



MINUTES OF THE PERSONNEL COMMITTEE

**TUESDAY, NOVEMBER 12, 2019, 4:30 PM
CITY HALL, ROOM 207
IMMEDIATELY FOLLOWING FINANCE COMMITTEE**

A. ROLL CALL.

I. Members: Ald. Bill Galvin, Chair, Ald. Kathy Lefebvre, Vice Chair, Ald. Barbara Dorff, Ald. Veronica Corpus-Dax

Present: Bill Galvin, Veronica Corpus-Dax, Barbara Dorff, Kathy Lefebvre

Others Present: Ald. Mark Steuer, Fire Chief David Litton, Police Chief Andrew Smith, Police Commander Kevin Warych, City Attorney Vanessa Chavez, Finance Director Diana Ellenbecker, Chief of Staff Celestine Jeffreys, Assistant City Attorney Lindsay Mather, Human Resources Director Joe Faulds, HR Operations Manager Melanie Falk, Officer Jeffrey Brann, Attorney Carley Windorff and others.

B. APPROVAL OF THE AGENDA.

It was proposed that the agenda be amended to discuss Regular Business item #4 before item #3 and to discuss Regular Business item #6 prior to item #5.

Moved by Ald. Barbara Dorff, seconded by Ald. Kathy Lefebvre to approve the agenda as amended. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

C. APPROVAL OF MINUTES.

I. Approval of the minutes from October 8, 2019.

Moved by Ald. Veronica Corpus-Dax, seconded by Ald. Barbara Dorff to approve. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

D. REGULAR BUSINESS.

1. Consideration with possible action on request by Ald. Wery to discuss customer service standards and work expectations of inspectors. Investigate the addition of evening and/or weekend inspection hours.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to hold this item until the first meeting in December. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

2. Consideration with possible action by Ald. Wery to explore partnering/joining the State of Wisconsin for health insurance.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to hold until the first meeting in December. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

3. Update and discussion on Green Bay Professional Police Association labor negotiations

The Committee may convene in closed session pursuant to § 19.85(1)(e), Wis. Stats., for purposes of deliberating or negotiating public employee contracts for competitive or bargaining reasons. The Committee may thereafter reconvene in open session pursuant to § 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to go into closed session. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

Moved by Ald. Kathy Lefebvre seconded by Ald. Barbara Dorff to return to open session. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

Out of closed session it was reported that staff should proceed as directed.

4. Update and discussion on Green Bay Fire Fighters Local 141 labor negotiations

The Committee may convene in closed session pursuant to § 19.85(1)(e), Wis. Stats., for purposes of

deliberating or negotiating public employee contracts for competitive or bargaining reasons. The Committee may thereafter reconvene in open session pursuant to § 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to go into closed session. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

Moved by Ald. Barbara Dorff, seconded by Ald. Kathy Lefebvre to return to open session. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

Reporting out of closed session, moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to direct staff to proceed as discussed. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

5. Consideration with possible action on the Grievance filed by Officer Matthew Lynch regarding the attendance of K9 training issued July 19, 2019.

The Committee may convene in closed session pursuant to § 19.85(1)(a), Wis. Stats., for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Committee may, thereafter, reconvene in open session pursuant to § 19.85(2), Wis. Stats. to report any actions taken during closed session and to consider all other matters on the agenda.

Moved by Ald. Barbara Dorff, seconded by Ald. Kathy Lefebvre to go into closed session. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

Moved by Ald. Kathy Lefebvre, seconded by Ald. Barbara Dorff to return to open session. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

Reporting out of closed session, moved by Ald. Kathy Lefebvre, seconded by Ald. Barbara Dorff to deny the grievance. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

6. Consideration with possible action on the Grievance filed by Officer Jeffrey Brann regarding the Personnel File Entry Report issued December 17, 2018.

The Committee may convene in closed session pursuant to § 19.85(1)(a), Wis. Stats., for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Committee may, thereafter, reconvene in open session pursuant to § 19.85(2),

Wis. Stats. to report any actions taken during closed session and to consider all other matters on the agenda.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to hold until January 14, 2020 for the parties to brief the issue of dismissal, with dates to be determined by the parties and the Law Department. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

E. INFORMATIONAL.

1. Review of WRS eligibility of the physical fitness incentive grievance.

The Committee may convene in closed session pursuant to § 19.85(1)(a), Wis. Stats., for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body. The Committee may, thereafter, reconvene in open session pursuant to § 19.85(2), Wis. Stats., to report any actions taken during closed session and to consider all other matters on the agenda.

Human Resources Director Joe Faulds reported that this grievance has been settled.

Moved by Ald. Veronica Corpus-Dax, seconded by Ald. Barbara Dorff to receive and place on file. Motion carried.

Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

2. Parks Department will begin recruiting for the WLS Superintendent position to begin January 1, 2020 as approved in the 2020 budget.

3. Report of routine personnel actions for regular employees.

4. Next meeting date: November 26, 2019

F. PUBLIC HEARINGS.

G. ADJOURNMENT.

Moved by Ald. Barbara Dorff, seconded by Ald. Kathy Lefebvre to adjourn. Motion carried.
Yes- Barbara Dorff, Bill Galvin, Kathy Lefebvre, Veronica Corpus-Dax, No- None, Abstain- None

Verbatim Minutes

- Personnel Committee. All right, we'll start out with roll call. Alder Galvin.
- Here.
- Alder-- Alder Dorff.
- I was thinking of Chair, here.
- Alder Lefebvre.
- Here.
- Alder Corpus-Dax.
- Here.
- Okay, everyone on the committee is here. Up for approval of the agenda.
- So moved.
- Moved
- Second.
- All right. All in favor?
- [Group] Aye.
- That passes unanimously.
- Oh wait, accept. Oh accept.
- As amended.
- Right. As amended.
- Accept as amended.

