



COUNTY OF DANE

DEPARTMENT OF ADMINISTRATION
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GREG BROCKMEYER
Director of Administration

Date: October 9, 2024

To: Employee Group #65
Erik Anderson

From: Greg Brockmeyer
Director of Administration

Subject: Step 3 Grievance Decision – IHO Scheduling

A third step hearing was held on September 27, 2024. I have summarized the primary arguments of each of the parties below:

Employee Group #65

Erik Anderson presented:

- There are five separate grievances that we are hearing today. These five went to Independent Hearing and have not been scheduled. One appeal goes back to March 8th, with the most recent appeal being August 5th.
- The handbook states that appealed grievances should be processed in the following manner. A panel of impartial hearing officers will be selected and mutually agreed upon by both parties within five days. This process was not followed.
- At meet and confer we proposed dual default language where both Employer and Employee Group are held to the same timelines. There is no step after step 4 and the Employee Group is left with no recourse so we're asking for reciprocal requirements.
- There is a mutual obligation and it is not the Employee Group's responsibility to hound the employer to get these officers selected and scheduled.
- It is not okay that these things proceed to step 4 unnecessarily as we believe that grievances should be settled at the lowest step possible. It can be expensive.
- The remedy is to have all grievances sustained due to employer's failure to process grievance in a timely manner.

Management:

Carlos Pabellon presented:

- The deadlines mentioned by Erik Anderson are accurate and there are mutual obligations between Corporation Counsel and the local representative to get these handled.
- These five grievances were difficult to schedule due to the creation of the new arbitrability clause in the EBH and the parties' need to determine if they should go to the IHO review process, rather than straight to an IHO Hearing. This requires discussion between both sides on whether they agree.

- No one from our office is ignoring emails and we attempt to schedule these as soon as we can. These will also be subject to workload at the time.
- We don't see this as a Corporation Counsel failure, but as a reflection of the fact that there numerous grievances that were pending.

Amy Tutwiler presented:

- I reached out to Attorney Sweet on August 5 after Erik Anderson's email. However, we did not hear back and proceeded to follow up later.

Decision

The grievance is denied.

As is required under the grievance process established by the Employee Benefit Handbook, my decision must be based upon the language of the Handbook itself. When the Employee Benefit Handbook is silent on a particular topic, it is a general rule that past practice or in our parlance, existing benefits, ought to guide how the parties resolve the topic. Both past practice and the language of the handbook refer to a mutual selection process, whereby both parties must take on their responsibility to communicate with each other to establish a Step 4 Hearing. The Employee Benefit Handbook writes,

A panel of Impartial Hearing Officers (IHO) has been established from which the IHO will be selected. The IHO shall, if possible, be mutually agreed upon by the parties to the grievance. If agreement on the IHO is not reached within ten (10) days after the date of the notice requesting an impartial hearing, then the IHO shall be selected by the parties within five (5) days from the panel using an alternate strike process or other agreeable means. Each party shall pay one half (1/2) of the cost of the impartial hearing. [Employee Benefit Handbook, Grievance Process, Section 3, paragraph b]

Under both timeline scenarios, the Employee Benefit Handbook uses the language of mutuality. First, the language in the Handbook offers a mutual agreement on the process for selecting an IHO. And second, if an IHO is not selected within five days, then the process would use an alternate strike "or other agreeable means." Under both timelines, both parties have a responsibility to communicate with the other as to how to proceed in the IHO selection process.

As Corporation Counsel presented during the meeting, they have been reaching out to the Represented Employee Groups to determine the path forward on selecting an IHO from the panel of IHOs. However, as Corporation Counsel presented at the hearing, they have yet to receive a response from the Represented Employee Groups on a mutually agreeable process. These facts went undisputed by the Employee Group Representative at the hearing.

Since the handbook uses the language of mutuality and the Represented Employee Groups have not been upholding their responsibility to communicate with Corporation Counsel, the Grievance is denied. Further, it is nonsensical to assert that by avoiding their responsibility to contribute to a mutual selection on an IHO, that the Represented Employee Groups should be awarded a procedural victory to several grievances, including one matter of discipline.

Additionally, topics that are currently a part of the discussion of the Annual Review of the Employee Benefit Handbook, have no bearing on this process. The County has agreed to abide by the current Handbook. Proposals that have yet to be agreed upon are not germane to the discussion.

If you have any questions, you may contact me at 608-266-4519.

Sincerely,

A handwritten signature in black ink that reads "Greg Brockmeyer". The signature is written in a cursive style with a horizontal line underneath the name.

Greg Brockmeyer
Director of Administration

Cc: Nick Bubb
Carlos Pabellon
Amy Tutwiler
Ben Ratliffe