

CITY OF SHULLSBURG -GRIEVANCE PROCEDURE (ACT 10)

PURPOSE: This policy is intended to comply with Section 66.0509, Wis. Stats., and provides a grievance procedure addressing issues concerning workplace safety, discipline and termination. This policy applies to all employees covered under Section 66.0509, Wis. Stats., other than police and fire employees subject to Section 62.13(5), Wis. Stats. An employee may appeal any level of discipline under this grievance procedure. A grievance may be initiated by any employee. An employee may be represented at all stages of the grievance procedure by a representative of his or her choice.

For purposes of this policy, the following definitions apply:

DEFINITIONS

1. **Grievance:** A complaint arising from termination, discipline or issues pertaining to workplace safety.
1. **Bifurcation:** Splitting the case into more than one element to deal with issues independently. Example: If a grievance has a timeliness issue, it may be addressed prior to the violation being grieved.
2. **Consolidation:** For multiple grievances which relate primarily to the same subject matter or issue, the joinder of the grievances for procedural and hearing purposes.
3. **Days:** Unless otherwise specifically stated, for purposes of this policy, shall mean calendar days. The time limits provided for herein are substantive and a grievant's failure to process a grievance within the time limits stated herein shall be deemed a waiver and settlement of the grievance unless, if mutually agreed upon by both parties in writing, time limits are waived or extended.
4. **Employee:** All employees of the City other than public safety employees and elected officials. For employees in collective bargaining units, the grievance procedure in any collective bargaining agreement that predates this policy shall supersede this policy for the duration of the agreement.
5. **Employee Discipline:** Includes suspension (either paid or unpaid) or a reprimand that is placed in the personnel file. Employee discipline does not include letters of performance expectations or performance improvement plans, evaluations or performance reviews of employees, transfers, demotions or changes in job assignments or placement on paid administrative leave such as during an investigation pending a decision leading to discipline.
6. **Termination:** Discharge from employment for rule violations, unsatisfactory performance or misconduct. Termination does not include voluntary quit, layoff and/or workforce reduction, failure to be recalled from layoff, job abandonment (e.g., failure to report for work or return from a leave), resignation in lieu of discharge, termination due to lack of appropriate licensure, medical condition or other inability to perform job duties, end of employment of a temporary, seasonal or contract employee or retirement.
7. **Workplace Safety:** A violation of a state or federal regulation on health and/or safety standards in the workplace that is applicable only to the safety of an employee or employees and not the endangerment of property.

8. **Impartial Hearing Officer (IHO):** The impartial hearing officer shall be a staff member of the Wisconsin Employment Relations Commission.

PROCEDURE

Employees are encouraged to attempt to resolve disputes informally with their immediate supervisor. However, informal attempts to resolve disputes shall not impact the timeliness requirements of the grievance process in the absence of mutual written agreement. **An employee is to continue to work while processing a grievance involving workplace safety unless there is a clear and present danger to the health or safety of the employee.**

Grievance Requirements:

A. Completed Grievance Report

B. Written grievance must contain:

1. A statement of the pertinent facts surrounding the nature of the grievance.
2. The date the incident occurred or the date the alleged workplace safety concern was discovered.
3. The steps taken to informally resolve the grievance, the individuals involved in the attempted resolution, and the results of such discussion.
4. The specific remedy requested; and
5. A description of the workplace safety rule alleged to have been violated, if applicable.

Filing of Grievances

An employee may not file a grievance outside of the time limits set forth below. If the employee fails to meet the deadlines set forth above, the grievance will be considered resolved. If it is impossible to comply with the deadlines due to meeting notice requirements or meeting preparation, the grievance will be reviewed at the next possible meeting date. An employee must process his/her grievance outside of normal work hours, unless the employee elects to use accrued paid time (vacation, comp time etc.) in order to be paid for time spent processing his/her grievance through the various steps of the grievance procedure.

Department Heads/Supervisors

In the event a department head or an employee with no immediate supervisor other than the Common Council has a grievance, he or she shall file the grievance and request for a hearing, whether the grievance pertains to termination, discipline or workplace safety, with the City Clerk. Grievances by the City Clerk shall be filed with the Mayor or, where the City has a Personnel Committee, with the Chair of the Personnel Committee.

Discipline and Termination

In cases of termination or discipline, the employee must file his or her grievance and request for a hearing on the form provided by the City Clerk with the City Clerk within ten (10) days of the date the notice of discharge or discipline, was sent or given.

Workplace Safety

For issues pertaining to workplace safety, the employee must first bring the safety concern to his or her immediate supervisor in writing within ten (10) days of the date on which the issue arises. The supervisor shall respond to the concern in writing within ten (10) days.

