

MINUTES

POLICE DISCIPLINARY REVIEW COMMITTEE - Annual Meeting

MONDAY – MAY 5, 2025 – 4:40 P.M.

COUNCIL CHAMBERS, MUNICIPAL BUILDING

Members present: Stan Nogalski, Mary Seidl, Gerald Valley, and Ronald Strojny.

Member excused: Doug VanWinkle

Others Attending: Mayor Katie Berman, Matt Decur, Tony O'Neill, Angel Wink.

Chair Nogalski called the meeting to order at 4:42 p.m.

Motion by Strojny and seconded by Valley to approve the agenda. Motion carried 4/0.

Minutes:

Motion by Valley and seconded by Strojny to approve the minutes of January 30, 2025. Motion carried 4/0.

Board Reorganization:

Valley nominated Nogalski for Chairperson.

Nogalski called three times for any more Chair nominations. No others were made.

Motion by Valley and seconded by Seidl to appoint Nogalski as Chairperson.

Motion carried 3/0. Nogalski abstained.

Nogalski nominated Seidl for Secretary.

Nogalski called three times for any more Secretary nominations. No others were made.

Motion by Nogalski and seconded by Valley to appoint Seidl for Secretary.

Motion carried 3/0. Seidl abstained.

Other matters: Valley asked for a moment of silence to recognize the passing of former officer Toby Sanborn.

Adjournment:

Motion by Strojny and seconded by Seidl to adjourn at 4:38 p.m. Motion carried 4/0.

Katie Berman
Mayor

DIVISION 4. - POLICE DISCIPLINARY REVIEW COMMITTEE

Sec. 2-120. - Police Disciplinary Review Committee.

- (a) Pursuant to Wis. Stats. § 62.13(6m), there shall be a committee designated as the Police Disciplinary Review Committee. The Committee shall consist of five members, three of whom shall constitute a quorum. The Mayor shall annually, between the last Monday of April and the first Monday of May, appoint in writing, to be filed with the Secretary of the Committee, one member for a term of five years, subject to confirmation by the Common Council. None of the Committee Members shall be elected or appointed officials of the City, nor shall they be employed by the City. The City shall pay each member on a per diem basis as determined by the Common Council on an annual basis. The Committee shall exercise authority limited to the powers and duties set forth in Wis. Stats. §§ 62.13(5) and 62.13(6m).
- (b) To facilitate and enable this division, the Mayor is hereby authorized and directed to select five qualified individuals under the provisions of Subsection (a) of this section to serve on the Police Disciplinary Review Committee. One member shall be appointed to a term expiring the first Monday in May, 2005, another to a term expiring the first Monday in May, 2006, a third to a term expiring the first Monday in May, 2007, a fourth to a term expiring the first Monday in May, 2008 and a fifth to a term expiring the first Monday in May, 2009. All such appointments shall be subject to confirmation by the Common Council. The members so appointed shall constitute the initial Police Disciplinary Review Committee under this division upon their confirmation.
- (c) Suspension and removal of City police officers shall be in accordance with the rules established by the Police Disciplinary Review Committee.

(Code 1991, § 5-1-7; Ord. No. 2004-01, § 1, 4-7-2004)

Secs. 2-121—2-138. - Reserved.

Officer Disciplinary Process

Police Disciplinary Review Committee (PDRC) (see attached ordinance creating)

The process for disciplining police officers is a matter of statewide concern governed by state law. Absent agreement by the employee, a suspension, reduction in rank or termination can be imposed only after a due process hearing before the PDRC. While the right to a hearing does not extend to newly-hired employees still in a probationary status, an employee promoted on a probationary basis is entitled to a hearing if a reduction in rank is based on misconduct allegations.

The disciplinary process is governed by Wis. Stat. § 62.13(5) and any administrative rules adopted by the PDRC ("PDRC rules") see attached. Paragraphs 1 to 6 of the statute do not apply to the City of Peshtigo because the city is under 4000 population. However, under 6(m)(a) the city established the Police Disciplinary Review Committee ("PDRC") who shall act in place of the Board (in larger cities). When an issue arises, the municipality must adhere to applicable procedures to reach a just resolution that will withstand judicial review.

