



CO00021061

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 97- 089

RELATING TO COUNTY EMPLOYMENT, REPLACING THE PERSONNEL
APPEALS BOARD WITH A PERSONNEL HEARINGS EXAMINER, AMENDING
CHAPTERS 3A.11 AND 2.50 SCC, AND ADDING A NEW CHAPTER 2.04 SCC

WHEREAS, the field of employment law has become increasingly complex and specialized expertise would promote thorough and timely review of county employment decisions that are subject to employee grievances;

WHEREAS, the use of a volunteer board to hear employee grievances has required extensive scheduling and impingement on the schedules of volunteer board members;

WHEREAS, the use of a personnel hearings examiner at Step IV of the existing grievance process will create a speedy, efficient and professional means of resolving employee grievances by a neutral third-party; and

WHEREAS, the procedural protections associated with recourse to a personnel hearings examiner will provide sufficient safeguards to warrant its use as an exclusive administrative remedy;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Snohomish County Code Section 3A.11.010, adopted by Ordinance No. 84-129 on November 21, 1984, is amended to read:

3A.11.010 Grievance - Definition - Limitations

A grievance is defined as a dispute or disagreement raised by an affected employee concerning the interpretation or application of the specific provisions of these rules, excepting those matters excluded by any terms of these rules from the grievance procedure.

Section 2. Snohomish County Code Section 3A.11.020, adopted by Ordinance No. 84-129 on November 21, 1984, is repealed and re-enacted to read:

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3A.11.020 Exclusive remedy.

A classified employee's exclusive remedy for a grievance shall be the grievance process described in this chapter, unless some other process is established by applicable collective bargaining agreement.

Section 3. Snohomish County Code Section 3A.11.025, adopted by Ordinance No. 84-129 on November 21, 1984, is amended to read:

3A.11.025 Grievance procedures.

The following procedures govern the conduct of the grievance process for classified employees: If an employee fails to submit a grievance in a timely manner or to adhere to the time limits established in the steps below, the employee shall have waived the grievance. If an employee does not receive a response within the number of working days outlined in the steps below, the employee may proceed to the next step in the grievance process (~~shall apply~~). The time limit specified in any of the steps may be waived by mutual agreement.

Step I. An employee shall have five working days from the occurrence of the event giving rise to the grievance to orally present the grievance to ~~((his/her))~~ the employee's immediate supervisor. The supervisor shall provide the employee with an oral response within three working days.

Step II. An employee dissatisfied with ~~((his/her))~~ the supervisor's oral response shall have five working days from the date of such response to submit a written grievance to the employing official. The written grievance shall specify the subject matter of the grievance and the remedy which is desired. ~~((and all))~~ All further actions concerning the grievance shall be limited to the matters specified. The employing official will review the grievance, will meet with the employee and supervisor, and will respond in writing within 10 working days of receipt of the employee's written grievance. A copy of the written response will be provided to the director.

Step III. In the event the grievance is not settled satisfactorily at Step II, the employee shall have five working days from the date of the employing official's response to submit a written grievance to the director. The director ~~((shall))~~ will investigate the grievance, make a written determination, and transmit such determination to the grievant and the employing official within 15 working days of receipt of the written grievance.

Step IV. If the employee disagrees with the director's determination and desires a hearing on the grievance before the personnel ~~((board))~~ hearings examiner, ~~((he/she))~~ the employee shall submit a written request for hearing to the director within five working days from receipt of the director's determination. The director ~~((shall))~~ will provide copies of the grievance and the county's responses, and related documents, to the personnel ~~((board))~~ hearings examiner within five working days from receipt of the request for hearing. The personnel ~~((board))~~ hearings examiner shall conduct a hearing on the grievance within 20 working days following receipt of the grievance unless a later

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date is set by the personnel hearings examiner based on agreement of the parties or a finding of good cause. Failure of the personnel hearings examiner to timely convene a hearing under these rules shall not affect the rights of the parties.

Section 4. Snohomish County Code Section 3A.11.030, adopted by Ordinance No. 84-129 on November 21, 1984, is repealed.

Section 5. A new chapter is added to Title 2 of the Snohomish County Code to read:

Chapter 2.04

PERSONNEL HEARINGS EXAMINER

Sections:

- 2.04.010 Creation and duties
- 2.04.020 Appointment and term
- 2.04.030 Qualifications
- 2.04.040 Removal
- 2.04.050 Vacancies
- 2.04.060 Conflict of interest and recusal
- 2.04.070 Conduct of hearings
- 2.04.080 Decisions and appeals

2.04.010 Creation and duties.

The office of personnel hearings examiner is hereby created. The office of personnel hearings examiner shall consist of an independent contractor nominated and appointed in accordance with SCC 2.04.020. The personnel hearings examiner shall conduct quasi-judicial hearings at Step IV of the grievance process for classified county employees in accordance with SCC 2.04.070 and Chapter 3A.11 SCC.

2.04.020 Appointment and term.

The personnel hearings examiner shall be nominated by the county executive and appointed by the county council. Appointment shall be for a term of two years following the date of appointment. Appointment shall be contingent upon execution of a professional services contract containing such terms and conditions as the council may deem appropriate.

