



# **MINUTES OF THE PERSONNEL COMMITTEE**

**TUESDAY, JANUARY 7, 2020, 4:30 PM**

**CITY HALL, ROOM 207**

**AMENDED**

**Immediately following Finance, which begins at 4:30 p.m.**

## **A. ROLL CALL.**

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

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

Others present: Finance Director Diana Ellenbecker, City Attorney Vanessa Chavez, Assistant City Attorney Lindsay Mather, Police Commander Paul Ebel, Police Commander Kevin Warych, Chief of Staff Celestine Jeffreys, Police Officer Jeff Brann, Associate Superintendent of Green Bay Schools Vicki Bayer, District Legal Counsel for Green Bay Schools Melissa Thiel Collar, Human Resources Director Joe Faulds, Human Resources Operations Manager Melanie Falk and others.

## **B. APPROVAL OF THE AGENDA.**

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to move Regular Business agenda item #3 to Regular Business agenda item #1 and 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 December 10, 2019.

Moved by Ald. Barbara Dorff, seconded by Ald. Kathy Lefebvre 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 to fill the following replacement positions and all subsequent vacancies resulting from internal transfers.

a. Custodian I - Police

b. Parking Enforcement Officer - Public Works

Moved by Ald. Kathy Lefebvre, seconded by Ald. Barbara Dorff to approve. Motion carried.

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

2. 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 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. Veronica Corpus-Dax to return to open session.

Motion carried.

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

Moved by Ald. Veronica Corpus-Dax, seconded by Ald. Kathy Lefebvre to approve dismissal of the grievance and to adopt the findings of fact and conclusions of law. Motion carried.

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

3. Consideration with possible action on an intergovernmental agreement with the Green Bay Area Public School District to permit off-duty police officers to use City of Green Bay Police Department uniforms and equipment.

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to open the floor for discussion. 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 close the floor for discussion.

Motion carried.

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

Moved by Ald. Barbara Dorff, seconded by Ald. Veronica Corpus-Dax to approve the agreement.

Motion carried.

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

## **E. INFORMATIONAL.**

1. Report of routine personnel actions for regular employees.

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

Motion carried.

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

2. Next meeting date: January 28, 2020

## **F. PUBLIC HEARINGS.**

## **G. ADJOURNMENT.**

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

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

## **VERBATIM MINUTES**

- Meeting. Let's start with the roll call.
- Alder Dorff here.
- Alder Corpus-Dax.
- Alder Kathy Lefebvre here.
- And Alder Galvin is also here. Looking for a motion on the agenda.

- I'd like to, before we approve the agenda, move that we move Item 3 up to before Item 1, which would be good.
- So, Item 3 would be going to Item 1?
- Second.
- Second.
- All right. All in favor of that?
- Aye.
- Aye.
- It passes...
- Who seconded?
- Who seconded that?
- No, sorry Corpus-Dax.
- Corpus-Dax.
- So, we're moving Item 3 up to Item 1. All right. I'll entertain a motion on the minutes.
- Approve the minute, move to approve.
- Second.
- All in favor?
- [Ald. Lefebvre, Ald. Corpus-Dax, Ald. Dorff] Aye.
- That passes unanimously. On to regular business. Item 3. Consideration with possible action on an inter-governmental agreement with the Green Bay Area Public School District to permit off-duty Police Officers the use of the City of Green Bay Police Department uniforms and equipment. Staff?
- We have our department chair speak to that.
- Good evening, everyone.
- Good evening.
- So the agreement obviously, is between the City and the School District. It will allow off-duty officers to work in the schools during, the four high schools, during the lunch periods and at certain athletic events, like football games, and possibly dances, and any other circumstances where the City and the District determine that the Police Officer or Security Officer's presence is necessary. The Officers will be off-duty, and so they won't, they'll be paid by the District subject to the District's implemented policies, but they won't be able to use Green Bay uniforms and patrol cars and their equipment so that there will still be a visible police presence in the schools and in the neighborhood to make sure that the communities are being kept safe. We have some

reps from the School District as well as Commander Ebel here if you have any specific questions for them. Otherwise, if you have any specific questions for me?