If the employee is not satisfied with the response, the employee shall file his or her grievance and request for a hearing on the form provided by the City with the City Clerk within five (5) days of the date the supervisor's response was sent or given or, if no written response is received from the employee's immediate supervisor, within fifteen (15) days of the date of the filing of the concern with the immediate supervisor.

Consolidation of Grievances

In the event more than one employee files a grievance related to the same facts or subject matter, the grievances may be consolidated.

Hearings

Within five (5) days of the City Clerk, Mayor or Committee Chair receiving the hearing request, the IHO will be contacted to schedule a hearing date.

The IHO shall set a hearing date, and inform both the employee and the City Clerk of the hearing date. If the City Clerk is the grievant, the IHO shall notify the Mayor or Chair of the Personnel Committee, if applicable. The hearing shall be held within thirty (30) days of notifying the IHO. In the event of a bifurcated hearing, the first hearing shall be held within thirty (30) days after notifying the IHO.

The IHO shall conduct the hearing informally and impartially in such manner as he or she deems best calculated to ascertain the correctness of the allegations of the grievance. The City may request bifurcation of the grievance if timeliness or other issues not relating to the merits of the case are in question. A record shall be made of the hearing in such form as the IHO determines is appropriate but shall, at a minimum, include an audiotape of the hearing and preservation of all written materials presented at the hearing.

The IHO will abide by the following guidelines:

1. Rules of evidence and procedure as applicable in civil and criminal cases do not apply. (Example: A second party may share what they heard, which could be considered "hearsay" in other legal proceedings.)
2. The scope of authority is limited to the issue in question of the specific case. A broad decision that would bring into play other policies and issues is not within the authority of the hearing officer.

The IHO shall have the authority, after having heard whatever evidence he or she deems sufficient, to act as follows:

- a. Uphold the termination of the employee.

- b. Uphold the discipline imposed on the employee.
- c. Reduce the original penalty.
- d. Dismiss the grievance.
- e. In work safety cases, if the hearing officer determines that a safety hazard exists, the IHO may enter such orders as are reasonably necessary to remedy the safety hazard or, if the IHO determines that no safety hazard exists, may dismiss the grievance.
- f. In discipline and termination cases, if the IHO determines that the evidence does not support the disciplinary action taken or the termination, the employee may be reinstated, and the IHO may order that the employee be paid and/or reimbursed for all or part of his or her salary and benefits, may order that a letter, indicating that the disciplinary action was reversed and that the specific charge should not be considered in any future actions, be placed in the employee's personnel file, or may order that the employee's personnel file be expunged of all material relating to the discharge or discipline or any combination of the foregoing.
- g. The IHO's decision shall be in writing and shall be served by first class mail upon the grievant and the City Clerk or Mayor /Chair and representatives for the grievant and City, if any.

Appeals

The grievant or, on behalf of the City, the grievant's immediate supervisor or, where applicable, the Chair of the Personnel Committee or the Mayor, may appeal the hearing officer's decision to the Common Council. Any appeal of the IHO's decision shall be made in writing on a form or forms provided by the City within fifteen (15) days of the date of the IHO's written decision.

The Common Council shall review the record of the hearing within thirty (30) days of the receipt of the appeal and issue a written decision within ten (10) days thereafter. The review will be conducted by the Common Council during a closed session meeting unless an open session is requested by the employee.

The Common Council shall have the right to affirm, modify or overrule the IHO's decision in whole or in part or it may remand the grievance to the IHO with directives as determined to be appropriate by the Common Council. The Common Council shall not hold any hearing or accept any additional information or evidence on the grievance but shall base its decision exclusively on the record of the hearing. The Common Council may, in its exclusive discretion, permit written arguments to be filed by or on behalf of the grievant or department head or Mayor /Chair. If written arguments are permitted, the appeal timeline for review of the record shall be extended from thirty (30) to ninety (90) days.

A simple majority vote of the Common Council shall decide the appeal within twenty (20) days following the last session scheduled for review. The

Common Council will issue a final written decision which shall be binding on all parties.

The decision shall be served by first class mail upon the employee, the supervisor or Chair/Mayor, and their representatives, if any.

In a case where the grievant is a library employee the appeal is filed with the Library Board. All above stated timelines and guidelines apply. The Library Board will issue a final written decision which shall be binding on all parties.

Costs

Any expense incurred by an employee in investigating, preparing, or presenting a grievance shall be the sole responsibility of the employee. Each party (employee and employer) shall bear its own costs for witnesses and all other out-of-pocket expenses, including possible attorney fees. The fees of the IHO shall be payable to the IHO, and divided equally between the parties with the employee(s) paying half and the employer paying the other half.

Adopted this 21 day of September 2011 at a regular meeting of the Common Council of the City of Shullsburg.

CITY OF SHULLSBURG:

Tom Lethlean

Tom Lethlean, Mayor

ATTEST:

Marsha L Einsweiler

Marsha Einsweiler