- So what we're going to be doing, is moving item four, in front of item three. And then item five in front of item six. So when we go into closed session for item five of item six, we can do it for,
- Together.
- All at the same time. Okay?
- And then we're going to, or, wait. I guess we'll talk about only one and two?
- Right, we're going to,
- We'll talk .
- We're going to, yeah, right. When we get .
- But we'll move four in front of three, so the fire can make their appeal and get out of here. And then save the police for last.
- So who made that motion?
- So Dorff and?
- Yeah.
- Dorff and Lefebvre, right?
- Do you need the motion?
- Yes.
- Yeah.
- Okay, all in favor of the changes to the agenda?
- Aye, for six .
- Okay, that passes unanimously. Okay, looking for approval of the minutes.
- So moved.
- Second.
- I have a motion and a second. All in favor?
- [Group] Aye.
- And on to, regular business.
- So we're not .
- It's only number one.
- Number one.

- One, one?
- Well we had number one.
- Okay.
- Okay. Number one is consideration with possible action request by Alder Weary to discuss customer service standards and work expectations of inspectors. Investigate the addition of evening and/or weekend inspection hours. Alder Weary is not able to be here at this time and has asked that it be held to our next meeting.
- In December.
- In December.
- First meeting in December.
- First meeting in December.
- Meeting in December. Okay.
- So.
- Motion to hold.
- Second.
- All right.
- Okay. Maybe what we should do then is because, I know he works until 4:30, it's hard to get here. Maybe we should, his request, should go down to the last. Ask him, if it would be easier for him, than to make, instead of always putting this off?
- Well--
- No he was in the room here.
- Oh he was.
- Yes! He has a meeting. He's currently,
- Oh yeah.
- In a meeting.
- That's right, that's right.
- I spoke with him,
- Yeah, that's right.
- personally.

- That's right, that's right.
- He said to hold it, until the next meeting.
- Okay.
- So.
- That's right, he said--
- All those in favor of holding until
- Sorry.
- Our first meeting
- It's okay.
- in December?
- [Group] Aye.
- Yeah?
- [Alder Steuer] I have a request.
- Yes?
- Okay.
- Alder Steuer.
- [Alder Steuer] Yes, thank you. Sure, we were at protection of policy yesterday and I don't know if Attorney Chavez can speak to that. I thought we were going to send this back? Is that possible? To the personnel.
- This is the exact same.
- Versus the same item.
- It is the same item.
- It's the same item. So the recommendation--
- I mean the recommendation at P&P, was to send it to personnel.
- Why do we have two items?
- [Alder Steuer] So I don't, I guess I just want to make sure .
- We have the same item going to two different committees at the same time.
- So we actually have had it going to three different committees.

- Oh no.

- Yeah.

- [Chavez] They seem to have originated at council. It was requested by the Alder that it be sent to I and S. And Personnel. The ordinance that we have, requires the person to identify a primary one, or requires an implication of a primary committee that will ultimately report it out to council. The recommendation was that it be Personnel, that we get the final one, since it pertains to hours and work standards and what not. So when it went to I and S, they did a discussion there and it was going to be referred to here immediately after that, but it went to protection and policy, because they were also considering potential revisions to the policies, for the inspection department. And so, it went there. We had a discussion on it last night. Talked about the different roles of both the alders and the inspection. How good of a training and what the process looks like and so the recommendation that came out of P&P was to receive based on, yeah, of P&P was to receive a , based on the information that was received there. So the next thing that was going to happen was to come here to address the final remaining issues which were specifically the customer service

- Okay. .

- Sorry.

- All right.

- So,

- So we have to vote.

- So we still need a vote. On whether we're going to hold this or not.

- Okay.

- The motion was to hold until the first meeting in December. All those in favor?

- [Group] Aye.

- Any opposed? It passes unanimously. I remember two considerations with possible action by Alder Weary to explore partnering, joining the state of Wisconsin, for health insurance.

- I'd like to, move that to the first meeting in December, as well.

- Do I have a second?

- Second.

- I have a second. All those in favor?

- [Group] Aye.

- Aye, that passes unanimously. All right.

- So moved.

- Item number four. Update and discussion on the Green Bay Firefighters Local 141 labor negotiations. We should go into closed session.
- Yes, .
- I'll make a motion to go into closed session.
- Okay. And then the community leaves.
- I need a second.
- Second.
- All those in favor?
- Wait, I need to read the language first.
- Oh, that's right.
- The committee may convene closed session pursuant to 19.851A, Wisconsin statutes, for the purposes of deliberating or negotiating public employee contracts, for competitive or bargaining reasons. The committee may thereafter, reconvene in open session, pursuant to 19.852 Wisconsin statutes, to report the results of the closed session and consider the balance of the agenda.
- All those in favor?
- [Group] Aye.
- That passes unanimously. All right, folks, we're in a closed session again. I'm sorry to have to ask you to leave and don't worry about .
- Move to go into open session.
- On your marks, get set.
- Second?
- Looking for a second, by Kathy?
- Yes.
- I have a second. All those in favor?
- [Group] Aye.
- All right. I have a motion.
- I would like to move that we proceed that direct staff to proceed as directed, in closed session.
- Second.
- I have a second. And a motion, all those in favor?

