



## MEMORANDUM

DATE: February 7, 2014

TO: PERSONNEL COMMITTEE

FROM: PAMELA A. CAPTAIN, CA/HR DIRECTOR

RE: DISCIPLINE & GRIEVANCE PROCEDURE UPDATES

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On November 7, 2011, the Common Council adopted a **Discipline & Grievance Procedure** for employees to use for matters concerning discipline, termination and workplace safety. This procedure was created in order to comply with a new statutory requirement under §66.0509, Wis. Stats.

I am recommending changes to the procedure as part of a periodic review. The procedure is attached and the recommended changes are identified using “strikethroughs” and “underlines.”

The recommended changes have been posted in various locations throughout the city with the message: “EMPLOYEES please take notice: Changes to this policy will be considered by the Personnel Committee on February 17, 2014. If you have any questions, suggested changes or corrections – call Pam Captain.”

The most significant changes are:

1. Expanded definition of “termination” eliminating the qualification of a disciplinary termination. *See* SEC. II.C.
2. Including a definition of “employee discipline.” *See* SEC. II.D.
3. Identifying what must be included in the written grievance and providing a sample form for employees to use. *See* SEC. III.C.
4. Appeals shall be filed with the Administrative Services Director rather than the Human Resources Director.

**REQUESTED ACTION: Motion to approve the changes to the City of Menasha Discipline & Grievance Procedure as set forth on the attached document.**

CITY OF MENASHA POLICY		TITLE: DISCIPLINE & GRIEVANCE PROCEDURE	
LAST UPDATE: 11-12-13	SECTION:		
AUDIENCE: All employees, except to the extent subject to a contractual or statutory grievance procedure	TOTAL PAGES: 3		
Personnel Committee Approval Date: October 17, 2011	Council Approval Date: November 7, 2011		

I. PURPOSE

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 or without reason.

This System is intended to comply with §66.0509, Wis. Stats. Employment disputes that are covered by state or federal statutes and administrative enforcement mechanisms are not covered by this System.

II. 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 rule or policy violations, other acts of misconduct or quality of performance reasons.

- D. “Employee discipline” means an employment action which results in disciplinary suspension, with or without pay, disciplinary termination, or disciplinary demotion. “Employee discipline” does not include oral reprimands or warnings, written reprimands or warnings, performance improvement plans, performance evaluations or reviews, documentation of employee acts or omissions, administrative leave or suspension with pay, non-disciplinary wage, benefit or salary adjustments, changes in assignment, action taken pursuant to an ordinance created under §19.59(1m), Stats., or other non-material employment actions.
- E. “Employee” shall not include statutorily appointed individuals identified specifically in statute as serving at the pleasure of an appointing authority, elected officials, and independent contractors.

### III. PROCEDURES

- A. 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.
- B. 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~~ Administrative Services Director and the same time periods for response will apply.
- C. Written Grievance Submission. The Grievance must be in writing and shall contain:
1. A clear and concise statement of the relevant facts and dates;
  2. The identities of people with material knowledge;
  3. Relevant documentation;
  4. Steps taken to informally resolve the dispute and the results of those discussions;
  5. Rationale supporting the Grievance; and,
  6. The remedy that should be issued.

A Grievance alleging a workplace safety issue shall also identify the workplace rules allegedly violated, if applicable.

- D. The written decision provided in paragraph 4. B above shall be final unless the employee files a written request with the ~~Human Resources Director~~ Administrative Services Director no later than five (5) working days of the date of the response required by paragraph 4. B above. The ~~Human Resources Director~~ Administrative Services 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~~ Administrative Services 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~~ Administrative Services Director has already reviewed the matter, as required by paragraph 4. B above, the provisions of this paragraph do not apply and the next step is before an impartial hearing officer.
- E. The written decision shall be final unless the employee files a written request with the ~~Human Resources Director~~ Administrative Services Director no later than five (5) working days of the date of the response under paragraph ~~E~~ D 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 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~~ Administrative Services Director or designee, arbitrary and capricious? The examiner shall provide a written decision.
- F. 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~~ E 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.
- G. 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.

H. The grievant may be accompanied by a representative throughout the grievance process. The representative may be an attorney or non-attorney. The representative shall not be a material witness to the dispute. The cost of any representative shall be the ~~grievant sole cost~~ sole responsibility of the grievant regardless of the outcome of the grievance.

CITY OF MENASHA GRIEVANCE FORM

EMPLOYEE'S NAME: \_\_\_\_\_

JOB TITLE: \_\_\_\_\_ DEPARTMENT: \_\_\_\_\_

Date of Occurrence: \_\_\_\_\_ Date of Filing: \_\_\_\_\_

Statement of relevant facts and dates: \_\_\_\_\_

Relevant documentation attached: Yes or No (Circle One)

List of attached documents: \_\_\_\_\_

Identities of people with material knowledge: \_\_\_\_\_

Steps taken to informally resolve the dispute and the results of those discussions: \_\_\_\_\_

Rationale supporting the Grievance: \_\_\_\_\_

Requested outcome/Remedy: \_\_\_\_\_

Signature of Employee: \_\_\_\_\_

Disposition (i.e. Settled, Withdrawn, Processed to Hearing Examiner):