify the Personnel Director in writing within ten (10) working days that they intend to process the grievance to arbitration.

2. Arbitrator. The City and Union shall select an arbitrator in a mutually agreeable manner.

3. Arbitration Hearing. The Arbitrator selected or appointed shall meet with the parties at a mutually agreeable date to review the evidence and hear testimony relating to the grievance.

4. Costs. Both parties shall share equally the costs and expenses of the arbitration proceedings, including transcript fees and fees of the arbitrator, if any. Each party, however, shall bear its own costs for witnesses and all other out-of-pocket expenses including possible attorneys' fees, except that an employee shall not suffer a loss of pay for reasonable and necessary witness time. The arbitration hearing shall be conducted in the City Hall.

5. Transcript. There shall be a transcript prepared for each arbitration hearing. The parties may mutually agree to waive the transcript.

6. Decision of the Arbitrator. The powers of the Arbitrator are limited as follows: Its function is limited to that of interpreting and applying the provisions of this Agreement. It shall have no power to add to, subtract from or modify any of the terms of this Agreement. The decision of the Arbitrator shall be rendered promptly following the hearing and if exercised in accordance with the terms of this Agreement and consistent with federal, state and local laws, shall be final and binding upon both parties.

G. General Provisions.

1. Past Grievance. Past grievances may not be filed under the provisions of this procedure and all grievances filed which bear a filing date which precedes or is the same as the expiration date of this Agreement must be processed to conclusion under the terms of this procedure.

2. Special Notice for New Facts. If the grievance has been processed beyond Step 3, and the grievant wishes to add new facts or information into the file, he shall immediately transmit notice to the Director of Public Works or Director of Parks and Recreation and shall indicate in said notice the nature and details of the new facts. When such notice has been transmitted by the grievant, the grievance cannot progress through the arbitration procedures until the Director has had an opportunity to respond.

   Within five (5) working days of receipt of such special notice, the Director shall exercise one of the following options:

   a. He may reopen the proceedings at Step 3 for the purpose of reconsidering the Step 3 decision.

   b. He may acknowledge receipt of the facts and stipulate that the grievance proceed.

3. Adjustments from Grievance Conferences. Any adjustments resulting from the grievance conferences under this provision shall not be inconsistent with the terms of this Agreement.

ARTICLE XVI - GRIEVANCE COMMITTEE

A. The Grievance Committee shall be as follows:

1. The Grievance Committee shall be up to five members as designated by the Union. The Union shall notify the Personnel Department in writing as to the members of the Grievance Committee.

2. The Employer agrees that time spent during working hours in the conduct of grievances and in negotiations shall not be deducted from the pay of delegated employee representatives of the union.

3. Not more than one union representative per department may accompany a grievant during normal working hours.

B. Accident Review Committee. The Accident Review Committee will consist of the Street & Sanitation Office Coordinator, the Vice-Chairman of the Personnel Committee and a Steward of Local 1035. This Committee shall review all traffic collisions and make a recommendation to the Park Superintendent or Street Superintendent as to whether discipline ought be imposed. Appeal of any discipline recommended by the accident review Committee shall be to the Personnel Committee as a Step 4 Grievance procedure.

ARTICLE XVII - WAIVER OF RIGHTS

Neither party to this Agreement by such act at the time hereof or subsequent hereto, agrees to and does waive any rights possessed by it or them under our state and federal laws, regulations or statutes. In the event any clause or portion of this Agreement is in conflict with the statutes of the State of Wisconsin, governing municipalities, or other statutes, such clause or portion of the Agreement shall be declared invalid, and negotiations shall be instituted to adjust the invalidated clause or portion thereof.

ARTICLE XVIII - UNION BULLETIN BOARD

The Union is hereby granted permission to post notices, announcements and other legitimate materials on the bulletin board at the premises.

ARTICLE XIX - FAIR SHARE

The Employer shall deduct from the wages of all employees a dollar amount equal to the monthly dues certified by the Union and forward such monies to the treasurer of the Union. The City is to be saved harmless in the event of any legal controversy involving this provision.

AGREEMENT

This Agreement is made and entered into by and between the City of Menasha, hereinafter referred to as "City" or "Employer" and Menasha City Hall and Police Support Staff Employees Local 1035-B, AFSCME, AFL-CIO, hereinafter referred to as the "Union".

ARTICLE I - RECOGNITION

The City hereby recognizes the Union as the exclusive bargaining agent for all regular full-time and regular part-time employees of the Menasha City Offices and all of the regular full-time and regular part-time Police Support Staff covered in the classifications listed in Article VIII of this Agreement, excluding elected officials, managerial, supervisory, confidential, temporary employees, and the garage clerk for the purpose of engaging in conferences and negotiations establishing wages, hours, and conditions of employment.

