

CITY OF LA CROSSE

Grievance Procedure

Effective October 1, 2011

Revised April 11, 2014

I. PURPOSE:

The City of La Crosse has established this Grievance Procedure for an employee to utilize for matters concerning discipline, termination, or workplace safety covered by this Grievance Procedure. This Procedure provides an employee with the individual opportunity to address concerns regarding discipline, termination or workplace safety matters, to have those matters reviewed by an Impartial Hearing Officer, and to appeal to the Common Council.

An employee shall use the Grievance Procedure for resolving disputes regarding employee termination, employee discipline or workplace safety issues covered by this Procedure. The City of La Crosse expects an employee and management to exercise reasonable efforts to resolve any questions, problems or misunderstandings prior to utilizing the Grievance Procedure. An employee subject to a contractual grievance procedure shall follow the contractual grievance procedure to the extent those procedures cover the matters covered by the Grievance Procedure. An employee subject to statutory dispute resolution procedures shall be subject to those procedures to the extent those procedures cover the matters covered by the Grievance Procedure.

The City of La Crosse reserves all rights and this procedure does not create a contract of employment. Unless required by statute, city ordinance, contract or Employee Handbook, employees of the City of La Crosse are employed at-will and may resign with or without reason. The Employer may terminate the at-will employment relationship at any time with or without reason and without violation of applicable law.

II. DEFINITIONS:

“Termination” means a separation from employment by the employer for disciplinary or quality of performance reasons. “Termination” does not include layoff, furlough or reduction in workforce, job transfer, non-disciplinary demotion, ~~reduction or position elimination based on failure to meet qualifications~~, resignation, abandonment, retirement, nonrenewal of contract, death, separation as a result of disability, action taken pursuant to an ordinance created under s. 19.59 (1m), elimination of position due to loss of grand funding, or the end or completion of temporary employment, seasonal employment, contract employment, or assignment.

“Employee Discipline” means an employment action that results in disciplinary suspension, with or without pay, disciplinary termination, or disciplinary demotion. “Employee discipline” does not include counseling, 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 or without pay~~, non-disciplinary wage, benefit or salary adjustments, changes in assignment, action taken pursuant to an ordinance created under s. 19.59 (1m), or other non-material employment actions.

“Employee” shall not include limited term employees, seasonal employees, employees subject to a collective bargaining agreement addressing employee discipline, termination and workplace safety, statutorily appointed individuals serving as employees identified specifically in statute as serving at the pleasure of an appointing authority or who are subject to removal under Wis. Stats Chapter 17 or Chapter 62, elected officials, and independent contractors. Those individuals who do not have a process for grieving workplace safety matters shall follow this grievance procedure for workplace safety grievances.

“Administration” means the person or person designated by the City to represent the interests of management in a Grievance matter. The Administration may be represented by counsel at any point in the procedure.

“Workplace Safety” shall be narrowly construed and is not construed to include basic conditions of employment unrelated to physical health and safety. “Workplace Safety” means conditions of employment related to the physical health and safety of employees, as long as such conditions are not enforceable under state or federal law, and includes 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. “Workplace Safety” does not include conditions of employment unrelated to physical health and safety matters, including, but not limited to, hours, overtime, sick, family, or medical leave, work schedules, breaks, termination, vacation, performance reviews, and compensation.

“Cause” means a lawful rational reason, including but not limited to inefficiency, neglect of duty, misfeasance, malfeasance, violation of city policies or work rules, or communicated expectation of conduct, or other conduct, or the failure to act that is detrimental to the interest of the City.

III. TIMELINES AND GRIEVANCE FORMAT:

- ~~1. Verbal Grievance and Dispute Resolution. Within fifteen (15) calendar days of the termination, employee discipline or actual or reasonable knowledge of the workplace safety issue and prior to filing a written Grievance, the Grievant must discuss the dispute with the supervisor who made the decision. The supervisor and employee must informally attempt to resolve the dispute. The supervisor shall notify the Director of Human Resources of this meeting and the results of the meeting.~~
- 1 Written Grievance Submission. The employee must file a written Grievance within twenty (20) calendar days of the termination, employee discipline or actual or reasonable knowledge of the workplace safety issue. The Grievance must be in writing and must be filed with the supervisor and with a copy to the Director of Human Resources. The Grievance shall contain a clear and concise statement of the pertinent facts, the dates the incidents occurred, the identities of the persons involved, documentation related to the Grievance in possession of the Grievant, the steps taken to informally resolve the dispute and the results of those discussions, all reasons why the actions of the supervisor should be overturned, if applicable, and the remedy that should be issued.

