

**Address to F & P Committee by Rich Smith (Local 180 consultant)**  
**12/5/13**

1. Selection of Impartial Hearing Officer (IHO). City employee has no choice, county employee has the option of picking one from a group of three.
2. Burden of proof language, we would prefer language similar to the county's handbook. It's more employee friendly. Also, the wording pertaining to "for cause" should be incorporated from part 1 (page 2-1) of the city handbook into the grievance procedure in part 2 of the city handbook.
3. The question of, was the decision of the Administration *arbitrary* or *capricious* should not be the only determining factor when deciding the fate of an employee. Just because the Administration's decision was not planned or done for a particular reason or not logical or reasonable, doesn't define that decision as being correct.

It is the opinion of SEIU Local 180 that more time is needed to review and comment on the City's handbook. The City entertained comments from union people on one single day. During my presidency of Local 180, I was assured by Wendy Oestreich that the union would have a seat at the table during the development of this handbook. I believe both the union and the council needs more time to look this over and make sure it gets done right the first time. Everyone is going to have to live with the results and the extra time will be well worth the effort. Thank you.

# CITY OF LA CROSSE

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.

### 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.
2. 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.
3. 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.
4. 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. 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.
5. 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 Impartial Hearing Officers written decision.
6. 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.
7. 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 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

Impartial Hearing Officer shall have the authority to determine whether the Impartial Hearing Officer has jurisdiction, which may be subject to review by the Common Council.

8. 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.
9. 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.

#### IV. HEARING PROCEDURE:

1. Selection of the Impartial Hearing Officer. Following receipt of the appeal requesting a hearing before an Impartial Hearing Officer, the Director of Human Resources shall 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.
2. Pre-Hearing Conference and Timelines. The Administration, Grievant and 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 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 Impartial Hearing Officer may 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 Impartial Hearing Officer. The Impartial Hearing Officer's involvement in any conciliation process shall not disqualify the Impartial Hearing Officer from hearing the merits of the Grievance unless all parties agree to replacing the Impartial Hearing Officer. The replacement of any Impartial Hearing officer shall be 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.
2. 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.
3. 7. Powers and Response of the Impartial Hearing Officer.
  - a. Written Decision: After receiving the evidence and closing the hearing, the Impartial Hearing Officer shall issue a written decision. The Impartial Hearing Officer may request oral or written arguments and replies. 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?

- b. Powers of the Hearing Officer: The Impartial Hearing Officer shall have the power to sustain or deny the Grievance. The Impartial Hearing Officer shall have no power to issue any remedy, but the 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.

8. Appeal to Common Council.

- a. Written Appeal: 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 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 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 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) 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.

10/1/11; R 12/2/13

# LA CROSSE COUNTY

## La Crosse County Employee Handbook

### 15.04 FILING A GRIEVANCE

The County Grievance Form must be completed and filed with the employee's Department Head and a copy to the County Personnel Department within fourteen (14) calendar days of the date of the occurrence giving rise to the grievance. Verbal notice is not acceptable. Failure to file a completed Grievance Form in a timely manner bars the grievance. Failure to file a timely appeal at any step of the Grievance Procedure bars an appeal and it shall be dismissed with prejudice.

### 15.05 GRIEVANCE PROCEDURE

**STEP 1 – Department Review** - the employee meets with Department Head, and/or immediate supervisor to attempt to reach a resolution within 7 calendar days. If none, Appeal notice in writing must be given within 5 calendar days after the meeting.

**STEP 2 – Personnel Review** - The Personnel Director meets with the grieving employee, Department Head/supervisor within 7 calendar days of appeal. They shall attempt to resolve the dispute. The County shall give the employee a written decision within 5 calendar days after said meeting. Appeal notice in writing must be given within 5 calendar days after receipt of the decision.

**STEP 3 – Administrator Review** - The Administrator meets with the grieving employee, Department Head/supervisor within 7 calendar days of appeal. They shall attempt to resolve the dispute. The County shall give the employee a written decision within 5 calendar days after said meeting. Appeal notice in writing must be given within 5 calendar days after receipt of the decision.

