



Meeting: Village Board
Meeting Date: 8/22/11
Agenda Item: 6a

Mission Statement

Delivering quality services in a courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REPORT FROM: Chris Haltom, Executive Director of Administrative Services

AGENDA ITEM: Review and take action on changing Section 12 of the personnel policies

POLICY ISSUE

Does the Village Board desire to modify Section 12 of the personnel policies regarding grievance procedures in order to be in compliance with new state law adopted in 2011 as Act 10 in conjunction with the state's biennial budget of 2011-2013?

BACKGROUND INFORMATION

The State of Wisconsin drastically modified collective bargaining laws through passage of Act 10. As part of the changes, all municipalities are being required to update (or adopt) grievance procedures that are similar to civil servant grievance procedures by October 1, 2011. Local area administrators have been meeting and have crafted language for updating the grievance procedures. The League of Wisconsin Municipalities also published examples of possible grievance procedures that are compliant with new state law.

The village's personnel policy already includes Section 12 titled "Grievance Procedures" which is not in compliance with the new state law. Interim Administrator Bob Bartelt worked with the area administrator's group to draft new uniform language for grievance procedures. The group utilized the services of attorney Bob Burns of Davis & Kuelthau to obtain most of the language included in Resolution 2011-20.

The grievance procedures developed by Bob Burns were compared with the League's recommended grievance procedure. Any differences between the two documents were discussed among staff members to determine if changes were warranted.

PRIOR ACTION/REVIEW

This item was introduced as New Business at the Aug. 8 Village Board meeting. Trustee Deppeler motioned to table it so that staff could include the League of Municipalities' language for revising the personnel policies in accordance with Act 10. That information is provided in Attachment III.

RECOMMENDED ACTION

Village staff recommends the Village Board approve the resolution. If the board decides to approve the resolution, the following motion could be made:

"I make a motion to approve Resolution 2011-20 amending the personnel policies."

POLICY ALTERNATIVE(S)

Modify the resolution before passage to grant more lenient grievance procedures (similar to the language already contained within existing collective bargaining agreements).

ATTACHMENTS

- I.** Existing Section 12 of the Howard Personnel Policies
- II.** Resolution 2011-20 Amending Section 12 of the Howard Personnel Policies
- III.** League of Municipalities' Sample Grievance Procedure

ATTACHMENT I

Section 12 Grievance Procedures.

- A. **Rationale.** There will be occasions when Village employees do not agree with interpretation of facts surrounding an incident, the severity of a disciplinary action, or the denial of benefits (including salary increases) which the employee feels he/she has deserved. The Village encourages use of the informal and formal grievance procedures in these circumstances. These grievance procedures are to be initiated by the employee. Any employee should always feel he/she can point out a problem or make a complaint to his/her supervisor without fear of retaliation.
- B. **Informal Grievance Procedure.** All grievances are initially considered informal. Any employee who has a problem or complaint should first attempt to resolve the matter with his/her immediate supervisor through an informal discussion. Informal grievances should not become part of the employee's personnel file.
- C. **Formal Grievance Procedure.** When the informal procedure does not produce a resolution, formal channels should be used. There are three levels in the formal procedure:
1. Level One.
 - a. Employee shall submit written complaint or problem to immediate supervisor.
 - b. The immediate supervisor will conduct an investigation of the grievance.
 - c. The immediate supervisor will render a written decision based on the results of the investigation within ten (10) working days from the date on which the complaint was submitted Level One.
 2. Level Two.
 - a. Employee shall submit written complaint or problem to next higher authority, within ten (10) working days from the receipt of the previous decision.
 - b. The immediate supervisor will provide the written decision from Level One to the next higher authority.
 - c. The next higher authority shall conduct any additional investigation into the complaint or problem deemed necessary by the authority.
 - d. The next higher authority shall call a hearing of the parties within ten (10) working days of his/her receipt of the complaint at Level Two.
 - e. The next higher authority shall render a written decision within fifteen (15) working days from the date on which the complaint reaches this level.