- 2 Administrative Response. The Director of Human Resources and the Department Head shall meet with the Grievant within fifteen (15) calendar days of receipt of the written Grievance to discuss voluntary resolution of the Grievance. If those discussions do not resolve the Grievance, then the Director of Human Resources will provide a brief written response to the Grievance within ten (10) calendar days of the meeting. The written response shall contain a statement of the date the meeting between the Director of Human Resources, the Department Head and the Grievant occurred, the decision to sustain or deny the Grievance, and the deadline for the Grievant to appeal the Grievance to an Impartial Hearing Officer.
- 3 Impartial Hearing. The decision of the Director of Human Resources shall be final unless the Grievant files a written appeal requesting a hearing before an Impartial Hearing Officer (IHO). The written appeal shall be filed with the Director of Human Resources and within ten (10) calendar days of the Administrative Response. ~~The Impartial Hearing Officer shall file a written decision within fifteen (15) calendar days of the close of the hearing.~~
- 4 Appeal for Review. Either party may file a written request for review by the Common Council within ten (10) calendar days of receipt of the IHO's ~~Impartial Hearing Officers~~ written decision.
- 5 Decision of Common Council. A decision by the Common Council will be made within ninety (90) calendar days of the filing of the appeal unless the Common Council extends this timeframe.
- 6 Importance of Timelines and Process. A Grievance will be processed pursuant to the established timelines. ~~A Grievant may advance a Grievance to the next step if a response is not provided within the designated timeframes.~~ A Grievant may not file or advance a Grievance outside of the designated timeframes. ~~The timelines may be modified by mutual agreement of the Grievant and Director of Human Resources. The Director of Human Resources reserves the right to provide an extension to the established timelines required of the Impartial Hearing Officer due to extenuating circumstances of the Impartial Hearing Officer.~~ The failure of the Grievant to follow the timelines and other requirements in this policy shall result in the IHO ~~Impartial Hearing Officer~~ not having jurisdiction over this matter. If the Grievant fails to follow the established timeline in this procedure, then the Grievance is considered resolved, and no further action is available. The IHO ~~Impartial Hearing Officer~~ shall have the authority to determine whether the IHO ~~Impartial Hearing Officer~~ has jurisdiction, which may be subject to review by the Common Council.

Any period of time described in the Grievance Procedure by reference to a number of days includes Saturdays, Sundays and any City observed holidays. Any period of time described in this procedure by reference to business day does not include Saturdays, Sundays or any City observed holiday. If the date or last date to perform any act or give notice is a Saturday, Sunday or City observed holiday, the act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or City observed holiday.

- 7 Scheduling. Grievance meetings and hearings may be held during the Grievant's off-duty hours. Time spent in Grievance meetings and hearings on off-duty hours will not be considered as compensable work time.
- 8 Individual claim. Any Grievance filed regarding workplace safety must relate to issues personal to the Grievant filing the Grievance and may not relate to, without limitation by enumeration, safety of property or third parties. A Grievance filed regarding workplace safety must be filed by the Grievant claiming the grievant has been personally affected by the alleged workplace safety violation.

A Grievance filed for discipline or termination may only be filed by the employee who is the subject of the discipline or termination.

IV. HEARING PROCEDURE:

1. Selection of the Impartial Hearing Officer (IHO). Following receipt of the appeal requesting a hearing before an Impartial Hearing Officer, the Director of Human Resources shall conduct a search and provide the names of three (3) persons, not employees of the City of La Crosse, whom he or she determines are impartial, having no interest in the grievance. This list of the three (3) IHOs shall be provided to the grievant within thirty (30) calendar days of the filing of the employee's appeal. ~~provide the parties with the name of the person who shall serve as an Impartial Hearing Officer. If the Grievant disagrees with the selection of the Impartial Hearing Officer they must file a written statement of reason to the Director of Human Resource, within 10 calendar days, asserting why the Impartial Hearing Officer should not serve. The Director of Human Resources will review the statement of reason for a determination.~~

Within fifteen (15) calendar days of receipt of the IHO list from Human Resources the grievant must notify Human Resources, in writing, as to the selection of the IHO. The list of IHO's may not be appealed. If the grievant fails to select an IHO from the established list and notify Human Resources by the close of the regular business hours on the 15th day, then the grievance shall be considered resolved.

2. Pre-Hearing Conference and Timelines. The Administration, Grievant and IHO ~~Impartial Hearing Officer~~ shall conduct a pre-hearing conference. ~~and select a date for hearing not more than forty five (45) calendar days from the date of the appeal. The IHO shall determine the date for the hearing.~~ The Impartial Hearing Officer shall assign dates for preliminary matters that may arise prior to the hearing.
3. Conciliation. Prior to the Hearing, the parties and IHO ~~Impartial Hearing Officer~~ may will engage in conciliation meetings to resolve the dispute. In cases involving allegations of workplace safety, the conciliation meeting shall be mandatory and shall occur not more than ten (10) calendar days after assignment to the IHO ~~Impartial Hearing Officer~~. The IHO's ~~Impartial Hearing Officer's~~ involvement in any conciliation process shall not disqualify the IHO ~~Impartial Hearing Officer~~ from hearing the merits of the Grievance unless all parties agree to replacing the IHO ~~Impartial Hearing Officer~~. The replacement of any IHO ~~Impartial Hearing officer~~ shall be made from the remaining two IHO's from

the original list, selected in accordance with Article IV, paragraph 1 of this Grievance Procedure.