Pre-Charge Investigation- To be done by Chief (in most cases or committee for citizen complaint.

1. Review actions of officer and identify specific police rules or procedures violated;
2. Determine whether the officer would have the training and knowledge to know of the consequences of his or her conduct;
3. Determine if the rule, order or procedure is reasonable;
4. Whether a reasonable effort was made to investigate whether a violation has occurred and whether the effort was fair and objective.
5. Whether substantial evidence was discovered that the officer violated the rule or order;
6. Whether the Chief is applying the rule or order fairly and without discrimination;
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and the officer's record of service with the Chief's department

Initiation of disciplinary proceeding.

Upon completion of the pre-charge investigation, if discipline is warranted, charges seeking discipline of a police officer may be filed by a department chief, by a member of the PDRC, the PDRC as a body, or any aggrieved person. Complaints by "aggrieved persons" are also referred to as "citizen complaints." Once charges are filed, the municipality should provide the PDRC with legal counsel independent from municipal counsel to assist in managing the disciplinary process. The process is further outlined as follows:

1. So under 62.13(5), the police chief can suspend pursuant to paragraph (em) as follows:
 - a. Chief suspends and files a report at the same time with the President (Chair) of the PDRC.
 - b. No hearing held unless requested by the employee. If requested, the Chief must file charges pursuant to 62.13(5)(b) with the President/Chair of the PDRC. (the employee's pay can then **not** be suspended pending disposition of charges)
 - c. The board then determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:
 1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
 2. Whether the rule or order that the subordinate allegedly violated is reasonable.
 3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
 4. Whether the effort described under subd. 3. was fair and objective.
 5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
 7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department
- d. Determination is made by PDRC and put in writing within 3 days of hearing.
 - e. Employee may appeal to circuit court. (see appeals attachment)

Upon the PDRC finding "just cause," an officer may be "suspended without pay, reduced in rank, suspended without pay and reduced in rank, or removed." For that reason, a chief will not file charges unless an unpaid suspension or greater penalty is sought. While the PDRC as a body or any member may file and prosecute charges, this is generally inadvisable. If an occasion arises where this is appropriate, the PDRC should delegate its prosecutorial role to a special counsel. A PDRC member who prosecutes should act solely in that capacity and should not participate in the decisional process.

The Charges.

The minimum requirements of a due process hearing include timely and adequate notice, an impartial decision-maker, and the opportunity to confront and cross examine adverse witnesses. Accordingly, disciplinary charges must contain sufficient detail to allow the respondent to prepare an adequate defense. The charges should be framed in light of the seven "just cause" standards noted above in the Pre-charge process. The charges should identify the department rule or order allegedly violated, describe any investigation of the charges, and set forth fact allegations supporting the charges. (See attached example).

Initial processing.

Review the Collective Bargaining Agreement ("CBA") for specific details on discipline. The current bargaining agreement for 2023-2025 states that Wis. Stats. 62.13 applies but the officer reserves the right to waive said rights under Section 62.13, and instead request to pursue disciplinary action under the Grievance procedure of the CBA (which would go in front of the personnel committee instead).

The PDRC must set a date for hearing not less than 10 days nor more than 30 days after service of the charges. Most matters will not be concluded within 30 days. While it is advisable to confirm the consent of the parties to continue the hearing beyond 30 days, if necessary, there is no reported decision suggesting that "continuing" the hearing beyond the 30 days violates the statute.

Typically the PDRC sets an initial hearing to be held within 30 days of filing to address issues such as scheduling, discovery and pre-hearing motion practice. Months may elapse between the filing of charges and the final resolution, partly because due process requires that the employee be given a reasonable opportunity to be heard and partly because the PDRC is composed of private citizens, often requiring that hearings be conducted during evening hours. If the charges are serious enough that termination is sought, commonly the employee is placed on a paid leave status pending resolution of the process.

