



Legislation Text

File #: 34311, Version: 1

Fiscal Note

No appropriation is required to establish this procedure.

Title

Creating Section 3.53(25) of the Madison General Ordinances establishing a Grievance and Arbitration Procedure for general municipal employees.

Body

DRAFTER'S ANALYSIS: Discussion on these ordinances as well as the employee handbook began in June of 2012. General municipal employees will have their current collective bargaining agreements end on December 31, 2014 to be replaced by the handbook and the Committee on Employee Relations. Representatives of City management, along with the Mayor's office and Human Resources worked to develop the handbook and committee structure. Employee representatives have been active and engaged in this process and have provided continuous input and commentary over the course of several meetings. While not labor agreements, the goal of all involved is to give employees continued input into the conditions of their employment with the City of Madison. Additional ordinances will be drafted for introduction at the July council meeting.

The Common Council of the City of Madison do hereby ordain as follows:

Subsection (25) entitled "Grievance and Arbitration Procedure for General Municipal Employees" of Section 3.53 entitled "Civil Service System" of the Madison General Ordinances is created to read as follows:
“(25) Grievance and Arbitration Procedure for General Municipal Employees.

- (a) Grievable Matters. A matter is grievable under this ordinance if it involves members of Compensation Groups 15, 16, 20, 28, 31, 32, 33, 71, 83 and the general interpretation, application, compliance with, or enforcement of Sections 3.32 and 3.54, MGO, with the exception of any matter covered under the City's Personnel Rules or any matter covered under a valid labor contract which are excluded from this Ordinance.
- (b) Grievance Procedure. Grievable matters allowed under this section (collectively "grievances") shall proceed in compliance with the time limits and procedures outlined below:
 - 1. Employee representatives or stewards may confer with Employer representatives on grievances filed pursuant to this section without loss of pay. However, the number of such Employee representatives or stewards shall be limited to one (1) at Step One and two (2) at Step Two unless another number is mutually agreed upon by the parties.
 - 2. All grievances must be submitted in writing within thirty (30) days of the event giving rise to the grievance, or within thirty (30) days of the time the employee knew, or should have known, about the event giving rise to the grievance with the exercise of reasonable diligence, but in no event more than ninety (90) days from the date of the occurrence; otherwise the right to file a grievance is forfeited and no grievance is deemed to exist.
 - 3. Time limits set forth in the grievance procedure, with the exception of the initial time limit for filing a grievance, shall be exclusive of Saturdays, Sundays and Holidays. Time limits for processing grievances from one step to another in the procedure may be extended by mutual agreement of the parties.
 - 4. All grievances shall be subject to the following procedures:
 - 5. Employee-Management Committees shall meet monthly to discuss grievances and matters of concern to either party. The parties shall notify each other of such matters at least one (1) week before the meeting. The following steps shall apply to all grievances:

Step One: The grievance shall be reduced to writing and presented

to the employee's immediate supervisor on the approved form with a copy sent to the Employee and Labor Relations Manager. Within ten (10) days of receipt of the grievance, the supervisor shall meet with the grievant(s) and the Employee's representative to discuss the grievance. Within five (5) days following the date of this meeting, the supervisor shall furnish the employee with a written answer to the grievance, a copy of which shall be forwarded to the designated Employee representative and the Employee and Labor Relations Manager.

Step Two: The grievance shall be considered settled in Step One unless within five (5) days after the immediate supervisor's written answer is due, the grievance is again reduced to writing and presented to the Department/Division Head with a copy sent to the Employee and Labor Relations Manager. The Department/Division Head, or his/her designee, shall, within ten (10) days of receipt of the grievance, confer with the employee and Employee's representative before making his/her determination. Within five (5) days following the date of this meeting, the Department/Division Head shall furnish the employee with a written answer to the grievance, a copy of which shall be forwarded to the designated Employee representative and the Employee and Labor Relations Manager.

Step Three: If the grievance is not settled at Step Two or if any grievance filed by the City cannot be satisfactorily resolved by conference with appropriate representatives of the employee, the parties may elect to proceed to mediation. If either party objects to mediation, the parties will proceed directly to arbitration.

- (c) Mediation. The purpose of mediation is to act as a means for the parties to communicate constructively, with the assistance of the mediator, on the issue being disputed with a goal of resolving the issue using consensus based problem solving. For grievances proceeding to mediation the following procedures apply:
1. Within fifteen (15) days of the receipt of the Department/Division Head's decision at Step Two, any party wishing to pursue the grievance past Step Two can send a written "Request to Initiate Mediation" to the other party.
 2. Within ten (10) days of the receipt of the "Request to Initiate Mediation," the City and the Employee Representative will endeavor to reach mutual agreement on a mediator. The mediator may come from the list of mediators supplied by the Wisconsin Employment Relations Commission or the Federal Mediation and Conciliation Service.
 3. If no agreement is reached on a mediator, the parties by lot will select five (5) names from the mediator panel. The parties shall alternately eliminate names until the mediator is selected. The flip of a coin shall determine which party is to eliminate the first name. The parties shall immediately contact the selected person to ascertain the person's availability and willingness to undertake the mediation and shall notify the parties of acceptance. In the event of non-acceptance, the selection process will be repeated until a mediator is selected.
 4. Each of the parties shall select their respective representative(s) to attend the mediation. Employee participants may have the grievant and two (2) Employee Representatives attend the mediation without loss of pay. Representatives must have the necessary authority to settle the grievance.
 5. The procedure at the mediation will be determined by the mediator after consultation with the representatives.
 6. No later than ten (10) days before the mediation, each party will notify the other party of the name(s) of those people who will appear at mediation, including that party's representative(s) and any other individuals it deems necessary to resolve the dispute.

