

TOWN OF HUMBOLDT
CHAPTER 20
EMPLOYEE GRIEVANCE PROCEDURE

Town of Humboldt Resolution for Adopting Employee Grievance Procedure

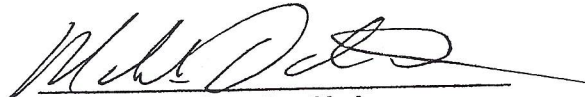
Whereas §66.0509(1m), Wis. Stat. requires local governmental units to adopt an employee grievance procedure which shall be effective as of October 1, 2011;

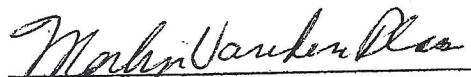
Whereas the Town Board of the Town of Humboldt, Brown County, Wisconsin thoughtfully considered this requirement and instructed the Town Attorney to develop and prepare an employee grievance procedure that contains all of the legally required elements consistent with the historical policies and practices of the Town;

Now, therefore be it resolved, that the Town Board of the Town of Humboldt, Brown County, Wisconsin hereby adopts the attached Town of Humboldt Employee Grievance Procedure pursuant to §66.0509(1m), Wis. Stat. The Town Clerk shall: (1) prepare a copy of this Resolution and the attached Town of Humboldt Employee Grievance Procedure; (2) denominate that copy "Chapter 20"; (3) place that copy into the Town of Humboldt Code of Ordinances; (4) prepare an additional three copies of both the Resolution and the Town of Humboldt Employee Grievance Procedure; and (5) within 30 days of October 3, 2011, post those three copies in three separate places in the Town likely to give notice to the public pursuant to §60.80 Wis. Stat.

Adopted this 3rd day of October, 2011 *nunc pro tunc* as of October 1, 2011.

By the Town Board:


Norbert Dantine Jr., Chairman


Merlin Vanden Plas, Supervisor


Wesley Dornier, Supervisor

Attested by Town Clerk:


Judy Baiertl, Clerk

Town of Humboldt, Brown 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 the day of the stated event and legal holidays as defined in s. 995.20, Wis. Stat.

"Deliver" and "Delivery" mean by regular mail, postage prepaid; or by electronic mail. The regular mail means of Delivery shall be utilized as to all documents to be Delivered to all parties except: (i) the Grievant may personally Deliver the Grievant's initial Grievance Form to the Town Clerk; (ii) the Supervisor may Deliver a Step 1 Grievance Decision to the Grievant by personal Delivery at the conclusion of the Supervisor/Grievant meeting; and (ii) alternative Delivery means may be used as to any party who has agreed, in advance and in a separate writing filed with the Town Clerk, to receive notices and other documents by electronic mail or other means, but Delivery by any such other means is subject to the consent of the other party. A party may also elect to have notices and other documents Delivered instead to the party's agent or legal representative, but such election, including selection of the electronic mail means of Delivery, shall be made in a separate writing filed with the Town Clerk. Delivery shall be deemed complete: on the third day after the day of deposit in the United States mail; or on the day after the day shown to be the electronic mail transmission date; or if by personal Delivery then the day the personal Delivery occurred.

"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.

"Grievant" means the employee filing the grievance.

"Hearing Officer" means the impartial Hearing Officer required pursuant to s. 66.0509(1m)(d)2, Wis. Stat. The Hearing Officer to be selected by the Town Board on a case by case basis shall be a licensed Wisconsin lawyer, a professional mediator/arbitrator, a retired judge, or other qualified individual. The Hearing Officer shall not be an employee of the Town of Humboldt.

"Step" "Steps" means any or all of the three Steps for grievance determination including but limited to: (1) Step 1 Supervisor meeting; (2) Step 2 Hearing Officer hearing; and (3) Step 3 Town Board Appeal.

"Supervisor" means the Grievant's designated (by Town Board resolution) immediate Supervisor; or in the absence of any such Town Board resolution designating an immediate Supervisor then the Town Chairperson.

"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.

"Workplace Safety" means but is limited to any standard relating to workplace safety established as a federal or state law statute, regulation or rule.

Section 1. Process and Timelines:

- 1.1 The Grievant must file a written grievance with the Town Clerk within 10 Days of the Termination, Discipline or the Grievant's actual or reasonable knowledge of any Workplace Safety violation. 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 Town Clerk. The Town Clerk shall inform the Grievant's Supervisor and the Town Chairperson of the Town Clerk's receipt of the written grievance as soon as practicable.
- 1.2 The Supervisor will meet with the Grievant within 10 Days of the Clerk's receipt of the written grievance. The meeting may be adjourned and its duration may be extended beyond a single meeting session, but only upon written agreement between the Grievant and the Supervisor. A copy of any such agreement between the Grievant and the Supervisor to continue their meeting shall be filed with the Town Clerk by the Supervisor. The Supervisor shall Deliver a copy of the Supervisor's written response to the grievance to the Grievant within 10 Days following the conclusion of the meeting between the Grievant and Supervisor. The Supervisor shall file the original Supervisor's written response to the grievance in the Clerk's office at the time the copy of the Supervisor's written response is Delivered to the Grievant.
- 1.3 The Grievant may request an appeal to the Hearing Officer by Delivering a written request to the Town Clerk within 10 Days of the Delivery of the Step 1 decision to the Grievant. The Town Clerk shall notify the Town Chairperson and the Supervisor of the Clerk's

receipt of the Grievant's request for a hearing as soon as practicable. The Town Clerk will work with the Hearing Officer and Grievant to schedule a mutually agreeable hearing date.

