

Ad Hoc Transition Committee Meeting Minutes
August 15, 2011, 1:00 a.m.

Meeting called to order by Chairman, Miller at 1:05 p.m. Present; Ward, Croke, Johnson, Sumpter and Miller. Excused, West, Cohen, and Stuchlak. Also present Bays, Djumadi, Lawson, Kaye, Phillippi and Kotlowski.

Motioned by Johnson/Croke to approve the agenda. Motion carried by unanimous voice vote. Motioned by Ward/Croke to approve June 24, July 18 and August 4th minutes. Motion carried by unanimous voice vote.

The committee deviated to (H) summary of recommendations from Phillips Borowski firm regarding distinguishing public safety employees from protective employees with different bargaining right. Dan informed the committee that he had been on speaker phone with the Executive Committee and the Administrative Finance Committee to discuss Wisconsin Retirement withholdings. He addressed union contracts expiration dates and the impact of that. He indicated that it would be easier to withhold money from an employee and pay them back, if in the event there should be litigation that over turns a decision, then to try and play catch up on Wisconsin Retirement withholdings. Elected Official and non representative will pay their share. He also talked about the legislative plan and its complexity.

Employees should not be tried twice for the same incident.
An action should be final and binding. There should be no retaliation.

Dan informed the committee that the budget repair bill is changing case history and the world without a collective bargain agreement will be different.
It is important to remember that there is too much investment in an employee to just release someone. We should exercise our power discretionally and appropriately.

It was suggested to use the same remedies with workplace safety as with the grievance procedure. i.e. remedies on appeal at the County Board Level.

Grievance Procedure:

The following sections were modified:

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3. Remedies. If the grievance is sustained, the Impartial Hearing Officer may award the Employee one or more of the following remedies: (a) reinstatement; (b) a lesser adverse employment action including, without limitation, suspension of employment, reduction in suspension, reduction in base pay, reduction in rank, demotion, oral or written reprimand or performance improvement plan; (c) documentation of employee acts and/or omissions in an employment file; (d) back pay; and (e) lost benefits. consisting of a suspension, reduction in the length of a suspension, written reprimand or documentation of employee acts and/or omissions in an employment file; (c) back pay; and (d) in the event of a reinstatement following termination, reimbursement of the County's applicable percentage of any payments made by the Employee for

continuation of health insurance under the **Consolidated Omnibus Budget Reconciliation Act** (COBRA).

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~~F. **Remedies On Appeal; Discipline And Termination.**—The County Board may award one or more of the following remedies to the Employee on appeal in a matter involving Discipline or Termination: (a) reinstatement; (b) a lesser adverse employment action including, without limitation, suspension of employment, reduction in suspension, reduction in base pay, reduction in rank, demotion, oral or written reprimand or performance improvement plan; (c) documentation of employee acts and/or omissions in an employment file; (d) back pay; and (e) lost benefits.~~

F. Remedies On Appeal; Discipline And Termination. The County Board may award one or more of the following remedies to the Employee on appeal in a matter involving Discipline or Termination: (a) reinstatement; (b) a lesser adverse employment action consisting of a suspension, reduction in the length of a suspension, written reprimand or documentation of employee acts and/or omissions in an employment file; (c) back pay; and (d) in the event of a reinstatement following termination, reimbursement of the County's applicable percentage of any payments made by the Employee for continuation of health insurance under the **Consolidated Omnibus Budget Reconciliation Act** (COBRA).

Page 4, section 4, c add: The impartial hearing officer may allow for opening or closing statements at the discretion of the impartial hearing officer, such statements not to exceed ten (10) minutes in length.

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D. Burden Of Proof; Impartial Hearing Officer's Decision; Remedies

~~1. **Burden Of Proof; Standard Of Review.**—The Employee bears the burden of proving by clear, convincing and satisfactory evidence that the County's decision to Discipline/Terminate the Employee was arbitrary and capricious. If the Employee does not satisfy this burden of proof, the Impartial Hearing Officer shall deny the grievance.~~

1. Burden Of Proof; Standard Of Review. Except in a grievance involving termination of an Employee that is subject to Wis. Admin. Code Chapter DHS 5, the Employee bears the burden of proof to persuade the Impartial Hearing Officer by clear, convincing and satisfactory evidence that the County's decision to Discipline/Terminate the Employee was arbitrary and capricious. If the Employee does not meet his or her burden of proof, the impartial hearing officer shall deny the grievance. For a grievance involving termination of an Employee that is subject to Wis. Admin. Code Chap. DHS 5, the County bears the burden of proof to persuade the Impartial Hearing Officer by a preponderance of the evidence that good cause exists to terminate the Grievant as provided in Wis. Admin. Code Chap. DHS 5.06(2)(b).

