

Special Meeting
Human Resources Committee
January 9, 2023
County Courthouse Room 200 at 5:05 pm
Agenda

1. Call to order
2. Elect Chair and Vice-Chair
3. Ordinance for change in personnel policy
4. Adjourn

ORDINANCE NO. _____

BE IT ENACTED BY THE QUORUM COURT OF GARLAND COUNTY, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

“AN ORDINANCE TO AMEND ORDINANCE O-22-26, AS AMENDED, (THE GARLAND COUNTY PERSONNEL POLICY) RELATING TO GRIEVANCE HEARING PROCEDURES, GROUP INSURANCE AVAILABILITY FOR JUSTICES OF THE PEACE, A WAGE CAP FOR PART-TIME AND TEMPORARY EMPLOYEES, DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.”

WHEREAS, Ordinance O-22-26, as amended, approved and adopted a revised Garland County Personnel Policy; and,

WHEREAS, it is periodically necessary to review and revise the personnel policy as changes in the law and circumstances require; and,

WHEREAS, it has become necessary to revise the personnel policy to update provisions regarding grievance procedures and group insurance availability as set forth herein; and,

WHEREAS, the Human Resources Committee previously met and recommended approval.

NOW, THEREFORE, BE IT ENACTED BY THE QUORUM COURT OF GARLAND COUNTY, ARKANSAS:

SECTION 1. GRIEVANCE PROCEDURES. That the Garland County Personnel Policy adopted by O-22-26, as amended, shall be amended as set forth herein. The sections regarding grievance hearings, titled “**GRIEVANCE HEARING PROCEDURE**” and “**GRIEVANCE HEARING ISSUES AND BURDENS OF PROOF**,” beginning on Page 42 and ending on Page 46 are hereby repealed and stricken in their entirety. The stricken sections are hereby replaced by the language set forth below, which is adopted and incorporated therein in its entirety:

GRIEVANCE HEARING PROCEDURE

A. Purpose.

Any decision of the Grievance Committee shall be advisory to the relevant elected official, but not binding on the elected official.

B. County Grievance Committee.

i. The County Quorum Court may appoint the membership of the County Grievance Committee as a standing Personnel Committee—such appointment of the Grievance Committee membership must be done by ordinance, and members of the Grievance Committee must be designated by position (not by name). If the Quorum Court has not appointed a Grievance Committee, then the Grievance Committee shall be the Quorum Court. The persons to serve for

any hearing will be the persons holding the committee position at the time the discipline or dismissal decision was made for which a hearing is requested.

ii. If the Grievance Committee determines that an executive decision or action of a County official violates the law or the Constitution, the Grievance Committee shall declare the decision or action to be illegal or unconstitutional and recommend the County official modify the decision or action to conform to the law, the state or federal Constitution, or state public policy.

iii. The Grievance Committee shall not substitute its operational judgment for that of a County elected official.

C. **Timely Grievance Hearing Request Required.** A grieving applicant or employee must submit a written grievance hearing request after any claimed deprivation of the applicant or employee's property, liberty, or statutory/constitutional rights. A written grievance hearing request must be delivered to the County Grievance Committee in care of the County Judge no later than the close of business on the third full business day (weekends and holidays excluded) after any claimed deprivation for which a hearing is requested. The written grievance hearing request must state: (1) the grievance for which a hearing is requested; (2) the alleged factual basis of the grievance; and (3) the relief sought. If the claimed deprivation is the result of actions alleged against the County Judge, the grievance hearing request must be delivered to the County Grievance Committee in care of the County Clerk in the same manner as described above.

D. **Back Pay Provisions when an Employment Decision is Reversed.** If an employee is rehired, reinstated, or any employment decision is reversed after the grievance hearing, the County shall pay the wages the employee would have earned, but did not, due to the unconstitutional or illegal actions taken, from the date of termination, demotion, or unpaid leave through the date of the reversal.

E. **Written Response to Hearing Request Required.** The County Grievance Committee, through the County Judge, shall provide a written response to all timely grievance hearing requests. If the hearing request is granted, the response shall state the date, time, and location of the hearing. If the hearing request is denied, the response shall state the reason(s) for the denial.

