Minutes from 6/27/11 meeting of Transition Committee

This meeting was called to order at 4:02 pm in the Vilas County Courthouse Conference Rooms by Chairman James Behling with the following committee members present: Bob Egan, James Behling, Sig Hjemvick, Emil Bakka, Ed Bluthardt and Erv Teichmiller. Others present during the meeting: Attorney Andy Phillips, Martha Milanowski, Ken Anderson (News Review), Monica Baltich (Lakeland Times) , and approximately 9 County employees. Excused: Linda Thorpe

Open meeting notices and quorum present verified by the Chairman.

Approve agenda to be discussed in any order by the Chair.

Motion by Ed Bluthardt, second by Emil Bakka to approve the agenda to be discussed in any order by the Chair. All voting aye. Carried

Approve minutes of June 2, 2011 meeting.

Motion by Emil Bakka, second by Ed Bluthardt, to approve the minutes of June 2, 2011 meeting. All voting aye. Carried.

Meeting Time. J. Behling indicates that late afternoon meetings may be becoming a hardship for some committee members. Ed Bluthardt thinks that an earlier time, at least during the summer, may be preferable. Bob Egan thinks it's difficult for employees when meetings are scheduled during the day. Not many employees have been attending the most recent meetings. Sig Hjemvick thinks the later meetings are preferable, as does Emil Bakka. Sig Jhemvick moves to continue the meetings at 4pm or 4:30pm, Bob Egan seconds. All voting aye. Carried.

Grievance Policy.

Jim Behling would like Attorney Phillips to work through the decision tree with the Committee at this meeting. Attorney Phillips notes that once the Committee answers the decision tree questions, he will draft the policy according to those answers. He thinks this policy should go to the full Board in September. Consortium meetings will be ongoing and this timeline will work in conjunction with those meetings. The law is passed and the timeline is now set, we no longer have a buffer and must comply with that timeline.

Ed Bluthardt distributes a draft grievance policy to the Committee and takes the Committee through the draft. Jim Behling thanks Supervisor Bluthardt for preparing this draft and asks the Committee members to further review this policy for further discussion at a future meeting. Sig Hjemvick presents an outline regarding the grievance process and the procedural issues associated with the same. Work place safety issues have a different process to follow, with the Safety Committee hearing those matters. ATP indicates that the County can choose to designate any committee it wishes to hear any particular matter under this policy. Jim Behling again asks the Committee to review this document and bring it back for further discussion. Ed Bluthardt notes that there are similarities between the two documents.

a. Action Items. Jim Behling provides update on the concept of a shared impartial hearing officer (IHO). Meetings have occurred with Oneida County and it is anticipated that another meeting will occur with Oneida and Lincoln County. Ed Bluthardt notes that the authority and duties of the IHO are covered in the draft grievance policy he distributed. Ed Bluthardt thinks that the IHO issue can be resolved and set by this committee within the next 30 days.

b. Decision Tree. Andy Phillips leads the committee through the decision tree as to what the grievance policy will look like. Many pieces may already be contained in the working drafts presented to the Committee. Pre-grievance process is discussed. Committee agrees with what is contained in this section.

- **i.** Definitions of discipline and termination. Sig Hjemvick and Erv Teichmiller are working on this.
- **ii.** Grievance. Should be written requirement.
- iii. Employee definition. What is a part-time employee. Definitions of both contracts and handbook are discussed. Ed Bluthardt will work on this definition. Majority of committee wants permanent part-time employees included. LTEs should be excluded (typically excluded under the union contracts). Political appointees (corporation counsel, other department heads) are discussed. What about the new human resource manager – Jim Behling states that this position should not have access to the grievance process. There is a conflict between ALL employees language that is included in the new law, and other language regarding particular positions. We need a list of the department heads and who is the appointing body, and the names and faces of the appointment power (statutory appointment). Discussion regarding whether statutory appointments should or should not have access to the grievance process. MJM will get this statutory appointment list to Attorney Phillips before the next meeting.
- **iv.** Workplace safety – different process/policy within the policy? If so, how will we define workplace safety? The most simple way – relates to a violation of state or federal law. Most broad – involves the safety of any employee. Ed Bluthardt reads from his document the definition of workplace safety. There is a concern as to how broadly this should be defined. The power of an IHO for these matters is discussed. Erv Teichmiller asks for language from Andy Phillips on this issue.
- **v.** Employee advocate. See d. below.
- **vi.** With whom is the grievance filed – the HR manager. This elevates the process, rather than filing with the department head. Copy the department head instead.
- **vii.** Can the person in receipt of the grievance reject it? Timeliness. HR should be in the position to make decisions as to relevancy. Are those decisions appealable? This insulates the process. The IHO should be empowered to make preliminary decisions. There needs to be appeal language. Andy

