

RESOLUTION No. 201101

**TOWN OF LUCAS RESOLUTION APPROVING
AN EMPLOYEE GRIEVANCE POLICY**

The Town Board of the Town of Lucas, Wisconsin, does resolve as follows:

SECTION I. RESOLUTION ADOPTED.

WHEREAS, Wisconsin Act 10 (Budget Repair Bill) contains a requirement that all local government units establish an employee grievance policy not later than October 1, 2011;

WHEREAS, the attached policy and procedure has been prepared to provide a system to be followed with respect to grievances by Town employees; and

WHEREAS, the Town Board has reviewed the employee grievance policy and procedure and has determined that it is fair and reasonable, and that such a policy and procedure should be adopted and implemented with respect to all employee grievance procedures;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Lucas hereby adopts the Employee Grievance Policy in the form attached hereto to be the official policy and procedure of the Town of Lucas relating to such employee grievance matters.


SECTION II. EFFECTIVE DATE

The above and foregoing Resolution was duly adopted at a regular meeting of the Town Board of the Town of Lucas on the 22 day of SEPT, 2011. This Resolution shall take effect upon passage and supercedes any prior or conflicting Town personnel policies/procedures.

TOWN OF LUCAS, WISCONSIN



Town Chairperson



Attest: Town Clerk

Town of Lucas Employee Grievance Policy

POLICY:

- (a) **Statutory Requirement.** This Employee Grievance Policy has been adopted to comply with Section 66.0509, Wis. Stats., and provides a grievance procedure for timely and orderly review of matters concerning workplace safety, discipline and termination.
- (b) **Employee Discipline In General.**
- (1) Disciplinary procedures may result when:
 - a. An employee's actions or conduct do not conform with generally accepted standards of good behavior;
 - b. An employee violates a policy, procedure and/or rule;
 - c. An employee's conduct is detrimental to the interests of the Town of Lucas ("Town"); and/or
 - d. An employee's performance is not acceptable.
 - (2) Disciplinary action may result in any of the following steps being taken:
 - a. Verbal warning or reprimand.
 - b. Written warning or reprimand.
 - c. Suspension, with or without pay.
 - d. Termination of employment.
 - (3) Based upon the facts involved, there may be circumstances when one (1) or more of the disciplinary steps are bypassed. Certain types of employee problems or infractions may be of such a serious nature to justify either a suspension or termination of employment without proceeding through progressive discipline steps. The Town of Lucas reserves the right, in its sole discretion, to impose disciplinary action as may be appropriate to the particular circumstances.
- (c) **Applicability.** This Policy shall be applicable to all Town employees covered under Section 66.0509, Wis. Stats., other than police and fire employees subject to Section 62.13(5), Wis. Stats. Specifically, but not limited to, this Policy applies to union and non-union employees, limited term employees, full- and part-time employees, at-will employees, and seasonal employees. A Town employee may appeal any level of employee discipline action under this grievance procedure.

DEFINITIONS:

For purposes of this Policy, the following definitions shall be applicable:

- (a) **Days.** Means calendar days, excluding legal holidays as defined in Section 995.20, Wis. Stats. If the last day on which an event is to occur is a legal holiday, any time limit under this Policy is extended to the next day which is not a legal holiday.

(b) **Employee Discipline.**

- (1) Any employment action that results in a:
 - a. Verbal reprimand.
 - b. Written reprimand.
 - c. Disciplinary suspension without pay.
 - d. Disciplinary suspension with pay.
 - e. Disciplinary reduction in pay or other benefits.
 - f. Disciplinary demotion.
 - g. Termination.

- (2) The term "discipline" does not include:
 - a. Verbal notices or reminders.
 - b. Performance evaluations.
 - c. Documentation of employee acts and/or omissions in a personnel file.
 - d. Non-disciplinary demotions, transfers or changes in job assignment.
 - e. Non-disciplinary adjustments to compensation and/or benefits.
 - f. Actions taken to address job performance, including use of a job target plan or performance improvement plan.
 - g. Placement of an employee on paid leave pending an internal investigation.
 - h. Counseling (written or verbal) regarding job performance.
 - i. Other personnel actions taken by the employer that are not a form of progressive discipline and are taken for non-disciplinary reasons.

(c) **Employee Termination.** Action(s) taken by the employer to terminate an individual's employment with the Town for misconduct or performance reasons but shall not include the following personnel actions:

- (1) Retirement.
- (2) Death.
- (3) Voluntary quit.
- (4) Layoff or failure to be recalled at the expiration of the recall period.
- (5) Completion of seasonal employment or temporary assignment.
- (6) Completion of contract employment.
- (7) Action taken for failure to meet any position qualifications.
- (8) Job abandonment ("no-call, no-show" or other failure to report to work)
- (9) Any workforce reduction action.

