

-COUNTY OF MILWAUKEE-
INTEROFFICE COMMUNICATION

DATE : September 8, 2011

TO : Supervisor Lee Holloway, Chairman, Board of Supervisors

FROM : The Department of Administrative Services, Corporation Counsel, Office of the Personnel Review Board, and Department of Labor Relations

SUBJECT: Request to amend Milwaukee County General Ordinance (MCGO) 17.207
Grievance Procedure

Issue

The passage of 2011 Wisconsin Act 10 (Budget Repair Bill) and Wisconsin Act 32 (Budget Bill), have made all issues except for base wages a prohibited subject of collective bargaining. Specifically, the County had negotiated, and the labor contracts had contained, a procedure for handling grievances. The contract with American Federation of State, County and Municipal Employees (AFSCME DC-48), had contained a provision for a grievance procedure, which the County is continuing to follow, until a new grievance procedure is proposed to the County Board and County Executive.

With the elimination of negotiations with labor unions regarding grievance procedures, the Budget Repair Bill required local units of government to establish a Civil Service System and/or a grievance procedure system. The County currently has a Civil Service System and an ordinance on grievances.

As currently written, Milwaukee County General Ordinance (MCGO) 17.207 only contains grievance procedures specific to non-represented employees. The ordinance, as written, covers issues concerning the application of wage schedules, provisions relating to hours of work and working conditions, and discrimination based on race, sex, age, nationality, political or religious affiliation or handicap.

The attached resolution proposes to make changes to MCGO 17.207 so that it covers both represented and non-represented employees. No changes are proposed to be made to Civil Service Rules, since it already covers both represented and non-represented employees. A grievance procedure is intended to resolve claims or disputes between parties regarding matters related to Civil Service Rules or Chapter 17 of County Ordinances.

A grievance procedure is not intended to be used to appeal disciplinary suspensions or oral or written reprimands. Under Civil Service Rules, represented and non-represented employees have the right to a hearing with the Personnel Review Board (PRB) for any suspension of more than ten days, for a second suspension (of any length) within six months, or for a termination or demotion. No process exists to appeal a suspension of ten days or less for a non-represented employee. For represented employees, current contract language allows for the appeal of suspensions of less than ten days to an arbitrator. The County will not propose any procedure regarding suspensions of ten days or less.

Background:

Currently, Milwaukee County follows different procedures for grievances depending on the representation of the employee. Included below, are an explanation of the current grievance procedures for non-represented employees, and for certain represented employees.

Non-represented Employees:

MCGO 17.207 currently provides a procedure specifically for:

- Non-represented employees to address grievances concerning the application of wage schedules and provisions relating to hours of work and working conditions; and
- Non-represented employees, students of county-operated or affiliated training programs, or county employees in the unclassified service to address grievances concerning discrimination based on race, sex, age, nationality, political or religious affiliation or handicap.

This procedure may not be used to change existing wage schedules, hours of work, working conditions, fringe benefits and position classifications established by ordinances and rules which are matters processed under existing procedures. All final appeals under MCGO 17.207 may be made to the Personnel Review Board (PRB) for decision.

Represented Employees:

Current collective bargaining agreements provide procedures specifically for matters involving the interpretation, application or enforcement of the terms of the agreement in effect. The procedures, similar to the MCGO 17.207, may not be used to change existing wage schedules, hours of work, working conditions, fringe benefits and position classifications established by ordinances and rules which are matters processed under existing procedures. All appeals under the collective bargaining agreement's procedures may be made to an arbitrator.

Recommendation

It is recommended that MCGO 17.207 be amended as follows:

- Adopt language to include ***any employee in the classified service that does not have a grievance process under a current collective bargaining agreement.*** This will create a process for all employees in the classified service while also allowing for grievance procedures in effect under current collective bargaining agreements (e.g. deputy sheriffs and firefighters). Upon the effective date of 2011 Wisconsin Act 10 grievance procedures became a prohibited subject of bargaining. The following unions would be affected by this as follows:

