

Memorandum

To: Finance and Personnel Committee

From: Deputy City Attorney Scott R. Letteney

Re: Wisconsin Statute § 66.0509 (1m) Grievance Procedure

Date: August 19, 2011

This issue will be before the Finance and Personnel Committee on Monday, August 22, 2011.

Among its provisions, 2011 Wisconsin Act 10, the “Budget Repair Bill,” requires municipalities without an existing civil service system to either establish a civil service system or establish a grievance system for employees. This must be in place no later than October 1, 2011. This requirement has been codified as Wisconsin Statute § 66.0509 (1m).

A grievance procedure is one that allows employees with complaints about various matters to formally bring those complaints to supervisors or manager. A grievance procedure ordinarily includes one or more steps that permit management to respond to the complaint. That response may be to agree that the complaint is valid. In that case, management would grant or sustain the grievance. The response could be that the complaint is not valid. In that case, management would deny the grievance. If the grievance is granted, the process is complete. If the grievance is denied, ordinarily one or more additional steps exist, which permit the employee to appeal the initial denial. As a rule, grievance procedures ultimately provide a right to a hearing before an independent hearing officer or tribunal.

Commonly, grievance procedures are included in collective bargaining agreements covering unions. However, the Budget Repair Bill and the 2011-2013 Wisconsin biennial budget, Senate Bill 27/Assembly Bill 40, greatly diminish collective bargaining rights for all municipal employees in Wisconsin, except for those in protective service occupations. So, the Budget Repair Bill requires municipalities to put such a grievance procedure in place, or establish a civil service system, to deal with employee complaints. Such a procedure must apply to all employees who are not covered by a collective bargaining agreement grievance procedure.

So, any procedure established by a municipality will not apply to those in unions in protective service occupations, because bargaining rights for such employees largely remain intact. However, as collective bargaining agreements for general municipal employees expire or otherwise terminate, the new procedures will apply. The new grievance procedures will also apply to non-represented employees, who are not covered by collective bargaining agreements. The new grievance procedure will not apply to police officers and firefighters, because disciplinary actions for protective service occupations are directed to police and fire commissions.

I will only discuss the requirements for a grievance procedure. A civil service system is complicated to establish and manage. I think it unlikely that municipalities without existing civil service systems will establish such a civil service system in the near term. The City Attorney's Office does not recommend the establishment of a civil service system for the City of Racine at this time.

The new provision in the law requires a municipality, without an existing civil service system, to create a grievance system. This grievance system must be in place no later than October 1, 2011.

The grievance system must allow grievances addressing the following matters:

1. Employee terminations.
2. Employee discipline.
3. Workplace safety.

The law does not specify the type of terminations, discipline, or workplace safety issue to be covered. For instance, the law would not require an employee be permitted to grieve a layoff based upon a job elimination or workforce reduction. However, it would be reasonable to permit an employee to grieve a disciplinary termination. The grievance procedure can also define what constituted discipline or a workplace safety issue.

The grievance must at least contain all of the following:

1. A written document specifying the process that a grievant and an employer must follow.
2. A hearing before an impartial hearing officer.
3. An appeal process in which the highest level of appeal is the governing body of the local governmental unit.

The law does not require any more. So, any remaining elements may be established by the municipality.

Although the law does not specify *all* of what may be involved in a grievance procedure under § 66.0509 (1m), Wis. Stats., of course, that does not mean that unreasonable provisions may be included. An unfair grievance procedure may result in a court challenge. In addition, a municipality has a responsibility to be a fair and reasonable employer.

The law does not specify whether the grievance procedure be an administratively-established policy or by action of the governing body through resolution or ordinance. However, the City of Racine has existing ordinances establishing grievance procedures. Ordinances currently exist providing a grievance procedure for non-represented employees and a termination procedure for administrative managers. However, neither existing ordinance meets the requirements of the new § 66.0509 (1m), Wis. Stats.

The City Attorney's Office recommends that the existing ordinances be repealed and recreated per the attached proposed grievance procedure.

As of this writing, Chapter 74, Article III, exists as a grievance procedure for non-represented employees. This existing grievance procedure does not satisfy the requirements of the new law. In addition, a hearing procedure for removal of administrative managers exists as Chapter 2, Article IV, sec. 2-441. Again, although it provides for a full hearing by the Common Council, this procedure would not comply with the new law, because an appeal to the Common Council must be provided under the new law.

The attached grievance procedure would repeal Chapter 2, Article IV, sec. 2-441, and repeal and recreate Chapter 74, Article III. The substance of Chapter 2, Article IV, sec. 2-441 would become the final part of the recreated Article III.

For all covered employees, except Administrative Managers facing termination, the newly created ordinance would establish a grievance procedure starting at the employee's supervisor, through the Administrative Manager, the City Administrator, an impartial Hearing Officer, and then through the Finance and Personnel Committee to the Common Council, as required by the law. The appeal to the Common Council would be based upon a review of the record established by the Hearing Officer. There would not be an additional hearing.

For Administrative Managers facing termination, under the new procedure, the first step would be to the impartial Hearing Officer. An appeal from the Hearing Officer would go to the Common Council for a full hearing as currently exists under the ordinances.

I am available for your questions.