- [Group] Aye.
- Ayes have it.
- Wasn't all that--
- Then we'll move on to the next item.
- And we'll go into number three.
- Number three.
- Oh man!
- Number two, now moving to number three.
- Why do we have so many things on the same night?
- I don't know.
- Someone!
- Sorry!
- We might as well get it over with,
- Yeah, right.
- At one time.
- Yeah, one sitting.
- Okay, before everybody gets comfortable,
- Just don't!
- Just don't.
- Item number three is an updated discussion on the Green Bay Professional Business Association labor negotiations.
- Are we,
- Do we?
- Going closed session on that?
- We're going to need to go into closed session.
- Close the session.
- On that folks.

- We need to put it in closed session.
- I'm sorry.
- Smoke them if you got them.
- I make a motion to go into closed session. Second.
- Second.
- And I'll read the language.
- All right.
- The committee may convene in closed session pursuant to 19.851A, Wisconsin statutes for the purpose of deliberating or negotiating, public employee contracts, for competitive or bargaining reasons. The committee may thereafter re-convene in open session, pursuant to 19.852, Wisconsin statutes, to report the results from the closed session and consider the balance of the agenda. And we have to vote.
- All those in favor?
- [Group] Aye. Closed session.
- And we're in closed session. Okay, all those in favor of a motion to go back into open session, say aye.
- Aye.
- Aye.
- Aye.
- I was just noticing the door closed.
- Yeah.
- [Man] They're coming.
- All right. That passes unanimously.
- Don't get comfortable.
- Don't get comfortable.
- I want to get a motion for item three.
- Motion for staff to proceed as directed.
- Second.
- All those in favor?
- [Group] Aye.

- All right and that passes unanimously.
- So now,
- Proceed as directed. Proceed as directed.
- Proceed as directed, right?
- Right.
- Who made the motion?
- Me?
- You made the motion?
- Yes.
- And I seconded it.
- Sure. Oh!
- Oh .
- All right, we're going to proceed Alder Corpus-Dax will be back in just a few moments.
- Yes.
- Yes. All right, we are now on item six, consideration with possible action on the grievance filed by Officer Jeffrey Brann, regarding the personnel file entry report issued on December 17, 2018. This grievance is before the personnel committee meeting at this time, upon the mutual agreement of the parties for extensions of time, rather than at the meeting that was first available after filed. This is a quasi-conditional matter. It is the goal of the Personnel Committee to provide and conduct a hearing that is both fair in form, appearance and substance. To ensure that this hearing satisfies these goals, each member of the Personnel Committee, please confirm the following by stating, "I confirm."
- Better wait for Alder--
- Yeah, we're going to wait for Alder Corpus-Dax. Okay. So by saying I confirm. I do not have an interest or conflict of interest in this matter and two, I have not received any communication from any person or party about this matter. Alder Lefebvre.
- Yes.
- Item number one.
- I have received no communication.
- I do not have a conflict of interest.
- No conflict of interest.
- Okay. And two, I have not received any communication from any person or party about this matter.

- No, I did not, okay.
- Alder Corpus-Dax. Item one. I do not have an interest or conflict of interest in this matter.
- I confirm.
- And two, I have not received any communication from any person or party about this matter.
- I confirm.
- Alder Dorff. Item one, I do not have an interest or conflict of interest in this matter.
- I confirm. And two, I have not received any communication from any person or party about this matter.
- I confirm.
- Okay and I can also confirm I do not have an interest or conflict of interest in this matter. And I can also confirm, I have not received any communication from any person or party about this matter. Okay, the decision will be made based upon the labor agreement between the City of Green Bay and the Green Bay Professional Police Association, in effect, as of the date of the event complained of. The Personnel Committee will either announce this decision tonight, or take the matter under advisement and have a decision at the next committee meeting. The Personnel Committee will make findings of that in conclusions of law based upon the record before. At this time, the following materials have been submitted into the record. One, a letter from human resources director, Joseph Faulds, to the Personnel Committee dated June 21, 2019, along with seven attachments. A, documentation of an oral warning for Officer Jeffrey Brann, dated August 9, 2018. B, the personal file entry for Officer Jeffrey Brann, dated December 4, 2018. The original grievance number 2019-001, identified as Green Bay Professional Police Association contract violation information form. Dated January 21, 2019 and attached documentation. D, grievance number, 2019-001, from Chief Andrew Smith, dated February 4, 2019. Item E, amended personal file entry for Officer Jeffrey Brann, dated March 22, 2019. F, letter from human resource director, Joseph Faulds, to Officer Jeffrey Brann, dated April 25, 2019. Does that match up with everybody up so far? Okay. Number 2. Personnel Committee report submitted by Attorney Carly Windorff. With 19 attachments. A, is exhibit one, reference map of incident locations. B... Example two, Personnel Committee timeline. C, exhibit three, GBPD professional center's pursuit review. D, exhibit four, original grievance paperwork submitted by Brann, dated 1/21 of '19. E, exhibit five, Chief response to step one grievance. F, exhibit six, HR Director, Faulds, step two response, dated 4/25 of '19. G, exhibit seven, speed calculations by Dave Hansen. H, exhibit 15. Lieutenant Englebrecht preliminary determination for the August 2nd of '18 incident. I, exhibit 16, Lieutenant Engelbrecht preliminary determination for September 20, '18 incident. J, exhibit 17, group report 18-208661. K, exhibit 18, current report 18-210609. L, exhibit 19, original personal file entry, with four violations. M, exhibit 20, modified personnel file entry, with two violations. N, exhibit 21, pursue policies in effect at the time of incidents. O, exhibit 22, new GBPD vehicle pursuits policy, 2019. P, exhibit 23, Brann documentation of oral warning from 8/9 of '18. Q, exhibit 24, employee discipline records dated May 6, 2019. There's two. April 19, 2019 and April 24, 2019. R, exhibit 25, preservation email, Brann to work. S, exhibit 26, email communications regarding Brann and another employee disciplined. That seems to be it. So does that match up with everybody?
- [Chavez] I think so .
- Do you have a question?
- [Brann] Do you have the Personnel Committee report?
- What exhibit would that have been?