**STEP 4 – IHO Review** - If no settlement is reached, then the grievance may be appealed in writing to an Impartial Hearing Officer (IHO) as follows: The County Administrator or designee shall provide the names of 3 persons, not employees of La Crosse County, whom he or she determines are impartial, having no interest in the grievance. The grievant shall select 1 of the 3 impartial persons to hear the grievance. A hearing will be scheduled as soon as possible with the IHO. Alternatively, the County Administrator and the employee may agree to use the Wisconsin Employment Relations Commission (WERC) as a source for the IHO, and, in that case, the County and employee shall each pay 50% of the cost of using the WERC.

#### IHO Hearing Procedure:

1. The IHO may issue subpoenas, and witnesses will be sworn.
2. The burden of proof required is preponderance of the evidence, which means the greater weight of the evidence.
  - the burden is on County in discipline or termination grievances to show just cause for the action taken.
  - the burden is on Employee in workplace safety grievances to show a violation of applicable state or federal occupational safety and health standard, rule, or regulation implicating workplace safety showing a condition of employment directly affecting an employee's health and safety that requires correction.
3. Strict adherence to legal rules of evidence is not required. Evidence must be relevant, reliable and probative. The IHO will determine admissibility, credibility, and weight of evidence.
4. In discipline and termination cases, the IHO has authority to sustain or deny the grievance. The IHO may not change or modify any discipline imposed, unless sustaining the grievance means that the discipline must be modified. In work place safety cases, the IHO can recommend a corrective remedy.
5. The hearing may be recorded by court reporter or an audio/video device.
6. Post-hearing briefs may be requested and may be allowed or required by the IHO.

Decision:

The IHO will make a decision within forty-five (45) calendar days after the hearing.

La Crosse County will assume responsibility for the costs of the IHO and court reporter, if any. But if the employee and County agree to use the Wisconsin Employment Relations Commission, the employee shall pay 50% of the WERC filing fee and the County the other 50%.

**STEP 5 – County Board** - If either the grievant or the County desires to appeal the decision of the IHO, the appealing party shall give written notice of appeal to the County Administrator within 20 calendar days of the date of the decision of the IHO or be barred from appeal. The appeal shall be to the La Crosse County Board.

The appeal shall be a review of the record only and not a de novo hearing of the case. The appellant at all times bears the burden of proof. The decision of the IHO enjoys a presumption of validity.

The Executive Committee of the County Board shall review the appeal record and make a recommendation to the County Board. Only the compiled record of the IHO hearing and exhibits admitted at the hearing shall be reviewed on appeal and no additional evidence shall be considered. The Executive Committee's and County Board's review is limited to:

- Whether the IHO kept within the IHO's jurisdiction
- Whether the IHO proceeded on a correct theory of law
- Whether the IHO's action was arbitrary or capricious and
- Whether the IHO's decision was supported by the preponderance of the evidence

The County Board on recommendation of the Executive Committee, may affirm (in whole or part), reverse (in whole or part) or modify the IHO's decision.

The County Board shall decide the matter by a majority vote of a quorum. This decision is final and non-appealable.

## ARTICLE 16 TRAVEL AND MEAL REIMBURSEMENT

- 16.01 Employees approved to travel in the course of their duties shall receive travel and meal reimbursement in accordance with the County's General Code, except such travel which may be otherwise covered by Statute or other applicable regulations.

## ARTICLE 17 RETIREMENT

- 17.01 There is no specified retirement age, however, all County employees are required to be mentally and physically fit to carry out their assigned duties. If a medical assessment of a working employee is needed to substantiate this requirement, the County shall pay for the examination by a medical doctor of the County's choice. An employee off work due to extended illness or injury may be required to establish fitness for duty to return at their expense. Employees of the County may retire under the terms of the Wisconsin Retirement System.
- 17.02 The County will pay the full amount of the Employer's contribution for retirement, and all employees, not otherwise exempted by law or covered by a collective bargaining