Resolution #1002-2011 in the Town of Red Cedar

Resolution Adopting Employee Grievance Procedure

WHEREAS, s. 66.0509(1m), Wis. Stat., requires local governmental units to adopt an employee grievance procedure;

WHEREAS, the Town of Red Cedar, Dunn County, Wisconsin has considered this requirement and prepared an employee grievance procedure that contains the required elements;

NOW, THEREFORE, be it resolved, that the town board of the Town of Red Cedar, Dunn County, Wisconsin adopts the attached employee grievance procedure pursuant to s. 66.0509(1m), Wis. Stat.

Adopted this 12th day of September, 2011.

By the Town Board:

Charlie Price, Chairman

Ron Robelia, Supervisor #1

Joe Feeney, Supervisor #2

Dave Leach, Supervisor #3

Doug Miller, Supervisor #4

Attested by Town Clerk:

(Post in 3 places within 30 days of adoption pursuant to s. 60.80, Wis. Stat.)

Town of Red Cedar, Dunn County, Wisconsin

Employee Grievance Procedure

Purpose: This grievance procedure is adopted pursuant to s. 66.0509(1m), Wis. Stat., and is intended to provide a timely and orderly review of disputes regarding: (a) employee terminations; (b) employee discipline; and (c) workplace safety.

Definitions for terms used in this document:

"**Days**" means calendar days, excluding legal holidays, as defined in s. 995.20, Wis. Stat.

"**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.

"**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 the person currently acting as the town attorney.

"**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 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, or any other cessation of employment not involving involuntary termination.

"**Workplace Safety**" means any alleged violation of any standard established under state law or rule or federal law or regulation relating to workplace safety.

Process and Timelines:

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 chair about receipt of the written grievance as soon as practicable.

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 chair 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 chair 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. 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 chair about the request as soon as possible. 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.

6. 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.

7. 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.

8. 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.

9. The grievant and town board may mutually agree in writing to waive a step or multiple steps within the procedure.

10. Granting the requested or agreed upon remedy resolves the grievance.

Grievance 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.

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; and
2. A decision as to whether the grievance is sustained or denied.

Procedure Before the Hearing Officer: 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.

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.

If the hearing officer's decision on any grievance is appealed, only the issues raised in the hearing may be appealed. Issues are not subject to modification in the appeal process.

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; and
3. A statement outlining the timeline to appeal the decision.

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.

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

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.

Costs: Any expense incurred by an employee in investigating, preparing, or presenting a grievance 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 at the current hourly rates charged.

Adopted and made a part of Resolution #1002-2011 by the town board of the Town of Red Cedar this 12th day of September, 2011.

ATTEST:

Cheryl L. Miller

Clerk