

Resolution No. 42-11

Resolution To Adopt the Grievance Procedure Concerning Employee Terminations, Employee Discipline and Workplace Safety as required by Wis. Stat. § 66.0509(1m)

TO THE HONORABLE MEMBERS OF THE POLK COUNTY BOARD OF SUPERVISORS:

WHEREAS, 2011 Wisconsin Act 10 created Wis. Stat. § 66.0509(1m), which requires local units of government to establish a civil service system or grievance procedure that addresses employee terminations, employee discipline and workplace safety no later than October 1, 2011; and

WHEREAS, the Polk County Board of Supervisors believes that it is in the best interests of all stakeholders in Polk County government to create a fair and equitable system for resolving employee grievances surrounding terminations, discipline and workplace safety issues; and

WHEREAS, following lengthy study and deliberations, the Transition Committee and the Personnel Committee have presented to the Polk County Board of Supervisors with a final draft of a grievance procedure that addresses employee terminations, employee discipline and workplace safety as required by Wis. Stat. § 66.0509(1m); and

WHEREAS, it is the intent of this resolution to establish the attached Workplace Safety and Discipline Policy as the official Grievance Procedure of Polk County pursuant to Wis. Stat. § 66.0509(1m); and

WHEREAS, existing policies contain language that is inconsistent with the grievance procedure; and

WHEREAS, it is the intent of the Polk County Board of Supervisors to eventually have a uniform personnel policy.

NOW, THEREFORE, BE IT RESOLVED that the Polk County Board of Supervisors adopts and establishes the Grievance Procedure attached hereto as Exhibit A as its grievance procedure required by Wis. Stat. § 66.0509(1m), notwithstanding any inconsistent language contained in current policies.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Polk County Board of Supervisors repeals the following policies: Policy 205 - Probation, Policy 395 - Severance Package for "At-Will" Polk County Employees, Policy 716 - Employee Discipline, and Policy 781 - Appeals Procedure, and strikes the inconsistent language in current personnel policies as attached hereto as Exhibit B.

Funding Amount and Source:	Not Applicable
Date Finance Committee Advised:	Not Applicable
Finance Committee Recommendation:	Not Applicable
Effective Date:	Upon Passage

Amended

Resolution No. 47 -11

~~Resolution To Adopt the Grievance Procedure Concerning Employee Terminations, Employee Discipline and Workplace Safety as required by Wis. Stat. § 66.0509(1m)~~ Workplace Discipline and Safety Appeal Policy

TO THE HONORABLE MEMBERS OF THE POLK COUNTY BOARD OF SUPERVISORS:

WHEREAS, 2011 Wisconsin Act 10 created Wis. Stat. § 66.0509(1m), which requires local units of government to establish a civil service system or grievance procedure that addresses employee terminations, employee discipline and workplace safety no later than October 1, 2011; and

WHEREAS, the Polk County Board of Supervisors believes that it is in the best interests of all stakeholders in Polk County government to create a fair and equitable system for resolving employee grievances surrounding terminations, discipline and workplace safety issues; and

WHEREAS, following lengthy study and deliberations, the Transition Committee and the Personnel Committee have presented to the Polk County Board of Supervisors with a final draft of a grievance procedure that addresses employee terminations, employee discipline and workplace safety as required by Wis. Stat. § 66.0509(1m); and

WHEREAS, it is the intent of this resolution to establish the attached ~~Workplace Safety and Discipline and Safety Appeal Policy~~ as the official Grievance Procedure of Polk County pursuant to Wis. Stat. § 66.0509(1m); and

WHEREAS, existing policies contain language that is inconsistent with the ~~grievance appeal~~ procedure; and

WHEREAS, it is the intent of the Polk County Board of Supervisors to eventually have a uniform personnel policy.

NOW, THEREFORE, BE IT RESOLVED that the Polk County Board of Supervisors adopts and establishes the ~~Grievance Procedure~~ Workplace Discipline and Safety Appeal Policy attached hereto as Exhibit A as its grievance procedure required by Wis. Stat. § 66.0509(1m), notwithstanding any inconsistent language contained in current policies.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Polk County Board of Supervisors repeal the following policies: Policy 205 - Probation, Policy 395 - Severance Package for "At-Will" Polk County Employees, Policy 716 - Employee Discipline, and Policy 781 - Appeals Procedure, and strikes the inconsistent language in current personnel policies as attached hereto as Exhibit B.