- Alder Dorff?

- For you. We have not had this type of agreement written in place before?

- Correct.

- It has been a process since I was an Associate Principal in 1988. We have had officers fulfilling these functions but this is the first time it would be written.

- Correct.

- What brought us this way?

- Police Officers off-duty are no longer allowed to use their GBPD uniforms, to wear their GBPD uniforms when working for other places.

- Why did that change?

- [Vanessa] I'll handle that. Essentially what happened, was ... About six months ago, maybe a little longer, it came to our attention that officers were working off-duty while wearing the uniforms, with the assumption that they were falling under the umbrella of the City's insurance and our liability coverage. We would be assuming responsibility for all of that, despite the fact that we had no control over their behavior while they were off-duty. And so, in speaking with our insurance carrier and investigating the law around it, we determined that it's really not the best practice. If they are in their uniforms, they are presenting themselves as officers and they need to be on duty. And so with that, the change was implemented, I'm actually checking a fact, the first of this year that officers are no longer allowed to wear the uniforms in a private capacity while serving as security officers. The issue at School District is they do still meet kind of a quasi-function where they have the police presence but not necessarily need the full-on Police Officers. What we determined was the best approach was a co-operative agreement. So under the State statutes there is an opportunity for municipalities and school districts to work together to use their joint powers to allow things like this to happen. We've kind of redefined what are considered school grounds to accommodate those gathering areas where school students gather during the school... school lunch periods and what not. So it's no longer just the school grounds, it's the adjoining parks that we might own, stuff like that. And so we are really just co-operating with the school district to make what they need happen, what we need happen. And so this way we still maintain the integrity of our position of when you're off-duty, you aren't wearing the uniform and it's clear to the public whether or not you are serving as a Security Guard or you're serving as a Police Officer. And then when we have governmental entities who are in need of a higher level of service because it will be our governmental entities, then we have this co-operative agreement to allow us to work in a slightly different manner.

- I noticed you used the words best practice but so it wasn't necessarily illegal to allow them to do it? Help me understand more about what you meant by it's not best practice.

- [Vanessa] Essentially, if the Police Officers are outside, working as independent contractors, and they punch somebody, the City is on the plug if they presented themselves as officers, regardless of whether or not they were actually acting as an officer. They could have completely gone rogue but they've got that air of authority behind them, so we would be making the argument saying that we are not covering you but then we would have somebody outside who got punched coming and suing the City and we'd have to deal with that, we might be exposed to liability.

- And so, by putting this agreement in place, as I read through it, it looks like it puts the liability on the School District, if there is any.
- [Vanessa] Correct.
- Okay, so that protects the City.
- [Vanessa] Yes. We're trying to refine it. I mean we realize that this was kind of not the top approach that we could come up with, this was something we needed to get in place really quickly and so we're going to be looking to figure out what would work. So this one ends at the end of the school year. We are already working with the School District to like figure out if there's going to be anything that we need to fix. And then, on top of that, we're also going to be looking at what's happening to see if we need to fix stuff in the interim. You guys will see another one in another six months or so. This one is just, we need to get something in place to make it happen. This is going to be pretty close to what it's going to look like moving forward. But we also recognize that we need to refine this process as it moves and so that's why it is only until the end of the school year when we can really take our time and figure out what needs to happen.
- I don't have any other questions.
- Anyone else have questions? All right, I have a few questions. So, the school is responsible for their actions?
- [Vanessa] Correct.
- Who is responsible for supervising that?
- [Vanessa] So what we have ultimately decided is that the officers are going to be subject to review by our officers but it is still only in their capacity as School District employees, so any findings that we make are referred just to the School District and not part of any actions in the City. But this way that's kind of our co-operative function, which is, we're assisting them with that portion because there is a quasi-law enforcement component to it because we are still kind of doing more than just... we still have our uniforms on. And so the Police Officers will still be following... I'm sorry, the Police Officers will still be subject to review by our Police Department Internal Affairs, but the results of that gets forwarded onto the School District to determine what they want to do with their Security Officers. The discipline wouldn't be handed down by us cause they are not ours, but it'll be handed down by the School District.
- Okay. Workman's Comp, all that is being through the School District? How is the City being compensated for this? Who pays them? Does the School District pay them? Do we pay them?
- [Vanessa] The School District pays them. They are private employees of theirs. They are not affiliated with the City during the time that they are on duty with the School District.
- Do we get financially compensated for the use of the equipment?
- [Vanessa] No, that's--
- Or is this a quid pro quo where we got extra officers out there now, uniforms and squad cars for 20 parks and schools.
- [Vanessa] It's more of, I guess you could see it that way, yes. So it's just a co-operation between the two of us seeing the
- So the school is responsible for who they want to hire and who they want to fire.

