

ENROLLED ORDINANCE 166-54

AMEND COUNTY CODE OF ORDINANCES BY ADDING
EMPLOYEE GRIEVANCE PROCEDURE

WHEREAS, State legislation in 2011 requires all counties to develop a grievance procedure for all employees; and,

WHEREAS, Waukesha County has long had a grievance procedure for non-represented employees; and,

WHEREAS, with some modifications, the current grievance procedure would be in complete compliance with the state requirements; and,

WHEREAS, Waukesha County has treated its employees with fairness and respect and intends to continue to do so.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that:

Section I. A new section of the County Code is created that shall read:

Introduction. The County provides an employee appeals process in order to address employment concerns and to help maintain harmonious employee-employer relationships. Supervisors and employees are expected to make every effort to resolve problems first on an informal basis. However, it is recognized that there will be grievances that will be resolved only after formal appeal and review.

For issues of employee discipline, termination and workplace safety this procedure provides employees with an opportunity to address their individual concerns and to have those matters reviewed by an Impartial Hearing Officer, and if necessary to file a subsequent administrative appeal to the Waukesha County Board.

Employees Covered. This grievance procedure is applicable to:

- A. All regular part time and regular full time employees except law enforcement employees covered by a collective bargaining agreement..
- B. Temporary employees
- C. For grievances relating to discipline, termination, and workplace safety, this procedure applies to all employees except:
 - 1. Employees covered by a civil service system,
 - 2. Employees whose removal from employment is covered by a specific state statute, or
 - 3. Independent contractors.

Definitions.

A. Grievance: Any cause of complaint arising between the County and its employees with reference to a condition of employment.

B. Discipline: formal documented and corrective action consisting of a verbal warning, written warning, suspension, or demotion. Discipline does not include:

- Performance Evaluations
- Employee Counseling and Instruction
- Performance Improvement or Corrective Action Plans
- Documented employee actions or behaviors placed in an employee file
- Non-disciplinary wage, benefit, or salary adjustments
- Changes in work assignments
- Paid or unpaid administrative leave pending a workplace investigation
- Layoffs, furloughs and other reductions in force

C. Termination: the involuntary separation of employment, which may be associated with the violation of a County or department general or specific work rule, policy, procedure, unsatisfactory work performance, acts of misconduct, or any other reason where it is determined that it is in the best interest of the County to end the employment relationship. Termination does not include:

- Layoff or workforce reduction
- Reduction in hours or employment status
- Transfer or demotion
- Voluntary resignation
- Retirement
- Job Abandonment or Failure to Report to Work
- Loss of Required License
- Inability to perform the required functions due to a physical or mental limitation
- Contract non renewal
- End of employment due to the completion of a temporary, contractual, seasonal, on call or limited term employment

D. Workplace Safety: a condition of employment which affects an employee's physical health or safety, the safe operations of equipment or tools, the physical workplace environment, the lack of required personal protective equipment, workplace violence, or the lack of training related to the above.

E. Impartial Hearing Officer: a non County employee who is designated by the County to serve as a neutral party and whose role is to conduct a hearing as outlined in this procedure, and render a decision pertaining to discipline, termination, or workplace safety.

F. Grievance Statement: a written statement containing a clear and concise statement of the facts, including the dates of the incidents, identities of individuals involved, any workplace rules, policies or procedures allegedly violated, the steps taken to informally resolve the dispute and the results of those efforts, and the remedy sought to resolve the grievance.

G. At-Will Employment: Employees may voluntarily resign County employment at any time. Likewise, employees who are not covered by a just cause standard due to a statutory requirement or a County policy are considered "employment at will"

employees. The employment at will employees may be involuntarily terminated at any time.

H. Arbitrary and Capricious Standard: The standard to be used by any reviewing entity in rendering recommendations on appeal is whether or not the action taken by the employer was appropriate or arbitrary and capricious. To recommend change of the decision the reviewer must find the decision was arbitrary and capricious which means that the decision was one which lacked any rational basis or which was the result of unconsidered willful or irrational choice. It must have been a decision with no rational basis.