Funding Amount and Source:	Not Applicable
Date Finance Committee Advised:	Not Applicable
Finance Committee Recommendation:	Not Applicable

Date Submitted to County Board:

September 20, 2011

Submitted and Sponsored By Transition Committee:

Herschel Brown

~~Kristine Kremer-Hartung~~

*B.R. Masters 9/8/11*

Jay Luke

Brian Masters

Patricia Schmidt

Resolution No. 47-11: ~~Resolution To Adopt the Grievance Procedure Concerning Employee Terminations, Employee Discipline and Workplace Safety as required by Wis. Stat. § 66.0509(1m)~~ *and Safety Appeal Policy* *Workplace Discipline*  
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Submitted and Sponsored By the Personnel Committee:

*Russ Arcand 9-8-11*

Russ Arcand

*Patricia Schmidt*

Patricia Schmidt

*Ken Sample*

Ken Sample

*Warren Sample Nelson*

Warren Sample Nelson

*James A. Edgell*

James Edgell

Review By County Administrator:

- Recommended
- Not Recommended
- Reviewed Only

*Dana Frey*

Dana Frey, County Administrator

Review By Corporation Counsel:

- Approved as to Form
- Recommended
- Not Recommended
- Reviewed Only

Jeffrey B. Fuge  
Jeffrey B. Fuge, Corporation Counsel

At its regular business meeting on September 20, 2011, the Polk County Board of Supervisors adopted the above-entitled resolution, Resolution 47-11: Resolution To Adopt the ~~Grievance Procedure Concerning Employee Terminations, Employee Discipline and Workplace Safety~~ as required by Wis. Stat. § 66.0509(1m) Workplace Discipline and Safety Appeal Policy, by a simple majority vote of \_\_\_ in favor and \_\_\_ against. unanimous voice vote

William Johnson, IV  
William Johnson, IV, County Board Chair

Dated: 09.28.2011

Attest: Carole T. Wondra  
Carole Wondra, Polk County Clerk

Dated: 9-28-11

**ADOPTED** by the Polk County Board, on the 20<sup>th</sup> day of Sept., 2011, by affirmative vote.

**WORPLACE SAFETY AND DISCIPLINE AND SAFETY APPEAL POLICY**

**I. PURPOSE**

A. This policy serves as the grievance policy pursuant to Wis. Stat. § 66.0509(1m) to address employee terminations, employee discipline and workplace safety as required by law. An Employee shall use this ~~grievance~~ policy for resolving disputes regarding employee terminations, employee discipline or workplace safety issues covered by this policy. The procedures contained herein shall hereinafter be referred to as "~~grievance~~appeals."

B. If an employee is subject to a contractual or statutory grievance procedure, that procedure must be followed as applicable. For example, the Employees that are deputy sheriffs will continue to be governed by Wisconsin Statute § 59.25 and whatever additional protections, if any, exist in an applicable collective bargaining agreement

C. It is the policy of the Employer to treat all employees with fairly and this ~~grievance~~ policy is intended to be one of the tools given to the employees in that effort.

**II. DEFINITIONS**

A. "Employee" for purposes of an ~~grievance~~appeal involving discipline or termination means a regular full-time or part-time employee. "Employee" does not include any of the following: elected officials or officers that serve at the pleasure of an appointing authority as provided by statute; limited-term employees; independent contractors; temporary employees; employees who have not completed at least six (6) months of continuous employment with the County.

B. "Discipline" is defined as any of the following adverse employment actions: disciplinary suspension of employment without pay; disciplinary reduction in rank or demotion. "Discipline" does not include any of the following actions: terminations, layoffs, workforce reduction; non-disciplinary wage, benefit or salary adjustments; non-disciplinary reductions in rank or demotions; plans of corrective action; performance evaluations; verbal or written warnings; verbal or written reprimands; administrative leave; change in assignment or job duties and a change in schedule or location of job duties.

C. "Termination" means a separation from employment initiated by the employer for disciplinary or performance reasons. "Termination" does not include layoffs, furloughs or reduction in workforce, reduction in hours, job transfer or reassignment, or retirement.

D. "Workplace Safety" includes any condition of employment related to the physical health and safety, including the safety of the physical work environment, the safe operation of the workplace equipment and tools, etc. "Workplace Safety" does not include conditions of employment unrelated to physical health and safety matters, including, but not limited to, hours, overtime, and work schedules.