- (10) Job transfer.
- (11) Action taken pursuant to an ordinance other than an ordinance specifically addressing employee discharge.
- (12) Termination of employment due to medical condition, lack of qualification or necessary license, or other inability to perform job duties for non-disciplinary reasons.
- (d) **Grievance.** A dispute between the employer and an employee regarding actions of Town officials with regard to employee discipline, employee termination, or workplace safety.
- (e) **Hearing Officer.** The impartial hearing officer required pursuant to Sec. 66.0509(1m)(d)2, Wis. Stats. The hearing officer selected by the Town Board may be an attorney, a retired judge, a professional mediator/arbitrator, an outside human resources professional from another governmental entity, or other qualified individual currently on the list of arbitrators or mediators for the Wisconsin Employment Relations Commission (WERC), Federal Mediation and Conciliation Service, or the American Arbitration Association. The hearing officer shall not be an employee of the Town nor someone with a direct interest in the matter, such as, for example, a member of the governing body or the governing body's personnel committee.
- (f) **Workplace Safety.** Conditions of employment affecting an employee's physical health or safety, safety of the physical work environment, the safe operation of workplace equipment and tools, personal protective equipment, workplace violence, and training related to the same. Included within this definition are any alleged violations of any standard established under state law or administrative rule or federal law or regulation relating to workplace safety.

PROCEDURES:

- (a) **Required Contents of all Written Grievances; General Considerations.**
 - (1) Any written grievance filed by a Town employee under this Policy shall contain all of the following information:
 - a. The name and position of the filing employee.
 - b. A brief summary statement of the issue involved.
 - c. A statement of the remedy or action sought.
 - d. A detailed explanation of the facts supporting the grievance.
 - e. The date(s) the incident(s) occurred or the date(s) the alleged workplace safety concern was discovered.
 - f. The specific policy, procedure or rule that is being challenged. If applicable, the specific workplace safety rule alleged to have been violated.
 - g. The steps taken to informally resolve the grievance (either orally or in writing) with the employee's supervisor, the individuals involved in the attempted resolution, and the results of such discussion. When necessary, an explanation should be included as to why a grievance was not resolved at a prior step.
 - h. The employee's signature and date.

- (2) A grievance or request for an appeal is considered timely if received by the Town Clerk during normally business hours or if postmarked by 11:59 p.m. on the due date.
- (3) An employee must process his/her grievance outside of normal work hours, unless the employee elects to use accrued paid time (vacation, compensatory time, etc.) in order to be paid for time spent processing his/her grievance through the various steps of the grievance procedure prescribed in this Policy.

(b) **Steps of the Grievance Process.**

(1) **Step 1 – Preliminary Grievance Steps.**

- a. Prior to filing a formal written grievance under this Policy, an employee shall discuss any complaint or problem with his/her immediate supervisor to determine if the grievance can be resolved.
- b. Every reasonable effort should be made by employees and supervisors to resolve any questions, misunderstandings, or problems that have arisen before an employee files a grievance.
- c. Such a preliminary meeting is not required in the case of termination.

(2) **Step 2 – Written Grievance Filed With Town Clerk; Review.**

- a. If the grievance cannot be resolved at Step 1, the employee must file a written grievance with the Town Clerk no later than ten (10) days from the date the employee first becomes aware of the termination, discipline, or workplace safety situation causing the grievance.
- b. The Town Clerk shall inform the employee's immediate supervisor and the Town Chairperson about receipt of the written grievance as soon as practicable.
- c. The Town Clerk, or his/her designee, shall investigate the facts given rise to the grievance. The Town Clerk shall respond to the grievance in writing, if possible, within ten (10) days of receipt of the written grievance.
- d. As part of the grievance investigation, the employee's supervisor may be requested to provide a written response, which must contain:
 1. A statement of the date(s) the meeting between the employee and supervisor was held.
 2. A statement as to whether the grievance was sustained or denied, with summary facts.
- e. If the grievance involves a decision directly affecting the Town Clerk, the process shall begin with a written grievance filed with the Town Chairperson who shall conduct the investigation as Step 2; appeal to a Hearing Officer as Step 3; and appeal to the Town Board as Step 4. The timelines established for each step shall apply.

(3) **Step 3 – Impartial Hearing Officer.**

- a. If the grievance is not resolved at Step 2, the employee may request in writing, within ten (10) days following receipt of the Town Clerk's written response, a request for written review by an impartial Hearing Officer.
- b. The Town Clerk shall notify the employee's supervisor and the Town Chairperson of the filing of the request for an appeal to a Hearing Officer as soon as practicable.

- c. The Town shall select the impartial Hearing Officer pursuant to Subsection (e). The Hearing Officer shall not be a Town employee or official.
- d. On appeal, the Town Clerk shall transmit all grievance materials, grievance responses, and a copy of this Policy to the Hearing Officer.
- e. 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 Hearing Officer decides a hearing is necessary, the Hearing Officer shall schedule a date/time for a hearing. The hearing shall be held at a mutually agreeable time in a public building and shall be open to the public unless the Hearing Officer otherwise directs.
- f. The Hearing Officer shall determine whether the Town acted in an arbitrary or capricious manner. The Hearing Officer may only overrule a disciplinary action if the action was arbitrary or capricious. In all cases, the grievant shall have the burden of proof to support the grievance. The Hearing Officer shall either sustain or deny the decision of the employee's supervisor. The Hearing Officer does not have authority to modify or amend the decision made by the employee's supervisor. The Hearing Officer does not have authority to grant in whole or in part a specific request of a grievant to modify a disciplinary determination.
- g. The Hearing Officer shall prepare a written decision affirming or reversing the action with the reasons therefore. The Hearing Officer shall submit his/her findings to the Town and the employee within thirty (30) days of the close of the hearing (if a hearing is conducted) or the submission of the parties' written briefs, if any, whichever is later, or at a date mutually agreed upon by the parties.

