



DANE COUNTY PROFESSIONALS, EGR 1871

affiliated with
**American Federation of State, County and Municipal Employees
 Wisconsin Council of State, County and Municipal Employees -
 Council 32**

Employer: Dane County	Date of alleged infraction: 6/18/2020
Department: Administration	Supervisor: Greg Brockmeyer
Employees: Multiple	Work Location: Department-wide
Date: June 26, 2020	

Step 3 Grievance: Telecommuting Agreements

Section of Employee Benefit Handbook Violation

- Coaching Notes
- Discipline, Suspension and Discharge
- Employee Group Representation And Work Related Associations
- Existing Benefits
- Any other provisions that may apply

Statement of Circumstances

For many years, many Dane County employees, across multiple departments, have had the ability to telecommute to their jobs, with the explicit and tacit consent and assistance of the county Department of Administration and the Division of Information Management. All employees are bound, whether on a job site or working remotely, by the county’s overall Administrative Practices Manual policies regarding data security, use of county electronic equipment and use of personal electronic equipment for their work. However, specific policies for remote work access have varied across different work locations and departments, subject to the overall hours, scheduling and other standards contained in the Employee Benefit Handbook. In some cases, formal work schedules have been developed between employees and their supervisors, in others informal understandings between employees and their supervisors

On June 18, 2020, the Dane County Department of Administration e-mailed a new “Telecommuting Agreement” (Attachment A) to some (but not all) employees of the Department of Human Services (DHS). DHS employees were told they must sign the new agreement by June 26, 2020. As of June 26, 2020, employees in other departments, including those already working from home under previous arrangements, had not received such agreements, nor been asked to sign.

The Employee Benefit Handbook allows grievances related to the interpretation of the Handbook to be started at Step 3.

Violations of the Employee Benefit Handbook

1. Coaching Notes and Discipline, Suspension and Discharge

The “Coaching Notes” section of the EG 1871 Employee Benefit Handbook includes the following language:

SUBJECT: COACHING NOTE

Dane County Coaching Note

(Performance Reasons - Non-disciplinary)

The “Discipline, Suspension and Discharge” section of the EGR 1871 Handbook reads:

- a. *Employees shall not be disciplined, suspended or discharged without just cause. A suspension shall not exceed thirty (30) days. Written notice of the suspension, discipline or discharge and the reason or reasons for the action shall be sent to the employee with a copy to the Employee Group Representative, if any, within twenty-four (24) hours. A grievance that may result from such action shall be considered waived unless presented in writing within ten (10) days of the receipt of the notice by the employee. A grievance concerning a discharge may be started at Step 3 or, if the parties agree, may be started at the Impartial Hearing step. If the parties agree, or the Impartial hearing officer finds that such discipline, suspension or discharge was improper, such disposition of the matter may be made as appears proper.*
- b. *The County and the Employee Group agree that the principle of progressive discipline shall ordinarily be followed and shall ordinarily include an oral reprimand, written reprimand, suspension without pay, and discharge. The specific discipline imposed in any particular case will, however, depend on the facts.*
- c. *Upon request of the employee, documented discipline shall be reviewed one time each year, and upon mutual agreement of the County and the employee, may be removed from a personnel file.*

These two clauses, along with the county Administrative Practices Manual standards for “Disciplinary Actions” (Attachment B) and “Employee Performance Problems – Corrective Action” (Attachment C) make a clear distinction between “disciplinary actions,” which are related to violations of civil service work rules, and “performance issues” which have to do with overall job performance. The first is appropriately handled by progressive discipline, only after fully establishing just cause. The second is appropriately handled by discussions with the employees, training and, as a last resort, a coaching note in a form described in the EBH.

Section 2 of the Telecommuting Agreement reads:

“If the telecommuting employee’s performance declines, then progressive discipline procedures will apply, which may range from terminating the Telecommuting Agreement up to and including termination of employment.”

This section of the agreement conflates “performance decline” with “disciplinary action,” even though they are clearly separate in the EBH and other county policies. Threatening an employee with discipline for performance-related issues, where there is no clearly established violation of civil service work rules, violates the “just cause” standard in the Handbook.

2. Employee Group Representation and Work Related Associations

The Employee Group Representation and Work Related Associations section of the EG 1871 Employee Benefit Handbook reads:

SUBJECT: EMPLOYEE GROUP REPRESENTATION AND WORK RELATED ASSOCIATIONS

Section 2: Employee Group's Representatives.