- [Vanessa] Correct.
- All right. I have some other questions, but I think I have to direct that more
- Can we?
- Aat the School District. Okay?
- Any remarks? Should we open up the floor.
- Yes.
- All right. Move to open the floor.
- Second.
- All in favor?
- [Ald. Lefebvre, Ald. Corpus-Dax, Ald. Dorff] Aye.
- That passes unanimously.
- Okay, so...
- Whoever wants to come on up.
- Melissa Thiel Collar is the attorney. Vicky Bayer is the Assistant Superintendent. They'll introduce themselves, of course.
- Good evening.
- And say where they live, which of course, this is what they have to do.
- Hi, yeah, we just need you to identify yourselves with your address.
- Sure. Melissa Thiel Collar. I'm the District Legal Counsel and we're at 200 South Broadway, Downtown.
- Vicky Bayer Associate Superintendent.
- Okay. PD has always kind of worked for the school and Sheriffs deputies have worked for the School District in the past. Are you going just with Green Bay Police now or are you still going to be working with other agencies or just Green Bay?
- It will be Green Bay.
- Okay. Does this include just within the City of Green Bay or is it going to include school property outside of the City of Green Bay?
- We're focusing on the secondary schools right now, continuing the practice that's been in place as Alderman Dorff had mentioned for quite some time now.
- Okay, but also now, in special events like dances, sporting events.

- Correct.
- Where as before it was just the SROs that were doing that.
- No.
- No.
- No they--
- No always, even when I was--
- Oh they did, okay.
- An AP in the 90s.
- Okay, all right. And then, so you guys will interview, hire the individual officers and work out a compensation package for them.
- We already have. There are already currently, well, we've been on a hiatus since the policy has changed but we've had a pool of officers who have been doing this for... going back to when Alderman Dorff was on staff.
- All right. And you guys are happy with the arrangement you currently have?
- Very much.
- It's been working, yes.
- So you're getting the people that you want in the right spots doing the things you want them to do. And that's all budgeted, it's been budgeted for years, right?
- Correct.
- Okay. All right, I have no more questions. Does anyone else have questions?
- Do you feel this agreement will help keep the students safe and help the community?
- That's our primary goal and we believe that, yes.
- Okay, I think this is a good agreement.
- If I could just say, thank you to the Law Department, cause they worked over the Christmas break and New Year trying to get this done given the time frames.
- Thank you.
- Just want to thank them for all the work.
- Thank you very much.
- To close the floor.
- Second.

- All in favor?
- [All Alders] Aye.
- Okay that passes unanimously. Any other questions or comments from anybody?
- I would move to approve.
- Second.
- All right, all those in favor of approval?
- [All Alders] Aye.
- That passes unanimously.
- Thank you.
- On to number one. Consideration with possible action in a request to fill the following replacement positions and all subsequent vacancies resulting from internal transfers. A is a Police Custodian, and B is a Public Works Parking Enforcement Officer. Staff?
- You have the request to fill in here, so if you have any questions, you can ask us those.
- Any questions from anybody?
- No.
- I'll entertain a motion.
- I'll make the motion that we approve the... the Custodian and the Parking Enforcement Officer.
- Second.
- We have a motion to approve and a second. All in favor?
- [Ald. Lefebvre, Ald. Corpus-Dax, Ald. Dorff] Aye.
- Aye. That passes unanimously. Onto number three.
- Two.
- Two.
- Well two, which is still three, kind of. Consideration with possible action in a grievance filed by Officer Jeffrey Brann regarding the personal file entry report issued December 17th of 2018. This committee may convene to a closed session.
- So are we starting the whole thing and...
- Already started.