Procedural Requirements and Time Limits. Employees and their supervisors are encouraged to reach an informal resolution whenever possible. It is recognized that there will be occasions when an employee and their supervisor are unable to resolve the dispute. In order to be processed under this procedure, employees must submit their written grievance statement to both their Department Head and Human Resources within thirty (30) calendar days after the time the employee affected knows, or should know, the facts causing the grievance.

Steps of the Procedure. The following steps outline the grievance procedure.

A. On matters involving discipline, termination, or workplace safety, the employee will follow the first three steps of the grievance procedure and if the matter is not resolved, then the employee may appeal the decision and process their grievance under Steps 4 and 5 of the grievance procedure. All other types of grievances are limited to Steps 1 through 3.

B. Step 1- Discussion of the Problem with the Supervisor - Employees shall first discuss the problem and resolution with their immediate supervisor.

C. Step 2- Discussion of the Problem with the Department Head - In the event the immediate supervisor's decision does not resolve the problem, the employee may present their grievance statement to their Department Head. Within 10 working days of receipt of the grievance statement, the Department Head, or designee, shall meet with the employee, other department representatives and a representative from Human Resources to discuss the grievance. The Department Head will issue a written response within ten (10) working days after the meeting.

D. Step 3- Discussion of the Problem with the Director of Administration –

i. In the event that the Department Head's decision does not satisfy the employee's grievance, the employee may, within ten (10) working days of the Department Head's response, file an appeal with the Director of Administration. A copy of the appeal must also be sent to the department head and to Human Resources. The Director of Administration shall hear the grievance within ten (10) working days after its receipt. If the grievance is not presented to the Director of Administration within ten (10) working days of the Department Head's response at Step 2, it shall be considered settled.

ii. The Director of Administration shall, after a hearing, make a decision on the grievance; that decision shall be final and binding on both parties, unless Step 4 applies.

E. Step 4 - Hearing Before an Impartial Hearing Officer - In the event that a grievance pertaining to discipline, termination, or workplace safety is not resolved under Step 3, the employee may file an appeal to an Impartial Hearing Officer designated by the County. This appeal must be filed with Human Resources within 10 working days of the Director of Administration's response.

F. Step 5 - Appeal of Decision to County Board - The employee or the County may appeal the decision of the Impartial Hearing Officer to the County Board or the governmental body designated by the County Board. The appeal must be filed with the County Board Office with a copy to Human Resources within ten (10) working days of the Impartial Hearing Officer's decision.

Procedures for Step 4 – Impartial Hearing. For a grievance to be processed under Step 4 of this policy, the following process will be utilized.

A. Prior to the hearing, the Impartial Hearing Officer may require the parties to exchange lists of witnesses and the documentary evidence they intend to introduce at the proceedings.

B. After receiving the evidence and closing the hearing, the Impartial Hearing Officer may request oral or written arguments and replies. The Impartial Hearing Officer will issue a written decision that will contain findings of fact, analysis, and a decision. In the decision, the Impartial Hearing Officer will address the following question: Based on a preponderance of the evidence presented, has the employee proven that the action taken by the County was arbitrary or capricious?

C. The Impartial Hearing Officer shall have the authority to issue a response and determine an appropriate remedy.

D. The written decision will be issued within a reasonable time period based on the nature of the grievance and the complexity of the record. It should be the goal of the Impartial Hearing Officer to issue a decision within ninety (90) calendar days from the conclusion of the hearing and receipt of all records, exhibits, transcripts, and briefs.

Notice of Hearing Officer. Following receipt of an appeal to Step 4, Human Resources will provide the employee with the name of the Impartial Hearing Officer.

Scheduling of Hearings. Human Resources will coordinate the hearing process for the Impartial Hearing Officer. Human Resources will contact the grievant, department head, and Impartial Hearing Officer to schedule an initial hearing. The initial hearing will be held no later than thirty (30) days from the date of the appeal. The hearing will be conducted in accordance with Wisconsin Statutes 19.85 (b) and 19.85 (f).

Record of the Step 4 Appeal and Hearing. The Impartial Hearing Officer will create a record of the proceedings. In the event that the Impartial Hearing Officer determines that a formal transcript of the hearing is necessary, the cost associated with the creation of this record will be paid for by the County. If the employee wishes to obtain a copy of a record, the cost of obtaining that record is the responsibility of the employee.

