

## **New Requirement to Establish an Employee Grievance Procedure** **By Carol Nawrocki, WTA Attorney**

As you are likely aware, 2011 Wisconsin Act 10, often referred to as the budget repair bill, made sweeping changes to the collective bargaining laws applicable to public employees. One of the changes included in the bill is a requirement that all municipal employers adopt a grievance procedure for their employees if the local government does not currently have a civil service system offering protections to employees in place. This article will touch upon the general requirements for such a procedure and hopefully get the town thinking about how it plans to comply with this new law. All municipalities must have a grievance procedure in place that meets the requirements of the new statute (s. 66.0509(1m), Wis. Stat.) as of October 1, 2011.

**Q. Our town only has one part-time employee who is an "at will" employee without any type of contract. Does our town still have to have a grievance procedure?**

A. Yes. All municipal employers must offer a grievance procedure regardless of whether you have employees that are in a union or not. Moreover, the law does not create any exceptions for municipalities that have only seasonal, part-time, or other limited-term type employees.

**Q. What sort of employee issues may the grievance procedure be used to address?**

A. Section 66.0509(1m)(c), Wis. Stat. requires the grievance procedure to address, at minimum, employee terminations, employee discipline, and workplace safety. Unfortunately, the law does not define these terms. So, the town will need to define what these terms do or do not include in the grievance procedure. If your town has an existing employee handbook or employee discipline policy, it should be reviewed and altered if needed to harmonize with the grievance procedure. If your town has never had an employee handbook or discipline policy now would be the time to strongly consider working with a labor law attorney to create one.

**Q. What steps will need to be included in the grievance procedure?**

A. The law only dictates a few specific elements that the grievance procedure must contain. First, there needs to be a written document specifying the process that a grievant and employer must follow. Secondly, there must be a hearing before an impartial hearing officer. And, thirdly, there must be an appeal process in which the highest level of appeal is the governing body of the local governmental unit. See s. 66.0509(1m)(d), Wis. Stat. Beyond these basic elements, the town is free to determine how many steps there will be to the procedure, the format of the form to be used for filing a grievance, the timelines for both filing and acting on the grievance, etc.

**Q. Who should be the "impartial hearing officer"?**

A. The new law does not explicitly define what "impartial" means or what the role of the hearing officer should be. It is likely that employees and unions will file lawsuits that will eventually clarify these questions. In the mean time, the town should think carefully about what it means to be "impartial". We know that many towns have few employees and no human resources department. In most cases, the town board as a whole or a town board designated individual would make the initial decision to terminate or discipline an employee. As a result, a member of the town board that decided the matter or the individual designated to handle the termination/discipline would not be "impartial" and, therefore, should not be the hearing officer. The safest course of action would be to select an independent hearing officer who is not an employee of the town. Our suggestion would be to consider hiring an attorney, a retired judge, an independent labor arbitrator, or a human resources director from another municipality, school district, or county that has experience hearing employee grievances. The town may also choose to have a staff member from the Wisconsin Employment Relations Commission serve as the impartial hearing officer. Be aware that an angry employee and his or her attorney are likely to scrutinize your choice. So, at minimum, whomever you select cannot be someone with a direct interest in the case and it cannot be a member of the town board that will ultimately be hearing any internal appeal of the hearing officer's decision.

**Q. Who pays the costs associated with the filing of the grievance?**

A. Payment of costs should be addressed in your grievance procedure. In the interests of fairness, it is suggested that each party (the employee and employer) pay their own costs associated with handling the grievance. Out of pocket costs might include things like attorney fees, investigation, photocopying, etc. Also indicate in your grievance procedure what fees the hearing officer will charge.

**Q. Will the final decision of the town board on any appeal be the end of the road for the employee grievance?**

A. The new statute says the "highest level of appeal" is the governing body of the local governmental unit, s. 66.0509(1m)(d)3, Wis. Stat. However, most labor law attorneys believe that there will still be the potential right to appeal to circuit court under Chapter 227 of the Wisconsin Statutes. That section would involve a judge (rather than a jury) reviewing the record created during the grievance process to see if the evidence contained therein adequately supports the decision.

**Q. Does WTA have a model grievance procedure our town can take a look at?**

A. WTA will be putting together a basic sample that includes the required elements. Such a sample will be made available on our website in the near future. Any member town that is unable to access information via the website may call our office for a copy once it becomes available. However, many options exist for creating such a procedure and there really isn't a "one size fits all" grievance procedure. Each municipality is strongly encouraged to have a labor law attorney review its grievance procedure prior to final adoption.