

1 **WASHINGTON COUNTY, WISCONSIN**

2
3 Date of enactment: 9/21/11

4 Date of publication: 9/21/11

5 **VOTE**

6 **2011 ORDINANCE 11**

7
8 AN ORDINANCE to repeal and recreate Section 7.10 of the Code relating to: Employees
9 Grievance Procedures.

10
11 *The people of the County of Washington, represented in the Board of Supervisors, do ordain*
12 *as follows:*

13
14 **SECTION 1.** Section 7.10 is repealed and recreated to read:

15 **7.10(RR 11-11) EMPLOYEE GRIEVANCE PROCEDURES.** (1)(RR 11-11) **Scope**
16 **and Intent.** The grievance procedures set forth in this section are adopted pursuant to §66.0509,
17 Wis. Stats. The procedures are intended to be available when a complaint arises between the
18 County and its employee as defined herein with reference to employee discipline as defined
19 herein. Collective bargaining agreements that provide for a grievance procedure shall supersede
20 this ordinance and control for those represented employees that are subject to said agreement.

21
22 (2)(RR 11-11) **Policy.** It is the policy of Washington County to treat all employees
23 equitably and fairly in matters affecting their employment. An employee of the County shall be
24 provided an opportunity to understand and resolve matters affecting employment, which
25 employee believes to be unjust, without fear of reprisal, and to have said matter addressed and
26 resolved. An employee bringing a grievance to the attention of the County shall not be treated
27 unfavorably nor shall the advancement of a grievance reflect upon the employee’s loyalty to the
28 County, nor shall it adversely affect an employee’s employment status.

29
30 (3)(RR 11-11) **Application.** This section shall apply to all regular part-time and regular
31 full-time employees not represented by a collective bargaining agreement having its own
32 grievance procedure. This procedure does not apply to temporary, seasonal, grant or limited-
33 term employees or employees working less than 40 hours biweekly.

34
35 (4)(RR 11-11) **Definitions.**

36
37 (a) Arbitrary and Capricious. A legally sufficient reason for suspension
38 without pay or termination. A reason is legally sufficient if it is supported by a preponderance of
39 the evidence and is a determination that is reasonable in light of the facts, circumstances and
40 work rule, order or performance standard. A determination that is arbitrary and capricious is one
41 that is unreasonable and without regard for the facts, circumstances, work rule, order or
42 performance standard.

1 (b) Dismissal. A separation from employment, but does not include job loss
2 resulting from a reduction in force, reduction in funding of positions, or a shortage of work.

3
4 (c) Employee. A person employed by the County on a regular part-time or
5 regular full-time basis.

6
7 (d) Employee Discipline. A suspension without pay or termination.

8
9 (e) Law Enforcement Officer. A person employed for the County for the
10 purpose of detecting and preventing crime and enforcing laws or ordinances, who is authorized
11 to make arrest for violations of the laws or ordinances for which he/she is employed to enforce.

12
13 (f) Preponderance of the Evidence. The greater weight of evidence; superior
14 evidentiary weight that, though not sufficient to free the mind wholly from doubt, is still
15 sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

16
17 (g) Suspension. The employer's temporary withdrawal without pay of an
18 employee from County employment.

19
20 (h) Termination. A separation from employment, but does not include job
21 loss resulting from a reduction in force, reduction in funding of positions, shortage of work,
22 retirement, resignation, or other voluntary interruption of work.

23
24 (i) Workplace Safety. A condition of employment related to the physical
25 health and safety of an employee, including but not limited to the safety of the physical work
26 environment, provision of protective equipment, provision of adequate safety training and the
27 safe operation of workplace equipment and tools. Workplace safety does not include conditions
28 of employment unrelated to physical health or safety such as compensation, performance
29 reviews, work schedule, hours of work, breaks, overtime, sick leave, family or medical leave,
30 vacation, vacation scheduling, compensatory time, funeral leave, health insurance, uniform
31 allowance or other similar benefits offered by the employer.

32
33 (5)(RR 11-11) **Limitations on Availability of Procedure.**

34
35 (a) A grievance that may be brought by or on behalf of a law enforcement
36 officer using the procedure specified in §59.26(8), Wis. Stats., or a grievance procedure
37 contained in the law enforcement officer's collective bargaining agreement may not be brought
38 under this section.

39
40 (b) A grievance that may be brought by or on behalf of an employee under a
41 grievance procedure that is contained in the employee's collective bargaining agreement may not
42 be brought under this section.

