



**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 infractions: 6/29/2020
Department: Administration	Supervisor: Greg Brockmeyer
Employees: Multiple	Work Location: Department-wide
Date: July 10, 2020	

**Step 3 Grievance: Civil Service Paid Time Status**

Relevant Sections of Dane County Civil Service Ordinance, Chapter 18, Dane County Code

- Section 18.03 “Policy and Purpose”
- Section 18.06 (3) “Employees Right to Self-Organization”
- Section 18.20 “Discrimination Prohibited”
- Section 18.24 “Employee Benefit Handbook.”

Employee Benefit Handbook Violations

- Introduction
- Bulletin Boards
- Employee Group Representation And Work Related Associations
- Existing Benefits
- Grievance Process
- Open Communication
- Orientation of New Employees
- Any other provisions that may apply

Statement of Circumstances

On June 29, 2020, Dane County Employee Group Representatives (EGRs) became aware of a new “Civil Service Paid and Unpaid Time Status” section of the county Administrative Practices Manual (Attachment A) that includes numerous and substantial violations of the Employee Benefit Handbook. These changes were apparently published in the online version of the Administrative Practices Manual (APM) on June 23, 2020. No prior notice of the new section of the APM was provided to any interested stakeholders, and the section was only discovered by the EGRs by happenstance. Under the terms of the EBH, grievances related to the interpretation of the EBH may be filed starting at Step 3.

## Violations of the Employee Benefit Handbook

### **1. Employee Group Representation and Work Related Associations**

The central issue in this grievance relates to the employer's attempt to completely ignore and subvert the *Employee Group Representation and Work Related Associations* section of the Employee Benefit Handbook (Attachment B).

The Employee Benefit Handbook clearly grants duly appointed EGR stewards and other EGR officials the right to conduct “*EGR work-related activity*,” “*including but not limited to, the posting of notices, the investigation and processing of grievances and participation in discussions related to personnel relations*” 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.

Furthermore, the EBH as written also provides an equitable opportunity for employees to join other work-related organizations of their choosing, and to conduct the legitimate business of those organizations during work time, without loss of pay.

In the Administrative Practice Manual guidance, the employer attempts to add new definitions (Attachment A, Section 1) that make an arbitrary distinction between Employee Group Representatives and other work-related organizations or associations. These definitions violate the clear language in the EBH and the agreed-upon meaning of that language, which was written specifically and intentionally, to provide an equivalency, as recommended by Judge Sumi. This allows all employees an equal opportunity to join organizations that advocate and inform related to the positions that they hold, whether that's an organization such as the American Bar Association, or an EGR. The employer's newfound, different and much narrower interpretation of "work-related activities" (Attachment A, Section 3) that are eligible to be conducted without loss of pay clearly violates the current version of the EBH. The Department of Administration's proposals to add similar language to the EBH through the 2020 EBH amendment process (currently pending) is an acknowledgment that the current language does not support the new approach set forth in the APM.

Section 3.4 of the employer's Administrative Practices Manual also attempts to establish a variety of new arbitrary and discriminatory criteria for determining paid vs. unpaid activities of the EGRs.

These violate the EBH or the Civil Service Ordinance (Attachment C). For example, the APM guidance proposes that “initiating a grievance, including investigation and preparation of a grievance request” should be done by EGRs on unpaid time. This statement violates the plain language of the EBH, which clearly indicates that investigation of grievances is a paid activity. Other statements in this section attempt to limit grievance-related activities of the EGR to arbitrary time limits, such as one half-hour or one-hour.

### **2. Misuse of the Administrative Practices Manual**

Section 18.24 of the Dane County Code (Attachment C) creates the Employee Benefit Handbook to “*establish the terms and conditions of employment*” for employees and establishes a rigorous, democratic and open process, with specific requirements, with advance notice, for amending such terms and conditions of employment. The Introduction section of the Handbook itself indicates that one of its purposes is “...to

*inform employees about what the County may generally expect from them so as to guide employees in their professional duties and in fulfilling their responsibilities as public servants.*” Based on this language, the language of s. 18.06, Dane County Code, and years of past practice dating back to the collective bargaining era, Dane County employees have a reasonable expectation that the Employee Benefit Handbook will be the primary source for information about the terms and conditions of their employment, and that changes to those standards can only be implemented through the deliberate, democratic and formal process described in s. 18.24, Dane County Code.