(4) **Step 4 – Review by Town Board.**

- a. Either the employee or the Town Clerk may file with the Town Board a written notice of appeal of the Hearing Officer's determination within ten (10) days of the postmark date that the Hearing Officer's determination is mailed. For Library employees (if a Town Library is established), the appeal shall be filed with the Library Board, which shall follow the procedures herein.
- b. Such appeals shall be on the written record, the preparation and associated costs of which shall be the responsibility of and at the expense of the party seeking the appeal. A copy of the written record shall be provided by the appealing party to the other party at no charge. The written record shall be filed with the Town Board within twenty-one (21) days of the notice of appeal.
- c. No formal hearing shall be held on the appeal before the Town Board. The Town Board shall only determine whether the Hearing Officer reached an arbitrary or incorrect result based on a review of the record coming before the Hearing Officer. The Town Board shall not take new testimony or evidence on the matter, but the Town Board may request additional written submittals from the parties regarding clarification of matters raised before the Hearing Officer.
- d. The appeal will be scheduled and noticed for the Town Board's next regular meeting. The Hearing Officer's determination may be affirmed, modified, or reversed by a majority vote of a quorum of the Town Board.

- e. The Town Board shall inform the employee in writing of its findings and decision within fifteen (15) days of the Town Board meeting, and shall also file its written decision with the Town Clerk. A copy of the written decision of the Town Board shall be mailed to the last known address of the employee or the employee's representative.
- f. The Town Board's decision shall be final and binding on the parties.

(c) **Grievance Settlements.**

- (1) A grievance shall be considered waived if not filed or appealed within the grievance timelines designated within this Policy. The time limits prescribed in the preceding steps may be extended by mutual written agreement between the parties.
- (2) A grievance shall be considered settled and dismissed at the completion of any step in this Policy if all parties are mutually satisfied or the grievance has not been timely processed to the next level.
- (3) Settlements shall be in writing and signed by the employee and the appropriate Town official(s) involved at the step level that the grievance was settled.

(d) **Consolidation of Multiple Grievances.**

- (1) If more than one (1) employee seeks to have a grievance reviewed that involves the same circumstance or issue, a single grievance review application may be used. A group grievance shall be signed by all grieving employees and must state that it is a group grievance at the first step in the grievance procedure.
- (2) The Town Clerk and/or the Hearing Officer may consolidate grievances where a reasonable basis for consolidation exists.

(e) **Selection of a Hearing Officer; Compensation.**

- (1) The Town may contract to engage the services of an impartial Hearing Officer to hear, review and determine appeals under Step 3. Any such Hearing Officer cannot be a Town employee or be receiving any compensation or benefits from the Town other than those set forth in this Subsection.
- (2) The Hearing Officer shall receive compensation at the Hearing Officer's standard rate for conducting the hearing, review of the case, travel time, and time spent preparing a written determination. Compensation for the Hearing Officer shall be equally divided between the parties.
- (3) While not mandatory, the Town Clerk may maintain a list of at least three (3) qualified individuals who are willing to serve as a Hearing Officer for purposes of this Policy. If such a list is maintained, the Hearing Officer selected to hear a grievance shall be selected by random drawing, with the parties to the grievance present when the drawing takes place, unless otherwise agreed upon. If such a list is not maintained, the Town shall select an impartial Hearing Officer.

(f) **Hearing Procedures.**

- (1) The Hearing Officer shall be responsible for the orderly and fair conduct of the hearing and the preservation of a record of the record. The Hearing Officer shall have the authority to administer oaths and issue subpoenas at the request of the parties. The party requesting a subpoena from the Hearing Officer is responsible for the fees associated with the subpoena.
- (2) This process does not involve a hearing before a court of law; thus, the rules of evidence shall not be applicable.
- (3) All testimony before the Hearing Officer shall be taken under oath.
- (4) If a court reporter is employed, all costs affiliated with the services of the court reporter and preparation of a transcript of the hearing shall be equally divided between the parties.

(g) **Representation.** Both the employee and the Town may be assisted by a representative of their own choosing at any point during the grievance procedure.

(h) **Miscellaneous Costs.**

- (1) Each party (employer and employee) shall be responsible for its own costs for witnesses and all other out-of-pocket expenses not specifically addressed in this Policy, including possible attorney fees.
- (2) Any expense incurred by an employee in investigating, preparing, or presenting a grievance shall be the sole responsibility of the employee.

(i) **Policy Revisions.** This Policy may be revised or repealed by the Town Board at any time.