43
44 (c) An Administrative Coordinator who is appointed by the County Board of
45 Supervisors pursuant to §59.19, Wis. Stats., may not bring a grievance under this section
46 regarding suspension or termination of his/her employment.

1 (d) A Corporation Counsel who is appointed pursuant to §59.42, Wis. Stats.,
2 may not bring a grievance under this section regarding suspension or termination of his/her
3 employment.

4
5 (e) A Court Commissioner who is appointed pursuant to §757.68, Wis. Stats.,
6 may not bring a grievance under this section regarding the suspension or termination of his/her
7 employment.

8
9 (f) A Register in Probate who is appointed pursuant to §851.71, Wis. Stats.,
10 may not bring a grievance under this section regarding the suspension or termination of his/her
11 employment.

12
13 (g) A Nursing Home Administrator who is appointed under §46.19, Wis.
14 Stats., may not bring a grievance under this section regarding the suspension or termination of
15 his/her employment.

16
17 (h) A Director of Human Services who is appointed pursuant to §46.23, Wis.
18 Stats., may not bring a grievance under this section regarding the suspension or termination of
19 his/her employment.

20
21 (i) This procedure is not available for complaints relating to oral or written
22 reprimands, work assignments, performance evaluations, reassignment, performance appraisals,
23 transfers within departments, demotions, the implementation of performance improvement plans
24 or corrective action plans, reduction in hours, revision of job descriptions or similar job related
25 administrative activity, voluntary resignation or retirement or any other voluntary leave or
26 separation from employment.

27
28 (6)(RR 11-11) **Grievance Administration.** The Director of Human Resources shall be
29 responsible for administering this grievance procedure. Grievance records shall be maintained in
30 the Human Resources Department and the Department in question.

31
32 (7)(RR 11-11) **Procedure – General.**

33
34 (a) An employee's grievance shall be handled following the procedures
35 contained herein.

36
37 (b) A grievance that results from employee discipline imposed by a
38 department head, manager, or supervisor or a workplace safety grievance shall be initiated in
39 writing.

40
41 (c) Every effort shall be made to resolve a grievance as quickly as possible
42 and as early in the process as is practical.

43
44 (d) Every grievance shall be submitted to informal mediation and
45 Administrative Services Committee review as set forth herein prior to and as a condition
46 precedent to a hearing.

1 (e) Time limits contained in this grievance procedure may be extended by
2 mutual consent of the party.

3
4 (f) Each employee shall be afforded an opportunity to be represented at each
5 step of the grievance procedure by a representative of the employee's choice and at the
6 employee's personal expense, except that an employee's representative shall not be a material
7 witness to the grievance matter.

8
9 (g) Hearings shall be conducted in accordance with this section and the rules
10 on file in the Human Resources Department.

11
12 (h) In all cases, the employee advancing the grievance shall bear the burden of
13 proof by a preponderance of the evidence that the employee discipline was arbitrary and
14 capricious or that the determination that no workplace safety violation exists was arbitrary and
15 capricious. The standard required of the party with the burden of proof in all cases is a
16 preponderance of the evidence.

17
18 (i) A record of all hearings conducted shall be made by a court reporter.

19
20 **(8)(RR 11-11) Procedure – Employee Discipline.**

21
22 (a) Informal Mediation. An employee shall within five (5) calendar days of
23 the imposition of the employee discipline present the employee's grievance in writing to the
24 Director of Human Resources, who shall conduct informal mediation in an attempt to fully
25 resolve the problem. The grievance shall fully state the details of the problem and suggest a
26 remedy. Informal mediation shall be conducted within seven (7) calendar days of receipt of the
27 written grievance by the Director of Human Resources. If resolution is achieved, the Director of
28 Human Resources shall document resolution and distribute same to Department Head and
29 employee. If the grievance is not submitted to the Director of Human Resources for informal
30 mediation within five (5) calendar days of the imposition of the employee discipline, it shall be
31 considered settled and may not move to the next step.

32
33 (b) Administrative Services Committee Review. If a grievance is not resolved
34 to the employee's satisfaction upon the conclusion of informal mediation, the employee shall
35 notify the Director of Human Resources, in writing within ten (10) calendar days of the
36 conclusion of the informal mediation, that the employee seeks a review of the grievance by the
37 Administrative Services Committee. The Director of Human Resources shall have the grievance
38 placed on the next Administrative Services Committee agenda for review. The Administrative
39 Services Committee shall review the matter in an attempt to resolve the grievance. If the
40 employee fails to notify the Director of Human Resources within ten (10) calendar days of the
41 conclusion of the informal mediation that he or she seeks a review by the Administrative
42 Services Committee, the grievance shall be considered settled.

