

Town of Brussels, Door County, Wisconsin

Employee Grievance Procedure

Purpose: This grievance procedure is adopted pursuant to s. 66.0509(1m), Wis. Stat., and is intended to provide a timely and orderly review of disputes regarding: a) employee terminations, b) employee discipline, and c) workplace safety.

Definitions for terms used in this document:

"Days": means calendar days, excluding legal holidays as defined in s. 995.20, Wis. Stat.

"Discipline": means any employment action that results in disciplinary suspension without pay, disciplinary reduction in pay or other benefits, disciplinary demotions and terminations. The term "discipline" does not include verbal notices or reminders, written reprimands, performance evaluations, documentation of employee acts and/or omissions in an employment file, non-disciplinary demotions, non-disciplinary adjustments to compensation or benefits, actions taken to address job performance such as establishment of a performance improvement plan or job targets; placing an employee on paid leave pending an internal investigation; or other personnel actions taken by the employer for non-disciplinary reasons.

"Employee": means an individual hired at-will and paid an hourly wage by the Town Board. This procedure does not include or apply to elected officials or appointed committee members.

"Hearing Officer": means the impartial hearing officer required pursuant to s. 66.0509(1m)(d)2, Wis. Stat. The hearing officer selected by the town board is (insert name and/or title of person(s) town board has selected to serve as the hearing officer such as: a lawyer, a professional mediator/arbitrator, a retired judge, or other qualified individual. The hearing officer shall not be an employee of the Town of Brussels.

"Termination": means a discharge from employment for rule violations, poor performance, acts detrimental to the employer or other acts of misconduct. The term "termination" does not include: a voluntary quit, completion of seasonal employment, completion of temporary assignment, completion of contract, layoff or failure to be recalled from layoff at the expiration of the recall period; retirement, job abandonment ("no call, no show" or other failure to report to work); or termination of employment due to medical condition, lack of qualification or license, or any other cessation of employment not involving involuntary termination.

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Process and Timelines:

1. The employee must file a written grievance with the town clerk within 10 days of the termination, discipline or actual or reasonable knowledge of the alleged workplace safety issue. So that an earnest effort can be made to resolve the matter informally, the grievant must discuss the issue with his/her immediate supervisor prior to filing the written grievance. However, in the case of a termination, such a meeting is not required. Grievance forms may be obtained from the clerk. The town clerk shall inform the employee's immediate supervisor and the town chair about receipt of the written grievance as soon as practicable.
2. The employee's immediate supervisor will meet with the grievant within 10 days of receipt of the written grievance. The supervisor will provide the grievant with a written response within 10 days of the meeting. A copy of the supervisor's response shall be filed in the clerk's office. If no one has been designated the employee's immediate supervisor, the employee will meet with the town chair who shall then provide the written response.
3. The employee may request an appeal to the hearing officer by filing a written request with the town clerk within 10 days of receiving the written response. The town clerk shall notify the town chair and employee's supervisor about the filing of the request for a hearing as soon as practicable. The town will work with the hearing officer and grievant to schedule a mutually agreeable hearing date.
4. The hearing officer shall provide the employee and employee's supervisor with a written decision no later than 30 days after the hearing date. The hearing officer shall also provide the town clerk with a copy of the decision for filing in the clerk's office.
5. The non-prevailing party may file a written request with the town clerk for an appeal to the town board within 10 days of receipt of the hearing officer's decision. The clerk shall notify the town chair about the request as soon as possible. The town board shall decide the matter and issue a written decision within 45 days of the filing of the appeal. The town board may sustain, deny or modify the recommendation of the impartial hearing officer. The decision of the town board shall be final and binding. A copy of the board's decision shall be provided to the employee and filed in the town clerk's office.
6. All timelines may be extended by mutual written agreement of the town board and employee. Without such agreement, a failure of the employee to adhere to any of the specified timelines shall preclude any further consideration of the grievance.
7. If the last day on which an event is to occur is a Saturday, Sunday, or legal holiday, the time limit is extended to the next day which is not a Saturday, Sunday or legal holiday. A grievance or request for an appeal is considered timely if received by the town clerk during normal business hours or if postmarked by 11:59 p.m. on the due date.

8. If the grievance is not answered within the time limits, at any stage, the employee may proceed to the next available step within 7 days.

9. The grievant and town board may mutually agree in writing to waive a step or multiple steps within the procedure.

10. Granting the requested or agreed upon remedy resolves the grievance.

Grievance Requirements:

The 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.