Phillips recommends accelerating the timeline regarding appeal of these decisions/ matters.

viii. Timeline for filing the grievance. Consensus is 10-working days for filing grievance.

ix. Statute of repose (absolute) vs. statute of limitations (as soon as you knew or should have known of the event) is discussed. Consensus is "reasonably should have known." Department head will have to show proof of when they've informed the employee and have taken adverse action against the employee.

x. Penalty for failing to comply with required timeline. Is there an extension possibility? Discretion of the HR director discussed. Modified by mutual agreement by grievant and administration. Committee agrees to possibility of an extension by mutual agreement.

xi. Grievance needs to be in writing.

xii. Information to be included in grievance – use Ed Bluthardt's draft as a start. Employee should give us their story. Andy Phillips will add some language (all reasons that employee believes that the adverse action was taken…).

xiii. Penalty of filling out a blank grievance form – this should not be allowed and should not be appealable to the HR manager. Must allow appeal to IHO if requested under an expedited process.

xiv. Amending grievance after initial filing? Erv Teichmiller thinks it should be allowed – (e.g. if information was left out or if a new witness is discovered). Shouldn't be surprise on either side when you get to the hearing. Need to set deadlines to allow enough time for grievant to establish grounds for grievance and for management to respond to and understand the grounds for the grievance. Committee agrees that they should allow ability to amend up to 15 days prior to date of hearing with IHO.

xv. Steps before going before the IHO and after filing of the grievance with HR director. Andy Phillips feels there should not be a mandatory step before the IHO. You've already had the best practices and have involved the HR manager and department head and employee. To involve them again would be repetitive and futile. Also, Personnel Committee, if involved earlier on, may not be able to review the matter at the full board final appeal level as they've already been involved and cannot be impartial. General statement in grievance process encouraging the conciliation/mediation process is discussed, but it shouldn't be mandatory. Workplace safety process would go to another section and have a separate process. We need to be aware of potential due process issues. Committee consensus thinks there should be no mandatory steps but we will encourage conciliation in the statement of purpose.

xvi. HR manager must either accept or deny the grievance. If accepted, what authority does HR manager have (e.g. modification of grievance, 5 day

suspension down to 3 day suspension). Sig Hjemvick thinks there should be some authority to modify, as does Jim Behling. Erv Teichmiller disagrees, as he thinks it's a potential conflict with the supervisor and that it's an arbitrary determination that could be potentially divisive. Andy Phillips – allowing this authority could encourage resolution/conciliation, by talking with both parties. The consensus is that HR manager should have some authority to modify.

xvii. Should denial be in writing? Yes.

xviii. Time frame for issuing a written denial. 10 days from receipt of grievance. Failure to meet deadline: discipline for HR deadline, employee has right to file in front of IHO (automatically goes before hearing)

xix. Request for a hearing – 10 working days from date of mailing of response and must be filed with the HR manager.

xx. Can HR director reject request as being untimely? Yes, but can still be appealed under a speedy remedy with a preliminary decision.

xxi. Does HR manager assign an IHO? Action item for Ed Bluthardt and Jim Behling. Person must be impartial under the due process clause, that is all that is required. Erv Teichmiller would like this person as disconnected from county government as possible, for example retired attorneys. Cost considerations are discussed.

xxii. Hearing fee? No. Costs for IHO will be borne by the County, hope is that the resources will be shared between the counties through an MOU.

xxiii. Employee statement as to proposed remedy must be included on the request for hearing.

xxiv. Can someone other than the employee file the request for a hearing? Consensus is that the employee should file. Erv Teichmiller: if employee advocate does their job well, there should be no employee lacking the ability/tools to file the grievance.

xxv. Pre-hearing procedures. Scheduling the hearing within a certain time frame – 45 days from calendar date (tentative, must be discussed with partners who are sharing IHO resources)

xxvi. Discovery – exchanging of documentary evidence upon written request, at least 15 days prior to hearing, any disagreement can be resolved by IHO. Andy Phillips reviews various forms of discovery in civil lawsuit context and labor relations context. Define it and put a deadline on it.

xxvii. Limitations on who can represent the employee's interest? Can union rep do this? Employee can hire a lawyer at their own expense. Jim Behling states that allowing a union steward to fill that role could create an unnecessarily adversarial situation between the County and the union. This is not a union matter. Committee will delay this matter until the next meeting.