AFSME District Council 48	Upon adoption
Association of Milwaukee County Attorneys	January 1, 2012
Milwaukee County Firefighters Association	Not applicable
International Association of Machinists and Aerospace Workers	January 1, 2012
Federation of Nurses and Health Professionals Local 5001, AFT, AFL-CIO	January 1, 2013
Milwaukee Deputy Sheriffs' Association	Not applicable
TEAMCO	January 1, 2012
Milwaukee Building Construction and Trades Council	January 1, 2012

- Limit the applicability of the grievance process to only employees in the classified service. Employees in the unclassified service would no longer have rights to grieve matters relating to discrimination based on race, sex, age, nationality, political or religious affiliation or handicap, which are covered by applicable federal laws, rules and regulations. Unclassified employees have the right to pursue claims of discrimination with the Equal Employment Opportunity Commission on the basis of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act and/or the Age Discrimination in Employment Act. Claims of discrimination may also be filed with the State of Wisconsin, Department of Workforce Development, Equal Rights Division based upon the Wisconsin Fair Employment Act, secs. 111.31 – 111.395 Stats. This would be the only impact on employees in the unclassified service.
- Limit the subjects to be grieved to only ***controversies relating to workplace safety, matters involving the interpretation, application, or enforcement of the language found in Civil Service Rules, and in Chapter 17 of the Milwaukee County General Ordinances, where there are no provisions to address such issues.*** Employees governed by this ordinance would not have the right to grieve issues concerning the application of wage schedules and provisions relating to hours of work and working conditions. Pursuant to 2011 Wisconsin Act 10, these issues are no longer mandatory subjects of bargaining. Additionally, matters relating to discrimination based on race, sex, age, nationality, political or religious affiliation or handicap are covered by applicable federal and state laws, rules and regulations. Represented employees have the right to pursue claims of discrimination with the Equal Employment Opportunity Commission on the basis of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act and/or the Age Discrimination in Employment Act. Claims of discrimination may also be filed with the State of Wisconsin, Department of Workforce Development, Equal Rights Division based upon the Wisconsin Fair Employment Act, secs. 111.31 – 111.395 Stats.
- Provide clarification that the grievance procedure does not cover disciplinary suspensions and oral and written reprimands. Represented employees that currently have the ability to appeal a suspension of ten days or less to an arbitrator would no longer have that right, since it is not a grievable issue. There is no intent at present, to provide an appeal process for suspensions of less than ten days. Represented employees would continue to have the same rights under Wisconsin State Statutes Chapter 63.10 to appeal any suspension of more than ten days, for a second suspension (of any length) within six months, or for termination or demotion.
- Modify the language to streamline the grievance process from a five step process to a three step process. This change would create a more efficient process for non-represented employees. Represented employees would no longer be able to appeal a decision of the Department of Labor Relations to a permanent arbitrator, but would be able to appeal a grievance decision to the Personnel Review Board. As is currently the case, any employee not satisfied with the decision of the Personnel Review Board would be entitled to pursue other actions against the County through their own means. The modified grievance process would consist of three steps:
 - 1st step: Grievance filed with supervisor or designated individual
 - 2nd step: Grievance elevated to designated grievance hearing officer
 - 3rd step: Grievance elevated to Personnel Review Board

Due to the extensive changes described above, it is recommended that MCGO 17.207 be struck in its entirety and replaced with the language in the attached resolution.

cc: Chris Abele, County Executive
Joe Sanfelippo, Chairman, Personnel Committee
George Aldrich, Chief of Staff, County Executive
Terrence Cooley, Chief of Staff, County Board
Jerry Heer, County Auditor
Steve Cady, County Board Fiscal and Budget Analyst
Rick Ceschin, County Board Analyst
Scott Manske, Controller
Fred Bau, Labor Relations Specialist
Candace Richards, Interim Human Resources Director
Matthew Hanchek, Interim Director Employee Benefits
Sue Drummond, Payroll Manager
Veronica Robinson, Ethics Board Executive Director
Mary Ann Grimes, Attorney at Law

A RESOLUTION

To amend Section 17.207 of the Milwaukee County Code of General Ordinances as it pertains to grievance procedures for classified and unclassified employees.