Supervisor's Response:

The supervisor's written response to the employee's written grievance must contain:

1. A statement of the date the meeting between the employee and supervisor was held.
2. A decision as to whether the grievance is sustained or denied.

Procedure Before the Hearing Officer: The hearing officer shall define the issues, identifying areas of agreement and identifying the issues in dispute and hear evidence and arguments. The hearing officer will determine whether the town acted in an arbitrary and capricious manner. A decision will not have been arbitrary or capricious if it was made in the best interest of the town. In all cases, the grievant shall have the burden of proof to support the grievance. This process does not involve a hearing before a court of law; thus, the rules of evidence will not be strictly followed. However, no factual findings may be based solely on hearsay evidence.

The hearing officer may require the employee and town to submit materials related to the grievance and witness lists in advance of the hearing in order to expedite the hearing. The hearing officer shall sustain or deny the decision of the employee's supervisor. The hearing officer is not given authority to modify the decision made by the employee's supervisor. The hearing officer is not given authority to grant in whole or in part the

specific request of the grievant. Within 30 days after the hearing, the hearing officer will issue a decision in writing indicating the findings and reasons for the decision.

If the hearing officer's decision on any grievance is appealed, only the issues raised in the hearing may be appealed. Issues are not subject to modification in the appeal process.

Hearing Officer's Decision:

The hearing officer's written decision must contain:

1. A statement of pertinent facts surrounding the nature of the grievance.
2. A decision as to whether the grievance is sustained or denied, with the rationale for the decision.
3. A statement outlining the timeline to appeal the decision.

Representation: Both the employee and the town may be assisted by a representative of their own choosing in person or by teleconference at any point during the grievance process.

Consolidation: The employee's immediate supervisor and/or the hearing officer may consolidate grievances where a reasonable basis for consolidation exists.

If more than one employee is grieving the same issue or circumstance, a single grievance form may be used. A group grievance must be signed by all grieving employees and must indicate that it is a group grievance at the first step in the grievance process.

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 impartial hearing officer shall be divided equally between the parties with the employee(s) paying half and the employer paying the other half. The fees of the hearing officer will be: _____.

Resolution Adopting Employee Grievance Procedure

Whereas s. 66.0509(1m), Wis. Stat. requires local governmental units to adopt an employee grievance procedure;

Whereas the Town of Brussels, Door County, Wisconsin has thoughtfully considered this requirement and prepared an employee grievance procedure that contains the required elements;

Now, therefore be it resolved, that the town board of the Town of Brussels, Door County, Wisconsin adopts the attached employee grievance procedure pursuant to s. 66.0509(1m), Wis. Stat.

Adopted this 14th day of Sept., 2011.

By the Town Board:

George DeBussche Jr.

Joe Wautier

Eden DeBussche

Attested by Town Clerk:

John Neenas

(Post in 3 places within 30 days of adoption pursuant to s. 60.80, Wis. Stat.)

New Requirement to Establish an Employee Grievance Procedure

By Carol Nawrocki, WTA Attorney

As you are likely aware, 2011 Wisconsin Act 10, often referred to as the budget repair bill, made sweeping changes to the collective bargaining laws applicable to public employees. One of the changes included in the bill is a requirement that all municipal employers adopt a grievance procedure for their employees if the local government does not currently have a civil service system offering protections to employees in place. This article will touch upon the general requirements for such a procedure and hopefully get the town thinking about how it plans to comply with this new law. All municipalities must have a grievance procedure in place that meets the requirements of the new statute (s. 66.0509(1m), Wis. Stat.) as of October 1, 2011.

Q. Our town only has one part-time employee who is an "at will" employee without any type of contract. Does our town still have to have a grievance procedure?

A. Yes. All municipal employers must offer a grievance procedure regardless of whether you have employees that are in a union or not. Moreover, the law does not create any exceptions for municipalities that have only seasonal, part-time, or other limited-term type employees.

Q. What sort of employee issues may the grievance procedure be used to address?

A. Section 66.0509(1m)(c), Wis. Stat. requires the grievance procedure to address, at minimum, employee terminations, employee discipline, and workplace safety. Unfortunately, the law does not define these terms. So, the town will need to define what these terms do or do not include in the grievance procedure. If your town has an existing employee handbook or employee discipline policy, it should be reviewed and altered if needed to harmonize with the grievance procedure. If your town has never had an employee handbook or discipline policy now would be the time to strongly consider working with a labor law attorney to create one.