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2.04.030 Qualifications.

The personnel hearings examiner shall be appointed on the basis of qualifications to perform the duties of personnel hearings examiner. Qualifications for the position shall include experience in labor and personnel matters and training with regard to evidentiary and other legal issues pertinent to the conduct of quasi-judicial proceedings. The personnel hearing examiner shall hold no other elective or appointive office or position in county government.

2.04.040 Removal.

The personnel hearings examiner may be removed from office for violation of the professional services contract or for such other cause as the council may deem appropriate by an affirmative vote of three members of the council.

2.04.050 Vacancies.

In the event of resignation, removal, or abandonment of position, the county executive shall declare a vacancy in the office of personnel hearings examiner. Failure of the personnel hearings examiner to timely convene a Step IV hearing at the county's request shall constitute abandonment of position. The county council may appoint a personnel hearings examiner pro tem to act as personnel hearings examiner until a successor is appointed pursuant to SCC 2.04.020.

2.40.060 Conflict of interest and recusal.

The personnel hearings examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or indirect substantial financial or familial interest, or from which recusal is required by SCC 2.50.040. In the event of recusal, the county council may appoint a personnel hearings examiner pro tem to act as personnel hearings examiner for purposes of the grievance from which the personnel hearings examiner was recused.

2.04.070 Conduct of hearings.

(1) A grievance hearing before the personnel hearings examiner shall be open to the public except where the personnel hearings examiner determines upon request of a party that there is a substantial reason for closing the hearing.

(2) The parties to a grievance hearing shall be the grieving employee and the county. The personnel hearings examiner shall mail notice of the hearing date to the parties at least ten days in advance of the hearing date. The personnel hearings examiner may hear and rule on scheduling and other pre-hearing matters after providing reasonable opportunity for the parties to be heard.

(3) If the employee intends to be represented by legal counsel at the hearing, the employee shall notify the director of human resources prior to any formal action on the employee's behalf by the employee's attorney but in no event later than ten (10) days

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prior to the first scheduled hearing date. The county may be represented by the prosecuting attorney's office.

(4) The personnel hearings examiner shall provide each party with an opportunity to make an opening statement, to present and cross-examine witnesses, to offer physical or documentary evidence, to make closing arguments, and to present relevant legal authority. Unless otherwise directed by the examiner, the county shall present its case first.

(5) All testimony shall be taken under oath. The personnel hearings examiner shall determine the admissibility and weight of all evidence offered at the hearing. The Rules of Evidence and Cross-Examination adopted by the Administrative Procedure Act, Ch. 34.05 RCW as currently codified in RCW 34.05.452 or hereafter amended shall apply to hearings before the personnel hearings examiner

(6) The personnel hearings examiner shall cause a tape recording or similar record to be made of all proceedings before the examiner which, together with all physical and documentary evidence admitted by the examiner, shall constitute the record of the hearing.

2.04.080 Decisions and appeals.

(1) Within twenty days after a grievance hearing the personnel hearings examiner shall enter findings of fact and conclusions of law concerning the grievance, together with an order granting or denying the relief requested by the employee.

(2) The findings, conclusions, and order of the personnel hearings examiner are subject to appeal to the superior court only on the following grounds:

- (a) that the personnel hearings examiner lacked or exceeded his jurisdiction;
- (b) that a rule of procedure affecting the rights of the parties was violated to the prejudice of a party;
- (c) that the decision of the personnel hearings examiner was contrary to law; or
- (d) that the factual determinations of the personnel hearings examiner were not supported by substantial evidence.

(3) Any appeal from the decision of the personnel hearings examiner must be served on the opposing party and filed in superior court within twenty (21) days of the final decision of the personnel hearings examiner. In the absence of a timely appeal, the decision of the personnel hearings examiner shall be final and binding on all parties.

Section 5. Snohomish County Code Section 2.50.020, adopted by Ordinance No. 91-084 on July 1, 1991, is amended to read:

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2.50.020 Appearance of fairness.

The appearance of fairness doctrine shall apply to all quasi-judicial hearings conducted by Snohomish county elected and appointed officials. (~~Hearings~~) Quasi-judicial hearings shall include, but not be limited to:

- (1) quasi-judicial actions on all matters concerning land use;
- (2) disability board proceedings;
- (3) boundary review board proceedings;
- (4) personnel (~~board~~) hearings examiner grievance proceedings;
- (5) business license revocation proceedings;
- (6) animal license enforcement proceedings; and
- (7) board of equalization proceedings.

PASSED this 8th day of October 1997.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

John Harner
Chairperson

Barbara Sikorsti
Clerk of the Council, *Asst.*

APPROVED

EMERGENCY

VETOED

DATE: 10-9-97

Joan M. Earl
COUNTY EXECUTIVE
JOAN M. EARL
Deputy Executive

ATTEST:

John Swanson
Approved as to form only:

Wendy Hite 6/3/97
Deputy Prosecuting Attorney

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