### III. ~~GRIEVANCE~~APPEAL PROCEDURE FOR DISCIPLINE AND TERMINATION

A. Filing Procedure

1. Who May File – An grievance-appeal may only be filed by an “employee” who is the subject of the Discipline or Termination.
2. Initiating An Grievance-Appeal – An Employee may initiate a Grievance-Appeal by presenting a written grievance-appeal on the form attached to this policy as Appendix A to the Employee Relations Director within fifteen (15) calendar days of the event giving rise to the Grievance-Appeal. The form must be filled out completely to be considered filed.
3. If the Grievance-Appeal is incomplete the Employee Relations Director or his or her designee shall inform the Grievant-Appellant of the defect and shall allow the Grievant-Appellant seven (7) calendar days to remedy the defect. Failure to correct the defect or failure to comply with the timeframes listed shall constitute a waiver of the right to access this Grievance-procedure. The Employee Relations Director shall not have the discretion to waive the time limits herein contained.
4. If the Grievance-Appeal was untimely or incomplete and not remedied; the Grievant-Appellant may seek a review by the Personnel Committee of the rejection of the Grievance-Appeal by the Employee Relations Director. The Personnel Committee will only determine whether there are extreme circumstances that rendered compliance with the time-frames unduly burdensome. Such exceptions to the filing requirements shall be construed narrowly. The decision of the Personnel Committee on this issue shall be final. A failure by the Employee to follow the timelines herein required constitutes a waiver by the Employee of their right to access this Grievance Procedure and an abandonment of the Grievance-Appeal.
5. By filing and signing the Grievance-Appeal the Employee is declaring under penalty of false-swearing that the information contained within the Grievance-Appeal is true and correct to the Employee’s belief. Any Employee who files an grievance appeal that is false or misleading or is filed for the purpose of intimidation, annoyance or harassment or who otherwise files an grievance-appeal in bad faith is subject to disciplinary action.

## B. Impartial Hearing Officer

1. **Selection of the Officer** - The Impartial Hearing Officer shall be selected from a panel of three (3) designated by the Employee Relations Director, based upon the nature of the matter in dispute. This shall occur as soon as reasonably possible. Once the Employee Relations Director has provided the three (3) names, the Employee shall make a selection within ten (10) calendar days. If that Officer is unable for any reason to fulfill his or her role this step shall be repeated until an Officer is selected.
2. **Role of the Officer** – The Impartial Hearing Officer conducts the Hearing and may limit the scope of the Hearing by defining the issues, identifying areas of agreement and to hear the parties' respective arguments. The Impartial Hearing Officer may at his or her discretion attempt to mediate the dispute prior to the date set for the Hearing.
3. **Cost** – The Employer shall be responsible for the cost of the Impartial Hearing Officer.

## C. Hearing

1. **Time frame** - The Impartial Hearing Officer will be to set a hearing date within forty-five (45) calendar days from the date of his or her selection. This time frame can be expanded for good cause at the discretion of the Hearing Officer or by mutual agreement of the parties, but in no case may the time frame go beyond ninety (90) calendar days from the date of his or her selection.
2. **Discovery** – Depending upon the complexity of the issues, discovery may be authorized by the Hearing Officer. It is expected that the parties will voluntarily and in good-faith share information without needing to seek authorization to engage in formal discovery. Formal discovery, if required, shall consist of Interrogatories and Requests for Production of Documents. All formal discovery, if required, must be provided no later than seven (7) calendar days prior to the scheduled hearing date. The parties shall provide a list of anticipated witnesses within the same time frame contained in this subsection.
3. The ~~Grievant-Appellant~~ may call witnesses and present testimony and exhibits that are relevant to the events at issue in the ~~Grievance-Appeal~~. The Employer may choose to cross-examine the ~~Grievant'-Appellant's~~ witnesses. The Employer may choose to call witnesses and present testimony and exhibits that are relevant to the events at issue in the ~~GrievanceAppeal~~. The Hearing Officer may also question any witness he or she deems necessary.