In contrast, the Administrative Practices Manual is not specifically authorized or identified in any section of county code, or state statute. There is no purpose statement for the APM, nor any guidelines for how it is to be used or amended, other than, presumably, at the whim of the Department of Administration. By unilaterally placing radically contradictory human resources policies in the APM and not in the EBH, with no notice to interested stakeholders and completely outside the annual amendment process described in s. 18.24, Dane County Code, the employer has betrayed the stated purposes of the EBH and the Civil Service Ordinance. It has also usurped the authority of the County’s elected officials who must approve any changes to the EBH per s. 18.24. The APM, as the name suggests, is an inappropriate place to set human resources policy; it should be reserved solely to either:

- provide detailed administrative practices (such as appropriate application forms, etc.) to implement policies established, but not specified in such detail, in the EBH, or;
- provide detail and context to issues that are not addressed by either the EBH or established past practice.

### **3. Existing Benefits**

The entire policy represents a drastic change from established past practice going back multiple years. The employer routinely granted paid time for EGR activity, with no specified supervisor approval as part of daily business. These changes were not proposed as part of the Employee Benefit Handbook amendment process, and therefore violate the Existing Benefits clause of the EBH.

### **4. Other Violations**

While the central issues raised by the new APM guidance are summarized above, the EBH violations contained in the APM document are breathtaking, not only in their quantity, but in the audacity of their disregard for the plain language of the Employee Benefit Handbook. Below is a more detailed review of the remaining sections of the APM guidance and an analysis of the relevant EBH and Civil Service Ordinance language, but it is not a comprehensive list of the contractual violations and the EGR reserves the right to detail additional ways in which the policy violates the EBH, practice and or the ordinances. For brevity, the APM policies are not repeated here. Please refer to Attachment A for specific APM language.

2. *Civil Service System* This section includes an incomplete listing of the purposes identified in the Dane County Civil Service ordinance: s. 18.03 includes: *"promote the recruitment and retention of a highly skilled and responsive workforce that delivers high quality services to Dane County residents, to promote full and open communication between the County and its employees, and to establish conditions of*

*employment for County employees, including uniform provisions in respect to classification of positions and salary ranges, payroll certification, attendance, vacations, sick leave, competitive examinations, hours of work, tours of duty or assignments according to earned seniority, employee grievance procedure, disciplinary actions, layoffs and separations for just cause."*

2.1.1 & 2.1.2 This section states that changes to terms and conditions of employment must be made exclusively through the EBH amendment process.

- We agree. However, the publication of this section of the APM itself was done without resorting to the processes described in s. 18.24, and yet seeks to substantially alter the existing terms and conditions of employment.

2.2.4 This section intends to make e-mail communications between individual employees and EGR representatives open to discovery during disciplinary and other grievance procedures.

- This constitutes interference with the employees' rights to self-organization, as described in the Civil Service Ordinance.

2.2.5 This section attempts to preclude EGRs from assisting members with ADA accommodations.

- Since standards for ADA accommodations are included in the EBH itself, this would prevent stewards from investigating potential grievances.
- This activity also falls under the "participation in discussions related to personnel relations" language of the EGR & Work-Related Association clause.

2.3.1 This section seeks to prohibit EGRs from meeting with each other, on the basis that such meetings are not work-related.

- As described above, the current EBH language and past practice does not support such a narrow definition of "work-related activities."
- This activity would also fall under "participation in discussions related to personnel relations."

2.3.2 This section seeks to prohibit EGRs from meeting with management outside of the annual EBH amendment process.

- Such activity clearly falls under the category of "participation in discussions related to personnel relations."
- Section 18.24(4)(b) of the Civil Service Ordinance reads *"At least annually, **and more frequently if requested**, the Division shall meet with interested stakeholders, to comprehensively review, discuss and obtain input concerning proposed changes to the (EBH)"* (emphasis added).
- In addition, the EGR & Work Related Associations, Section 2 clearly grants stewards or other officials the right to "investigate" grievances on paid time. Such investigation is not possible if stewards are prohibited from discussing such issues with managers or supervisors. In fact, Step 1 of the Grievance Process section of the EBH specifically requires that EGRs *"discuss issues orally with supervisors and seek to find a mutually agreeable solution."*
- The Open Communication section of the EBH clearly grants employees the right to meet with managers to discuss a wide variety of issues. Any rights

that are granted to individual employees must also be granted to those employees' elected representatives. If such rights are available to employees individually, they must be available in aggregate as well. Indeed, the entire purpose of employee self-organization is to allow for representation of employees in all matters related to all the terms and conditions of their employment.