43
44 (c) Hearing. If a grievance is not resolved to the employee's satisfaction upon
45 the conclusion of informal mediation and Administrative Services Committee review, the
46 employee may submit the grievance, in writing within ten (10) calendar days of the conclusion of

1 the Administrative Services Committee review to the Director of Human Resources for the
2 scheduling of a hearing. The written grievance shall be submitted on the form provided by the
3 Director of Human Resources. If the grievance is not presented to the Director of Human
4 Resources within ten (10) calendar days of the conclusion of the Administrative Services
5 Committee review, it shall be considered settled.

6
7 1. Upon timely receipt of the written request for an impartial hearing,
8 the Director of Human Resources shall provide the employee with a list of hearing examiners
9 available to hear the grievance. The employee may, within ten (10) calendar days of receipt of
10 the list, rank the hearing examiners in order of preference and return the list to the Director of
11 Human Resources.

12
13 2. The Director of Human Resources shall contact the hearing
14 examiners in order of the employee's preference to schedule a hearing. If the employee fails to
15 return the list or rank the hearing examiners, the Director of Human Resources may select any
16 hearing examiner on the list.

17
18 3. The hearing examiner shall be impartial and shall not have any
19 prior knowledge of the grievance.

20
21 4. A hearing will be scheduled within fifteen (15) calendar days of
22 receipt by the Director of Human Resources of the written grievance. The hearing examiner may
23 extend the time for hearing beyond the fifteen (15) calendar days with the mutual consent of the
24 parties. The hearing shall be conducted in accordance with this section and the rules on file in
25 the Human Resources Department.

26
27 5. The hearing examiner may, with the consent of the parties, use
28 his/her best effort to mediate the grievance.

29
30 6. The hearing examiner shall provide a written decision within
31 fifteen (15) calendar days following the close of the record. The written decision shall be on the
32 form provided by the County and shall include, but is not limited to, a case caption; the parties
33 and appearances; a statement of the issue(s); findings of fact; any necessary conclusions of law;
34 the final decision, including recommended relief; and any other information the hearing
35 examiner deems appropriate. The written decision shall be filed with the Human Resources
36 Department which shall immediately send a copy to the employee.

37
38 a. Upon receipt of a decision sustaining the employee
39 discipline imposed, the employee's status shall remain unchanged.

40
41 b. Upon receipt of a decision which determines that the
42 imposed employee discipline was arbitrary and capricious, the Director of Human Resources
43 shall review the decision and recommended relief and within three (3) calendar days, determine
44 whether alternative disciplinary measures or corrective actions are appropriate including whether
45 to reinstate employee, restore benefits lost or make a payment of back pay and immediately
46 notify employee of said determination.

1 (d) County Board Appeal.

2
3 1. An employee or Washington County may, within ten (10) calendar
4 days of receipt of the hearing examiner's decision, appeal the decision to the County Board by
5 filing a written notice of appeal with the Director of Human Resources on the form provided by
6 the Director of Human Resources.

7
8 2. The written notice of appeal must contain a statement explaining
9 the reasons and basis for the appeal, include a copy of the written grievance filed with the
10 Director of Human Resources, include a copy of the hearing examiner's decision, include a copy
11 of the hearing transcript, or exhibits or both and include a copy of any information that was
12 admitted into evidence at the hearing. The submission shall not include any information not
13 admitted into evidence by the hearing examiner.

14
15 3. For employee initiated appeals, the employee shall bear the entire
16 cost of any appeal to the County Board, including, but not limited to providing copies of the
17 appeal, transcript, exhibits, and any other documentation required to be submitted for each
18 supervisor and the County Clerk.

19
20 4. The appeal will be placed on the agenda for the first County Board
21 meeting that is held at least ten (10) calendar days after the Director of Human Resources
22 receives a written notice of appeal. The Director of Human Resources shall promptly notify the
23 County Clerk of receipt of the notice of appeal. The appeal will be noticed for consideration in
24 open session unless the employee requests a closed session pursuant to §19.85(1)(b), Wis. Stats.,
25 which pertains to dismissal, demotion, licensing or suspension of a public employee. The
26 employee submitting the appeal to the County Board shall be provided with a copy of the
27 meeting notice.