3. Level Three

- a. Employee will submit written complaint or problem to Board within ten (10) days from the receipt of the decision at Level Two.
 - b. Both the supervisor and the next higher authority (at Level Two) will provide written decisions to the Board.
 - c. The Board may conduct an independent investigation into the nature and substance of the complaint.
 - d. The Board may hold a hearing within thirty (30) working days of the complaint reaching this level.
 - e. The Board shall render a final written decision within fifteen (15) working days from the date the Board reaches a decision on the matter.
4. The time frames mentioned above may be extended so long as it is mutually agreeable to both the employee and reviewing authority.
 5. All material in the formal procedure must be submitted in writing and must be available to all parties concerned.
 6. If an employee feels he/she needs another party to assist him/her through the grievance procedure, nothing herein would bar such help. Documentation of the formal grievance procedure, including all decisions at all levels, all employee complaints and requests, and the like will become part of the employee's personnel file.
 7. Documentation of the formal grievance procedure, including all decisions at all levels, all employee complaints and requests, and the like will become part of the employee's personnel file.

ATTACHMENT II

RESOLUTION NO. 2011-20

RESOLUTION AMENDING THE PERSONNEL POLICIES FOR VILLAGE OF HOWARD EMPLOYEES

WHEREAS, the Resolution 2008-17 amended the written personnel policies (referred to as “Policies” or “Policy”) for village employees covering Sections 1-16 as follows:

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|-----------------------------------|--------------------------------------|
| 1. Definitions. | 9. Employee Performance Evaluations. |
| 2. Non-Discrimination Policies. | 10. Hiring Procedures. |
| 3. Harassment. | 11. Employee Files. |
| 4. Employee Status. | 12. Grievance Procedures. |
| 5. Working Conditions. | 13. No Payment in Advance. |
| 6. Employee Conduct and Behavior. | 14. Pay Ranges/Job Classification. |
| 7. Leaves. | 15. Working Agreements. |
| 8. Other Fringe Benefits. | 16. Specific Job Duties |

WHEREAS, since adoption of Resolution 2008-17, the State of Wisconsin has amended laws related to personnel issues (Act 10 approved in 2011) and now require a formalized grievance procedure be in place by October 1, 2011; and

WHEREAS, the existing Policy contains language that is deemed insufficient to meet with the state’s new legal requirements related to grievance procedures for municipalities; and

WHEREAS, the written Policy for village employees benefits the operations, government and good order of the village and the health, safety, welfare and convenience of the public; and

WHEREAS, the village desires to become compliant with the new state law by adopting the following amended grievance procedure language contained in the personnel policies as Section 12;

NOW THEREFORE, BE IT RESOLVED, that the Village Board of the Village of Howard, Brown County, Wisconsin, hereby approves and adopts the attached Amended Personnel Policies document this 8th day of August, 2011.

Burt R. McIntyre
Village President

Robert Bartelt
Village Administrator/Clerk

Section 12 Grievance Procedures

A. Definitions

1. A grievance is a complaint by an employee that must pertain to discipline or discharge of that employee or workplace safety, as those terms are defined below. For purposes of this grievance procedure, the following definitions shall apply:
2. “Employee Discipline” means any unpaid suspension or other formal adverse action issued in writing against an employee by his or her supervisor that is maintained in the employee’s personnel file. The term does not include performance meetings or evaluations, implementation and evaluation of an employee, a performance improvement plan, informal discussions between a supervisor and employee, employee assignments, demotions or transfers, or any oral reprimand that is not memorialized in writing and placed in the employee’s personnel file.
3. “Employee Discharge” means any involuntary termination of an employee’s employment with the Village, excluding such termination due to layoff or partial layoff.
4. “Workplace safety” means any condition of employment or duty, responsibility, or environmental hazard that may reasonably be viewed to adversely affect an employee’s health.
5. Any written grievance filed under this policy must contain the following information:
 - a. The name and position of the employee filing the grievance
 - b. A statement of the issue involved,
 - c. A statement of relief sought,
 - d. A detailed explanation of the facts supporting the grievance,
 - e. The date(s) the event(s) giving rise to the grievance took place,
 - f. The identity of the policy, procedure or rule that is being challenged,
 - g. The steps the employee has taken to review the matter, either orally or in writing, with the employee’s supervisor; and
 - h. The employee’s signature and the date.

