

It is expected that a Quorum of the Administration Committee, Board of Public Works, and Common Council will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

**CITY OF MENASHA
PERSONNEL COMMITTEE
Third Floor Council Chambers
140 Main Street, Menasha
September 6, 2011
7:00 PM**

Or immediately following Board of Public Works

AGENDA

- A. CALL TO ORDER
- B. ROLL CALL/EXCUSED ABSENCES
- C. MINUTES TO APPROVE
 - 1. [Personnel Committee, 8/1/11](#)
- D. COMMUNICATIONS
 - 1. [Open Contract Negotiations request from Wisconsin Council 40 AFSCME AFL-CIO on behalf of Local 1035 and 1035B](#)
- E. ACTION ITEMS
 - 1. [City of Menasha Discipline and Grievance Procedure](#)
 - 2. [Intergovernmental Cooperation Agreement Impartial Hearing Officers between the Cities of Appleton, Menasha, Neenah, Oshkosh and Fond du Lac.](#)
 - 3. Motion to Adjourn into Closed Session pursuant to Wis. Stats. §19.85(1)(e)&(g):
Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session; Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
(Local 603 Arbitration)
- F. ADJOURNMENT

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."

**CITY OF MENASHA
PERSONNEL COMMITTEE
Third Floor Council Chambers
140 Main Street, Menasha
August 1, 2011
MINUTES**

A. CALL TO ORDER

Meeting called to order by Chairman Englebert at 8:33 p.m.

B. ROLL CALL/EXCUSED ABSENCES

PRESENT: Aldermen Sevenich, Langdon, Krueger, Zelinski, Englebert, Klein

EXCUSED: Alderman Benner, Taylor

ALSO PRESENT: CA/HRD Captain, Mayor Merkes, Lt. Bouchard, FC Auxier, CDD Keil,
COMP. Stoffel, LD Lenz, Deputy Clerk Sewall and the Press

C. MINUTES TO APPROVE

1. Personnel Committee, 7/18/11

Motion made by Ald. Krueger, seconded by Ald. Langdon to approve minutes.

Motion carried on voice vote.

D. DISCUSSION ITEMS

1. Budget Reductions recommended by Mayor Merkes (held 7/18/11)

Motion made by Ald. Krueger, seconded by Ald. Langdon to forward the budget reductions recommended by Mayor Merkes to common council.

Mayor Merkes raised a Point of Order calling the motion out of order since no action is needed by the common council.

Chairman Englebert stated that the motion was out of order; this item is for discussion only.

Staff answered questions pertaining to how this year's reductions will impact next year's budget and cleared up confusion as to the actual dollar amount the budget was to be reduced by.

E. ADJOURNMENT

Motion made by Ald. Sevenich, seconded by Ald. Langdon to adjourn at 8:50 p.m.

Motion carried on voice vote.

Respectfully submitted by Deputy Clerk Kristin Sewall



Jim Garity
President
Christine Kistner
Vice President
Diane Schmahl
Treasurer
Richard Badger
Executive Director

PLEASE REPLY TO:
Mary B. Scoon
Staff Representative
W5670 Macky Drive
Appleton, WI 54915
Tel/Fax: (920) 832-1332
mscoon@afscme40.org

August 24, 2011

Ms. Pamela Captain, City Attorney/Personnel Director
City of Menasha
140 Main Street
Menasha, WI 54952-3151

Re: Open Contract Negotiations
AFSCME Local 1035 (Menasha City Employees)
AFSCME Local 1035B (Menasha City Hall and Police Support Staff Union)

Dear Ms. Captain:

Please be advised that AFSCME Local 1035, Menasha City Employees, and AFSCME Local 1035B, Menasha City Hall and Police Support Staff, are hereby requesting to initiate negotiations over the total base wages as provided in Wisconsin Act 10. In preparation for negotiations the Union is requesting the following information pursuant to §111.70. The information I have requested is necessary so I can communicate to the members post Act 10:

- 1) A complete listing of members of AFSCME Local 1035, Menasha City Employees Union, including name, address, phone number, position, hire date, department, and base wage rate;
- 2) A complete listing of members of AFSCME Local 1035B, Menasha City Hall and Police Support Staff Union, including name, address, phone number, position, hire date, department, and base wage rate;
- 3) Copies of health and dental insurance plans including insurance rates for 2010-2012;
- 4) Copies of the employer's personnel policies and civil service ordinances.