- I have--

- Oh, you have something to read

- Something to read. We're now on Item two, consideration with possible action in a grievance filed by Officer Jeffrey Brann regarding the personal file entry report issued on December 17, 2018. This is a continuation of the November 12th Personnel Committee meeting. At that time the City moved for dismissal and the committee held this matter to give the parties an opportunity to brief the issue of dismissal. To ensure a fair hearing, each member of the committee shall reconfirm that he or she does not have a conflict of interest in this matter and has not received any communication from any person or party. Each member please do so by stating I confirm and identify yourself please.

- Alder Dorff, I confirm.

- Alder Corpus-Dax, I confirm.

- Alder Kathy Lefebvre, I confirm.

- Alder Galvin, I confirm. Today the committee will consider the arguments made by the parties to determine whether the grievance should be dismissed. If the grievance is not dismissed, an evidentiary hearing on the merits will be scheduled for a future date. The committee members are in receipt of the brief from Human Resources Director, Joe Faulds, that the Personnel Committee gave December 13th, 2019. As well as the brief on behalf of Officer Brann, regarding the timeliness of his Step Two grievance submitted on December 13th, 2019. The parties also requested that the members of this committee review the audio recording of the March 22nd meeting between Commander Kevin Warych, Officer Brann, and Officer Brann's Union Representative, Officer Knudson. Have all the committee members reviewed the audio recording? I need a verbal.

- Yes.

- Yes.

- Yes.

- Yes? Okay, everyone confirms that they have reviewed the audio recording. Would the parties like to make any statements in support of their written submissions before the committee goes into closed session?

- Jeff?

- [Jeff] No, not at this time.

- Police Department or I mean, Human Resources?

- I'm all right thank you.

- No? Okay, if the parties do not wish to make statements, does any member of the Personnel Committee have any questions for either party?

- No, none at this time.

- Okay. If not, I will now entertain a motion to go into closed session to deliberate.

- So moved. And I'll read the...

- Second.

- The words. The committee may convene in closed session pursuant to 1985 sub 1 sub A Wisconsin Statutes 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 sub 2 Wisconsin Statutes to report any actions taken during closed session and to consider all other matters on the agenda.

- All those in favor?

- [Ald. Lefebvre, Ald. Corpus-Dax, Ald. Dorff] Aye.

- That passes unanimously, we are now in closed session.

- Move to go back into open session.

- Second.

- I'll entertain a motion, any seconds? All in favor?

- [Ald. Lefebvre, Ald. Corpus-Dax, Ald. Dorff] Aye.