B. Step One

1. Every reasonable effort should be made by supervisors and employees to resolve any questions, problems and/or misunderstandings that have arisen. Accordingly, employees should first discuss any complaints or questions they may have with their immediate supervisors, and are urged to initiate such discussions at the time the dissatisfaction or questions arises. Supervisors, in turn should take positive and prompt action to answer employee’s questions and resolve complaints presented to them.
2. The employee shall notify his supervisor in writing within ten (10) calendar days following the day the employee first became aware of the particular discipline or safety problem or complaint. The employee shall be specific as to the intent to initiate a grievance. If such grievance is not received by the Supervisor within the specified time period, then it shall be deemed waived and abandoned and shall not thereafter form the basis of a grievance. In the event of extenuating circumstances, the time limit may be extended by written mutual agreement of the employee and supervisor.
3. Within ten (10) calendar days after receiving the grievance, the supervisor shall investigate the complaint and will talk with the employee. Within ten (10) days after the meeting between the employee and the supervisor, the supervisor shall give an answer in writing.

Where an employee does not have an immediate supervisor, the grievance shall be submitted to the Village Administrator. If the employee is not satisfied with the supervisor's answer, appeal may be taken to the Village Administrator, except in cases where the Administrator serves as the employee's immediate supervisor. In these cases the employee will have the opportunity to appeal to the Independent Hearing Officer as outlined in Step 3.

- 4. Any grievance as the result of an employee's termination of employment shall be commenced at Step Two of this procedure, and must be submitted in writing to the Village Administrator with ten (10) days of the notice of termination.**

C. Step Two

1. If the grievance has not been satisfactorily resolved in Step One of the Grievance Procedure, the grievance may then be presented to the Village Administrator.
2. The employee shall notify the Village Administrator in writing within ten (10) calendar days following the written decision by the immediate supervisor that further review is requested. If such grievance is not presented within the specified time period, then it shall be deemed waived and abandoned and shall not thereafter form the basis of a grievance. In the event of extenuating circumstances, the time limit may be extended by written mutual agreement of the parties.
3. Within ten (10) calendar days after receiving the grievance, the Village Administrator shall investigate the complaint and give an answer in writing.

D. Step Three

1. If the employee is not satisfied with the answer of the Village Administrator, the employee may appeal to the Independent Hearing Officer as designated by the Board. The request for review by the Independent Hearing Officer must be submitted in writing within ten (10) days of the decision of the Village Administrator by submitting a written request to the Village Administrator to initiate such review by an Independent Hearing Officer. The Independent Hearing Officer shall conduct a hearing at such time and place as determined by the Independent Hearing Officer. The Independent Hearing Officer shall issue a written decision within thirty (30) days of the hearing unless such time is extended by mutual consent.

E. Step Four

1. After the decision of the Independent Hearing Officer, the grievance may be advanced by either the employee or the Village Administrator by a request in writing within ten (10) days of the decision of the Independent Hearing Officer for Village Board review.
2. The written appeal request shall be signed and dated by the requesting party and filed with the Village Board President or designee. The written request for review shall clearly state reasons why the decision of the Independent Hearing Officer at Step Three was not acceptable. New grievance issues that were not raised at step one may not be raised to the Board.

3. The non-requesting party shall submit a written position statement to the Board within ten (10) days of the submission of the request for review to the Board.
4. The Board may review the matter with or without a hearing. If the Board chooses to conduct a hearing, and should there be more than one grieving employee on an issue, the group will select one person to act as their primary spokesperson. Additional witnesses may be called, as the reviewing body deems necessary.
5. The Village Board shall, within thirty calendar (30) days of receipt of the appeal, issue a written decision unless such time is extended by Board action. The decision of the Village Board is final.

SAMPLE GRIEVANCE PROCEDURE FOR MUNICIPALITY -- LONG VERSION

DISCIPLINE AND GRIEVANCE PROCEDURE

Discipline. Discipline may result when an employee's actions do not conform with generally accepted standards of good behavior, when an employee violates a policy or rule, when an employee's performance is not acceptable, or when the employee's conduct is detrimental to the interests of the [City/Village/Town]. Disciplinary action may call for any of four steps – verbal warning, written warning, suspension (with or without pay) or termination of employment – depending on the problem and the number of occurrences. There may be circumstances when one or more steps are bypassed. Certain types of employee problems are serious enough to justify either a suspension or termination of employment without going through progressive discipline steps. The [City/Village/Town] reserves the right, in its sole discretion, to impose disciplinary action as may be appropriate to the particular circumstances.