- [Windorff] Oh, I think it would have been either one or two.
- Personnel Committee timeline, exhibit two.
- [Windorff] There's a timeline and then there's another longer narrative.
- Oh it's right in front of, there it is, Personnel Committee report.
- [Windorff] Thank you.
- Yeah, we have it.
- Okay.
- Thank you.
- Why are we looking at this then?
- Alder Galvin,
- Yes?
- From what you just read, it's number two and then the attachments are listed as,
- Oh it's a part of attachments to that.
- The attachments? Okay.
- Report.
- All right. Next is our understanding the grievant has requested a fact finding hearing pursuant to section 3.8.3 of the labor agreement. The committee may decide whether to hold a fact finding hearing. What are the parties request for a hearing?
- I would request there be a denial of the hearing. I think what the committee should be looking at is conditions as to whether or not it should be dismissed, based on the agreement he had on March 22, 2019. And then, if it's not for that reason, it should be dismissed because, due to untimeliness, he did fail to, file with HR Director in a timely matter. And then from there, those are the two reasons why I think we shouldn't have a hearing. And then if you, because it should be dismissed. But from there, even if you do believe it should be dismissed, I think that there really isn't any factual dispute on what happened. I think Officer Brann is just stating that, what he did, did not violate the policies of the police department. So I think from there, even if you do believe it should be dismissed, we shouldn't have a fact finding hearing, because I think the facts have already been discussed with both parties.
- [Windorff] Thank you. And with respect to the timeline of the, the two grievance, that's kind of where there's a gray area. In the agreement, section 3.7, the grievance steps, the grievance procedure steps can be waived by mutual agreement of the parties and it's our position that, the city constructed to waive them. I mean the process is that once the Chief promulgates his step one letter, then the timeline starts to toll from that date and I think it says 15 working days from that date. Then the problem is, that kind of work, continued to discuss this with both union representatives and my client and then you have this March 22, when Director Faulds terms as an agreement, my client disputes that characterization of that. And I think that's why we're requesting the evidentiary hearing. There's an audio recording of that meeting, in which it was my client's

understanding that Commander Warych was saying I understand that, you don't necessarily agree with the disposition in this case, but you're signing this to essentially indicate that you've received it. And I think there's some pieces on that audio where my client indicates, am I free to continue to challenge this, Commander Warych says yes. I mean if we had been following the agreement, it should have been done and over with in February, so I'm not sure why Commander Warych was continuing to meet with my client and go over the way this was investigated, which was sort of another tertiary issue. And then on top of that, the step two grievance, if we're using the March 22 date, which my client did not agree with, that was sort of the final piece of what the department was doing with this. He presented that step two grievance to Director Faulds on the 10th working day, following that. So our agreement is timely. Because the city constructively waived that sort of step one process, if that makes sense?

- Not understanding how the contract works, I'll bet it doesn't.

- [Woman] Certainly.

- And so that's,

- You said what?

- Because of the way the contract reads, I think maybe what she's explaining, may not necessarily make sense as to why she feels that it should be waived. But okay, then. As to the dismissal about previous, that there was an agreement reached between the city and the unit.

- [Windorff] They essentially chose not to represent my client in that process, because, essentially the claims that we have are that he was not disciplined, I guess, for cause, or based on, essentially there should've been other officers who should've been disciplined. There then was discipline meted out, not in conjunction with my client's discipline, but after he made those claims, he made these claims, I think he kind of started talking with Commander Warych sometime in January or February of that year. This March 22nd sort of final deposition happens, and then they meet it out, based on my client's claims in April. So long story short, that March 22nd resolution, is what we're terming as, he signed that, I think it's in the police exhibits. He signed that, not necessarily saying he agrees with that deposition, but that he's signing that, acknowledging the fact that he received that, but what we'd ask that the committee consider, in a sort of limited evidentiary hearing, is listening to the audio of that recording, because there's another recording and then several of the videos that are issued. And I would also just offer if the committee were so inclined to grant that evidentiary hearing, if you wanted to, I guess we'd do that independently time, you know, we don't have to waste your precious time this evening, if you want to adjourn and do that, independently, but those audio and video files, we had attempt to submit in advance, but I guess the system he uploaded or whatever, so. That's just the basis for that evidentiary hearing.

- I guess I would just respond to say that it's very common that a police officer will receive a discipline and then will have the meeting with the Chief and that'll be on a certain date. Then in between that date and the 15 working days, to file with the HR Director. It's very common that the union meets with the police department and try and work out a resolution to that discipline and I believe in this matter it happened. But that does not constructively push the date any farther out. I would agree that if the committee does not want to dismiss this matter, and they did want to move forward with evidentiary hearing, you were looking at the documents on your own time, we would have no issue with that, but I would just ask that the city and the police department can just do one more review of the documents submitted and then allow the committee to look at it afterwards. So if you do not move for dismissal, then I think it'd be okay to look at the documents after the fact. Versus having the hearing.

- Any questions? It's an awful lot.

- It is! It is.