28
29 5. The employee has the right to representation by a person of the
30 employee's choosing and at the employee's expense, except that an employee's representative
31 shall not be a material witness to the grievance matter. The employee or the employee's
32 representative may address the County Board during the properly noticed meeting. However, the
33 employee and the employee's representative may be excluded from any closed session during the
34 County Board's discussion or deliberation of the matter.

35
36 6. The County Board's consideration of the appeal will be limited to
37 a review of the record to determine whether there was any procedural error or any abuse of
38 discretion on the part of the hearing examiner.

39
40 7. The County Board may request and consider oral or written
41 arguments by the employee, the employee's representative or the County. However, the parties
42 shall not submit any oral or written arguments unless requested by the County Board to do so.

1 8. The County Board may reverse the hearing examiner’s decision,
2 remand the decision for further proceedings, substitute a lesser discipline, or uphold the hearing
3 examiner’s decision.

4
5 9. The County Board Chair shall prepare and sign a written
6 determination reflecting the County Board’s decision. The County Board Chair may enlist the
7 assistance of the Corporation Counsel in preparing the written determination. A copy of the
8 determination will be provided to the employee within ten (10) calendar days following the
9 County Board’s decision and shall be filed in the Human Resources Department.

10
11 (9)(RR 11-11) **Procedure – Workplace Safety.**

12
13 (a) No employee may initiate a workplace safety grievance unless:

14
15 1. The employee has reported the alleged workplace safety violation
16 to his or her Department Head and the Department Head has taken no action to address the
17 alleged safety violation; and

18
19 2. The employee has reported the alleged workplace safety violation
20 in writing to the Director of Human Resources; and

21
22 3. The Director of Human Resources, or designee, has responded in
23 writing to the report within thirty (30) calendar days that it has received and investigated the
24 alleged safety violation and has determined that it will not take corrective action; or

25
26 4. Thirty (30) days has elapsed from the employee’s written report to
27 the Director of Human Resources.

28
29 (b) An employee initiating a workplace safety grievance by alleging a
30 violation of Wisconsin Administrative Code Chapter COMM 32 shall submit a written complaint
31 along with suggested corrective action to the Director of Human Resources on the forms
32 provided and attach the notice given to the Director of Human Resources of the alleged safety
33 violation and the Director’s response, if any.

34
35 (c) Upon receipt of the written complaint, the Director of Human Resources,
36 shall, within three (3) calendar days evaluate the adequacy of the complaint and request
37 additional information, if needed, and schedule the complaint for review by the Administrative
38 Services Committee at its next regularly scheduled meeting by having the matter placed on the
39 agenda. Failure to submit an adequate complaint or provide the requested additional information
40 shall constitute a withdrawal of the workplace safety grievance.

41
42 (d) Administrative Services Committee Review. The Administrative Services
43 Committee shall meet with the employee and his or her representative, if any, in an attempt to
44 address the alleged workplace safety violation in open session. If a review by the Administrative
45 Services Committee does not resolve the alleged violation set forth in the written complaint, the
46 Director of Human Resources shall proceed to schedule the matter for a hearing as set forth

1 below. If the Administrative Services Committee review resolves the alleged workplace safety
2 violation set forth in the written complaint, the Director of Human Resources shall document the
3 resolution and take the actions directed by the Committee and the grievance shall be considered
4 settled.

5
6 (e) Hearing. Upon receipt of a written complaint and after review by the
7 Administrative Services Committee, the Director of Human Resources shall promptly schedule a
8 hearing to be conducted by an impartial hearing officer, which officer shall be appointed by the
9 Director of Human Resources.

10
11 1. A hearing shall be convened within fifteen (15) calendar days of
12 receipt of an adequate written complaint which hearing shall be conducted in accordance with
13 the hearing procedures set forth in this subdivision and applicable rules on file in the Human
14 Resources Department.

15
16 2. The hearing examiner may extend the time for hearing beyond the
17 fifteen (15) calendar days with the mutual consent of the parties.

18
19 3. An employee alleging workplace safety violation shall have the
20 burden of proof to demonstrate the existence of a violation of Wisconsin Administrative Code
21 Chapter COMM 32 and necessity of corrective action suggested in the written complaint.

22
23 4. The hearing examiner shall provide a written decision within thirty
24 (30) calendar days following the close of the record. The written decision shall be on the form
25 provided by the Human Resources Department and shall include, but is not limited to, a case
26 caption; the parties and appearances; a statement of the issue(s); findings of fact; any necessary
27 conclusions of law; the final decision, including recommended relief; and any other information
28 the hearing examiner deems appropriate. The written decision shall be filed with the Human
29 Resources Department which shall immediately send a copy to the employee.

