Minutes from 7/14/11 meeting of Transition Committee

This meeting was called to order at 3:30 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 18 County employees.

Open meeting notices and quorum present verified by the Chairman.

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

Motion by Linda Thorpe, second by Erv Teichmiller to approve the agenda to be discussed in any order by the Chair. All voting aye. Carried

Approve minutes of June 27, 2011 meeting.

Motion by Emil Bakka, second by Ed Bluthardt to approve the minutes of June 27, 2011 meeting. All voting aye. Carried.

Meeting Time. Consensus of the Committee is that the meetings should be held at 4:00 p.m.

Carryover from last meeting (xxvii. from 6/27/11 agenda): Discussion on who will represent the employee's interest in the hearing. Erv Teichmiller doesn't think we should be telling the employee who they can have to assist them. Sig Hjemvick agrees, this person will need to be an individual with whom the employee is comfortable. Linda Thorpe notes that this is a different issue than an employee advocate/ambassador (Jim Behling refers to the advocate/ambassador as a "process cop"). Jim Behling would like this process to be separated from the grievance procedure that has been in union contracts – this is a different process. Ed Bluthardt is not opposed to a union rep assisting the employee. Emil Bakka thinks the employee should have the right to choose who will represent them, union or non-union. Andy Phillips: due process doesn't require the County to expand the employee's right to representation to someone other than an attorney (e.g. a union representative). Ed Bluthardt states that there should be a limitation regarding the number of individuals an employee can bring to the hearing to represent them. Motion by Erv Teichmiller, second by Emil Bakka to not restrict the employee's right to choose representation in the grievance procedure. Discussion: Sig Hjemvick thinks one representative should be allowed, but not a panel. Ed Bluthardt brings up the issue of a fellow employee representing the grievant and whether that employee would get paid for that. Erv Teichmiller states that there can be limitations placed on this. Voting Aye: Emil Bakka, Erv Teichmiller and Bob Egan. Opposed: Ed Bluthardt, Sig Hjemvick, Linda Thorpe and Jim Behling. Motion fails. Motion by Sig Hjemvick, second by Erv Teichmiller to allow the employees to have one representative of their choice represent them through the entire process. Ed Bluthardt thinks this may eliminate their ability to hire a lawyer. Linda Thorpe states they will already have an ambassador, but Ed Bluthardt points out that the ambassador will only advise on process, not on the arguments associated with the case. Sig Hjemvick amends his motion to not interfere with their right to counsel, one representative of their choice. Andy

states that this could lead to concerns with who is the spokesperson. You can say *a* representative, and that can include legal counsel. Bob Egan asks whether the person would be allowed to change their representative during the process, at different steps. The consensus of the committee is that this is acceptable. Andy states that this process should be a fair and equitable process that can resolve the matter effectively and efficiently. The amended motion is withdrawn, back to the original motion. Andy Phillips: employee gets a representative, suggests that the representative shouldn't be an employee. It puts a co-employee in an awkward position and this creates conflicts. It's better to have separation between an employee and the representative. Ed Bluthardt agrees to limiting official representation to non-employees. Erv Teichmiller states that a union steward may be chosen because they have been doing it for many years, versus a different employee who doesn't have any experience. Motion by Ed Bluthardt to amend motion by excluding employees from being a representative. Amendment dies for lack of a second. Vote on original motion: Voting aye: Sig Hjemvick, Erv Teichmiller, Linda Thorpe, Bob Egan and Emil Bakka. Opposed: Jim Behling and Ed Bluthardt. Motion carried.

Grievance Policy.

a. Action Items. **Scope of actions that would be subject to the grievance policy –** Erv Teichmiller and Sig Hjemvick were going to further review this. Sig Hjemvick feels we need to avoid unfair practices. How do we grieve unfair treatment? This would in essence open the grievance system to all county policies. Jim Behling states that if we move into an environment that emphasizes mobility, cross-training to fill a need, we may be limiting our ability to do so if we allow any policy decision to be subject to the grievance policy (e.g. assigning to a different shift, different job duties). Sig Hjemvick would think that the employee would have to define how it is unfair. Jim Behling thinks this is too broad. If we have good employee management procedures and a good HR manager, with accountable department heads, we do not need to broaden this policy. Erv Teichmiller: if a supervisor applies provisions of the employee handbook differently/inappropriately, would that be grievable, or would it be grievable if the employee said no to the directive and is disciplined for doing so. Andy Phillips: it depends on how you define discipline. This is defined in the draft Grievance Policy drafted by Andy Phillips – policy is distributed to the committee members and the public in attendance. Ed Bluthardt: the definition has been enhanced and seems to fit what the committee was discussing at earlier meetings. Andy Phillips: policy decisions can be dealt with in ways other than the grievance system (e.g. through the HR department). Erv Teichmiller is not totally comfortable with limiting it to solely what the law requires, a narrow range of grievable issues. It's difficult to define further issues subject to grievance but he thinks that there should be additional rights under the grievance system other then discipline, termination and workplace safety. Jim Behling: our employees are professionals and we are now in a situation that we have an opportunity to knock down some barriers and allow for cross-training, consolidation activity, without having this sort of action grievable. It's an opportunity to treat employees more professionally. Ed Bluthardt: we have a deadline and have to pass this by a date certain (October 1, 2011). Draft handed

out is for discussion and to further guide the committee in making decisions on this process – it represents what the committee has discussed in earlier meetings.

b. Decision Tree.

