

Town of Black Brook
Polk County, Wisconsin
An Ordinance Establishing a Grievance Procedure for Town Employees
Ordinance # 9-15-11

SECTION I. SECTION CREATED.

Section _____ of the Code of Ordinances of the Town of Black Brook is hereby created to read as follows:

SECTION _____. Employee Grievance Procedure.

- (a) **Purpose.** This grievance procedure is adopted pursuant to s. 66.0509(1m), Wis. Stats., and is intended to provide a timely and orderly review of disputes regarding: a) employee terminations, b) employee discipline, and c) workplace safety.
- (b) **Definitions.**
- (1) **"Days"**: means calendar days, excluding legal holidays as defined in s. 995.20, Wis. Stat.
 - (2) **"Discipline"**: means any employment action that results in disciplinary suspension without pay, disciplinary reduction in pay or other benefits, disciplinary demotions and terminations. The term "discipline" does not include verbal notices or reminders, written reprimands, performance evaluations, documentation of employee acts and/or omissions in an employment file, non-disciplinary demotions, non-disciplinary adjustments to compensation or benefits, actions taken to address job performance such as establishment of a performance improvement plan or job targets; placing an employee on paid leave pending an internal investigation; or other personnel actions taken by the employer for non-disciplinary reasons.
 - (3) **"Hearing Officer"**: means the impartial hearing officer required pursuant to s. 66.0509(1m)(d)2, Wis. Stat. The hearing officer selected by the Town Board is **(insert name and/or title of person(s) Town Board has selected to serve as the hearing officer such as: a lawyer, a professional mediator/arbitrator, a retired judge, or other qualified individual.** The hearing officer shall not be an employee of the Town of Black Brook.
 - (4) **"Termination"**: means a discharge from employment for rule violations, poor performance, acts detrimental to the employer or other acts of misconduct. The term "termination" does not include: a voluntary quit, completion of seasonal or part-time employment, completion of temporary assignment, completion of contract, 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, inability to perform job duties, or any other cessation of employment not involving involuntary termination.

- (5) "**Workplace Safety**": means any alleged violation of any standard established under state law or rule or federal law or regulation relating to workplace safety. "Workplace safety" does not include issues involving work hours, overtime, sick, family or medical leave, work schedules, breaks, termination, vacation, performance reviews and compensation.

(c) Procedure.

(1) The employee must file a written grievance with the Town clerk within 10 days of the termination, discipline or actual or reasonable knowledge of the alleged workplace safety issue. So that an earnest effort can be made to resolve the matter informally, the grievant must discuss the issue with his/her immediate supervisor prior to filing the written grievance. However, in the case of a termination, such a meeting is not required. Grievance forms may be obtained from the clerk. The Town clerk shall inform the employee's immediate supervisor and the Town Chairman about receipt of the written grievance as soon as practicable.

(2) Any employee who personally identifies, or is given information about, a workplace safety issue or incident must notify his/her immediate supervisor of the issue or incident, no matter how insignificant the situation may appear be, within 24 hours after the incident or issue was raised in order to be addressed as part of the grievance procedure.

(2) The employee's immediate supervisor will meet with the grievant within 10 days of receipt of the written grievance. The supervisor will provide the grievant with a written response within 10 days of the meeting. A copy of the supervisor's response shall be filed in the clerk's office. If no one has been designated the employee's immediate supervisor, the employee will meet with the Town Chairman who shall then provide the written response.

(3) The employee may request an appeal to the hearing officer by filing a written request with the Town clerk within 10 days of receiving the written response. The Town clerk shall notify the Town Chairman and employee's supervisor about the filing of the request for a hearing as soon as practicable. The Town will work with the hearing officer and grievant to schedule a mutually agreeable hearing date.

(4) The hearing officer shall provide the employee and employee's supervisor with a written decision no later than 30 days after the hearing date. The hearing officer shall also provide the Town clerk with a copy of the decision for filing in the clerk's office.