4. Rules of Evidence – The Impartial Hearing Officer is not bound by rules of evidence any may admit all evidence that the Officer determines is reliable and relevant. The Officer may limit evidence that is unduly repetitious. The Hearing Officer shall recognize the rules of privilege, unless waived by the appropriate party.
5. Representation – The Employer and/or the Employee may choose to be represented. The Representative does not need to be an attorney.
6. Briefs –There shall be no briefs submitted by either party; however, each party may choose to submit a two-page summary of their position in lieu of closing oral arguments of the parties.
7. Recording the Hearing – The Hearing shall be recorded. Any party wishing to have the recording transcribed shall bear the cost of the transcription.
8. Decorum – The Impartial Hearing Officer shall maintain order and decorum at all times during the hearing.
9. Closed Hearing – The Hearing shall be closed unless the Employee requests an open hearing.
10. Burden of Proof – Except for an Grievance Appeal involving termination of an employee that is subject to Wis. Admin. Code Chap . DHS 5, the Grievant Appellant bears the burden of proof to persuade the Impartial Hearing Officer by clear, convincing and satisfactory evidence that the Employer abused its discretion in disciplining or terminating the Grievant Appellant. In determining whether this burden has been met, the Hearing Officer shall consider whether there was a rational basis for the discipline or termination.
11. Decision – The Impartial Hearing Officer shall issue a written decision within seven (7) calendar days of the close of the evidence. The decision shall, at a minimum, contain a statement of issues, standard of review, findings and, if the grievance appeal is sustained, a remedy for the Employee.
12. Remedies for Appeals Involving Terminations Grievances– If the grievance appeal is sustained, the Hearing Officer may award the Grievant Appellant one of the following remedies:
  - a) *Reinstatement, with or without a suspension*
  - b) *Reinstatement with a lesser employment action such as a reduction in rank and/or base pay; demotion; oral or written reprimand*
  - c) *Reinstatement with actual back-pay*

13. Remedies for Appeals Involving Discipline Grievances – The Hearing Officer may award one of the following remedies;

- a) *Reduction in suspension*
- b) *Reduction in base pay and/or rank; demotion*
- c) *Oral or written reprimand in lieu of a suspension*
- d) *No adverse employment action*

#### IV. ~~GRIEVANCE~~ APPEAL PROCEDURE FOR WORKPLACE SAFETY

##### A. Conditions Precedent to Filing a Workplace Safety ~~Grievance~~ Appeal

1. An Employee may not file an grievance appeal relating to a condition that the employee believes constitutes a Workplace Safety violation unless the Employee has first reported the condition to their immediate supervisor and/or the Employee Relations Director in writing.

2. Upon receipt of the notice under paragraph 1, the Employer shall have ten (10) calendar days in which to investigate the condition and advise the Employee in writing that the Employer: has determined that the condition does not constitute a Workplace Safety violation and will not be taking corrective action; or will be taking corrective action in accordance with the law to address the condition. If the Employer advises the Employee in writing within ten (10) calendar days that it is taking corrective action in accordance with law, no Grievance Appeal under this subsection may be initiated.

##### B. Action by Safety Committee

1. If the Employer determines that the condition does not constitute a Workplace Safety violation, the Employee Relations Director shall immediately notify the Chair of the Safety Committee.

2. The Chair shall call a meeting of the Committee as soon as practicable. The Employee shall be given notice of the meeting in addition to the notice required under the Open Meetings Law. The Committee shall have the authority to review the matter and provide a resolution to the matter as it deems appropriate, as appropriate under County Policy.

##### C. Initiating an Grievance Appeal relating to Workplace Safety

1. An Employee may initiate an Grievance Appeal under this subsection by presenting a written complaint on the form attached to this Policy as Appendix B to the Employee Relations Director within seven(7) calendar days from the Employee's receipt of notice contemplated under subsection IVA from the Employer that it will not be taking corrective action.
2. The Grievance Appeal must be signed and dated by the Employee and must be complete. If it is determined by the Employee Relations Director that the Grievance Appeal is not complete the procedure under III A 3 & 4 shall apply.

**D. Impartial Hearing Officer**

1. Selection of the Officer - The Impartial Hearing Officer shall be selected from a panel of three (3) designated by the Employee Relations Director, based upon the nature of the matter in dispute. This shall occur as soon as reasonably possible. Once the Employee Relations Director has provided the three (3) names, the Employee shall make a selection within ten (10) calendar days. If that Officer is unable for any reason to fulfill his or her role this step shall be repeated until an Officer is selected.
2. Role of the Officer – The Impartial Hearing Officer conducts the Hearing and may limit the scope of the Hearing by defining the issues, identifying areas of agreement and to hear the parties' respective arguments. The Impartial Hearing Officer may at his or her discretion attempt to mediate the dispute prior to the date set for the Hearing.
3. Cost – The Employer shall be responsible for the cost of the Impartial Hearing Officer.