- **i.** Recording of hearing. Digital recording is preferred.
- **ii.** Is hearing open to the public? The IHO is not a governmental body, so open meetings law doesn't apply. Counsel: should respect the privacy of the issue and not have it open to the public. The grievant can bring people with them, and the IHO can decide if they can stay. Shouldn't have to notice it under Chapter 19.
- **iii.** Burden of Proof. Who has the obligation to prove something to the IHO. In a suspension, who has the burden of proof? The employer has taken the action, employee submits grievance, employer responds. Counsel: the employee should have to prove that the decision was wrong. The committee has the option to decide how this should work. Erv Teichmiller: in a small claims case, the plaintiff has the burden of proof. The employee should have the burden of proof. Consensus is that employee should have burden of proof.
- **iv.** What is the burden of proof? In draft policy, clear and convincing evidence is the standard. This is the middle standard. The Wisconsin standard jury instructions describe this, and the IHO will need to know how to evaluate this. Ed Bluthardt thinks this standard is fair and will work. Consensus: clear and convincing evidence.
- **v.** Who represents management? Counsel: this should be left silent, as it depends on the circumstances. Agreed.
- **vi.** Can the IHO ask questions of the witnesses? Yes.
- **vii.** Are parties allowed to file briefs after the hearing? This could lead to less efficient process. It's another opportunity to argue the case. Consensus: No.
- **viii.** What kind of information must be included in IHO decision? Page 6 of draft policy: (6)(a)-(g). Conclusions of law will involve the burden of proof standards: e.g. "I find that administration abused its discretion in terminating employee x." Consensus: agrees with draft language at (6)(a)-(g). Erv Teichmiller: what about failure of the IHO to issue written decision will result in the matter going directly to the County Board? Andy Phillips will review this possibility and get some language on it.
- **ix.** Remedies. Draft language is discussed. Limitation on back pay is discussed. This may encourage the process to move along. Process may take more than 30 days. Ed Bluthardt: What if it's the County's fault for delays – this limitation may not be fair to the employee. Maybe we should keep time period consistent with the time periods of the entire process as a whole. Jim Behling thinks this provides an incentive to move along. Erv Teichmiller

feels we should look at total time period allowed under all steps and limit back pay mirroring that time period. Consensus: 75 days back pay. Erv Teichmiller thinks back pay should reflect the number of days the employee was out of work (no cap on back pay). Ed Bluthardt – what happens about agreed-upon extensions? Motion by Ed Bluthardt to include limitation of 75 working days for back pay in the remedies. Second by Linda Thorpe. Voting aye: Jim Behling, Linda Thorpe, Ed Bluthardt, Emil Bakka, Sig Hjemvick, Bob Egan. Opposed: Erv Teichmiller. Motion carries.

x. Appeal issues. Jim Behling thinks both parties should have appeal process open to them (to the county board). 1.05 (2) of draft policy is discussed. Remedies under the Board appeal mirror those remedies available at the hearing with the IHO. Back pay issue is discussed. Erv Teichmiller moves that back pay be equivalent to actual days lost (under reinstatement). Ed Bluthardt seconds. 6 in favor of the motion. Opposed: Jim Behling. Motion carried.

c. HEARING OFFICER. Ed Bluthardt updates the committee. Shared IHO concept was discussed with several different counties, but recently the idea fell apart and the other counties have pulled out and will handle in-house. We may look into using court commissioner, district attorney staff or others who will have the background to handle these matters. Jim Behling thinks we should revisit this with Oneida County. Job description for this individual will not be included in the policy. Authority of this individual will be part of the policy. Andy Phillips has drafted language on this and the committee can review this. Erv Teichmiller thinks the court commissioner may be a viable option for IHO, as it is separated from county employment.

d. Employee Advocate. Andy Phillips suggests that HR director have information available on the process, if the employee already has the right to any representative of their choice throughout the process. There would no longer be a need for this position. Committee agrees.

e. Workplace safety. Not as black and white as termination or suspension. Discussion about setting up a process between the employer and employee to work out these issues, and then go to the IHO. This should be a separate section within the grievance process. Chapter COMM 32 of the Wisconsin Administrative Code is provided to the committee. This could serve as a guide in defining workplace safety. You could also use the Governor's definition in his email. Should consider creating a safety committee or delegating to an existing committee to review these matters. No one wants an unsafe working environment and we should encourage people coming forward to address these matter. Committee will review Comm 32 for next meeting. Andy Phillips will work on language.

Public Participation. Linda Small comments on the type of days within the draft grievance policy. This language will be further reviewed by counsel. David Sadenwasser: Any sort of written reprimand should be subject to the grievance procedure, as it takes away the ability to contest something that is a black mark against the employee. He also asks about making it a requirement to go into closed session –

counsel explains that state law requires a vote to go into closed session (can't make a policy to go into closed session automatically). Finally, with regard to the timing of the grievance process, he states that as an employee, he has an incentive to get the process going so he can get back to work. Ken Anderson – is there any penalty in missing the Oct. deadline? Legal counsel states no, but recommends that we get the policy done in accordance with the timelines required by law. We can always revisit the policy and further improve.

Review and respond to employee correspondence - None.

Letters and communications – Letter to Erv Teichmiller: offer for consulting services from Mead Consulting in employee benefits area. This letter will be included with today's minutes.

Set next meeting dates and times - July 25, 2011 at 4:00 p.m. Next agenda: Completion of Grievance Policy. August 15, 2011 at 4:00 p.m.

Adjournment Chair calls the meeting adjourned at 6:12 p.m.

Minutes reflect the recorder's notation and are subject to approval by the appropriate board or committee.

Submitted by: Martha Milanowski, Corporation Counsel