

UNION COUNTY
RESOLUTION NO. 2023-22

A RESOLUTION AMENDING THE UNION COUNTY PERSONNEL POLICY MANUAL
TO SIMPLIFY AND CLARIFY SECTIONS 7 (EMPLOYEE DISCIPLINE) AND 8
(GRIEVANCE PROCEDURES)

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF UNION
COUNTY, NEW MEXICO:

WHEREAS, Union County, New Mexico (hereinafter “the County”) has in place a
Personnel Policy Manual, Resolution No. 2021-18 (hereinafter “the Personnel Manual”) which
governs the employment relationship of Union County employees and serves as the contract of
employment between Union County and its employees;

WHEREAS, the Personnel Manual is out of date and does not reflect the shared
understanding of the County and its employees concerning the terms of employment with the
County and needs to be revised;

WHEREAS, Sections 7 and 8 of the Personnel Manual in particular are complex and
confusing and should be revised so as to make the requirements and obligations of those sections
clear and simple to understand and apply;

WHEREAS, those sections of the Personnel Manual should be revised immediately and
the remaining sections of the Personnel Manual should be revised in due course; and

WHEREAS, Sections 7 and 8 shall be and hereby revised, as set forth below, and copies
of the revised sections should be provided to all Union County employees.

IT IS THEREFORE RESOLVED AND ADOPTED, AS FOLLOWS:

SECTION ONE. Section 7 of the Personnel Manual is hereby rescinded and the following
amended Section 7 enacted in its place:

“SECTION 7. DISCIPLINE AND DISCIPLINARY TERMINATION

7.1. AUTHORITY TO TAKE DISCIPLINARY ACTION.

A. General. –

Supervisory and managerial personnel of Union County have the responsibility and obligation to take whatever disciplinary actions are deemed necessary, within a reasonable time after the need for action becomes apparent, in the best interests of the County.

B. Purpose of Discipline. –

The Primary purpose of discipline is to correct performance or conduct that is below acceptable standards or contrary to the County’s interest, in a constructive manner that promotes employee responsibility and performance.

C. Consultation. –

Supervisory and managerial personnel of the County may consult with the County Manager and County Attorney before undertaking an oral or written reprimand and shall consult with the County Manager and the County Attorney before ordering a suspension, demotion or termination. Whenever consultation is not feasible prior to taking such action, necessary action may be taken by supervisory and managerial personnel and the consultation deferred until feasible.

D. Progressive Discipline. –

Progressive discipline shall be used wherever appropriate, building on previously-ordered discipline. Progressive discipline may range from an oral or written reprimand, suspension, demotion or termination of employment depending on the severity of the conduct causing the discipline, and the nature of the previously ordered discipline, and the frequency of misconduct. Progressive discipline may not be appropriate in all situations.

7.2. FORMS OF DISCIPLINARY ACTION.

A. Oral Reprimand. –

An oral reprimand is generally used for minor offenses or to correct minor faults in an employee's performance.

B. Written Reprimand. –

A written reprimand may be issued for an offense of a more serious nature which requires more formal action than an oral reprimand or must be documented.

C. Suspension. --

i. A suspension may be ordered for an offense of a more serious nature or for repeat of a minor offense. An employee may be suspended for a period not to exceed ten (10) working days. During a suspension, an employee will not be paid or accrue benefits. Each suspension shall be recorded and filed in the employee's personnel file and shall remain there for not less than twenty-four (24) months at which time it may be removed on request of the employee so long as no further suspensions have been ordered and the employee is still employed at the County.

ii. The duration of the suspension depends on the conduct which led to the suspension. A suspension for up to two working days may be ordered where an employee commits a minor offense for which the employee has previously received an oral or written reprimand, or where the employee commits a more serious error or mistake which alone merits a suspension. A suspension of up to five (5) working days may be ordered where the employee commits an infraction of a more serious nature for which termination is not justified, or for committing multiple violations of a minor infraction for which previous discipline has been imposed. A suspension of up to ten (10) working days may be ordered when an employee commits an act or acts which alone justify termination, but mitigating factors or circumstances exist. Notwithstanding the foregoing, the duration of any suspension shall be determined by the supervisor and shall be commensurate with the severity of the offense, error, mistake or misconduct.

D. Demotion. --

An employee may be demoted for an offense of a more serious nature or for repeat of a minor offense or for poor performance. The employee may only be demoted to a lesser position for which the employee is otherwise qualified. When demoted, the employee will receive compensation commensurate with the new position.

E. Termination. --

A regular employee may be terminated for cause for violation of this Resolution, County policies, State or federal law, or for any other inappropriate behavior.