## **E. Hearing Procedure**

- 1. Time frame - The Impartial Hearing Officer will be to set a hearing date within twenty (20) calendar days from the date of his or her selection. This time frame can be expanded for good cause at the discretion of the Hearing Officer or by mutual agreement of the parties, but in no case may the time frame go beyond thirty-five (35) calendar days from the date of his or her selection.**
- 2. Discovery – Depending upon the complexity of the issues, discovery may be authorized by the Hearing Officer. It is expected that the parties will voluntarily and in good-faith share information without needing to seek authorization to engage in formal discovery. Formal discovery, if required, shall consist of Interrogatories and Requests for Production of Documents. All formal discovery, if required, must be provided no later than seven (7) calendar days prior to the scheduled hearing date. The parties shall provide a list of anticipated witnesses within the same time frame contained in this subsection.**
- 3. The Employer shall present evidence and call witnesses, subject to cross examination by the Employee. The Employee may present evidence and call witnesses, subject to cross examination by the Employer.**
- 4. Rules of Evidence – The Impartial Hearing Officer is not bound by rules of evidence any may admit all evidence that the Officer determines is reliable and relevant. The Officer may limit evidence that is unduly repetitious. The Hearing Officer shall recognize the rules of privilege, unless waived by the appropriate party.**
- 5. Representation – The Employer and/or the Employee may choose to be represented. The Representative does not need to be an attorney.**
- 6. Briefs –There shall be no briefs submitted by either party; however, each party may choose to submit a two-page summary of their position in lieu of closing oral arguments of the parties.**
- 7. Recording the Hearing – The Hearing shall be recorded. Any party wishing to have the recording transcribed shall bear the cost of the transcription.**
- 8. Decorum – The Impartial Hearing Officer shall maintain order and decorum at all times during the hearing.**
- 9. Burden of Proof – The Employer bears the burden of proving by a preponderance of the evidence that the condition identified by the Employee does not constitute a Workplace Safety violation and that no corrective action is required.**

10. Decision – The Impartial Hearing Officer shall issue a written decision within seven (7) calendar days of the close of the evidence. The decision shall, at a minimum, contain a statement of issues, standard of review, findings and, if the grievance-appeal is sustained, a remedy for the Employee.

11. Remedies – If the Grievance-Appeal under this subsection is sustained, the Impartial Hearing Officer may issue an order requiring the County to take corrective action. The Hearing Officer may not order a particular kind of corrective action.

## V. FINAL APPEAL TO COUNTY BOARD OF DISCIPLINE, TERMINATION AND WORKPLACE SAFETY GRIEVANCES APPEAL DECISIONS

A. Requesting an Final Appeal – An final appeal may be initiated by filing a request to the Employee Relations Director on the form attached as Appendix C within seven (7) calendar days of the date of the decision of the Impartial Hearing Officer. Failure to file the request within the deadline constitutes a waiver of the right to an final appeal.

B. County Board Final Appeal - When the Employee Relations Director receives a timely request, he or she shall forward the final appeal to the County Board Chair along with a copy of the Hearing Record, including the audio recording. The Chair shall schedule a meeting to review the Record and the Hearing Officer's decision. The County Board may not take new evidence and is only to conduct a review of the Record.

C. Standard of Review – The County Board shall only overturn the decision of the Independent Hearing Officer if the Officer abused his or her discretion and rendered a decision that is arbitrary, oppressive or unreasonable.

D. Remedies on Final Appeal in Termination and Discipline Cases – If the County Board overturns the Hearing Officer's decision, the matter goes back to the Hearing Officer for reconsideration of his or her decision consistent with the findings made by the County Board.

E. Remedies on Final Appeal in Workplace Safety Cases – The County Board may immediately require the Employer to take corrective action according to law.

F. The decision of the County Board is final.

Note: Nothing in this ~~Grievance~~-Policy should be interpreted to create a contractual relationship between the County and any employee. Unless specifically required otherwise by statute or code, the County's employment relationship with employees covered under this policy is at-will and employment may be terminated at any time, for any reason that does not violate state or federal law, with or without cause, at the option of the employer or the employee

STATE OF WISCONSIN )  
 ) SS  
COUNTY OF POLK )

I, Carole T. Wondra, Clerk for Polk County, do hereby certify that the attached is a true and correct copy of Resolution No. 47-11 that was adopted by the Polk County Board of Supervisors on Sept. 20, 2011.

Carole T. Wondra 9-23-11  
Carole T. Wondra Date  
Polk County Clerk