Adams County Grievance Procedure appeal form was simplified:

APPEAL

~~1. Identify each finding of the Impartial Hearing Officer that you are appealing by quoting directly from the written decision of the Impartial Hearing Officer. For each finding that you are appealing, identify the specific grounds for your appeal using the following list:~~

- ~~a. The finding lacks factual support;~~
- ~~b. The finding is inconsistent with the evidence presented;~~

- ~~c. The Impartial Hearing Officer failed to consider evidence presented;~~
- ~~d. The finding is based on factual errors or a misinterpretation of fact;~~
- ~~e. The finding is based on an erroneous application of law, rule or procedure.~~

~~(For example, the Impartial Hearing officer's finding that the Employee "failed to adequately perform assigned job duties" lacks factual support or the Impartial Hearing Officer's finding that the County "lacked just cause to discipline the Employee" was based on an erroneous application of the law and the standards of the grievance procedure).~~

~~2. Describe, in detail, the factual or legal basis for each ground for appeal that you identified in paragraph 1 above.~~

~~3. Describe the relief that you are requesting on appeal (for example, reversal of the Impartial Hearing Officer's decision affirming the County's suspension with an award of back pay or reversal of the Impartial Hearing Officer's decision finding that the County's decision to terminate was arbitrary and capricious).~~

Croke recommended simplifying the questions, for example: Why was the Hearing Officer wrong? What should the Impartial Hearing Officer have ordered and why?

Dan will insert the appropriate language on the form.

There will be no electronic filing of forms, they will be in paper form and they will be signed, however; faxing a document is appropriate.

Discussion on the ethic ordinance will take place at a future meeting.

Discussion on the employee handbook will take place at a future meeting.

The committee agreed that the Corporation Counsel should be the recipient of the Workplace Safety forms, to review, deny, answer, and reclude from hearing the appeal. Insert the same time lines, and precondition filings. The committee also talked about the creation of a Safety Committee with the power being at the committee level and the option of consulting with the mutual on issues that may relate to Chapter 32 of Wisconsin Administrative Code. The committee would consist of three (3) members.

The committee talked about immediate dangerous conditions. They referenced appendix B., a form must be filed that identifies unsafe or hazardous conditions.

The committee talked about different workplace safety scenarios. Kaye informed the committee that if an accident occurred an employee is tested (substance) immediately. She also informed the committee that there is random testing at the Solid Waste and Highway Department.

Kotlowski said if there is reasonable suspicion then a test is done.

Croke indicated workers compensation should be notified immediately of an incident. Kaye stated that employees/department heads are to report incidents within 24 hours.

Kotlowski left at 2:00 p.m.

Croke would like to see forms included in the policy handbook. Sumpter questioned if the committee would be reviewing the book soon. This will be future agenda item.

Bays questioned if a staff member could have union representation or employee as an option rather than just an attorney to represent them at a hearing. Croke explained, and the answer was no. Guidance goes to the Impartial Hearing Officer and employees are restricted to attorneys. The process should be informal and quick.

Johnson said we want an employee friendly atmosphere and don't want everything to go to grievance.

The committee recommended sending the grievance procedure to the county board members. Discuss and/or act on memo regarding the workweek/schedule. The committee discussed the memo and decided they will take no action.

Djumadi said there is really no way to stay within a zero levy with compensation packages currently in place.

The committee gave authority to Dan and Cindy to review the documents and make changes as long as it does not change the intent.

Johnson requested to be excused at the next meeting.

Agenda for next meeting will be finalization of the grievance documents.

Motioned by Croke/Johnson to adjourn at 3:20 p.m. Motion carried by unanimous voice vote.

Respectfully Submitted,

Cindy Phillippi
Recording Secretary