- Aye, that passes unanimously. Findings of fact and conclusions of law. This matter came before the Personnel Committee for a public hearing on November 12th 2019. A motion to dismiss was made by the City at the hearing and the matter was continued to January 7th 2020 to allow the parties an opportunity to brief the issue of dismissal. Findings of fact: One, this matter was heard by the Personnel Committee upon the mutual agreement of the parties for extensions of time rather than at the meeting that was first available after filing. Two, the parties were provided an opportunity to submit written documentation in support of their positions. Three, all of the submitted documents were admitted into the record. Four, the City moved for dismissal based on estoppel because the parties had already reached a resolution to the grievance or in the alternative they were to comply with the deadline set forth in the labor agreement. Five, both parties submitted briefs in support of their positions. Six, section 3.2 of the Labor Agreement requires that the grievant be identified by name, position, and signature in the written grievance. Seven, Officer Brann is listed by name, position, and signature in the written grievance. Eight, the written grievance is also signed by the Union Representative. Nine, both Officer Brann and his Union Representative, Matt Knudson, were actively involved in the grievance process. 10, the deadline to submit the grievance and Step 2 of the grievance process was 15 working days from February 4th 2019. 11, the City and the Union agreed to an extension of the time to submit the grievance to Step 2 until February 28th, 2019 in an effort to settle the grievance. 12, on February 28th, 2019, the Union notified the City that the Union agreed to settle the grievance by reducing the discipline from four policy violations to two policy violations. 13, between February 28th 2019 and March 22nd 2019, Officer Brann, Commander Warych, and Union Representative, Matt Knudson, met to discuss the terms of the discipline. During the meeting on March 22nd 2019 Commander Warych informed Officer Brann, and I quote, "You, by signing this, are acknowledging the fact that you have accepted, not accepted, but you have been informed that this personal file entry will be in your personnel file." 15, in response, Officer Brann asked, and I quote, "And it doesn't revoke any of my rights for any future complaints or anything like that or any legal aspect? It's not holding me that I'm agreeing to this then, correct?" To which Commander Warych responded, and I quote, "You know, that's a question for the lawyers. I mean, no. You have pursued the grievance procedure. Your grievance was settled after Step 1 before only to the Human Resources Director. So that's my knowledge of it." 16, during that meeting Officer Brann asked, "And then the other thing, I have to follow up on with this on my behalf, this modification. Your understanding is was part of the grievance process of settling of the grievance, is that correct?" To which Commander Warych stated, "Yes." 17, during that meeting Commander Warych further stated, "Because my understanding is once you get to Step 2, once the Chief gets it and if he denies, then the union has so many days to go present the grievance to the Human Resources

Director. But at that point the Union, this is what I'm being told, the Union owns the grievance and they determine whether or not to take it to the Human Resources Director or not. They chose to talk about it and settle it, which this is the result of, the settlement." In response to Commander Warych, Officer Brann stated, "Okay." 18, Commander Warych then asked, "Am I wrong?", to which Union Representative Knudson stated, "You are correct." 19, Officer Brann then asked, "Are you aware of the Chief's denial or the rejection of the grievance?" to which Commander Warych stated, "Yes." Number 20, Officer Brann then stated, "Okay, okay, then I will sign." 21, Officer Brann stated later in that meeting, "So this, this in your mind and, and from what you're doing, this is done." to which Commander Warych responded, "Hopefully we never have to talk about it again." 22, before the meeting concluded, Union Representative Knudson and Officer Brann asked if he could attach a rebuttal to the personal file entry. Commander Warych notified them there was no problem with that. 23, Officer Brann concluded the meeting by stating, "Okay, I think that's it." 24, on March 22nd 2019, the City reduced the discipline from four policy violations to two policy violations. Number 25, on April 5th 2019, Officer Brann submitted the grievances to Step 2 of the grievance process. Conclusions of Law. One, this grievance is properly before the Personnel Committee pursuant to Article 3 of the Labor Agreement. Two, a hearing on this matter was timely conducted according to Article 3 of the Labor Agreement. I'm not going to do all these cites, the legal cites, but, three, the principles of contract law apply in resolving disputes under collective bargaining agreements and in arbitration as elsewhere, waiver and estoppel are established doctrines. Four, the elements of equitable estoppel are one action and non-action by the person against whom estoppel is asserted. Two, which reduces reasonable reliance thereon by the other either in action or non-action, and three, which is to his or her detriment. Five, the element of equitable estoppel is whether the party against whom estoppel is asserted caused another party to change position to his or her detriment. In the context of a claim of equitable estoppel, detriment has been equated with prejudice and commonly understood to mean injury or damage. Six, in construing terms of collective bargaining agreement various sources may be considered including the express language of the agreement, statements of the parties in negotiations, bargaining history custom in past practice. In factual disputes, such as whether agreements are settled, the parties conduct may also be considered absent anything in the Labor Agreement to the otherwise. Eight, the evidence shows that the parties reached an agreement to resolve the grievance during the discussions among the City, Officer Brann, and Union Representative Knudson at the meeting on March 22nd 2019. During the meeting on March 22nd 2019, the evidence shows that Officer Brann understood that the personal file entry amendment was final and for the purpose of settling the grievance. 10, the evidence shows that the City reasonably relied on that agreement to settle by amending Officer Brann's personal file entry on March 22nd 2019. 11, the evidence shows the City reasonably relied on that agreement to settle by removing the original personal file entry, which included two additional charges. 12, the amendment of the personal file entry was to the City's detriment. 13, Officer Brann is therefore to stop from pursuing the grievance and this matter is dismissed. 14, as this matter is dismissed, based on estoppel, there is no need to address the issue of waiver. I'll entertain a motion.