- (5) All timelines may be extended by mutual written agreement of the Town Board and employee. Without such agreement, a failure of the employee to adhere to any of the specified timelines shall preclude any further consideration of the grievance.
- (6) If the last day on which an event is to occur is a Saturday, Sunday, or legal holiday, the time limit is extended to the next day which is not a Saturday, Sunday or legal holiday. A grievance or request for an appeal is considered timely if received by the Town clerk during normal business hours or if postmarked by 11:59 p.m. on the due date.
- (7) If the grievance is not answered within the time limits, at any stage, the employee may proceed to the next available step within 7 days.
- (8) The grievant and Town Board may mutually agree in writing to waive a step or multiple steps within the procedure.
- (9) Granting the requested or agreed upon remedy resolves the grievance.
- (d) **Grievance Form Requirements:** The written grievance must contain:
- (1) A statement of the pertinent facts surrounding the nature of the grievance.
 - (2) The date the incident occurred or the date the alleged workplace safety concern was discovered.
 - (3) The steps taken to informally resolve the grievance, the individuals involved in the attempted resolution, and the results of such discussion.
 - (4) The specific remedy requested; and
 - (5) A description of the workplace safety rule alleged to have been violated, if applicable.
- (e) **Supervisor's Response:** The supervisor's written response to the employee's written grievance must contain:
- (1) A statement of the date the meeting between the employee and supervisor was held.
 - (2) A decision as to whether the grievance is sustained or denied.
- (f) **Procedure Before the Hearing Officer:**
- (1) The hearing officer shall define the issues, identifying areas of agreement and identifying the issues in dispute and hear evidence and arguments. The hearing officer will determine whether the Town acted in an arbitrary and capricious manner. A decision will not have been arbitrary or capricious if it was made in the best interest of the Town. In all cases, the grievant shall have the burden of proof to support the grievance. This process does not involve a

hearing before a court of law; thus, the rules of evidence will not be strictly followed. However, no factual findings may be based solely on hearsay evidence.

- (2) The hearing officer may require the employee and Town to submit materials related to the grievance and witness lists in advance of the hearing in order to expedite the hearing. The hearing officer shall sustain or deny the decision of the employee's supervisor. The hearing officer is not given authority to modify the decision made by the employee's supervisor. The hearing officer is not given authority to grant in whole or in part the specific request of the grievant. Within 30 days after the hearing, the hearing officer will issue a decision in writing indicating the findings and reasons for the decision.

(g) **Hearing Officer's Decision:** The hearing officer's written decision must contain:

- (1) A statement of pertinent facts surrounding the nature of the grievance.
- (2) A decision as to whether the grievance is sustained or denied, with the rationale for the decision.
- (3) A statement outlining the timeline to appeal the decision.

(h) **Appeal of Hearing Officer's Decision.** The non-prevailing party may file a written request with the Town clerk for an appeal to the Town Board within 10 days of receipt of the hearing officer's decision. The clerk shall notify the Town Chairman about the request as soon as possible. Only the issues raised in the hearing may be appealed. Issues are not subject to modification in the appeal process. The Town Board shall show great deference to the decision of the hearing officer and shall overturn the decision only if it finds the hearing officer abused his/her discretion and the decision is arbitrary and capricious. Questions which the Board may consider on appeal:

- a. Did the hearing officer follow a fair and impartial process such that the award should be rendered invalid?
- b. Is there evidence of corruption, fraud or misconduct by the hearing officer such that the award should be rendered invalid?
- c. Did the hearing officer make an error of fact and/or law which renders his/her award invalid?

(i) **Decision on Appeal.** The Town Board shall decide the matter and issue a written decision within 45 days of the filing of the appeal. The Town Board may sustain, deny or modify the recommendation of the impartial hearing officer. The decision of the Town Board shall be final and binding. A copy of the Board's decision shall be provided to the employee and filed in the Town clerk's office.

(j) **Representation:** Both the employee and the Town may be assisted by a representative of their own choosing in person or by teleconference at any point during the grievance process.

(k) **Consolidation:** The employee's immediate supervisor and/or the hearing officer may consolidate grievances where a reasonable basis for consolidation exists.

(l) **Group Grievance.** If more than one employee is grieving the same issue or circumstance, a single grievance form may be used. A group grievance must be signed by all grieving employees and must indicate that it is a group grievance at the first step in the grievance process.

(m) **Costs:** Any expense incurred by an employee in investigating, preparing, or presenting a grievance or an appeal shall be the sole responsibility of the employee. Each party (employee and employer) shall bear its own costs for witnesses and all other out-of-pocket expenses, including possible attorney fees. The fees of the impartial hearing officer shall be divided equally between the parties with the employee(s) paying half and the employer paying the other half. The fees of the hearing officer will be: *(insert)* _____.


SECTION V: Severability

If any provision of this Ordinance or any application of this Ordinance to any person or circumstance is found to be invalid or unconstitutional, such a finding shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION VI. Effective Date


Following passage by the Town Board, this ordinance shall take effect the day after the date of publication or posting as provided by Sec. 60.80, Wis. Stats.

ADOPTED this 15 day of September, 2011.


Charles Barney
Town of Black Brook Chairman

Posted this 15 day of September, 2011.

Attest:


Sally Pickard
Town of Black Brook Clerk