- The city is asking for dismissal on at least two points.
- For the whole.
- Right based on two things.
- Yeah.
- Yeah, two things. You're bringing up arguments that in and amongst themselves, would probably require a couple of hours at least I think, to get everyone up to speed where we would understand exactly what the points you're trying to make. And then, make a decision whether even have an evidentiary hearing or not. And I hate to make everybody come in and out of here, numerous times, but, to do what's right for everyone, I think we have to take this into consideration.
- I think we have to spend more time with it.
- And that's the way I feel at this time. I wouldn't want, I mean it seems to me, on the flush, from what I've read, discipline was handed out. This is done. When you're bringing up things that give me some pause. And I guess I would want a better explanation from both sides, as to why they feel the way they feel. And as to how we should proceed. That's me and I'll, the rest of the committee, you certainly.
- You know, I have this printed and look, you know, because I needed, there were so many questions that I had as I was reading through it. So I couldn't just do that on the computer. So, you know, and I just, want us to keep what's in here and I have a lot of questions. Obviously, a lot of time was put into this on both sides, and I feel that it would be worth my time to listen, but I would need more, I would appreciate being able to review stuff outside of this meeting.
- If I could add, I think what would be relevant to the dismissal, would be the ability to listen to the audio of the meeting. That he brought up. I think that would be good for the committee to listen to that. And,
- In committee, or on our own?
- On your own. I don't think if we, I don't know if we have it tonight or not.
- Okay.
- If we do, I think it's about nine or 10 minutes, I think. So, I'd be okay with the committee reviewing that audio of that meeting with Officer Brann, his union representative and Commander Warych.
- [Chavez] So if I'm hearing the committee correctly, it sounds like you guys want to determine whether or not it should be dismissed, before you move on to an evidentiary hearing?
- Correct.
- [Chavez] If that is the case, what you can do, is accept all that information tonight, regarding just the, the issue of dismissal. And then take the matter under advisement, so you can make a decision. Alternatively, you could go into, actually I should say that you should give the parties an opportunity to brief that, if you guys are looking for additional information, because I think it is pretty complex issue and so both parties could be given a time frame with which to submit their positions on both sides, so that you guys have something solid to look at, as to what the positions are, regarding that matter.
- Just as it pertains to dismissal.

- Correct.

- Tonight.

- [Chavez] Correct.

- Okay.

- So, what I would be recommending at this point, is you accept the information pertaining to the audio and then provide a briefing schedule for the parties to provide the right motions. And I would say that that would probably need to happen before the next Personnel Committee meeting. So that you can have it on the agenda at that point. And then at that meeting, you would determine whether or not you're going to move forward with it and the parties can have their evidentiary hearing that night, if you decide to move forward.

- Kathy, do you have any questions?

- No.

- Veronica?

- No, I think.

- It's a lot.

- Yeah, it is.

- So and I'm not understanding it. Contract works.

- Is that, well even with me understanding the contracts, I don't understand the contracts. So I mean, it's, and it's changed last since I was on the job, so. And I would, it would behoove us in the meantime, between now and the next meeting, to review all the pertinent documentation to this again, because if we do move into evidentiary, we can't keep pushing this off.

- Right.

- So at least, start a process so that they have some light at the end of the tunnel and this can be done. All right. I would entertain a motion that,

- Well do we have to have it at the very next meeting?

- I was going to bring that up.

- It's kind of--

- I mean I know we have the holidays around.

- Yes!

- I mean, if not, to January, I think we, I'm not opposed to any,

- Okay.

- kind of schedule you guys come up with.

- I guess.

- [Windorff] Nope and that's fine too. And just as a reference, in that Personnel Committee report that we wanted to make sure that you have, that does sort of give the large over view that everything else is sort of documentation. I have no objection to that. And I think we were just primarily interested in having you guys watch the videos, because, those are sort of what all the discipline is based on.

- So and then the videos that like, how many videos total?

- I guess to be clear for me, I mean our perspective from the city, is that, listening to the audio of the meeting, is kind of what's pertinent to this.

- Okay.

- And I guess my thought, and it's obviously up to you and to Attorney Chavez, is that, if you feel like there's no dismissal, then my suggestion would be, then we move forward with looking at all the videos and everything submitted by both parties.

- So that we can explain this, so we're not just watching a video and not knowing what's going on. I mean that's--

- Someone will watch the videos, if we determine that it's not going to be dismissed. If we determine there's going to be a hearing, we would watch the videos at the hearing.

- My suggestion is,

- [Chavez] We'd two it ways.

- Yeah.

- [Chavez] So the first way, would be you make a determination at the next committee meeting, or whichever one you hold about the dismissal. And then at that point, you set the hearing for an alternative date, so that you guys can allow the parties to prepare for that and also allow yourselves to prepare for that. Or you can deliberate that night. So then you can have, instead of having to have all the videos shot at one hearing that day, you could either prepare to allot enough time for it to happen so that you can have it kind of allot it's own potentially.

- Right. Right.

- Or, you guys could review them independently within that time frame.

- I guess if I'm going to watch a video, that someone's trying to make a point on, I'd rather have that person present, so that,

- Me too.

- We can stop it and they can explain what was going through or happening at that time.

- So then sitting like the next time, we determine not to dismiss, then at that next meeting in January, then we would then set the hearing date and maybe make it on its own, not a regular meeting, have a time that.

- If you're going, of you--

- If we decide to do that.

- [Chavez] You can do it either way. If you guys are just going to watch the videos all together, it doesn't really matter whether or not you have set a hearing further down the road, or that day, but if you want to allow it, because the idea would be, that if you needed additional time, to review things on your own, then you could set . But if you're going to watch them all at once, you can either announce the decision that night and then have a hearing that night. Or, if you want additional time allotted for the specific hearing, then you can set it on its own hearing.