F. **Mediator Role of County Judge.** Upon receiving notice of a request for a hearing before the County Grievance Committee, the County Judge may choose to conduct an informal hearing of the dispute to mediate a solution acceptable to both the grieving applicant or employee and the supervising County official(s). The mediation will be concluded by the County Judge before the hearing before the County Grievance Committee begins. The mediation may be conducted in any manner the County Judge believes will offer the best opportunity for resolving the dispute informally and by agreement.

G. **Hearing Procedure.**

i. The hearing shall be held in public if required by law (such as under the FOIA). The employee may, at any time, decline or end the hearing and accept the intended discipline or termination.

ii. The hearing shall be transcribed by a court reporter (not merely a tape recorder) upon request by the grieving employee or the employee's supervising elected official at the expense of the requesting party. At the hearing, on the record, the parties shall suggest any desired hearing procedures and state any complaints regarding: (i) the notice; (ii) the date, time, or location of the hearing; (iii) the opportunity to refute charges; and (iv) the impartiality of any decision maker(s).

iii. Informal rules of procedure and evidence shall be followed at hearings: (i) witnesses shall testify under oath; (ii) parties shall be allowed to be represented by legal counsel at their own expense; (iii) parties shall be allowed to examine and cross-examine witnesses; and (iv) parties should be granted a reasonable continuance if requested prior to the hearing in writing and if reasonably necessary for stated reasons to prepare adequately for the hearing.

iv. The Grievance Committee will hear the evidence and argument offered by the parties and vote without public discussion or deliberation. Only the Grievance Committee's decision, expressed as a single word agreement or disagreement with the elected official's underlying employment action, but not the factual or legal reasoning, shall be announced publicly. No notes should be taken by members of the Committee.

v. Public access to applicant or employee grievance records is authorized only if approved by the applicant or employee or authorized by the Arkansas FOIA.

GRIEVANCE HEARING ISSUES AND BURDENS OF PROOF

A. Claim of Property Interest in Employment. The grieving employee has the burden of proving by a preponderance of the evidence that he or she has a legitimate claim of entitlement to his or her employment—despite the County's at-will employment policy—and not a mere subjective or unilateral expectancy of continued employment. If the employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that there is just cause for the intended discipline or dismissal.

B. Claim of illegal or unconstitutional discrimination. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she is a member of a protected class (Title VII, ADA, ADEA, or other class established by a civil rights statute), that they were subject to unwelcome harassment, that the harassment was causally related to their status in a protected class, that the harassment affected a term, condition, or privilege of employment, and that the County knew or should have known about the harassment and failed to take proper action.

C. Claim of Unconstitutional Retaliation. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she has engaged in constitutionally-protected conduct that was a substantial or motivating factor in an adverse employment decision, discipline, or dismissal. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence

that the adverse employment decision, discipline, or dismissal would have occurred in the absence of the constitutionally-protected conduct.

D. Claim of Disability Discrimination. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she is a qualified individual with a disability who, because of the disability, has been treated or affected differently than another person regarding job application, procedures, advancement, dismissal, compensation, training, or other terms, conditions, or privileges of employment. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the difference in treatment or effect is job-related and necessary to effectuate a legitimate County objective, that performance of the job cannot be accomplished by reasonable accommodation, or that the needed accommodation would cause the County undue hardship.

The following definitions apply to claims of disability discrimination:

- i. “Disabled” or “disability”: A physical or mental impairment that substantially limits one or more major life activities of an individual; having a record of such impairment; or being regarded as having such an impairment. Being “regarded as having such an impairment” may include individuals with conditions such as obesity or cosmetic disfigurement and individuals perceived to be at high risk of incurring a work-related injury.
- ii. “Discrimination” includes: (i) limiting, segregating, or classifying a job applicant or employee in a manner that adversely affects his or her opportunities or status; (ii) participating in contractual or other arrangements that have the effect of subjecting individuals with disabilities to discrimination; (iii) using standards, criteria, or methods of administration in such a manner that results in or perpetuates discrimination; (iv) imposing or applying tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or selection criteria are job-related and consistent with County necessity; (v) failing to make reasonable accommodations to the known limitations of a qualified individual with a disability unless an accommodation would impose an undue hardship on the operation of the County; or (vi) denying employment opportunities because a qualified individual with a disability needs reasonable accommodation.
- iii. “Reasonable accommodation” examples include: (i) making existing facilities used by County employees readily accessible to the disabled; (ii) restructuring non-essential elements of the job; (iii) flexible or modified work schedules/locations; (iv) reassignments to other positions; (v) acquisition or modification of equipment or devices; and (vi) permitting the use of vacation or an unpaid leave of absence.
- iv. “Undue hardship” is an action requiring “significant difficulty or expense,” considering: (i) the overall size of the County with respect to the number of employees, number and type of facilities, and size of the budget; (ii) the type of operation maintained by the County including the composition and structure of the workforce; and (iii) the nature and cost of the accommodation needed.