ARTICLE II - MANAGEMENT RIGHTS RESERVED

A. General: Unless as otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, demote, suspend or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested exclusively in the Employer.

B. Work Rules: The Employer may adopt and publish reasonable rules which may be amended from time to time. Except for rules, regulations and directives from the State of Wisconsin, or any other governmental agency having jurisdiction over the Employer, such rules and regulations shall be submitted to the Union, if possible, prior to their effective date, for its consideration.

C. Union Action: Action to amend, alter or otherwise change said rules and/or regulations shall be taken through the Grievance Procedure, in this Agreement.

D. Subcontracting: The Employer may contract out for any goods and services.

ARTICLE III - REPRESENTATION

A. Union Negotiating Team: The Union shall be represented in all such bargaining or negotiations with the City by such representatives as the Union shall designate.

B. City Negotiating Team: The City shall be represented in all such bargaining or negotiations with the Union by such representatives as the City shall designate.

ARTICLE IV - GRIEVANCE AND ARBITRATION PROCEDURE

A. Definition of a Grievance: A grievance shall mean a dispute concerning the interpretation or application of this contract.

B. Subject Matter: Only one subject matter shall be covered in any one grievance. A written grievance shall contain the name and position of the grievant, a clear and concise

statement of the grievance, the issue involved, the relief sought, the date the incident or violation took place, the specific section of the Agreement alleged to have been violated and the signature of the grievant and the date. Matter involving a Union grievance shall be signed and processed by a Union officer or representative.

C. Time Limitations: If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits can be extended by mutual consent in writing. Working days shall be defined as Monday through Friday excluding holidays.

D. Settlement of Grievance: Any grievance shall be considered settled at the completion of any step in the procedure, if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.

E. Steps in Procedure:

Step 1: The employee, alone or with his representative, shall discuss his complaint with his supervisor no later than five (5) working days after he knew or should have known of the cause of such complaint. The employee shall perform his normal work task and present his complaint later unless safety is an issue. If the issue is not resolved during the discussion, the employee may file a written grievance as described in Step 2 of this Article.

Step 2: If the grievance is not settled at the first step, the employee and/or his representative shall prepare a written grievance and present it to the supervisor within five (5) working days of the Step 1 decision. The supervisor will further investigate the grievance and submit his decision to the employee and his representative in writing within five (5) working days after receiving written notice of the grievance. The City shall notify the Union with the Step 2 decision if the Union should appeal to Step 3 or Step 4. However, the City may not require both steps.

Step 3: If the grievance is not settled at the second step, the employee and/or his representative may appeal in writing to the Department Head within five (5) working days of the Step 2 decision. If the Department Head is the immediate supervisor, Step 3 shall be omitted. The Department Head will further investigate the grievance and submit his decision to the employee and his representative in writing within five (5) working days after receiving notice of the grievance.

Step 4: If the grievance is not settled at the third step, the Union may appeal in writing to the Personnel Director within five (5) working days after receipt of the written decision of the Department Head. The Personnel Director shall discuss the grievance, within ten (10) working days of the appeal, with the employee, and the Union representative shall be afforded the opportunity to be present at this conference. Following said conference the Personnel Director shall respond to the employee and the Union within ten (10) working days in writing.

F. Arbitration:

1. Time Limit: If a satisfactory settlement is not reached in Step 4, the Union must notify the Personnel Director in writing within ten (10) working days that they intend to process the grievance to arbitration.

2. Arbitrator: The City and Union shall select an arbitrator in a mutually agreeable manner.

3. Arbitration Hearing: The arbitrator selected or appointed shall meet with the parties at a mutually agreeable date to review the evidence and hear testimony relating to the grievance.

4. Costs: Both parties shall share equally the costs and expenses of the arbitration proceedings, including transcript fees and fees of the arbitrator, if any. Each party, however, shall bear its own costs for witnesses and all other out-of-pocket expenses including possible attorneys' fees, except that an employee shall not suffer a loss of pay for reasonable and necessary witness time. The arbitration hearing shall be conducted in the City Hall.

5. Transcript: There shall be a transcript prepared for each arbitration hearing. The parties may mutually agree to waive the transcript.

6. Decision of the Arbitrator: The powers of the Arbitrator are limited as follows: its function is limited to that of interpreting and applying the provisions of this Agreement. It shall have no power to add to, subtract from or modify any of the terms of this Agreement. The decision of the Arbitrator shall be rendered promptly following the hearing and, if exercised in accordance with the terms of this Agreement and consistent with federal, state, and local laws, shall be final and binding upon both parties.