WHEREAS, The passage of 2011 Wisconsin Act 10 and Wisconsin Act 32 have made all issues except for base wages a prohibited subject of collective bargaining; and

WHEREAS, Specifically, the County had negotiated, and the labor contracts had contained, a procedure for handling grievances; and

WHEREAS, The contract with American Federation of State, County and Municipal Employees (AFSCME DC-48), had contained a provision for a grievance procedure, which the County is continuing to follow, until a new grievance procedure is proposed to the County Board and County Executive; and

WHEREAS, With the elimination of negotiations with labor unions regarding grievance procedures, the 2011 Wisconsin Act 10 required local units of government to establish a Civil Service System and/or a grievance procedure system; and

WHEREAS, The County currently has a Civil Service System;

WHEREAS, The County currently has an ordinance on grievances which only contains procedures specific to non-represented employees;

NOW THEREFORE

BE IT RESOLVED, Milwaukee County will no longer follow the grievance procedures outlined in Section 4.02 of the 2007-2008 signed collective bargaining agreement with the American Federation of State, County and Municipal Employees District Council 48 upon adoption of this resolution; and

BE IT FURTHER RESOLVED, The Milwaukee County Board of Supervisors hereby amends Section 17.207 of the Milwaukee County Code of General Ordinances by adopting the following:

AN ORDINANCE

The County Board of Supervisors of the County of Milwaukee does ordain as follows:

SECTION 1. Section 17.207 of the General Ordinances of Milwaukee County is struck in its entirety and replaced with the following language:

17.207. Grievance procedure.

- ~~1. Application; exceptions. A grievance shall mean any controversy which exists as a result of an unsatisfactory adjustment or failure to adjust a claim or dispute by a nonrepresented employe or group of nonrepresented employes concerning the application of wage schedules and provisions relating to hours of work and working conditions and nonrepresented employes as well as students of county-operated or affiliated training programs or county employes in the unclassified service concerning discrimination based on race, sex, age, nationality, political or religious affiliation or handicap. The grievance procedure shall not be used to change existing wage schedules, hours of work, working conditions, fringe benefits and position classifications established by ordinances and rules which are matters processed under existing procedures.~~
- ~~2. Representatives. An employe may choose to be represented at any step in the procedure by representatives (not to exceed three (3)) of his/her choice, except that as to the first step, the choice shall be limited to employe representatives.~~
- ~~3. Time of handling. Whenever possible, grievances will be handled during the regularly scheduled working hours of the parties involved.~~
- ~~4. Time limitations. If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing. If one (1) of the parties requests an extension not mutually acceptable, the request with the reason therefor, may be submitted to the personnel review board. After consideration and within eight (8) working hours after receipt of the request, they will notify both parties in writing of their decision to grant or deny the extension. If an extension is not requested within the time limits herein provided, or a reply to the grievance is not received within time limits provided herein, the grievance may be appealed directly to the next step of the procedure.~~
- ~~5. Settlement of grievances. Any grievance shall be considered settled at the completion of any step in the procedure, if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.~~
- ~~6. Forms. There are three (3) separate forms used in processing a grievance: the grievance initiation form, the grievance disposition form and the grievance appeal form. All forms are to be prepared in quadruplicate except at the county institutions, park commission, and department of public works, where five (5) copies are to be prepared. Two (2) copies are to be retained by the person originating the form: one (1) copy will be sent to the other person involved in the procedure at that step, for example, immediate supervisor, and one (1) copy will be forwarded to the personnel review board. At the county institutions, one (1) copy will be forwarded to the office of the director; in the park commission, one (1) copy will be forwarded to the office of the general manager; and public works, one (1) copy will be forwarded to the office of the director. The forms are available in the office of the personnel review~~

~~board and in any county department or institution. Each department or institution shall have forms readily available to all employees.~~

~~7. Steps in the procedure.~~

~~(a) Step 1.~~

- ~~1. The employe alone or with his/her representative shall explain the grievance verbally to his/her immediate supervisor designated to respond to employe grievances.~~
- ~~2. The supervisor designated in paragraph 1 shall within three (3) working days verbally inform the employe of his/her decision on the grievance presented.~~