7.3 GROUNDS FOR DISCIPLINARY ACTION. Grounds for disciplinary action include, without limitation, but by way of illustration, the following offenses:

- A. Violation of this Personnel Manual;
- B. Continued unsatisfactory performance of duties;
- C. Personal conduct which substantially interferes with the performance of duties;
- D. Tardiness, improper use of leave, excessive absences;
- E. Working in an unsafe manner;
- F. Negligence or gross negligence while at work resulting in injury, damage or

- death to a person;
- G. Insubordination;
- H. Falsifying official documents or records;
- I. Threatening or harassing an employee or Elected Official;
- J. Theft or vandalism of County property;
- K. Damaging or destroying County property;
- L. Unauthorized use or possession of County property;
- M. Use of, possession of, or being under the influence of a controlled substance or intoxicant, while on duty;
- N. Operation of a County vehicle or equipment while under the influence of a controlled substance or intoxicant;
- O. Operating a County vehicle or equipment in a reckless or intentionally tortious manner, or continuing to operate County vehicles or equipment negligently after a previous warning;
- P. Accepting a bribe or consideration given with the intent to influence the performance of duty;
- Q. Any violation of the Governmental Conduct Act, NMSA 1978, Sec. 10-16-1 *et seq.*;
- R. Conviction of a misdemeanor or felony related to employment with the County; or
- S. Conflict of interest which results in private gain to the employee or detriment to the County.

7.4 DISCIPLINARY PROCEDURES

A. Oral Reprimand, Written Reprimand. --

i. An oral reprimand or written reprimand may be issued by the supervisor upon the existence of grounds for discipline set forth herein. An employee receiving a written reprimand may respond, if desired, in writing within ten (10) business days. A written reprimand, together with any response, shall be recorded and filed in the employee's personnel file and shall remain there for not less than twenty-four (24) months at which time it may be removed on request of the employee so long as no further reprimands have been ordered and the employee is still employed at the County.

ii. An oral reprimand or written reprimand is effective when given.

iii. Oral or written reprimands are not grievable.

B. Notification Of Proposed Suspension, Demotion or Termination. --

Any time a suspension, demotion or termination is proposed for a full-time, regular non-probationary, or part-time, regular non-probationary period employee, the supervisory or managerial personnel shall notify the employee in writing that he or she is to be disciplined through a *Notice of Proposed Discipline*. The *Notice of Proposed*

Discipline shall set out the reason(s) for the proposed discipline and shall establish the date, time and place of the Predetermination Hearing, if applicable.

C. Predetermination Hearing. --

At the Predetermination Hearing, the employee shall be notified of the reason(s) for the proposed discipline as set out in the *Notice of Proposed Discipline*, and the employee shall be given an opportunity to respond thereto. The hearing shall be informal and shall be recorded by electronic recorder or certified court reporter. A copy of the recording or transcript shall be made available to the employee upon request; if the record is by electronic recorder the cost shall be borne by the County, and if by certified reporter, the transcription costs shall be paid by the party requesting the transcription. The employee shall be permitted to bring a representative to the Predetermination Hearing.

D. Final Decision on Discipline. --

The final decision shall be made in writing and delivered to the employee within ten (10) days of the predetermination hearing.”

SECTION TWO. Section 8 of the Personnel Manual is hereby rescinded and the following amended Section 8 enacted in its place:

“SECTION 8. GRIEVANCES

A. Grievance, Defined. --

A grievance is a complaint concerning alleged deprivation of a presently-existing property right, including, but not limited to, (1) the employee's working conditions; (2) alleged discrimination against the employee; or (3) disciplinary action taken against the employee. Section 2.17 (Definitions – “Grievance”) of Resolution No. No. 2021-18 is rescinded and shall no longer apply.

B. Eligibility. –

Only regular, non-probationary employees are eligible to file a grievance. Employees who are subject to grievance procedures contained in a collective bargaining agreement may not file grievances pursuant to this Personnel Manual.

C. Process. –

The following steps comprise the normal grievance process. The employee's supervisor or Supervisory and managerial personnel may waive steps, as appropriate, on good cause shown:

i. Informal Discussion. --

Within five (5) working days of any action complained of, the employee must attempt to resolve the complaint through informal discussion with the employee's supervisor. The date and time of the informal discussion, and any proposed resolution of the complaint, shall be documented by the supervisor.

iii. Written Grievance. --

If the matter cannot be resolved informally through an informal discussion, the employee may submit a written grievance to the Human Resources Officer. If the Human Resources Officer is also the employee's supervisor with whom the informal discussion was conducted, the employee shall present the written grievance to the County Manager.

iv. Time to File Written Grievance. --

If the employee is still aggrieved and elects to continue with the grievance beyond the informal discussion, a written grievance must be submitted to the Human Resources Officer within five (5) working days of the date of the informal discussion.

v. Content of Written Grievance. --

Written grievances shall be submitted on the *Report of Grievance* form. This form requires a short and concise statement of the facts, the action complained of, reasons why the discipline is alleged to be inappropriate, the relief requested, and the date when the informal discussion occurred. "*Report of Grievance*" forms are available in the County Manager's office.

vi. Response to the Written Grievance. --

The supervisor shall promptly respond in writing to the written grievance, but in any event, not later than ten (10) working days from receipt. The supervisor may consult with the County Attorney on the content of the response.

vii. Finality. --

Unless the employee's grievance concerns the employee's suspension, demotion or termination, the grievance process concludes with the response to the written grievance.