- Which would make more sense and it wouldn't, I just think it would fairer. For us to just--

- Hearing. If we decide

- Yeah.

- To have a hearing.

- If we decide to have a hearing.

- Yeah that's one hearing.

- I think that we should give people a heads up and give them time to prepare and not just go, "Let's just have it "right now."

- Yeah, yeah.

- So, yeah. I think the next time, it'll be decided, are we going to dismiss it, or not dismiss it? Then, I would like to see us set a date to give them time so that they don't have to come in ready and then what if we dismiss it? And, okay.

- Are you opposed to that attorney?

- [Chavez] Nope, that sounds fantastic.

- And then--

- And then--

- All right so--

- Oh!

- Oh no go ahead.

- [Windorff] I do have the audio for the dismissal decision. I do think Attorney Chavez has that. I don't know if she has that like today. Okay.

- So she can send it to us and we can listen to it on our own computers

- Okay.

- At home.
- [Windsorff] Well I think the idea was that we would listen to it right now.
- We would listen to it right now.
- So that you guys have that to ask questions.
- Oh.
- Yeah.
- Okay.
- For that party.
- Okay. Now talking timelines.
- Yes .
- Is there a reason not to?
- [Chavez] I mean that's really up to the parties, if you guys want an open or closed session.
- I mean I guess I would prefer that they just listen to it on their own.
- [Chavez] Okay.
- That's what my thought was. Because I mean, I don't know, there's a lot of discussions in there.
- Well if we listen to it on our own,
- Here.
- And then.
- You're talking here in closed session? He's talking--
- No. No.
- No I'm talking going home.
- So we leave this meeting.
- You go home.
- And then we go home and listen to it.
- Listen to it on your own. You review the paperwork. Then when we have the next meeting to decide if we're going to dismiss or not dismiss, if we have any questions, we can ask those at that time.
- That's what I prefer.

- In reference to the audio that we heard or any of the paperwork that we've read.
- Okay. But I mean that's I'm up for it.
- My thoughts were, we review the paperwork on our own, listen to the audio on our own. Then at the next meeting that we have for the determine dismissal or not dismissal, if we have any questions on that audio, we could ask them at that time and have them explain it to us.
- [Windorff] That sounds okay.
- Okay. I just want to get the timeline out here. When will we have the meeting, our very next meeting? Would that be,
- No.
- To determine dismissal, or are we talking January?
- We talk January.
- That's up to the committee and attorney. However you guys want to do it. If you guys aren't ready to determine dismissal at the next meeting, I think we're okay with that.
- In two weeks.
- If you want to wait until that January
- Well here's my other concern and not to say this thing is going to turn into some Supreme Court hearing here, but we're all up for re-election and we could all be gone in April. So I mean. You know,
- And that sounds .
- Just to let this thing get so elongated out that.
- No, I don't think--
- I think . Is allowing the parties adequate time to present their
- And that's fine.
- [Chavez] motions, their written motions to you guys. Or I'm sorry, their written submissions in support of their positions. And so I think it's really an issue whether or not they've had adequate time, within those two weeks, to provide something to you and still give you enough time to actually use it.
- Okay.
- [Chavez] So then with that, I guess the question is, what do the parties prefer? And then what does the committee prefer?
- City, what would you prefer? I think if we're looking at to have briefs on the dismissal, and then after that, prepare for a hearing. I think we could have the dismissal meeting in January and then I think we have, evidentiary hearing either late January or early February.

- [Windorff] I think that sounds fine and just to clarify between now and then, anticipating a January date, that would be the sort of briefing. Okay, yeah.
- We would get more stuff to look at.
- [Windorff] Okay. Because this is
- More!
- Not enough. We need some more.
- Okay.
- [Chavez] So then next question I have is, would the committee like to establish those dates now or would you rather we work with the parties as the law department, to determine what dates work with them?
- What? What? But it wouldn't be like on a Tuesday.
- [Chavez] I don't mean that, I mean for the briefings to be submitted.
- Oh, so we're asking
- I would prefer that.
- By this time. You would just take it.
- The city and Officer Brann work that out between themselves.
- Right, you can do that.
- Because its--
- And I will provide them with what needs to be submitted.
- Okay.
- Great.
- All right. Does everyone, totally understand?
- So what do we need at the first
- So she's going to be,
- Meeting?
- Sending us the video to watch. Audio, I mean.
- Yeah.
- Audio, yeah.
- Okay, we'll listen to the audio. And then our first meeting in January, which will be the 2nd Tuesday?

- Yep, the 14th.
- It's the 14th? Because that's not on my calendar. All right!
- Okay.
- January 14th we will decide on dismissal.
- Dismissal or not a dismissal.
- Depending on what happens then. And we'll take the next step.
- Okay.
- Okay.
- Sound good to everybody?
- Yes.
- Yes.
- Do we need a motion or anything?
- No.
- We're going to do a motion on this.
- Yes.
- So the motion would be to hold until,
- January 14th.
- January 14th.
- Okay.
- For, the parties to brief the issue of dismissal.
- Okay, so I need--
- It would be, it would be dates of submission to be determined by the parties. Dates to determine. Okay. So I move that we hold this until January 14th, to brief the issue of dismissal with the dates to be determined by the city and the parties on what dates the information the briefs have to be in to us by.
- Do I have a second?
- I second .
- I have a second, all those in favor?

