

## CHAPTER 74

### ARTICLE III. DISCIPLINE AND GRIEVANCE PROCEDURE\*

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\*State law references: Municipal employment relations, Wis. Stats. § 66.0509 and § 111.70 et seq.

#### **Sec. 74-66. Purpose; discipline; definitions.**

- (a) *Purpose.* The purpose of this article is to provide guidance for employees and supervisors concerning discipline of covered city employees. In addition, the purpose of this article is to establish a procedure to provide those city employees who are not covered by a grievance procedure as part of a collective bargaining to resolve grievances while in the employ of the city.

This procedure is intended to comply with Wis. Stats. § 66.0509, and provides a grievance procedure addressing issues concerning workplace safety, discipline, and termination. This procedure applies to all employees covered under Wis. Stats. § 66.0509, and excepts all police and fire employees subject to Wis. Stats. § 62.13(5). A covered employee may appeal any level of discipline under this grievance procedure. Any grievance filed under the article shall be filed on behalf of an individual employee. No grievance may be filed on behalf of more than one employee, a group of employees, or any collective bargaining unit.

Nothing in this article is intended to create a legally binding contract between the city and covered employees or to change the at-will nature of employment for covered employees with the City of Racine. Employment with the City of Racine is voluntarily entered into and employees are free to resign at any time with or without cause. Similarly, the city may terminate the employment of any covered employee, at any time with or without cause, subject to applicable federal, state, or local law. The city reserves its management rights to exclusively manage its operations.

- (b) *Discipline.* To the extent possible, it is in the best interests of the employees and the city to ensure fair treatment of all employees and in making certain that disciplinary actions are prompt, uniform, and impartial.

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. Disciplinary action may call for any of four steps - warning, reprimand, 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 reserves the right, in its sole discretion, to impose disciplinary action as may be appropriate to the particular circumstances.

(c) For the purposes of this article, the following definitions apply:

- (1) *Discipline and disciplinary actions* are actions taken to correct a problem or misbehavior, deter of further problems or misbehavior, prepare an employee for satisfactory service in the future, or separate an employee where an employee has demonstrated an inability or unwillingness to perform satisfactory service. Approved discipline and disciplinary actions are:
  - a. *Warning* – Written documentation given to an employee describing specific disciplinary infractions, such as inappropriate conduct, poor performance, or violation of work rules/policies. Such documentation may include information regarding past infractions and what action will be taken if the employee fails to improve. A warning is the first step of formal discipline.
  - b. *Reprimand* – Written documentation given to an employee describing continuing or more serious specific disciplinary infractions, such as inappropriate conduct, poor performance, or violation of work rules/policies. Such documentation may include information regarding past infractions and shall include what action will be taken if the employee fails to improve. A reprimand is more serious than a warning.
  - c. *Suspension* – A disciplinary measure, including written documentation, in which employees are suspended without pay for a specified period of time due to violations including continuing or serious specific disciplinary infractions, such as inappropriate conduct, poor performance, or violation of work rules/policies. Such documentation shall include what action will be taken if the employee fails to improve.
- (2) *Employee discipline* includes all levels of progressive discipline, but shall not include the following personnel actions:
  - a. Placing an employee on paid administrative leave pending an internal investigation;
  - b. Counseling sessions, meetings, or other pre-disciplinary action, whether written or oral;
  - c. Actions taken to address work performance, including establishment and/or use of a performance improvement plan or job targets;
  - d. Demotion, transfer, or change in job assignment; or
  - e. Other personnel actions taken by the employer that are not a form of 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:
- a. Voluntary quit;
  - b. Layoff, furlough, or failure to be recalled from layoff at the expiration of the recall period;
  - c. Time lost because of a lack of work available to the employee;
  - d. Job abandonment, "no-call," "no-show," or other failure to report to work;
  - f. Termination of employment due to medical condition, lack of qualification or license, or other inability to perform job duties; or
  - g. Retirement;
- (3) *Workplace safety* is defined as conditions of employment regarding employees' physical health or safety, and specifically including only: the safe operation of workplace equipment and tools, safety of the physical work environment, provision of personal protective equipment, workplace violence, and training related to same.

**Sec. 74-67. Filing of complaint; hearings; decisions.**

- (a) *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. An employee whose complaint concerning the employee's discipline, termination, or workplace safety has not been resolved informally to the employee's satisfaction with the employee's immediate supervisor may obtain a review of the complaint under the following procedures:
- (1) *Step 1: Supervisor review.* The employee shall reduce his complaint to writing, using the form prescribed by the Human Resources Department, and submit it to his the employee's immediate supervisor within 15 working days after he the employee knew or should have known the cause of such grievance. Such complaint shall be referred to in this section as "the grievance." Any written grievance filed under this article 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 specific 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.