- 1.4 The Hearing Officer shall Deliver the Hearing Officer's written decision to the Grievant and the Supervisor no later than 30 Days after the date the hearing is concluded. The Hearing Officer shall also Deliver a copy of the decision to the Town Clerk for filing in the Clerk's office.
- 1.5 The non-prevailing party may Deliver a written request with the Town Clerk for an appeal to the Town Board within 10 Days of Delivery of the Hearing Officer's decision. The Clerk shall notify the Town Chairperson about the Clerk's receipt of the request as soon as possible. The appeal shall be conducted as a review of the hearing record unless either party requests, or the Town Board determines that the Town Board will conduct a further evidentiary hearing to supplement the hearing record. Any such supplemental evidentiary hearing shall commence within 30 Days of the date the written request for appeal was Delivered to the Clerk. The Town Board shall decide the appeal and issue a written decision within 45 Days of the Delivery of the request for appeal to the Clerk unless: the parties agree to extend that time; or additional time is required to enable supplemental evidentiary hearing(s) before the Town Board, in which case the Town Board shall issue a written decision on the appeal within 20 Days of the conclusion of the supplemental evidentiary hearing. The Town Board may sustain, deny or modify the decision of the Hearing Officer. The appeal decision of the Town Board shall be final and binding. A copy of the Town Board's decision shall be Delivered to the Grievant and filed in the Town Clerk's office.
- 1.6 All timelines may be extended by mutual written agreement of the Town Board and the Grievant. Without such agreement, a failure of the Grievant to adhere to any of the specified timelines shall preclude any further consideration of the grievance.
- 1.7 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.
- 1.8 If the grievance is not determined within the time limits, at any Step, the Grievant may proceed to the next available Step in this grievance procedure within 7 Days of the Grievant's Delivery of notice to the Town Clerk declaring the Grievant's intent to proceed to the next available grievance Step within 7 Days of Delivery of such notice to the Town Clerk, unless the grievance determination is Delivered to the Grievant within that 7 Day period.
- 1.9 The Grievant and Town Board may mutually agree in writing to waive or modify a Step or multiple Steps within this grievance procedure at anytime.
- 1.10 Granting the Grievant's requested or the parties' agreed upon remedy resolves the grievance.

Section 2. Grievance Requirements: The written grievance must be submitted on the Town's Grievance Form obtained from the Town Clerk and shall contain all information requested by the Grievance Form including:

- 2.1 A complete statement of the pertinent facts surrounding the nature of the grievance.
- 2.2 The date(s) the event(s) or incident(s) occurred or the date the alleged workplace safety concern was discovered.
- 2.3 The Steps taken to informally resolve the grievance, the individuals involved in the attempted resolution, and the results of such discussion.
- 2.4 The specific remedy requested; and
- 2.5 A clear description of the workplace safety rule alleged to have been violated, if applicable.

Section 3. Supervisor's Response: The Supervisor's written response to the Grievant's written grievance must contain:

- 3.1 A statement of the date(s) the meeting(s) between the Grievant and Supervisor were held.
- 3.2 A decision by the Supervisor as to whether the grievance is sustained or denied.

Section 4. Procedure Before the Hearing Officer:

- 4.1 The Hearing Officer shall create a record of the proceeding wherein the Hearing Officer shall: define the issues; identify areas of agreement; identify the issues in dispute; hear evidence and arguments; and render a written decision. Within 30 Days after the hearing is concluded, the Hearing Officer will issue a decision in writing indicating the findings and reasons for the decision. The Hearing Officer's written decision must contain:
 - 4.1.1 A statement of pertinent facts surrounding the nature of the grievance.
 - 4.1.2 A decision as to whether the grievance is sustained or denied, with the rationale for the decision.
 - 4.1.3 A statement outlining the timeline to appeal the decision.
- 4.2 The nature and extent of the hearing may be determined by agreement of the parties, but shall otherwise be determined by the Hearing Officer in accord with the severity of the Discipline at issue. For example, the procedure for a grievance over a relatively minor/minimal Discipline may be somewhat different from the procedure for a grievance over Termination.