- Aye.
- Aye.
- Aye.
- Any opposed? That passes unanimously. All right. This part is settled until then.
- Okay.
- Okay.
- All right. On to item...
- Five?
- Five. Okay consideration with possible action on the grievance filed by Officer Matthew Lynch, regarding the attendance of K9 training issues, July 19, 2019. Oh I have this. Okay. At last we left this, we were in closed session and we had been asking for some information from the city on defining verbiage within the contract as it pertains to this issue. So I would entertain a motion that we enter back into closed session, to further discuss this and then read our judgment.
- I move that we go into closed session.
- Do I have a second?
- Second.
- All right, good.
- I'll read the language.
- Okay.
- The committee may convene in closed session pursuant to 19.851A Wisconsin statutes, for the purpose of deliberating concerning a case which was the subject of a judicial or quasi-judicial trial, or hearing before that governmental body. The committee may thereafter re-convene in open session pursuant to 19.852 Wisconsin statutes, to report any actions taken during closed session and to consider all other matters on the agenda.
- All those in favor?
- [Group] Aye.
- Any opposed? We are in closed session. Hate to do this to you guys again. All right, can I get a motion. To go back into open session.
- I move that we go back into open session.
- Second.
- All right, in favor?
- [Group] Aye.

- All right. To both parties, I mean, we have listened to you and, gone back and forth. And have some legal expertise rendered to us, to try and understand the various nuances in the contract and the management rights. And so, I've got a long list of findings of facts, but we're going to cut right to the chase and I'll entertain a motion.

- I'll make a motion that we deny the appeal.

- Second.

- Okay. Second. All in favor?

- [Group] Aye.

- And that passes unanimously and I'll read to you our findings of facts. This matter was heard by the Personnel Committee on October 8, 2019. Upon the mutual agreement of parties for extensions of time, rather than at the meeting that was first available for filing. Number two, the parties were provided an opportunity to submit written documentation in support of their positions, which documents were admitted into the record and considered by the Personnel Committee in making their determinations. Number three, neither party requested a fact finding hearing and the Personnel Committee similarly determined that a hearing was not required in this matter. However, both parties made oral arguments in support of the written submissions at the meeting of October 8, 2019. Number four, the Personnel Committee took this matter under advisement and continued the matter until November 12, 2019. Number five, the relevant provisions of the labor agreement and the citing this grievance, are sections 1.2 management rights, section 3.5, removal from special team or assignment, and section 7.3.3 pertaining to K9 unit training. Number six, pursuant to section 3.5, the parties acknowledge that Officer Lynch has not been removed from the K9 unit. Number seven, section .3.3, provides that the K9 officer shall be responsible for 17 hours of maintenance training per month on a yearly average. Number eight, section .3.3 further provides that when feasible, all K9 officers, will train together as a unit. Number nine, section 1.2. Management rights provided partly that union recognizes the of the city, subject to its duties, to collectively bargain, to operate and manage its affairs in all respects in accordance with its responsibilities and the powers and authority, which the city has not abridged, delegated or modified by this agreement, are retained by the city, including to delete the positions from the table of organization due to lack of work, lack of funds, or any other legitimate reasons and to determine the methods, means and personnel by which the city operations are to be conducted. The city agrees that it may not exercise the above rights, prerogatives, powers or authority in any manner which alters, changes, or modifies, the terms of this agreement as administered. Number 10, the labor agreement is silent as to what happens when a dog position in the K9 unit is eliminated. Officer Lynch's dog/partner, has been retired from the city's K9 unit, and as such, Officer Lynch does not currently have a dog assigned to him. The city has decided not to add a new dog to the K9 unit and instead, has effectively elected to eliminate this dog position from its K9 program. Based on the elimination of a dog from the K9 program, the K9 unit has more officers than dogs. Number 14, Officer Lynch has not been removed for cause from the K9 unit. Number 15, the GBPPA, argues that because any officer may only be removed from a special team, position or assignment for cause, and because the labor agreement provides that when feasible, all K9 officers, will train together as a unit, Officer Lynch is entitled to attend K9 unit training, regardless of whether he currently has a K9 partner, or whether a dog position has been eliminated. Number 16, the city argues that regardless of whether the officer remains a member of the K9 unit as they have not been removed for cause, the city retains the right to limit training to K9 officers who have a K9 partner, pursuant to its management rights. Conclusions of law. This grievance is properly before the Personnel Committee, pursuant to article three of the labor agreement. Number two, a hearing on this matter was timely conducted, timely conducted in accordance with article three of the labor agreement. Number three, a contract is ambiguous when its terms are reasonably susceptible to more than one interpretation. I will not cite the case law, but its included on the conclusions here. Number four, ambiguity may also be created when a contract is silent regarding terms. Number five, if a contract is ambiguous, it must be

interpreted to avoid absurd results. Number six, the parties have presented two equally rational interpretations of the contract.

- Sorry, I didn't quite--

- Sorry.

- Okay. Number seven, upon review of the contract and submissions and arguments of the parties, the committee has determined that the labor agreement is ambiguous with regard to this matter. And number eight, because the labor agreement is ambiguous as to what happens to the K9 unit when a dog is eliminated from the program, the city retains the right to limit training to K9 officers who have a K9 partner, pursuant to its management rights. And we give you the . This will be signed and you will receive a copy of this as I'm sure you will certainly going to entertain the thought of taking this further. Okay. So all that information that I just read off, will be there for your attorney to review and use it as he sees fit. I thank both parties for their time and effort in this and hopefully, you know, something can be worked out in the future, as it pertains to this unit. Thank you.

- [Man] Thank you. All right thank you for .

- All right.

- We still have some more stuff. Yeah, yeah. Why is my finger not ? Okay. We're down to E, informational review of the WRS eligibility of physical fitness incentive grievance.

