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TO: Eddie Cullen, Chair, Personnel Committee

FROM: Paul Kuglitsch, Deputy Corporation Counsel ^{PK}
Margo Franklin, Employee Relations Director

CC: County Clerk George L. Christenson (c/o Shanin Brown)
Theodore Lipscomb, Sr., Chairman, Board of Supervisors
Kelly Bablitch, Chief of Staff, Board of Supervisors
County Executive Chris Abele
Raisa Koltun, Chief of Staff, County Executive

DATE: January 23, 2019

RE: File No. 19-147: Employee Grievance Procedure

The Office of Corporation Counsel and Human Resources have been asked to prepare this report outlining the employee grievance procedure in Milwaukee County.

Under the provisions of 2011 Wisconsin Act 10 (“Act 10”), local governmental units are required to have a grievance procedure addressing (1.) employee terminations, (2.) employee discipline, and (3) workplace safety. Wis. Stat. § 66.0509(1m)(c). Act 10 further provided that “[i]f an employee of a local governmental is covered by a civil service system on June 29, 2011, and if that system contains provisions that address [such grievable events], the provisions that apply to the employee under his or her existing civil service system continue to apply to the employee.” Wis. Stat. § 66.0509(1m)(e).

In Milwaukee County, grievances related to employee terminations and discipline are controlled by a civil service system under Chapter 63, Wis. Stats.¹ See Wis. Stat. §§ 63.10, 63.12. Grievances related to workplace safety are controlled by a local grievance procedure under Section 17.207 of the Milwaukee County Code of General Ordinances (“MCO”).² Both systems were in place prior to June 29, 2011.

¹ An informational report describing Milwaukee County’s corrective action policy, including discipline and termination, was submitted concurrently under File No. 19-164.

² Milwaukee County Ord. § 17.207 has not been updated post-Act 10 and, on its face, only applies to non-represented employees. In practice, however, the grievance procedure has been extended to also cover represented employees since the grievance procedures previously contained in now defunct collective bargaining agreements (“CBAs”) no longer apply (except, of course, for public safety CBAs which contain alternate grievance procedures).

Per MCO § 33.01(1), the Milwaukee County Personnel Review Board (“PRB”) is the body empowered to hear and decide cases of non-BHD employee terminations and discipline pursuant to Wis. Stat. § 63.10(1), and to hear and decide non-BHD employee grievances pursuant to MCO § 17.207. Since the enactment of 2013 Wisconsin Act 203, the Civil Service Commission hears these cases for BHD employees.

In addition to the grievance procedure codified in ordinance, Milwaukee County has implemented an Open Communications policy controlling all employee work-related issues. This policy is described in detail in both the General Milwaukee County and BHD Milwaukee County Employee Handbooks. This policy was not meant to replace the grievance procedure set forth in MCO § 17.207, but rather to enhance it.

Taken together, the civil service system, grievance procedure, and open communications policy provide all Milwaukee County employees with statutory and local protections that exceed those required under state law.

Employee Grievances Under MCO 17.207

As noted above, MCO § 17.207 governs the filing of grievances. There, MCO 17.207(1) clearly defines a grievance as “any controversy which exists as a result of an unsatisfactory adjustment or failure to adjust a claim or dispute” concerning, specifically, (1) the application of wage schedules; (2) provisions relating to hours of work; (3) working conditions; and (4) discrimination based on race, sex, age, nationality, political or religious affiliations or handicap. Notably, the grievance procedure is “not to 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.” MCO § 17.207(1).

Under the ordinance, the steps in the grievance procedure are as follows:

- Step 1. The employee alone or with his/her representation shall explain the grievance verbally to his/her immediate supervisor. Within three (3) working days, the supervisor is to inform the employee of his/her decision on the grievance presented.
- Step 2. If the grievance is not settled at the first step, the employee must prepare a written grievance and submit it to his/her supervisor for confirmation of his/her verbal response. The grievance is then elevated up the chain of command, a hearing is held, and a written decision must be issued within ten (10) working days of having received the grievance initiation form. This second step can be waived by mutual consent of the employee and the department.
- Step 3. [applicable only to the DPW, Parks, and DHHS]. If the grievance is not settled at the second step, the employee may appeal the written decision to the division or district head. The person to whom the appeal is sent, must inform the employee of his/her decision in writing within five (5) days of having received the grievance appeal form.
- Step 4. If the grievance is not settled at the second step or at the third step for DPW, Parks or DHHS, the employee may appeal the written decision to the department head. The

department head must inform the employee of his/her decision in writing within five (5) days after having received the grievance appeal form.

- Step 5. If the grievance is not settled at the second step or if applicable the fourth step, the employee may appeal to the PRB or CSC within five (5) working days after receiving the written decision denying the grievance. The PRB will review the record of the case, hold a hearing as soon as practicable, and issue a final written decision within ten (10) day after the completion of the hearing.

Although the ordinance clearly indicates what constitutes a grievable controversy, employees sometimes do file grievances over other issues when they have disputes with management. In these cases, the PRB is often asked to determine whether the dispute falls within one of the enumerated controversies under MCO § 17.207(1). For example, employees have filed grievances over work assignments. The PRB has taken the position that this type of dispute is not grievable under MCO § 17.207; and, therefore, the PRB does not have jurisdiction to hear it. This does not, however, mean that the employees have no recourse. They can pursue a resolution through the open communications policy.

Open Communications Policy

Both the General Milwaukee County and BHD Milwaukee County Employee Handbooks describe in detail the County's Open Communications policy. Human Resources developed this policy understanding that open communication is essential to ensure the County maintains a professional and supportive working environment. Employees are encouraged to meet with their managers and supervisors and/or HR-Business Partners to discuss work-related issues. If the issues are sensitive or confidential, the employees may communicate directly with their HR-Business Partners. To the extent the issues raised are not resolved, employees are directed to contact the Employee Relations Hotline or submit a Human Resources Complaint form to their HR-Business Partner.

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