2.3.4 This section seeks to prohibit EGRs from assisting employees with Worker's Compensation claims.

- Nothing in state statute, the EBH or the Dane County Civil Service ordinance prohibits the employee from seeking the assistance of their chosen representative in matters related to Worker's Compensation.
- Such activity clearly falls under the category of "participation in discussions related to personnel relations."

2.3.5 This section seeks to prohibit EGRs from using the county e-mail system.

- The Bulletin Boards section of the EBH specifically allows EGRs, or other interested stakeholders, "*reasonable use of the county electronic mail system "for the purposes of employee information dissemination."*
- Given that each EGR represents hundreds of individual employees, sending e-mails to distribution lists of EGR members is the only reasonable way that EGRs could use the county's e-mail system to "disseminate information."
- The Employer claims that such use unduly burdens the technical capacity of the county's e-mail system, but has provided no data or information to support this claim.
- County employees routinely receive (and in fact are encouraged by the employer to receive) mass-mailed e-mails from other work-related associations (such as the Bar Association, American Planning Association, Wisconsin state agencies, etc.) as well as announcements from the Division of Employee Relations itself, with no significant impact on the technical functioning of the e-mail system. Denying EGRs access such reasonable use while simultaneously encouraging such use for other work-related associations is unreasonable and appears to be discriminatory on the basis of association with a labor organization. Such discrimination is expressly prohibited by the Civil Service Ordinance.

2.3.7 This section seeks to prohibit EGRs from recruiting new members on county time.

- The only access EGR stewards and other officials have to employees is at the job site, and on county time. Prohibiting membership solicitation would constitute employer "interference, restraint and domination" over an employees rights to "join or assist in the creation and maintenance of" an EGR. Such interference is expressly prohibited in s. 18.06(3), Dane County Code.
- The Orientation section of the EBH specifically grants EGRs 25 minutes at new employee orientation sessions to "*to orient new employees to the employee group and to distribute employee group-related information.*" Any such orientation has to include information about the benefits of membership in an Employee Group Representative, their role in personnel relations and information about how to join such an organization.

3.2 This section attempts to define certain activities of the EGR, including answering questions from EGR members, as non-work-related and therefore not eligible for paid time.

- Such activity clearly falls under the category of “participation in discussions related to personnel relations.”
- The employer’s narrow and arbitrary definitions of “work-related” and distinctions between “Civil Service Activities” and other activities of the EGR are not supported by the existing language of the EBH.
- Any discussion with EGR members about county personnel policy could potentially involve a future grievance. Part of the purpose of such discussions is to determine whether or not the employer's administration of such benefits violates the terms of the EBH. Therefore, these issues properly fall into the category of "investigation" of a possible grievance, which is clearly paid time under the EBH.

3.3 This section seeks to establish an approval process for EGRs to conduct activities on paid time.

- EGR activity and Work Related Associations Section 1 states that "*reasonable time spent in the conduct of these activities, with notice, to the employee's supervisor, shall not be deducted from the employee's pay.*"
- Note this says, "notice," not approval. Established past practice has been to provide notice to a supervisor, but not to seek specific approval. Advance approval is not required by the EBH.
- Note that the existing language allows the employer recourse if they believe that such activity is no longer "reasonable." Any disciplinary action or reduction in pay that results from unreasonable activity would then be subject to the grievance process.

### Request for Settlement of Corrective Action

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

- a. the entire Administrative Practices Manual section entitled “Civil Service Paid and Unpaid Status” be rescinded in its entirety, with notice provided to all employees of such action
- b. that the Division of Employee Relations notify all employees, at least 10 days in advance of publication, of any future modifications to the Administrative Practices Manual;
- c. that the employer be enjoined against modifying the terms and conditions of paid or unpaid work or any other terms and conditions of employment except through the meet and confer Employee Benefit Handbook process described in Sections 18.24(3) & (4) of the Dane County Code.
- d. and that the employees be made whole for any losses.



July 10, 2020

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**Brian Standing**

**Vice-President / Chief Steward  
EGR 1871**

**Date**