- a. *Employees selected by an Employee Group's Representatives to act as employee and group representatives shall be known as stewards. Employee Group's Representatives shall notify the County, from time to time of the names of stewards and the names of other officials who may represent employees on behalf of the Employee Group's Representative.*
- b. *Reasonable time spent in the conduct of Employee Group representational activity during the workday, including but not limited to the posting of notices, the investigation and processing of grievances and participation in discussions related to personnel relations shall not be deducted from the pay of the stewards or other officials. The number of employees who may receive pay under this provision shall continue as in the past while engaging in discussions with the County during scheduled duty hours.*

Section 10 of the Telecommuting Agreement reads: "While working under this telecommuting agreement, the employee agrees not to engage in any non-county related activity or unapproved Employee Group Representative work-related activity during the work hours specified unless such activity occurs during a break or unless the employee uses personal leave time to perform such activity. With their immediate supervisor's approval, employees may adjust their schedule or use a flexible schedule under this agreement. Overtime, undesirable hour pay, and any time spent on Employee Group Representative work-related activity must be pre-approved in advance."

The Employee Benefit Handbook clearly grants duly appointed EGR stewards and other EGR officials the right to conduct "EGR work-related activity" without loss of pay "during scheduled duty hours." Note also, that the EBH does not require prior approval of a supervisor before a steward or other EGR official engages in EGR activity. Section 1 of the Telecommuting Agreement notes that "the employee's duties obligations, responsibilities, standards of performance and conditions of employment remain unchanged when telecommuting." EGR 1871 agrees with this statement, in principle, but would add "rights afforded to employees under the Employee Benefit Handbook" to the list of conditions of employment that remain unchanged. It's hard to imagine a more blatant violation of the plain language of the Handbook, nor one that seems more patently discriminatory against the legitimate work of the EGRs.

3. Existing Benefits

The Existing Benefits section of the EG 1871 Employee Benefit Handbook reads:

SUBJECT: EXISTING BENEFITS

Section 1:

- a. *Existing Benefits. So long as the services of the Employee Group are continued by the County, the County shall continue existing benefits (including, but not limited to coffee breaks, car allowance and/or mileage payments), or other amenities not mentioned herein that are primarily related to wages, hours and conditions of employment, but established by practice*

with the knowledge and tacit consent of the County, for the life of this Handbook. Prior to effectuating any changes in the foregoing existing benefits and other amenities shall be that are primarily related to wages, hours and conditions of employment. Any proposed changes shall be subject to the process set forth in D.C.O. 18.24(3) and (4).

Section 13 of the Telecommuting Agreement reads: “*This Agreement shall supersede and replace all prior agreements and understandings, oral or written, between the manager and the employee regarding the employee’s ability to telecommute.*” To date, many Dane County employees have availed themselves of work-from-home and remote-working telecommuting options successfully, including some who have longstanding informal oral permission from their supervisors. In other cases, such as with employees at the Aging and Disability Resources Center (ADRC), telecommuting policies were drafted through a mutual cooperation process as part of a prior grievance settlement between EGR 1871 and management at the Department of Human Services. Until June 18, 2020, none of these employees were required to sign this Telecommunication Agreement and none were require to waive rights afforded them under the Employee Benefit Handbook. Unilaterally requiring substantive changes in the terms, conditions and rights afforded to employees accessing the existing benefit of telecommuting violates established past practice. Changes of this scope cannot be made unilaterally, but must be brought up in the county’s annual meet and confer process, as described in sections 18.24(3) & (4) of the Dane County Code.

Request for Settlement of Corrective Action

EGR 1871, along with its co-grievants, request that:

- a. the entire Telecommuting Agreement text be rescinded, in its entirety;
- b. any existing Telecommuting Agreements following the June 18, 2020 template and signed by any employee within an Employee Group be declared null and void;
- c. that any employee within any Employee Group who has, or continues to, work remotely be allowed to continue to do so, consistent with any prior oral, written, formal or informal agreements and/or prior grievance settlements and consistent with established past practice, and;
- d. that the employer be enjoined against modifying the terms and conditions of telecommuting work except through the meet and confer Employee Benefit Handbook process described in Sections 18.24(3) & (4) of the Dane County Code.



June 26, 2020

Brian Standing
Vice-President / Chief Steward
EGR 1871

Date