PDRC rules may allow for dismissal of charges without an evidentiary hearing, if the charges are facially groundless or frivolous, have been resolved in a prior proceeding, or the complainant lacks standing. Although the statutes do not address it, PDRC rules may provide for pre-hearing discovery. A PDRC that has not adopted such rules may consider allowing some discovery to avoid a possible claim of a due process deprivation upon later judicial review. If the PDRC has not formally adopted administrative rules, it may be prudent to review rules developed in other municipalities to use as guidance in managing the pre-hearing process.

Hearing and Decision.

The evidentiary hearing is a quasi-judicial administrative proceeding. It is public. Both the complainant and respondent may compel the attendance of witnesses by subpoenas to be issued by the PDRC president on request. The Wisconsin Supreme Court has upheld PDRC rules providing for the employment of a hearing examiner to conduct both the pre-hearing process and the evidentiary hearing, at least where the rules have provided for the hearing to be videotaped. The PDRC issues its final decision based on the evidence as well as the examiner's report.

PDRC rules may specify what, if any, evidentiary rules apply at the hearing. Given that the Wisconsin Supreme Court has described the hearing as having the elements of "fair play" fundamental to due process in an administrative law setting, following the procedures applicable in Case 3 contested hearings under Wis. Stat. ch. 227, including the rules of evidence set forth in § 227.45, should satisfy due process. Erroneous evidentiary rulings may result in a due process deprivation, which would require a new hearing.

The complainant bears the burden of proof by a preponderance of the evidence. The PDRC's deliberations on the evidence should be conducted privately with its counsel; other municipal officials should not be present. The PDRC must issue its determination in writing within three days after the conclusion of the hearing. Counsel for the PDRC will assist in crafting a decision that clearly states the PDRC's findings of fact and conclusions of law, as well as an order either imposing discipline or dismissing the charges. The written decision should address the seven just cause standards contained in Wis. Stat. § 62.13(5)(em). The decision and order must be filed with the secretary of the PDRC.

Review.

If the PDRC imposes discipline, the officer has two avenues for judicial review: a right of statutory appeal to the circuit court under Wis. Stat. § 62.13(5)(i) and a petition to the circuit court for common law writ of certiorari. The respondent may pursue both avenues of review, and the resolution of issues on the appeal is not binding relative to issues on certiorari review, even though the issues on the two methods of review may overlap. These are the exclusive methods of review; the PDRC's decision cannot be collaterally attacked in another proceeding. A charging party can challenge the PDRC decision to dismiss the charges by seeking certiorari review. The statutory appeal focuses solely on whether there is just cause to sustain the charges. The respondent initiates an appeal by serving written notice on the PDRC secretary within 10 days after PDRC files its order. Service on the secretary must be in person. The secretary must certify the record to the clerk of circuit court within 5 days. Unless otherwise agreed by the parties, trial is to be scheduled not be later than 15 days after an application by either party. Trial is to the court on the record, but the court may require the return of further evidence. No costs are allowed and the municipality pays the clerk's fees. If the PDRC's order is reversed, the officer is reinstated and entitled to any backpay. If the PDRC's order is sustained, respondent has no further right of appeal.

Certiorari review is initiated by the respondent filing an action in circuit court and must be commenced within six months of the PDRC action the respondent seeks to challenge. On certiorari, the court determines whether (1) the PDRC exceeded its jurisdiction, (2) the PDRC proceeded on a correct legal theory, (3) the PDRC acted in an arbitrary, oppressive, or unreasonable manner that represented its will and not its judgment, and (4) whether the evidence was such that the PDRC could reasonably make the determination at issue. Most allegations of error in the disciplinary process are addressed on certiorari review, given the limited scope of review on the statutory appeal. In contrast to the statutory appeal, the circuit court's decision on certiorari review is subject to appellate review.

Summary.

Discipline of employees in protective services poses a unique challenge to municipalities. This challenge falls to the PDRC, a body ordinarily comprised of citizens not trained in the law. Providing the PDRC with independent legal counsel to assist it in managing the process and conducting the disciplinary hearing best insures a just resolution that will withstand judicial review.

Some potential law firms that have a government law team that may be available to assist:

- Stafford Rosenbaum LLP- Government Law Team;
- Amundson, Davis law firm
- Liebmann Conway law firm
- Foley and Lardner- madison