The supervisor shall answer the grievance within five working days. If the grievance is answered in a manner unsatisfactory to the employee, the employee may proceed to step 2.

- (2) *Step 2: Administrative manager review.* If the grievance is not resolved at step 1, the employee may appeal the grievance to the employee's administrative manager within five working days of the receipt of the decision of the employee's supervisor at step 1. The administrative manager will review the matter and inform the employee of his/her decision, if possible, within 10 working days of receipt of the grievance.
- (3) *Step 3: City administrator review.* If the grievance is not resolved at step 2, the employee may appeal the grievance to the city administrator within five working days of the receipt of the decision of the administrative manager at step 2. The city administrator will review the matter and inform the employee of his/her decision, if possible, within 10 working days of receipt of the grievance.
- (4) *Step 4: Impartial hearing officer.* If the grievance is not resolved at step 3, the employee may request in writing, within five business days following receipt of the city administrator's decision, a request for review by an impartial hearing officer.
  - a) The parties shall, within 10 business days, jointly request that the Wisconsin Employment Relations Commission appoint an impartial hearing officer. The parties shall equally share the cost of the independent hearing officer, which payment shall be made at the same time as the request therefor.
  - b) In all cases, the grievant shall have the burden of proof to support the grievance. The impartial hearing officer will determine whether the city acted in an arbitrary and capricious manner. This process does not involve a hearing equivalent to a hearing before a court of law. The rules of evidence will not be followed.
  - c) 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. If the impartial hearing officer determines that a hearing is necessary, the parties shall attempt to agree in advance upon the issue involved and stipulate to facts to be used at the hearing. The independent hearing officer shall meet with the parties at the earliest possible date which can be set to

review the evidence and hear testimony relating to the grievance. All such hearings shall be held at Racine City Hall. The impartial hearing officer shall prepare a written decision.

d) The impartial hearing officer may order either party to pay the entire amount of the independent hearing officer's fees upon such terms, and for such reasons, as the independent hearing officer finds appropriate and equitable.

(5) *Step 5: Review by the common council.* If the grievance is not resolved after step 4, the employee or the city administrator shall request, within five business days of receipt of the written decision from the hearing officer, a written review by the common council. The appeal shall be submitted as a communication to the common council, using a form prescribed by the Human Resources Department, through the finance and personnel committee. The finance and personnel committee shall review the matter at its next regularly scheduled meeting, subject to the notice requirements of the open meetings law, and make a recommendation to the common council. The finance and personnel committee shall not take testimony or evidence; it may make a recommendation only upon a determination 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 forwarded to the common council at its next regular meeting. The common council shall not take testimony or evidence; it may determine whether the hearing officer reached an arbitrary or incorrect result based on a review of the record before the hearing officer. The common council, through the city clerk, will inform the employee of its findings and decision in writing within 10 working days of the common council meeting. A two-thirds vote of the common council shall be required to overturn the decision of the independent hearing officer. Absent such a supermajority vote, the decision of the independent hearing officer shall be affirmed. The decision of the common council shall be final and binding.

(b) 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 conduct all activities related to processing the grievance, other than delivering the grievance to the appropriate person as described in the various steps, above, during non-working hours and shall not otherwise be compensated for time spent in processing his/her grievance through the various steps of the grievance procedure. An employee shall not be permitted union representation at any stage in the grievance process.

(c) *Administrative managers.* Notwithstanding anything else contained herein any grievance by an administrative manager regarding discipline or workplace safety shall commence at step 3, using a form prescribed by the Human Resources Department including the information required for step 1, above, within 15 working days after the employee knew or should have known the cause of such grievance. Notwithstanding anything else contained herein any grievance by an administrative manager regarding that administrative manager's termination based on a charge of official misconduct or inefficiency:

- (1) Shall be initiated in accordance with Wis. Stat. § 17.16(3).
- (2) Shall commence at step 4 as set forth above.
- (3) If neither the employee nor the city appeal the decision of the impartial hearing officer, the common council shall affirm the decision of the impartial hearing officer.
- (4) If the employee or the city appeal the decision of the impartial hearing officer, such appeal shall be heard by the common council as follows:
  - a. Whenever any charge of official misconduct, malfeasance, or inefficiency shall be preferred against an administrative manager employed by the city, the common council shall proceed within 30 days, or such other time as agreed between the parties, after the charge so filed with the city clerk, to hear and determine the case upon its merits.
  - b. The mayor may suspend such officer against whom charges have been preferred until the disposition of the charges and appoint a person to fill the vacancy temporarily until the charges have been disposed of.
  - c. The common council may, for the purpose of such hearing, compel the attendance of witnesses and the production of all papers by subpoena when necessary for the purpose of such hearing.
  - d. Two-thirds of all the members of the common council elect shall have the power to dismiss such administrative manager from office for malfeasance, misconduct, or inefficiency in office, upon due process hearing as provided in this section.