Grievance Procedure. 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. For purposes of this policy, the following definitions apply:

1. "Employee discipline" includes all levels of progressive discipline, but shall not include the following items:
 - Placing an employee on paid administrative leave pending an internal investigation;
 - Counselings, meetings or other pre-disciplinary action;
 - Actions taken to address work performance, including use of a performance improvement plan or job targets;
 - Demotion, transfer or change in job assignment; or
 - Other personnel actions taken by the employer that are not a form of progressive discipline.

2. "Employee termination" shall include action taken by the employer to terminate an individual's employment for misconduct or performance reasons, but shall not include the following personnel actions:
 - Voluntary quit;
 - 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 other inability to perform job duties.

3. "Workplace safety" is defined as conditions of employment affecting an employee's physical health or safety, the safe operation of workplace equipment and tools, safety of the physical work environment, personal protective equipment, workplace violence, and training related to same.

Any written grievance filed under this policy must contain the following information:

- The name and position of the employee filing it,
- A statement of the issue involved,
- A statement of the relief sought,
- A detailed explanation of the facts supporting the grievance;
- The date(s) the event(s) giving rise to the grievance took place,
- The identity of the policy, procedure or rule that is being challenged;
- The steps the employee has taken to review the matter, either orally or in writing, with the employee's supervisor; and
- The employee's signature and the date.

Steps of the Grievance Procedure

Employees should first discuss complaints or questions with their immediate supervisor. Every reasonable effort should be made by supervisors and employees to resolve any questions, problems or misunderstandings that have arisen before filing a grievance.

1. Step 1 – Written Grievance Filed with the Department Head. The employee must prepare and file a written grievance with the Department Head within five (5) business days of when the employee knows, or should have known, of the events giving rise to the grievance. The Department Head or his/her designee will investigate the facts giving rise to the grievance and inform the employee of his/her decision, if possible within ten (10) business days of receipt of the grievance. In the event the grievance involves the Department Head, the employee may initially file the grievance with the [City/Village/Town] Administrator, who shall conduct the Step 1 investigation.
2. Step 2 – Review by [City/Village/Town] Administrator. If the grievance is not settled at Step 1, the employee may appeal the grievance to the [City/Village/Town] Administrator within five (5) business days of the receipt of the decision of the department head at Step 1. The [City/Village/Town] Administrator or his/her designee will review the matter and inform the employee of his/her decision, if possible within ten (10) business days of receipt of the grievance.
3. Step 3 – Impartial Hearing Officer. If the grievance is not settled at Step 2, the employee may request in writing, within five (5) business days following receipt of

the [City/Village/Town] Administrator's decision, a request for written review by an impartial hearing officer. The [City/Village/Town] shall select the impartial hearing officer. The hearing officer shall not be a [City/Village/Town] employee. In all cases, the grievant shall have the burden of proof to support the grievance. The impartial hearing officer will determine whether the [City/Village/Town] acted in an arbitrary and capricious manner. This process does not involve a hearing before a court of law; thus, the rules of evidence will not be followed. Depending on the issue involved, the impartial hearing officer will determine whether a hearing is necessary, or whether the case may be decided based on a submission of written documents. The impartial hearing officer shall prepare a written decision.

4. Step 4 – Review by the Governing Body If the grievance is not resolved after Step 3, the employee or the [City/Village/Town] Administrator shall request within five (5) business days of receipt of the written decision from the hearing officer a written review by the Governing Body. For Library employees, the appeal shall be filed with the Library Board. For all other employee, the appeal shall be filed with the [City Council/Village Board/Town Board]. The [City Council/Village Board/Town Board] shall not take testimony or evidence; it may only determine whether the hearing officer reached an arbitrary or incorrect result based on a review of the record before the hearing officer. The matter will be scheduled for the [City Council/Village Board/Town Board]'s next regular meeting. The [City Council/Village Board/Town Board] will inform the employee of its findings and decision in writing within ten (10) business days of the [City Council/Village Board/Town Board] meeting. The [City Council/Village Board/Town Board] shall decide the matter by majority vote and this decision shall be final and binding.

An employee may not file a grievance outside of the time limits set forth above. 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 will not be compensated for time spent in processing his/her grievance through the various steps of the grievance procedure.

*Prepared by Atty. Nancy L. Pirkey and Buelow Vetter Buikema Olson & Vliet LLC
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