4. Representation. The Grievant shall have the right to representation during the Grievance Procedure at the Grievant's expense. The representative shall not be a material witness to the dispute.
5. Record of Proceedings. The Impartial Hearing Officer shall conduct the proceedings and make a record of the proceedings. Following the issuance of the decision, the record shall be provided to the Director of Human Resources of the City of La Crosse for preservation. If a court reporter is utilized the costs shall be equally shared by the grievant and the employer.
6. Burdens of Proof and Procedure. ~~The Grievant shall bear the burden of production and burden of proof.~~ The rules of evidence shall not be strictly followed. Evidence must be relevant, reliable and probative.
 - a. In disciplinary and termination matters of employees who are not at-will employees, the Administration shall bear the burden of production and burden of proof. The Administration must persuade the IHO that "cause" exists to discipline or terminate the grievant.
 - b. For at-will employees the Grievant shall bear the burden of production and burden of proof. The Grievant must persuade the IHO that the City had an unlawful reason for the termination or discipline.
 - c. In grievances due to workplace safety, the Grievant shall bear the burden of production and burden of proof.

In all cases, the IHO shall require the Grievant and Administration to provide a list of witnesses and exhibits that each intends to produce at the hearing no later than 10 calendar days prior to the hearing.

7. Costs: The grievant shall pay \$400 as payment towards the IHO services. The payment shall be made payable to the City of La Crosse, and must be submitted with the notice to the City of the selected IHO as described in paragraph IV (1).
8. Powers and Response Decision of the Impartial Hearing Officer.
 - a. Written Decision: After receiving the evidence and closing the hearing, the ~~IHO Impartial Hearing Officer~~ shall issue a written decision. The IHO has the authority to extend the timeframe for the written decision as needed. The IHO Impartial Hearing Officer may request oral or written arguments and replies. The IHO may set deadlines for pre-hearing motions. The decision shall contain findings of fact, analysis and a recommendation. The Impartial Hearing Officer must answer the following questions: ~~Based on the preponderance of the evidence presented, has the Grievant proven the decision of the Administration was arbitrary or capricious?~~

- i. Based on the preponderance of the evidence presented, has the Administration proven the evidence in support of cause for discipline or termination?
 - ii. In the case of workplace safety, has the Grievant shown a workplace safety that may cause harm to the physical health of the employee which requires immediate and necessary action by the employer.
 - iii. In the case of termination or discipline of an at-will employee, has the Grievant shown that the decision of the employer was unlawful.
 - b. Powers of the Hearing Officer: The ~~IHO Impartial Hearing Officer~~ shall have the power to sustain or deny the Grievance. The ~~IHO Impartial Hearing Officer~~ shall have no power to issue any remedy, but the ~~IHO Impartial Hearing Officer~~ may recommend a remedy. Remedial authority shall be subject to the determination and approval of the Common Council, and shall be addressed by the Common Council in the event the Grievance is sustained.
9. Appeal to Common Council.
- a. Written Appeal: Either party may file a written notice of appeal requesting a Common Council review of the IHO decision. The written notice of appeal shall be filed within 15 calendar days following the issuance of the IHO decision. The written notice of appeal shall contain a statement explaining the reasons for the appeal and a copy of the Grievance, the Administration's response to the Grievance, and the IHO's ~~Impartial Hearing Officer's~~ response. The parties are prohibited from presenting new information in the written notice that was not presented at the Hearing. The request shall be filed with the City Clerk, and with a copy to the City Attorney, Director of Human Resources, Mayor and Council President.
 - b. Review by Common Council: The Common Council may decide, in each situation whether it will make a decision based upon the record, or assign an ~~IHO Impartial Hearing Officer~~ to create a recommendation based upon the record for the Common Council's consideration prior to rendering its decision. ~~If no hearing has occurred on the matter, the Common Council may direct that an Impartial Hearing Officer conduct a hearing and create a record in accordance with Article IV.~~ The manner and process of review is the sole choice of the Common Council. As an administrative procedure this review by the Common Council is not subject to public hearings or veto by the Mayor.
 - c. Decision: All decisions of the Common Council involving the Grievance shall be by simple majority vote and in writing and filed with the City Clerk or secretary of the Common Council within five (5) calendar days of the date of the final decision. A copy of the final decision shall be delivered to the Grievant, Director of Human Resources and the Administration. The Common Council's decision is final and is not subject to appeal or veto by the Mayor.

V. LIMITATIONS OF THE SCOPE OF THE GRIEVANCE PROCEDURE:

The scope of a grievance that is subject to the jurisdiction of a governmental body or specific

procedure by other Wisconsin Statutes shall be governed by those statutes and not the Grievance Procedure.

The scope of a Grievance that is subject to a grievance procedure in a collective bargaining agreement may not be brought forth under this Policy.

The scope of a Grievance that is subject to other Policy or Ordinances for formal or informal investigation or dispute resolution procedures may not be brought forth under this Policy.

Any process available under Chapter 68, Wis. Stats., shall not apply and this grievance procedure shall be the exclusive process for all employees.