- A motion to approve the dismissal based on estoppel.

- And an adoption of the findings and conclusions.

- And an adoption of the findings and conclusions.

- Second?

- Second.

- All those in favor?

- [Ald. Lefebvre, Ald. Corpus-Dax, Ald. Dorff] Aye.

- Aye. Any opposed? I'm sorry this matter is concluded. Everyone, there will be a copy available and disclosed to City Council next Tuesday.

- Thank you.
- Do you want these back?
- There's a typo.
- Yeah, I saw that. All right, so. Informational. Under Informational Report of Routine Personal Actions for Regular Employees. Staff?
- Do you have any questions on the report?
- I have none.
- I have none.
- Entertain a motion.
- Move to receive and place in file?
- All those in favor?
- [Ald. Lefebvre, Ald. Corpus-Dax, Ald. Dorff] Aye.
- Aye. And the next meeting date is January 28th, 2020.
- Move to adjourn.
- Second.
- All in favor?
- [All Alders] Aye.
- We're adjourned. Oh I get to leave the meeting.

### **Findings of Fact and Conclusions of Law**

This matter came before the Personnel Committee for a public hearing on November 12, 2019. A motion to dismiss was made by the City at the hearing, and the matter was continued to January 7, 2020 to allow the parties an opportunity to brief the issue of dismissal.

### **Findings of Fact**

1. This matter was heard by the Personnel Committee 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.
3. All of the submitted documents were admitted into the record.
4. The City moved for dismissal based on estoppel because the parties had already reached a resolution to the grievance, or in the alternative, failure to comply with the deadlines set forth in the Labor Agreement.
5. Both parties submitted briefs in support of their positions.
6. Section 3.2 of the Labor Agreement requires that the grievant be identified by name, position, and signature in the written grievance.
7. Officer Brann is listed by name, position, and signature in the written grievance.
8. The written grievance is also signed by the Union representative.
9. Both Officer Brann and his Union representative, Matt Knutson, were actively involved in the grievance process.
10. The deadline to submit the grievance to Step Two of the grievance process was fifteen (15) working days from February 4, 2019.
11. The City and the Union agreed to an extension of time to submit the grievance to Step Two until February 28, 2019 in an effort to settle the grievance.
12. On February 28, 2019, the Union notified the City that the Union agreed to settle the grievance by reducing the discipline from four (4) policy violations to two (2) policy violations.

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Personnel File Entry Grievance filed by Officer Jeffrey Brann

13. Between February 28, 2019 and March 22, 2019, Officer Brann, Commander Warych, and Union representative Matt Knutson met to discuss the terms of the discipline.
14. During the meeting on March 22, 2019, Commander Warych informed Officer Brann, "You, by signing this, you are acknowledging the fact that you have accepted, not accepted, but you have...been informed that this personnel file entry will be...in your personnel file."
15. In response, Officer Brann asked, "And it doesn't revoke any of my rights for any...future complaints or anything like that or any legal aspect? It's not holding me that I'm agreeing to this then, correct?" to which Commander Warych responded, "You know, that's a question for the lawyers, I mean, no... you have pursued the grievance procedure...the grievance was settled after step 1 before it went to the Human Resources Director, so that's my knowledge of it."
16. During that meeting, Officer Brann asked, "And then the other thing, I have to follow up on with this on my behalf, this modification, your understanding is, was part of the grievance process of settling of the grievance, is that correct?" to which Commander Warych stated "Yes."
17. During that meeting, Commander Warych further stated, "Because my understanding is once you get to Step 2, once the Chief gets it and ... if he denies, then the union has so many days to go present the grievance to the Human Resources Director, but at that point, the union, this is what I'm being told, the union owns the grievance, and they determine whether or not to take it to the Human Resources Director or not. They chose to talk about it and settle it, which... this is the result of ... the settlement." In response to Commander Warych, Officer Brann stated, "Okay."
18. Commander Warych then asked, "Am I wrong?" to which Union representative Knutson stated, "You are correct."
19. Officer Brann then asked, "Are you aware of the Chief's denial or the rejection of the...grievance?" to which Commander Warych stated, "Yes."
20. Officer Brann then stated, "Okay. Okay. Then I will sign."
21. Officer Brann stated later in that meeting, "...so this, this is in your mind in, in from what you're doing, this is done?" to which Commander Warych responded, "Hopefully, we never have to talk about it again."
22. Before the meeting concluded, Union representative Knutson and Officer Brann asked if he could attach a rebuttal to the Personnel File Entry, and Commander Warych notified them there was no problem with that.