v. “Qualified individual with a disability”: An individual with a disability who, with or without reasonable accommodation, can perform the “essential functions” of the employment position held or desired.

vi. “Essential functions”: Job tasks that are fundamental but not marginal (not every job task is to be included in determining the essential functions).

E. Claim of Equal Protection Violation. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she has been treated differently than another similarly-situated person. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the different treatment is rationally related to the effectuation of a legitimate County objective.

F. Claim of Arbitrary Decision—No Legitimate County Objective. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that the action taken against him or her is not rationally related to the effectuation of any conceivable legitimate governmental objective of the County. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the action taken is rationally related to the effectuation of a conceivable governmental objective of the County.

G. Claim of Deprivation of Liberty Interest in Future Employment. The grieving applicant or employee has the burden of alleging that a “stigmatizing charge” has been publicly communicated by the County or a County official or employee and requesting an opportunity to publicly clear his or her name. If the applicant or employee meets his or her burden, the County shall provide the applicant or employee a public hearing opportunity to clear his or her name.

SECTION 2. GROUP INSURANCE AVAILABILITY. That the Garland County Personnel Policy adopted by O-22-26, as amended, shall be amended as set forth herein. The section titled **ADMINISTRATIVE LEAVE AND OTHER BENEFITS (A) Group Insurance Programs**, on Page 26, shall be amended to read as follows:

Administrative Leave and other Benefits

A. Group Insurance Programs: The County offers group insurance programs for full-time County employees. The County pays portions of some but not all premiums for group insurance programs. All insurance benefits are subject to change at any time. This Personnel Policy does not guarantee continuation of any group insurance benefits. Garland County shall allow Justices of the Peace to participate in any group insurance program it makes available for full-time county employees. However, Justices of the Peace shall be solely responsible for making all premium payments that come due and the County shall not be obligated to continue said insurance in the event that a Justice of the Peace fails to make any payment. Group insurance programs shall not be available to the dependents of Justices of the Peace.

SECTION 3. PART-TIME AND TEMPORARY EMPLOYEE WAGE CAP. That the Garland County Personnel Policy adopted by O-22-26, as amended, shall be amended as set forth herein. The section titled **EMPLOYEE CLASSIFICATION, ATTENDANCE, AND COMPENSATION (B) Employee Compensation**, beginning on Page 23 and ending on Page 24, shall have the following language added as a final paragraph:

Part-time employees and temporary extra-help employees shall be paid the then-prevailing minimum wage. Any official seeking to pay a part-time employee or temporary extra-help employee at a rate greater than the then-prevailing minimum wage shall be required to submit a written request and justification for exceeding the cap. The Human Resources Committee shall review each request on a case-by-case basis and shall have the authority to authorize a greater rate when circumstances warrant. Rates Greater than the cap will require justification such as, but not limited to emergency need, experience, demand, specialized skill or training, unusual job duties, etc.

SECTION 4. That the County Judge or his or her designee, is hereby authorized to make editing and formatting revisions to the policy document as needed provided that any such revisions do not make substantive changes.

SECTION 5. That time being of the essence, an emergency is hereby declared, and this Ordinance shall be in full force and effect upon passage.

SECTION 6. That if any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Ordinance which can be given effect without the invalid provisions or application, and to this end the provision of this Ordinance is declared to be severable.

SECTION 7. That this Ordinance shall be codified in the Garland County Code of Ordinances, and the Sections may be re-numbered and re-lettered to accomplish such intention.

ATTEST: _____
Sarah Smith
Garland County Clerk

APPROVED: _____
Darryl Mahoney
Garland County Judge

SPONSOR: _____
Thomas Anderson
Justice of the Peace

DATE: _____