D. Mediation and Hearing. --

If the grievance concerns the employee's suspension, demotion or termination, the employee may file a request for hearing on the grievance.

i. Request for Hearing. --

A request for hearing on a grievance must be in writing and must be filed with the Human Resources Officer within five (5) working days of the response to the written grievance. A copy of the written grievance and the response must accompany the request for a hearing.

ii. Mandatory Mediation. --

After a written request for hearing has been received, mediation may be required or desired. If the Human Resources Officer determines that the grievance may be resolved through mediation, the Human Resources Officer shall schedule a mediation conference and attempt to reach an amicable agreement between the parties.

iii. Attendance at the Mediation Conference. --

Attendance at the mediation conference is mandatory. If the employee fails to attend the conference, or refuses to attend, the grievance shall be dismissed with prejudice.

iv. Settlement Agreement. --

If the employee's grievance is successfully addressed by mediation, an appropriate document stating the agreement shall be prepared and executed, and the grievance dismissed.

v. Scheduling the Hearing. --

If mediation is unsuccessful, the Human Resources Officer shall forward a copy of the employee's grievance, the response, and the request for a hearing to the County Hearing Officer, who will schedule the hearing.

vi. Hearing Procedure. --

a. Appointment of Hearing Officer. --

Within ten (10) days after notice has been given that the mediation has been unsuccessful, the Human Resources Officer shall provide the grievant with the name, address, and qualifications of the County's administrative hearing officer. Within five (5) days of receipt of that notice, the grievant will notify the Human Resources Officer of any reasons that the Hearing Officer should recuse himself or herself from the proceedings on grounds set forth in the Rules Governing Judicial Conduct, Rule 21-211 NMRA 2023. The Hearing Officer shall review any such notice and rule on any objection.

b. Time and Place of Hearing. --

The Hearing Officer shall determine the time and place of the hearing and notify the

Human Resources Officer and the grievant. Grievance hearings shall be private, not public, meetings and witnesses to the hearing shall not be permitted to attend any part of the hearing other than the time the witness is testifying.

c. Pre-Hearing Matters. –

All pre-hearing matters shall be addressed by the Hearing Officer. Each party shall submit to the Hearing Officer a copy of a witness and exhibit list no later than fifteen (15) days prior to the hearing. A copy of all exhibits, numbered to correspond to the exhibit list, shall be presented to the Hearing Officer along with the exhibit list. At least ten (10) days prior to the hearing, each party shall provide to the Hearing Officer a position statement that addresses the grounds for discipline, the progressive discipline undertaken, anticipated evidentiary issues, and relief requested.

d. Conduct of the Hearing. --

aa. The hearing shall be recorded by an audio recorder. At the option of a party, a certified court reporter may be provided, but the cost and expense of the reporter shall be borne by the party requesting the reporting (except for a copy of the transcript, which shall be paid for by the party requesting the transcript).

bb. The County shall bear the burden of proof and shall deliver a brief opening statement. The grievant may deliver an opening statement, reserve it, or not give a statement. Opening statements shall be limited to fifteen (15) minutes per party.

cc. Witnesses shall be sworn by the Hearing Officer. The Rules of Evidence shall not strictly apply during the hearing; admissible evidence will be determined by the administrative standard of review, but all decisions of the Hearing Officer shall be subject to the *legal residuum* rule, requiring admissible evidence to support the Hearing Officer's ruling. The Hearing Officer will rule on all objections.

dd. When each party has concluded their evidentiary presentation, the parties may offer a brief closing statement. Closing statements shall be limited to fifteen (15) minutes.

e. Ruling. –

The Hearing Officer shall rule on the grievance within thirty (30) days of the conclusion of the hearing, unless otherwise stipulated by the parties.


f. Further Review. –

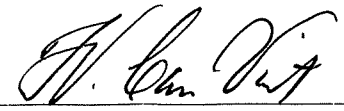
Further constitutional review of the Hearing Officer's decision may be available through NMRA 2023 Rule 1-075. If review is sought, the County will prepare the transcript for the Court.”

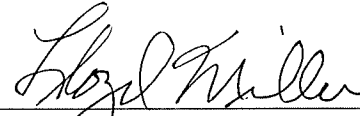
SECTION THREE. A copy of this Resolution shall be provided to each employee.

PASSED, APPROVED AND ADOPTED THIS 10th day of January, 2023.

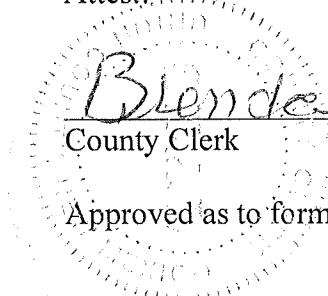
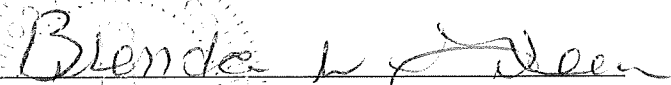
THE BOARD OF COUNTY COMMISSIONERS
OF UNION COUNTY


Chair



Member


Member

Attest:



County Clerk

Approved as to form:


County Attorney