G. General Provisions:

1. Special Notice for New Facts: If the grievance has been processed beyond Step 3, and the grievant wishes to add new facts or information into the file, he shall immediately transmit notice to the Department Head and shall indicate in said notice the nature and details of the new facts. When such notice has been transmitted by the grievant, the grievance cannot progress through the arbitration procedures until the Department Head has had an opportunity to respond.

   Within five (5) working days of receipt of such special notice the Department Head shall exercise one of the following options:

   a) He may reopen the proceedings at Step 3 for the purpose of reconsidering the Step 3 decision.

   b) He may acknowledge receipt of the facts and stipulate that the grievance proceed.

2. Adjustments from Grievance Conferences: Any adjustments resulting from the grievance conferences under this provision shall not be inconsistent with the terms of this Agreement except by mutual agreement.

U. Horseplay or violation of safety procedures.

V. Possessing weapons or explosives of any type on City property without City authorization.

W. Substandard quality and/or quantity of work, including deliberate reduction of output.

X. Failure to complete reports promptly and accurately.

Y. Undesirable appearance.

Z. Unauthorized parking.

AA. Discourteous treatment of the general public or co-workers or the use of profanity or threatening language.

BB. Any activity which is not compatible with good public service.

The City's corrective action program is designed to encourage individuals to become satisfactory employees rather than punish them. Corrective action may take the form of:

- an oral warning,
- a written warning, and/or
- termination.

Based on the severity of the incident, as determined by management, the oral warning and/or written warning may be bypassed and the employee terminated. The City reserves the right to add to, to modify or to eliminate any rule.

ARTICLE XX - DISPUTE RESOLUTION

The City's policy is to resolve employees' serious job-related concerns in a prompt, equitable, and impartial manner. Every effort should be made by all employees to encourage prompt and amicable solutions to these concerns as they arise through informal discussions between employees and their immediate supervisors. Initiation of the dispute resolution procedure in good faith by an employee will not be considered to cast any reflection on the employee's standing or loyalty, or on the employee's supervisor or co-workers.

A. Dispute Resolution Procedure. Employees with a serious job-related concern should first present the concern to their immediate supervisor. The immediate supervisor will investigate the concern and give the employee an answer.

   If the employee is not satisfied with the immediate supervisor's response, the employee, after notifying the immediate supervisor, may present the concern to the next higher level of management, where the concern will be investigated and the employee will receive an answer.

If the employee is not satisfied with the response of the next higher level of management, the employee may present the concern to the Personnel Director and/or the Mayor, whose decision shall be final unless such decision is appealed to the Personnel Committee.

In the above procedure, management may request information, assistance, or participation from any City employee having knowledge of the matter under review.

ARTICLE XXI - SEXUAL HARASSMENT

All employees are responsible for assuring that the work place is free from sexual harassment. The purpose of this policy is to maintain a healthy work environment in which all individuals are treated with respect and dignity and to provide procedures for reporting, investigating, and resolving complaints of harassment and discrimination. Federal and State law provides for the protection of classes of persons based on race, color, sex, religion, age, disability, national origin and sexual orientation.

It is the policy of the City of Menasha that all employees have the right to work in an environment free from all forms of harassment. The City will not tolerate, condone, or allow harassment by employees, whether sworn (regular or reserve), civilian, volunteer or other non-employees, who conduct business with the City. Menasha considers harassment and discrimination or other forms to be serious employee misconduct. Therefore, the City shall take direct and immediate action to prevent such behavior, and to remedy all reported instances of harassment and discrimination. A violation of this policy can lead to discipline up to and including termination with repeated violations, even if "minor", resulting in greater levels of discipline as appropriate. This policy applies to all employees, elected officials or appointed members of councils, boards, commissions, or committees, as well as all co-op students, outside vendors, contractors, volunteers, or any other person who has business with the City of Menasha.

Sexual harassment is a form of unlawful discrimination that undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment does not refer to occasional compliments or other generally acceptable social behavior. It refers instead to behavior, which is unwelcome, personally offensive, undermining, or weakening to employee morale. Sexual harassment, therefore, interferes with the work effectiveness of its victims and their co-workers.

1. Prohibited sexual harassment or discrimination includes, but is not limited to conduct, implicit or explicitly implied which constitutes:

   (a) Unwelcome physical contact or gestures.

   (b) Unwelcome sexually explicit language or gestures, including sexually degrading words used to describe an individual or sexually graphic or suggestive comments to or about an individual.

   (c) Uninvited or unwanted sexual advances or requests for sexual favors.