7. No later than ten (10) days before the mediation, each party will simultaneously exchange with the other party, and send to the mediator: (a) a summary of each party's position in the dispute and the relief requested, said summary to be no longer than ten (10) pages; (b) copies of all documents each party refers to in its summary
 8. To facilitate a successful resolution of the grievance at mediation, all parties agree, and understand, that mediation discussions are for the purpose of reaching a mutually acceptable resolution of the grievance. Accordingly, all parties agree that mediation discussions are confidential and may not be used by any party, in any way, at any subsequent arbitration. Further, all parties understand that they may not call the mediator as a witness in any subsequent arbitration. Notwithstanding the foregoing, nothing shall prevent any party from introducing documents at any subsequent arbitration that were utilized at mediation provided that the documents were not created during the mediation.
 9. No formal record or transcript of the mediation will be made.
 10. Payment of the mediator's fees and other reasonable expenses will be split equally between the parties to the mediation.
- (d) Final and Binding Arbitration. For grievances proceeding to final and binding arbitration, the following procedures apply:
1. Within fifteen (15) days after the close of mediation, if the parties were unable to settle the matter at mediation, any party may file a written notice of the intent to proceed to arbitration with the other party. The notice shall identify the applicable contract provision, the grievance (s), the Department and the employee involved. If notice is not filed within fifteen (15) days, the matter is deemed settled at Step Two.
 2. If the parties cannot agree on an arbitrator, either party may request that the Wisconsin Employment Relations Commission (WERC) or Federal Mediation and Conciliation Service (FMCS) submit a list of five (5) arbitrators to both parties. Within five (5) days of the receipt of the WERC's or FMCS' list, either party may notify the WERC/FMCS, and the other party, of their intent to reject the entire WERC/FMCS list. The WERC/FMCS shall submit a new list which shall not duplicate the original list. The option to reject a list may only be exercised by each party once per grievance.
 3. If no agreement is reached on an arbitrator, the parties by lot will select five (5) names from the arbitrator panel. The parties shall alternately eliminate names until the arbitrator is selected. The flip of a coin shall determine which party is to eliminate the first name. The parties shall immediately contact the selected person to ascertain the person's availability and willingness to undertake the arbitration and shall notify the parties of acceptance. In the event of non-acceptance, the selection process will be repeated until an arbitrator is selected.
 4. An arbitrator must be picked and the arbitration must be scheduled within six (6) months from the date the last panel was submitted to the parties or the grievance shall be moot. This provision shall not be construed to mean that the arbitration hearing must take place within six (6) months, only that it be scheduled within six (6) months.
- (e) Hearing. The hearing shall be held in Madison, Wisconsin, at a time and place convenient to the parties at the earliest possible date after the arbitrator has been notified of their selection.
1. The grieving employee(s) and not more than two (2) Employee representatives may be present at the hearing without loss of regular wages if the hearing is scheduled during their regularly scheduled workday. Not more than five (5) employees called by the Employee or Employee's representative as witnesses may appear at the hearing without loss of regular wages if the hearing is scheduled during the employees' regularly scheduled workday. Employees who appear as witnesses during their regularly scheduled work day and do not testify at the hearing will not receive their regular wages unless the matter is settled during the course of the hearing.
 2. The arbitrator shall have the authority to administer oaths and to issue subpoenas at the

request of the parties and shall be responsible for the fair and orderly conduct of the hearing and the preservation of the record. Any party requesting a subpoena will be responsible for the fees associated with the subpoena. All testimony shall be taken under oath and shall be recorded stenographically or by a recording machine under the supervision and control of the arbitrator. The arbitrator shall take such evidence as in his/her judgment is appropriate for the disposition of the issue(s) presented. Statements of position may be made by the parties, documents may be submitted into evidence and witnesses may be called to testify.

3. The arbitrator shall have the initial authority to determine whether or not the dispute is procedurally arbitrable under this ordinance. If the dispute is procedurally arbitrable, the arbitrator shall proceed with the hearing and determine the merits of the dispute in accordance with this ordinance and the applicable sections of Chapter 788 of the Wisconsin Statutes. If the Wisconsin Statutes and City of Madison Ordinances are in conflict regarding any procedure for arbitration, the Wisconsin Statutes shall control.
4. In making his/her decision, the arbitrator shall neither add to, detract from, nor modify the language in any ordinance or work rule in arriving at a determination of the issue(s) presented. The arbitrator shall have no authority to change wage rates or salary schedules.
5. The arbitrator shall only decide the issue(s) submitted by the parties for arbitration and shall have no authority to determine any other issue. The arbitrator shall not submit observations or make declarations of opinion on matters that are not directly essential in reaching a determination of the issue(s) presented.

(f) Fees and Expenses. Fees and expenses for the arbitrator's services shall be borne equally by both parties.

(g) Decision. The arbitrator shall submit his or her decision affirming or reversing the action with his/her reasons in writing to the parties within sixty (60) calendar days of the close of the hearing or the submission of the parties' briefs, whichever is later. No decision may be retroactive for a period greater than thirty (30) days prior to the presentation of the grievance in Step One. The decision of the arbitrator is final and binding without recourse to further appeal."