30
31 (f) County Board Appeal.

32
33 1. An employee may, within ten (10) calendar days of receipt of the
34 hearing examiner's decision, appeal the decision to the County Board by filing a written notice
35 of appeal with the Director of Human Resources on the form provided by the Director of Human
36 Resources.

37
38 2. The written notice of appeal must contain a statement explaining
39 the reasons and basis for the appeal, include a copy of the written grievance filed with the
40 Director of Human Resources, include a copy of the hearing examiner's decision, include a copy
41 of the hearing transcript, or exhibits or both and include a copy of any information that was
42 admitted into evidence at the hearing. The submission shall not include any information not
43 admitted into evidence.

1 3. The employee shall bear the entire cost of any appeal to the County
2 Board, including, but not limited to providing copies of the appeal, transcript, exhibits, and any
3 other documentation contained in the submission for each supervisor and the County Clerk.
4

5 4. The appeal will be placed on the agenda for the first County Board
6 meeting that is held at least ten (10) calendar days after the Director of Human Resources
7 receives a written notice of appeal. The Director of Human Resources shall promptly notify the
8 County Clerk of receipt of the notice of appeal. The appeal will be noticed for consideration in
9 open session unless the County Board determines that a closed session is needed and a basis
10 exists under §19.85(1), Wis. Stats., for said closed session. The employee submitting the appeal
11 to the County Board shall be provided with a copy of the meeting notice.
12

13 5. The employee has the right to representation by a person of the
14 employee's choosing and at the employee's expense. The employee or the employee's
15 representative may address the County Board during the properly noticed meeting. However, the
16 employee and the employee's representative may be excluded from any closed session during the
17 County Board's discussion or deliberation of the matter.
18

19 6. The County Board's consideration of the appeal will be limited to
20 a review of the record to determine whether there was any procedural error or any abuse of
21 discretion on the part of the hearing examiner.
22

23 8. Based on a review of the record, the County Board in its sole
24 discretion may affirm, modify or reverse the hearing examiner's decision.
25

26 9. The County Board Chair shall prepare and sign a written
27 determination reflecting the County Board's decision. In the case of a determination that a
28 workplace safety violation exists, the decision shall direct the Administrative Coordinator to
29 evaluate the violation and take necessary corrective action. The County Board Chair may enlist
30 the assistance of the Corporation Counsel in preparing the written determination. A copy of the
31 determination will be provided to the employee within ten (10) calendar days following the
32 County Board's decision.
33

34 10. The County Board's decision is final and may not be appealed or
35 reconsidered.
36

37 (10)(RR 11-11) **Excluded Grievances.** This grievance procedure shall not apply
38 to elected officials, nor shall it be construed to grant job tenure to non-represented employees
39 who are appointed by elected officials as deputies.
40

41 (11)(RR 11-11) **Employee's Rights Preserved.** A grievance under this procedure
42 shall not be construed as limiting employee's rights of appeal to applicable Federal and State
43 agencies nor shall the grievance procedure herein abrogate any legal means of redress by a court
44 of competent jurisdiction.

1 (12)(RR 11-11) **Retaliation Prohibited.** Retaliation and/or reprisal against an
2 employee who files a grievance under this section is prohibited. An employee who engages in
3 retaliatory action against an employee filing a grievance will be subject to disciplinary action up
4 to and including the termination of employment.

5
6 **SECTION 2. EFFECTIVE DATE.** This ordinance shall become effective October 1,
7 2011 and upon passage by the Board of Supervisors and publication as provided by law.

8
9 **SECTION 3. SUMMARY.** An ordinance adopting a grievance procedure as required
10 by §66.0509, Wis. Stats.

11
12 _____
13
14 VOTE REQUIREMENT FOR PASSAGE: Majority

15
16 APPROVED: Introduced by members of the ADMINISTRATIVE
17 (signed by Kimberly A. Nass) SERVICES COMMITTEE as filed with
18 Kimberly A. Nass, County Attorney the County Clerk.

19 Dated 9/19/11

20 Considered 9/13/11 (signed by Roy C. Justman)

21 Adopted 9/13/11 Roy C. Justman, Chairperson

22 Ayes 26 Noes 1 Absent 3

23 Voice Vote _____

24
25 Countersigned:

26 _____
27 Herbert J. Tennies

28 County Board Chairperson

29
30 (There will be costs related to this procedure when it is used. There will be costs for a court
31 reporter, administrative costs and staff time. At this time, these costs are unknown.)