- So we had a resolution for this grievance. So it no longer will be in front of committee.

- All right.

- Okay.

- Oh, oh good.

- Thank you.

- Good, oh. Well done, Chavez. So we need a motion on this, or we can just--

- Receive in place a file.

- Motion to receive in place a file.

- Second.

- All in favor?

- [Group] Aye.

- All right. Number two, Parks Department will begin recruiting a WLS superintendent position to begin January 1. As approved in the 2020 budget.

- And as this position was approved in the budget, we've just been lining all that .

- Okay.

- Okay. Routine, part of routine personnel actions through your employees, any?
- No,
- No.
- Okay. And, the next meeting date is November 26th.
- If needed.
- If needed.
- If needed.
- So we're going to keep it on and then we'll let you know if we have any .
- Right.
- Yes.
- I will notify you, right now, I will be .
- No more closed sessions, please.
- Oh we got some of those coming up next year.
- Yeah, no more closed sessions this year.
- Yeah.
- Yes. Yes, for this year.
- Move to adjourn?
- Probably going to be a, yes!
- Okay. Second.
- No. All in favor?
- [Group] Aye.
- Who seconded that one?
- I did, well I moved it.
- I seconded it.
- Okay.
- Yeah, she seconded it.
- These we have to turn in, right?

- I would think so.

Findings of Fact and Conclusions of Law

This matter came before the Personnel Committee on October 8, 2019. The purpose of the evidentiary hearing was to determine whether Officer Matthew Lynch is entitled to continue training with the Canine Unit pursuant to the terms of the Labor Agreement between the City of Green Bay and the GBPPA Bargaining Unit ("Labor Agreement").

Findings of Fact

1. This matter was heard by the Personnel Committee on October 8, 2019 upon the mutual agreement of the parties for extensions of time, rather than at the meeting that was first available after filing.
2. The parties were provided an opportunity to submit written documentation in support of their positions, which documents were admitted into the record and considered by the Personnel Committee in making their determinations.
3. Neither party requested a fact-finding hearing and the Personnel Committee similarly determined that a hearing was not required in this matter. However, both parties made oral arguments in support of their written submissions at the meeting of October 8, 2019.
4. The Personnel Committee took this matter under advisement, and continued the matter until November 12, 2019.
5. The relevant provisions of the Labor Agreement in deciding this grievance are Sections 1.2, Management Rights, Section 3.5, Removal from Specialty Team or Assignment, and Section 7.3.3 pertaining to Canine Unit training.
6. Pursuant to Section 3.5, the parties acknowledge that Officer Lynch has not been removed from the Canine Unit.
7. Section 7.3.3 provides that the Canine Officer shall be responsible for 17-hours of maintenance training per month on a yearly average.
8. Section 7.3.3 further provides that when feasible all canine officers will train together as a unit.
9. Section 1.2, Management Rights, provides in part that "The Union recognizes the prerogative of the City, subject to its duties to collectively bargain, to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which the City has not abridged, delegated or modified by this Agreement, are retained by the City, including... to delete positions from the Table of Organization due to lack of work, lack of

funds, or any other legitimate reasons... and to determine the methods, means and personnel by which City operations are to be conducted. The City agrees that it may not exercise the above rights, prerogatives, powers or authority in any manner which alters, changes or modifies...the terms of this agreement, as administered.

10. The Labor Agreement is silent as to what happens when a dog position in the Canine Unit is eliminated.

11. Officer Lynch's dog partner has been retired from the City's Canine Unit, and as such, Officer Lynch does not currently have a dog assigned to him.

12. The City has decided not to add a new dog to the Canine Unit, and instead has effectively elected to eliminate this dog position from its canine program.

13. Based on the elimination of a dog from the canine program, the Canine Unit has more officers than dogs.

14. Officer Lynch has not been removed for cause from the Canine Unit.

15. The GBPPA argues that because an officer may only be removed from a specialty team position or assignment for cause, and because the Labor Agreement provides that when feasible all canine officers will train together as a unit, Officer Lynch is entitled to attend Canine Unit training regardless of whether he currently has a canine partner or whether a dog position has been eliminated.

16. The City argues that regardless of whether the officer remains a member of the canine unit as they have not been removed for cause, the City retains the right to limit training to canine officers who have a canine partner pursuant to its management rights.

Conclusions of Law

1. This grievance is properly before the Personnel Committee pursuant to Article 3 of the Labor Agreement.

2. A hearing on this matter was timely conducted in accordance with Article 3 of the Labor Agreement.

3. A contract is ambiguous when its terms are reasonably susceptible to more than one interpretation. Chapman v. B.C. Ziegler & Co., 2013 WI App 127, ¶ 2, 351 Wis. 2d 123, 127-28, 839 N.W.2d 425, 427.

4. An ambiguity may also be created when a contract is silent regarding terms. City of Madison v. AFSCME, 124 Wis.2d 298, 303, 369 N.W.2d 759 (Ct.App.1985).

5. If a contract is ambiguous, it must be interpreted to avoid absurd results. Chapman, 351 Wis. 2d at 128.

6. The parties have presented two equally rational interpretations of the contract.
7. Upon review of the contract and submissions and arguments of the parties, the Committee has determined that the Labor Agreement is ambiguous with regard to this matter.
8. Because the Labor Agreement is ambiguous as to what happens to the Canine Unit when a dog is eliminated from the program, the City retains the right to limit training to canine officers who have a canine partner pursuant to its management rights.

Approved by the Personnel Committee, November 12, 2019.

William Hahn
Chair, Personnel Committee

11/12/19
Date

Attest:

Kris A. Teske
Clerk