- 4.3 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.
- 4.4 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.
- 4.5 The Hearing Officer may require the Grievant and Town to submit materials related to the grievance and witness lists in advance of the hearing in order to expedite the hearing.
- 4.6 The Hearing Officer's decision making authority is limited as follows:
- 4.6.1 The Hearing Officer shall sustain or reverse the initial grievance grant or denial decision of the Supervisor. The Hearing Officer is not given authority to modify the grievance grant or denial decision made by the Supervisor.
- 4.6.2 The Hearing Officer does not have authority to grant in whole or in part the specific remedy request of the Grievant if the Supervisor's initial determination was to deny the Grievance.
- 4.6.3 Upon reversing the grievance denial decision of the Supervisor, the Hearing Officer shall return the matter to the Supervisor for an initial determination of the Grievant's requested remedy by the Supervisor. The Supervisor's initial determination of the Grievant's remedy may thereafter be the subject of further hearing before the Hearing Officer, provided that in such event the Hearing Officer shall determine the remedy to be either: (i) the remedy determined by the Supervisor; or (ii) the final remedy request which was submitted to the Supervisor by the Grievant.
- 4.6.4 Unless otherwise expressly authorized in a separate written agreement between the parties, the Hearing Officer shall have no authority to modify the remedy alternatives proffered by either party either: in the context of the Supervisor's initial remedy determination, or in any subsequent hearing before the Hearing Officer.
- 4.7 If the Hearing Officer's decision on any grievance is appealed, only the issues in dispute raised in the hearing before the Hearing Officer may be appealed. Unless otherwise agreed in a separate writing executed by the parties, the issues to be determined in the appeal process are not subject to modification in the appeal procedure.

Section 5. Representation: Both the Grievant and the Town may be assisted and represented by a licensed Wisconsin attorney of their own choosing, in person or by teleconference, at any Step during the grievance procedure.

Section 6. Consolidation: The 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 and all such employees shall be thereupon collectively be deemed the Grievant. 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.

Section 7. Costs, Attorneys Fees and Hearing Officer Fees:

- 7.1 Any cost or expense incurred by a Grievant in investigating, preparing, or presenting a grievance shall be the sole responsibility of the Grievant.
- 7.2 At each Step of the grievance procedure, each party (Grievant and Town) shall bear its own costs for investigation, witnesses or preparation and all other out-of-pocket expenses, including their respective attorney fees.
- 7.3 Any out-of-pocket costs incurred by the Hearing Officer for recording the hearing or otherwise shall be added to the fees for services charged by the Hearing Officer (collectively "Hearing Officer Fees"). Unless otherwise provided in a separate written agreement between the parties, all Hearing Officer Fees shall be divided equally between the parties with the Grievant paying half and the Town paying the other half.
- 7.4 In order to secure the services of an impartial Hearing Officer in some cases it may be necessary that the Town undertake joint and several responsibility to the Hearing Officer for the Hearing Officer Fees. Notwithstanding and without waiving the Grievant's responsibility for the Hearing Officer's Fees (as defined and allocated at Section 7.3 above) the Town may pay the entire amount of the Hearing Officer's Fees to the Hearing Officer. If the Town pays the entire Hearing Officer Fees, thereupon and thereafter the Grievant shall be obligated to pay the Grievant's half of the Hearing Officer Fees to the Town upon demand. Any amount of Hearing Officer Fees not fully paid by the Grievant to the Town within 30 Days of the Town's Delivery of the Town's demand for payment to the Grievant, shall thereafter bear interest at the rate of one percent (1%) per month compounded monthly, until the entire amount owed to the Town has been paid in full by the Grievant.

Town of Humboldt, Brown County Employee Grievance Form

Employee Name: _____

Job Title: _____

Employee Contact Information: (provide phone numbers, regular mail address, email address, etc.)

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

This section to be completed for Step 1 only: Describe the grievance and then state all relevant facts, including: date(s), time(s) and place of incident(s) or occurrence(s) being grieved; names and contact information of persons involved; names and contact information of persons who witnessed or may have witnessed the incident or occurrence being grieved; steps taken and names and contact information of person(s) you contacted to informally resolve the grievance before submitting this form; and any other information which will assist with determining the facts, circumstances, witnesses, person(s), place(s) and thing(s) pertaining to or involved in this grievance. Attach additional sheets if more space for information concerning this grievance is needed.

Additional sheets attached

Describe relief sought:

Employee's Signature

Date Submitted

For office use only:

Date received: ___/___/20___

Clerk's initials: _____

Town of Humboldt, Brown County, Grievance Decision Form

Name of Employee: _____

Job Title: _____

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

Decision: (Attach additional pages if necessary)

Additional sheets attached.

Date Grievance or Grievant's Request for Hearing/Appeal Received: _____

Date of Meeting or Hearing: _____

Date of Decision: _____

Date Grievant Was Provided Copy of this Decision: _____

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

Supervisor or Hearing Officer Signature

(Title)

The Grievant may request an appeal to a 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 Hearing Officer's decision, the non-prevailing party may file a written request with the Town Clerk for an appeal to the Town Board.

*****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: _____