23. Officer Brann concluded the meeting by stating, "Okay, I think that's it."
24. On March 22, 2019, the City reduced the discipline from four (4) policy violations to two (2) policy violations.
25. On April 5, 2019, Officer Brann submitted the grievance to Step Two of the grievance process.

### **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. The principles of contract law apply in resolving disputes under collective bargaining agreements, and "in arbitration, as elsewhere, waiver and estoppel are established doctrines." Madison Teachers Inc. v. Madison Metro. Sch. Dist., 2004 WI App 54, ¶ 17, 271 Wis. 2d 697, 711 (internal citations omitted).
4. The elements of equitable estoppel are: (1) action or nonaction by the person against whom estoppel is asserted (2) which induces reasonable reliance thereon by the other, either in action or nonaction, and (3) which is to his or her detriment. Welter v. City of Milwaukee, 214 Wis. 2d 485, 496 (Ct. App. 1997); Olive Portfolio, LLC v. Harrill, 2014 WI App 45, ¶ 14, 353 Wis. 2d 554, 846 N.W.2d 34 (citing Milas v. Labor Ass'n of Wis., Inc., 214 Wis.2d 1, 11-12, 571 N.W.2d 656 (1997)).
5. "The final element of equitable estoppel is whether the party against whom estoppel is asserted caused another party to change position to his or her detriment. In the context of a claim of equitable estoppel, "detriment" has been equated with "prejudice," and commonly understood to mean "injury or damage." Milas v. Labor Ass'n of Wisconsin, Inc., 214 Wis. 2d 1, 13, 571 N.W.2d 656, 660-61 (1997) (internal quotations and citations omitted).
6. In construing terms of a collective bargaining agreement, various sources may be considered, including the express language of the agreement, statements of the parties in negotiations, bargaining history, custom, and past practice." Id. at ¶ 15, 271 Wis. 2d 697 at 710.
7. In factual disputes such as whether a grievance is settled, the parties' conduct may also be considered absent anything in the Labor Agreement to the otherwise. Id.

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8. The evidence shows that the parties reached an agreement to resolve the grievance during the discussions among the City, Officer Brann, and Union representative Knutson at the meeting on March 22, 2019.
9. During the meeting on March 22, 2019, the evidence shows that Officer Brann understood that the personnel file entry amendment was final and for the purpose of settling the grievance.
10. The evidence further shows that the City reasonably relied on the agreement to settle by amending Officer Brann's personnel file entry on March 22, 2019.
11. The evidence shows that the City reasonably relied on the agreement to settle by removing the original personnel file entry which included two (2) additional charges.
12. The amendment of the personnel file entry was to the City's detriment.
13. Officer Brann is therefore estopped from pursuing the grievance and this matter is dismissed.
14. As this matter is dismissed based on estoppel, there is no need to address the issue of waiver.

Approved by the Personnel Committee, January 7, 2020.

Williami Hakim  
Chair, Personnel Committee

1/7/2020  
Date

Attest:

Chris A. Teske  
Clerk