Feel free to e-mail the above requested information. Please contact me to arrange a mutually acceptable time to begin negotiations. Thank you in advance for responding to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary B. Scoon". The signature is fluid and cursive, with the first name "Mary" being the most prominent part.

Mary B. Scoon

cc: John Quella, Local 1035
Corey Gordon, Local 1035B

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.

**INTERGOVERNMENTAL COOPERATION AGREEMENT
IMPARTIAL HEARING OFFICERS**

This Intergovernmental cooperation Agreement is made pursuant to Section 66.0301, Wisconsin Statutes by and between the Cities of Appleton, Menasha, Neenah, Oshkosh, and Fond du Lac, Wisconsin (the Cities).

WHEREAS, the Cities have reviewed the requirements of §66.0509 (1m), Wisconsin Statutes, as created by 2011 Wisconsin Act 10 which mandates that grievances regarding discipline, terminations and workplace safety issues must be heard before an impartial hearing officer.

WHEREAS, the Cities have investigated the costs involved in hiring outside counsel to conduct these hearings, and determined that there exists an opportunity for the Cities to reduce costs and operate more efficiently; and

WHEREAS, the Cities have determined there would be a mutual benefit to all entities if they were to enter into this Agreement; and

NOW, THEREFORE, BE IT RESOLVED that the Cities mutually agree on the terms and conditions of an Intergovernmental Agreement for use of personnel to serve as impartial hearing officers, as follows:

FOR GOOD AND VALUABLE CONSIDERATION, including the mutual covenants contained herein, the Cities hereby enter into the following agreement pursuant to Section 66.0301, Wisconsin Statutes:

1. **INTENT.** The intent of this Agreement is to set forth the responsibility of the parties for the exchange of the services of the attorneys in the Cities' legal departments to serve as impartial hearing officers for personnel grievances as required by §66.0509 (1m).
2. **SERVICES.** That any City that is party to this Agreement shall from time to time be in need of impartial hearing officers to comply with the statutes, and each City that is a party to this agreement shall be able to contact the in-house legal department of any other City to request the services of an attorney for said hearings and request such services (the "Requesting City"). The City receiving the request ("Responding City") will endeavor to provide assistance but may refuse the request if for any reason it is not able to provide the assistance as requested. The Requesting City shall be responsible for paying all costs associated with the hearing.
3. **FEES.** No fees shall be charged for the services of the attorneys employed by the participating Cities. The Requesting City shall be responsible for the reasonable out-of-pocket travel costs, including mileage at the IRS rate, for the attorney from the Responding City. The Responding City shall be responsible for paying the wages of and covering workers compensation claims of its attorney responding to the request for aid under this agreement.
4. **INDEMNIFICATION.** The Cities agree to mutually indemnify, defend and hold harmless each other and their officers, officials, employees and agents from and

against any and all liability, loss, damage expense, costs (including attorney fees arising out of this agreement), caused in whole or in part by any negligent act or omission of any of them, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of the Cities.

5. CLAIMS ARISING FROM THE HEARING. For purposes claims subject to Wis. Stat. § 893.80, personnel from the Responding City, while acting in response to a request for assistance under this agreement, shall be deemed employees of the Requesting City.
6. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.
7. MODIFICATION. This Agreement may be amended or modified only by written instrument duly executed by the parties.
8. NOTICES. Any notice required hereunder shall be given in writing signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested to the parties' respective addresses as set forth below.

City of Appleton
ATTN: City Clerk
100 North Appleton Street
Appleton WI 54911

City of Menasha
ATTN: City Clerk
140 Main Street
Menasha WI 54952

City of Neenah
ATTN: City Clerk
211 Walnut Street

Neenah WI 54956

City of Oshkosh
ATTN: City Clerk
215 Church Avenue
P.O. Box 1130
Oshkosh WI 54903

City of Fond du Lac
ATTN: City Clerk
160 South Macy Street
P. O. Box 150
Fond du Lac WI 54936

9. COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which shall be deemed an original.
10. BENEFIT, BINDING EFFECT. This agreement shall inure to the benefit of and be binding upon the parties hereto, provided, however, that a party's interest in this Agreement may not be assigned or transferred voluntarily, involuntarily or by operation of law without the prior written consent of the other party.
11. TERM. This Agreement shall remain in full effect until terminated by mutual agreement of the parties.

Dated this _____ day of _____, 2011.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF APPLETON

By: _____

CITY OF MENASHA

By: _____

CITY OF NEENAH

By: _____

CITY OF OSHKOSH

By: _____

CITY OF FOND DU LAC

By: _____

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