Record Custodian. Following the issuance of a decision, the Impartial Hearing Officer will provide all records created in the hearing, including and not limited to, a copy of the decision, exhibits, transcripts, audio recordings, witness statements, and briefs to Human

Resources. The records will be retained in accordance with the County record retention schedule.

Procedures for Step 5 - Appeal to County Board.

A. A written notice of appeal will contain a statement explaining the reasons for the appeal, a copy of the grievance, the responses from the earlier steps of the grievance procedure, and the decision issued by the Impartial Hearing Officer. The appeal may not include information not presented during the Step 4 process.

B. The appeal before the County Board will be an administrative review of the Impartial Hearing Officer's decision. The County Board shall review the record and determine whether a rational basis exists for the Impartial Hearing Officer's decision. The findings and decision of the Impartial Hearing Officer shall not be overturned unless clearly erroneous. In the event the County Board does not sustain the Impartial Hearing Officer, then the Board may render a new decision and remedy, request additional evidence be taken by the Impartial Hearing Officer, or assign a new Impartial Hearing Officer to create a recommendation. The administrative review will be conducted in accordance with Wisconsin Statutes 19.85 (b) and 19.85 (f).

C. All decisions of the Board will be made by simple majority vote of those in attendance at the meeting. The County Board will issue a written decision and file a copy of the decision with the County Clerk. A copy of the decision will be given to the employee and the department head.

D. The County Board's decision is final and is not subject to appeal.

Exception for Employees of the Federated Library System. In accordance with Wisconsin Statutes 43.58 (4), decisions of the Impartial Hearing Officer regarding the discipline, termination or workplace safety of employees of the Federated Library System will be appealed to and reviewed by the Federated Library Board.

Standard of Review for Grievances Involving Discipline, Termination and Workplace Safety.

A. All employees of Waukesha County are At Will employees and do not have a just cause standard for discipline and termination decisions unless they are covered by a specific statutory or collective bargaining provision which provides a just cause standard.

B. The grievant shall bear the burden of proof. The rules of evidence shall not be strictly followed, but no factual conclusions may be based solely on hearsay evidence.

Exception - Employees Covered by a Merit System Cause Standard. Regular full-time and regular part-time non-represented employees employed in the Health and Human Services Department prior to March 1, 2002, and the position of Internal Audit Manager retain the merit system cause standard and arbitration process for matters involving suspension, demotion, or discharge. If the grievance concerns suspension, demotion or dismissal, these employees may choose to appeal the Director of Administration's decision to arbitration or alternatively, utilize the remaining steps outlined in this procedure. The appeal must be in writing, addressed to Human Resources, and received within ten (10) working days of the Director of Administration's decision. The Human Resources Manager shall select an arbitrator from names available from the Wisconsin

Employment Relations Commission or Federal Mediation and Conciliatory Service. The cost of the Arbitrator shall be shared equally by the parties. The decision shall be final and binding on both parties.

Procedural Timelines and Scheduling Requirements.

A. A grievance must be processed in accordance with the timelines outlined in the procedure. The timelines may be modified by mutual agreement. Failure to follow the timelines and other procedural requirements in the policy will result in the Impartial Hearing Officer not having jurisdiction over the grievance and shall terminate the processing of this grievance. The Impartial Hearing Officer will have the authority to determine if the matter has met the procedural requirements.

B. Grievance meetings will normally be held during an employee's non-work hours. If the supervisor, department head, or Impartial Hearing Officer schedules the meeting during an employee's normal work hour, the employee will receive their regular compensation. Employees will not be paid for the processing of grievances outside their scheduled work hours.

Employee Representation. Employees may be represented at each of the steps in the grievance procedure by a representative of their choice and at their own cost.

Exclusion of Certain Grievances

A. This grievance procedure shall not apply to elected officials, nor shall it be construed to grant job tenure to employees who are appointed by elected officials in accordance with Wisconsin statutes.

B. The time limits contained in the grievance procedure shall not be controlling concerning appeals of alleged claims of discrimination filed under the Civil Rights Act or other federal and state statutes covering equal employment opportunity.