xxviii. Disclosure of witnesses before hearing – 10 days before hearing.

xxix. Does IHO have ability to exclude evidence before hearing? Yes.

xxx. Can IHO serve as a mediator prior to hearing? There is a danger in this, as neither side will want to give up their case, but if parties consent in writing to it, this could be an advantage to both parties.

c. HEARING OFFICER. See a. above.

d. Employee Advocate. Bob Egan distributes a draft document regarding the employee advocate duties. Jim Behling states that this document contains duties beyond what this individual would do. He sees the advocate as a "process cop" rather than a problem resolver (second sentence implies problem resolver). Ed Bluthardt thinks the duties set forth in this document may resemble a defense attorney. Bob Egan feels this is more like a shepherd position. The draft grievance procedure distributed by Bluthardt includes the right to have an attorney. Andy Phillips thinks the title of this position may be misleading. This is a process-driven position to ensure that the employee is being given a fair hearing. Maybe "employee ambassador" would make more sense. We want employees to feel like they are getting help through the process. There needs to be duties, some training process/certification, then we must decide who appoints them. The County would provide the certification program (through outside counsel, corporation counsel, the human resources manager, etc…) Jim Behling thinks this position may resemble a union steward, but Andy points out that the steward is elected by the employees and has an obligation to advocate for the employee. This position is not the same as a steward. Sig Hjemvick thinks the employee should have the choice as to what this position will do. Erv Teichmiller thinks this person will help the employee get through the process (i.e. travel agent/tour guide) so they believe the process has worked on their behalf, even if it doesn't result in their favor. Erv Teichmiller questions the idea of having a supervisor saying "No" to an employee being an employee advocate. Egan explains that a small department (e.g. 2-person department) may not have the time to devote an employee to this process from time to time. But Erv Teichmiller points out that this places the supervisor in a potential tension position and thinks maybe the HR manager could make this decision. The Supervisor could make a recommendation to the HR manager as to whether their employee could take on these additional duties, given the existing departmental duties. Jim Behling states he expects the supervisor to make this call fairly and impartially. If not, the performance issue is with the supervisor, not the employee, and that in fact could lead to a discipline action. Jim Behling asks Bob Egan and Linda Thorpe to take all of these comments into consideration and come back with a second draft for the next meeting. He thinks this is an excellent start.

e. OTHER: **Discussion regarding policies that would be subject to the grievance policy.** Sig Hjemvick and Erv Teichmiller have looked into this further. Erv Teichmiller points out that policies could be included in the grievance policy, there is latitude for the County to include other policies. Andy Phillips indicates that the County has broad discretion to include policies it so chooses (in addition to

workplace safety, which is in fact required under the law). If a particular policy is at issue within the disciplinary matter, the policy would automatically be involved in the grievance. The question is how broad do you want to make this grievance policy. Erv Teichmiller thinks that an employee performance evaluation should be a part of the grievance policy. The union contracts have allowed grievances to be filed on much more. Jim Behling asks Hjemvick and Teichmiller to further review this matter and come back to the committee with specific recommendations as to which policies should be subject to the grievance policy. Ed Bluthardt asks whether incorporating an appeal process through any given procedure (e.g. performance evaluation) would solve this matter without bringing it into the formal grievance process. Jim Behling thinks that a performance evaluation including a discipline/performance improvement plan would kick in the right to grieve the matter. Sig Hjemvick wants the evaluation process to be fair and by including an appeal in that process may decrease the likelihood of an effective performance review system. Erv Teichmiller states that he and Sig Hjemvick must look at the definitions of termination and workplace safety and how they affect which policies may be subject to the right to grieve.

Andy Phillips will have draft language at the next meeting to reflect the decisions made by the Committee thus far in going through the decision tree. Jim Behling thanks the Committee for their work this afternoon/evening.

Public Participation. None.

Review and respond to employee correspondence - None.

Letters and communications – Emil Bakka presents Linda Thorpe's written correspondence regarding training subgroup and options. July 12 training in Oneida County is an update and overview of the BRB, modifications to BRB by Legislature, and training on policy-making branch and executive branch of county. Linda Thorpe is going to this training. Jim Behling states that upon completion of the grievance policy, we need to move on rapidly to benefits. The Committee has a spread sheet of benefits currently provided through the bargaining contracts.

Set next meeting date and time - July 14, 2011 at 3:30 p.m. Next agenda: finish grievance policy and report on action items.

Adjournment Chair calls the meeting adjourned at 7:09 p.m.