~~(b) Step 2.~~

- ~~1. If the grievance is not settled at the first step, the employe or his/her representative shall prepare the grievance in writing on the grievance initiation form and shall present such form to the immediate supervisor designated in step 1 to initial as confirmation of his/her verbal response.~~
- ~~2. The employe or his/her representative after receiving confirmation shall forward the grievance to his/her appointing authority or to the person designated by him/her to receive grievances within ten (10) working days of the verbal decision. Failure of the supervisor to provide confirmation shall not impede the timeliness of the appeal.~~
- ~~3. The person designated in step 2, paragraph 2 will schedule a hearing with the person concerned and within ten (10) working days from date of service of the grievance initiation form, the hearing officer shall inform the aggrieved employe in writing of his/her decision.~~
- ~~4. Those grievances which would become moot if unanswered before the expiration of the established time limits will be answered as soon as possible after the conclusion of the hearing.~~
- ~~5. The second step of the grievance procedure may be waived by mutual consent of the employe and the department. If the grievance is not resolved at step 2 as provided, the employe or the department may appeal such grievance within ten (10) working days to step 3 if applicable or to step 5.~~

~~(c) Step 3.~~

- ~~1. (Applicable only to department of public works, department of parks, recreation and culture, and department of human services.) If the grievance is not settled at the second step, the employe and/or his/her~~

~~representative will write up the grievance appeal form and the employe shall present it to the employe's division or district head in his/her department, or in the case of the department of human services, to the employe's institution or department head or his/her duly designated representative, within five (5) days after receiving the written decision as provided in step 2.~~

- ~~2. The person designated in subsection (c)1 will review the record and interview the persons concerned and inform the aggrieved employe in writing of his/her decision within five (5) days after the grievance appeal form.~~

~~(d) Step 4.~~

- ~~1. If the grievance is not settled at the second step or at the third step in the department of public works, the department of parks, recreation and culture or the department of human services, the employe and/or his/her representative will write up the grievance appeal form and the employe shall serve it to the employe's department head or his/her duly designated representative, or in the case of the department of human services, the person designated by the director of the department of human services to receive grievance appeals, within five (5) days after receiving the written decision as provided in step 2 or 3.~~
- ~~2. The person designated in subsection (d)1 will review the record and interview the persons concerned and inform the aggrieved employe in writing of his/her decision within five (5) days after receiving the grievance appeal form.~~

~~(e) Step 5.~~

- ~~1. If the grievance is not settled at the second step or if applicable the fourth step, the employe and/or his/her representative may appeal to the personnel review board, within five (5) working days after receiving the written decision provided in step 2 or if applicable step 4. The board will review the record of the case, hold a hearing thereon as soon as practical, notify all interested persons of the time and place of the hearing, and notify all interested persons of its decision in writing within ten (10) days after the completion of the hearing.~~

Section 17.207. Grievance Procedure.

1. Application; exceptions. A grievance shall mean any controversy which exists as a result of an unsatisfactory adjustment or failure to adjust a claim or dispute by an employee in the classified service regarding workplace safety, matters involving the interpretation, application, or enforcement of the language found in the Milwaukee County Civil Service Rules, and Chapter 17 of the General

Ordinances of Milwaukee County, where there are no provisions to address such issues. The grievance procedure shall not be used to appeal disciplinary suspensions or oral or written reprimands, or to change existing wage schedules, hours of work, working conditions, fringe benefits and position classifications established by ordinances and rules which are matters processed under existing procedures. This section shall not apply to classified employees who have a grievance procedure under a current collective bargaining agreement.

2. Representative. An employee may choose to be represented at Step 2 and/or Step 3 of this procedure by a representative of his/her choice.
3. Time of handling. Whenever possible, grievances will be handled during the regularly scheduled working hours of the parties involved.
4. Time limitations. If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing. If one (1) of the parties requests an extension not mutually acceptable, the request together with the reason for the extension, may be submitted to the Personnel Review Board for consideration of a request to extend time limits only. After consideration and within ten (10) workdays after receipt of the request, the Personnel Review Board will notify both parties in writing of their decision to grant or deny an extension. If an extension is not requested within the time limits herein provided, or a disposition of the grievance is not received within the time limits provided herein, the grievance may be appealed directly to the next step of the procedure.
5. Settlement of grievances. Any grievance shall be considered settled at the completion of any step in the procedure if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.
6. Forms. There are three (3) separate forms used in processing a grievance: the Grievance Initiation Form, the Grievance Disposition Form, and the Grievance Appeal Form. All forms are to be prepared in triplicate. The original (1) copy of the Grievance Initiation Form shall be provided to the designated hearing officer in the employee's department. One (1) copy shall be forwarded to the Personnel Review Board, and the employee originating the Grievance Initiation Form shall retain one (1) copy. The Personnel Review Board and all departments shall maintain a supply of the Grievance Initiation Form, the Grievance Disposition Form, and the Grievance Appeal Form. In addition, the forms shall be made available on line.
7. Steps in the procedure. Time is of the essence with respect to the initiation of grievances and the advancement of a grievance from one step to another. Failure of the grievant to adhere to the time limits expressed herein shall bar the grievance from further consideration.