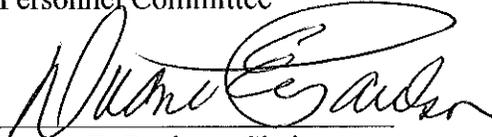
C. In matters of suspension, demotion or dismissal, law enforcement officers of the Sheriff's Department shall utilize Wisconsin Statute 59.26 (8) b.

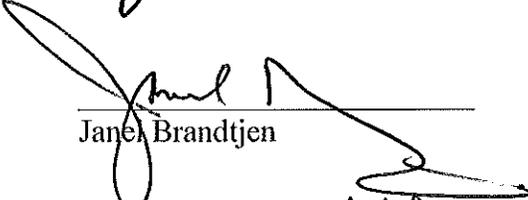
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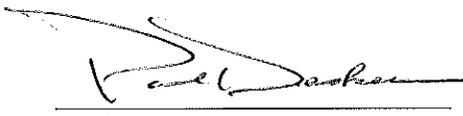
Presented by:
Executive Committee


James T. Dwyer, Chair

Approved by:
Personnel Committee


Duane E. Paulson, Chair

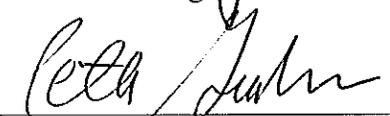

Jane Brandtjen

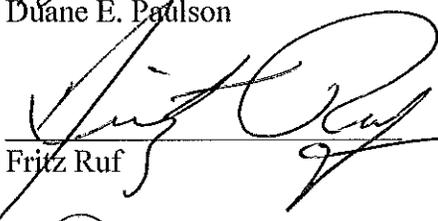

Paul L. Decker

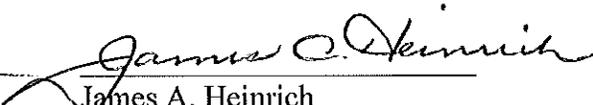

Patricia A. Haukohl


Daniel J. Draeger

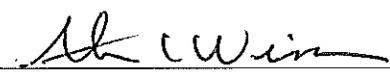

Duane E. Paulson

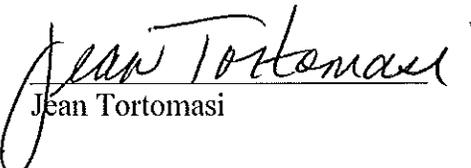

Peter Gundrum

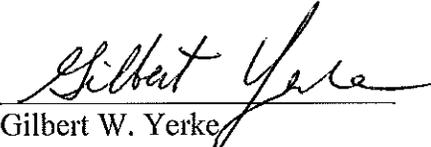

Fritz Ruf


James A. Heinrich

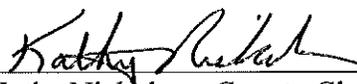

David W. Swan


Steven C. Wimmer


Jean Tortomasi


Gilbert W. Yerke

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 9-30-2011, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 10-3-11, 
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-09/27/11

(ORD) NUMBER-1660055

1 D. FALSTAD.....AYE
3 R. HUTTON.....AYE
5 J. JESKEWITZ.....AYE
7 P. HAUKOHL.....AYE
9 J. HEINRICH.....AYE
11 F. RUF.....AYE
13 P. DECKER.....AYE
15 P. MEYERS.....
17 J. TORTOMASI.....
19 S. WIMMER.....AYE
21 W. ZABOROWSKI.....AYE
23 D. DRAEGER.....AYE
25 G. YERKE.....AYE

2 T. ROLFS.....
4 J. DWYER.....AYE
6 J. BRANDTJEN.....AYE
8 T. SCHELLINGER....AYE
10 D. SWAN.....AYE
12 P. WOLFF.....AYE
14 M. INDA.....AYE
16 D. PAULSON.....AYE
18 K. CUMMINGS.....NAY
20 P. JASKE.....AYE
22 P. GUNDRUM.....AYE
24 W. KOLB.....AYE

TOTAL AYES-21

TOTAL NAYS-01

CARRIED X

DEFEATED _____

UNANIMOUS _____

TOTAL VOTES-22