Q. What steps will need to be included in the grievance procedure?

A. The law only dictates a few specific elements that the grievance procedure must contain. First, there needs to be a written document specifying the process that a grievant and employer must follow. Secondly, there must be a hearing before an impartial hearing officer. And, thirdly, there must be an appeal process in which the highest level of appeal is the governing body of the local governmental unit. See s. 66.0509(1m)(d), Wis. Stat. Beyond these basic elements, the town is free to determine how many steps there will be to the procedure, the format of the form to be used for filing a grievance, the timelines for both filing and acting on the grievance, etc.

Q. Who should be the "impartial hearing officer"?

A. The new law does not explicitly define what "impartial" means or what the role of the hearing officer should be. It is likely that employees and unions will file lawsuits that will eventually clarify these questions. In the mean time, the town should think carefully about what it means to be "impartial". We know that many towns have few employees and no human resources department. In most cases, the town board as a whole or a town board designated individual would make the initial decision to terminate or discipline an employee. As a result, a member of the town board that decided the matter or the individual designated to handle the termination/discipline would not be "impartial" and, therefore, should not be the hearing officer. The safest course of action would be to select an independent hearing officer who is not an employee of the town. Our suggestion would be to consider hiring an attorney, a retired judge, an independent labor arbitrator, or a human resources director from another municipality, school district, or county that has experience hearing employee grievances. The town may also choose to have a staff member from the Wisconsin Employment Relations Commission serve as the impartial hearing officer. Be aware that an angry employee and his or her attorney are likely to scrutinize your choice. So, at minimum, whomever you select cannot be someone with a direct interest in the case and it cannot be a member of the town board that will ultimately be hearing any internal appeal of the hearing officer's decision.

Q. Who pays the costs associated with the filing of the grievance?

A. Payment of costs should be addressed in your grievance procedure. In the interests of fairness, it is suggested that each party (the employee and employer) pay their own costs associated with handling the grievance. Out of pocket costs might include things like attorney fees, investigation, photocopying, etc. Also indicate in your grievance procedure what fees the hearing officer will charge.

Q. Will the final decision of the town board on any appeal be the end of the road for the employee grievance?

A. The new statute says the "highest level of appeal" is the governing body of the local governmental unit, s. 66.0509(1m)(d)3, Wis. Stat. However, most labor law attorneys believe that there will still be the potential right to appeal to circuit court under Chapter 227 of the Wisconsin Statutes. That section would involve a judge (rather than a jury) reviewing the record created during the grievance process to see if the evidence contained therein adequately supports the decision.

Q. Does WTA have a model grievance procedure our town can take a look at?

A. WTA will be putting together a basic sample that includes the required elements. Such a sample will be made available on our website in the near future. Any member town that is unable to access information via the website may call our office for a copy once it becomes available. However, many options exist for creating such a procedure and there really isn't a "one size fits all" grievance procedure. Each municipality is strongly encouraged to have a labor law attorney review its grievance procedure prior to final adoption.

Town of Brussels, Door County Employee Grievance Form

Employee Name: _____

Job Title: _____

Employee Contact Information: (provide phone numbers, mailing address, etc.)

Grievance Level (check one): (Step 1) Meeting with Immediate Supervisor ☐

(Step 2) Request for Impartial Hearing ☐

(Step 3) Appeal to Town Board ☐

This section to be completed for Step 1 only: Describe the grievance: state all relevant facts, including time, place of incident being grieved, names of persons involved, steps taken to informally resolve the grievance, etc. Attach additional sheets if needed.

☐ Additional sheets attached

Describe relief sought:

Employee's Signature

Date Submitted

For office use only:

Date received: ____/____/20____

Clerk's initials: _____

Town of Brussels, Door County, Grievance Decision Form

Name of Employee: _____

Job Title: _____

Decision: (Attach additional pages if necessary)

☐ Additional sheets attached

Date Employee Grievance or Request for Hearing/Appeal Received: _____

Date of Meeting or Hearing: _____

Date of Decision: _____

Grievance Level (check one): (Step 1) Meeting with Immediate Supervisor ☐
(Step 2) Request for Impartial Hearing ☐
(Step 3) Appeal to Town Board ☐

Date Employee Provided Copy of this Decision: _____

Delivery method: _____ (U.S. mail, hand delivered, etc.)

Employer or Hearing Officer Signature

(title)

The employee may request an appeal to the impartial hearing officer by filing a written request with the town clerk within 10 days of receiving the supervisor's written response. Within 10 days of receipt of the impartial hearing officer's decision, the non-prevailing party may file a written request for an appeal to the town board with the town clerk.

***A copy of this completed form must be provided to the town clerk for record keeping purposes.

For office use only:

Date received: ____ / ____ /20 ____

Clerk's initials: _____