a. Step 1.

1. The employee shall explain the grievance verbally to his/her immediate supervisor or the department's human resources employee designated to respond to employee grievances. Step 1 must occur within ten (10) working days of the event giving rise to the initiation of the grievance.
2. The supervisor/human resources employee designated in paragraph 1. shall, within ten (10) workdays, verbally inform the employee of his/her decision regarding the grievance presented.

b. Step 2.

1. If the grievance is not settled at Step 1, the employee or his/her representative shall prepare the grievance in writing on the Grievance Initiation Form and shall, within ten (10) workdays of the verbal decision, present such Form to the designated grievance hearing officer in the employee's department.
2. The grievance hearing officer will schedule a hearing with the employee and the supervisor/human resources employee within ten (10) workdays from date of receipt of the Grievance Initiation Form. The grievance hearing officer shall provide a written Grievance Disposition Form to the grievant and the supervisor/human resources employee no later than 20 (twenty) workdays after the date of the hearing.
3. Step 2 of the grievance procedure may be waived by mutual consent of the grievant and the grievance hearing officer to Step 3. If the grievance is not resolved at Step 2 as provided, the grievant or the hearing officer may file a Grievance Appeal Form within twenty (20) workdays after receipt of the Step 2 disposition or after a waiver mutually agreeing to forward the grievance to Step 3 before the Personnel Review Board.

c. Step 3.

1. When a Grievance Appeal Form is filed with the Personnel Review Board within twenty (20) workdays from the date of the Step 2 disposition or waiver of Step 2, the Personnel Review Board shall review the record and/or may interview the employee and others and may hold a hearing if requested by the grievant after which the Personnel Review Board may uphold, overturn, or modify the disposition appealed from Step 2. The Personnel Review Board shall inform the grievant and the Step 2 hearing officer of its decision in writing within thirty (30) workdays after the

Grievance Appeal Form is received. The decision by the
Personnel Review Board is final.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 09/08/11

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: Request to amend Milwaukee County General Ordinance (MCGO) 17.207
Grievance Procedure

FISCAL EFFECT:

- | | |
|--------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact | <input type="checkbox"/> Increase Capital Expenditures |
| <input checked="" type="checkbox"/> Existing Staff Time Required | <input type="checkbox"/> Decrease Capital Expenditures |
| <input type="checkbox"/> Increase Operating Expenditures
(If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues |
| <input type="checkbox"/> Absorbed Within Agency's Budget | <input type="checkbox"/> Decrease Capital Revenues |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget | |
| <input type="checkbox"/> Decrease Operating Expenditures | <input type="checkbox"/> Use of contingent funds |
| <input type="checkbox"/> Increase Operating Revenues | |
| <input type="checkbox"/> Decrease Operating Revenues | |

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue		
	Net Cost	0	0
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.


A. The Department of Administrative Services (DAS) is requesting approval of the attached resolution to amend Milwaukee County General Ordinance (MCGO) 17.207 Grievance Procedure.

B./C. There are no anticipated fiscal costs associated with this procedural change. It is estimated that any costs associated with grievances filed and heard before the Personnel Review Board (PRB) will fall within current appropriations. DAS will work with PRB staff to monitor the number of grievances filed and the level of work generated due to the new procedure.

D. The assumptions used in this fiscal note are that the volume of work generated through this procedural change will be handled within the current capacity of the PRB and PRB staff resulting in no fiscal impact.

Department/Prepared By Cynthia (C.J.) Pahl

Authorized Signature



Did DAS-Fiscal Staff Review? Yes No

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.