

BEFORE THE IMPARTIAL HEARING OFFICER

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In the Matter of the Grievance of

ANNE JACOBSON

Under the Grievance Procedure of

CITY OF WAUSAU

Case ID: 462.0004

Case Type: IHO

DECISION NO. 41451

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**Appearances:**

Aviva Meridian Kaiser, Attorney, appearing on behalf of Anne Jacobson.

James M. Carroll, Attorney, Buelow Vetter Buikema Olson & Vliet, LLC, appearing on behalf of the City of Wausau.

**DECISION OF THE IMPARTIAL HEARING OFFICER**

Grievant Anne Jacobson and the City of Wausau (City) requested that the Wisconsin Employment Relations Commission appoint a member of the Commission's staff to serve as the Impartial Hearing Officer (IHO) in a proceeding involving Jacobson's written reprimand by the City. I was assigned by the Commission to serve as the IHO. A hearing was scheduled for January 15, 2026. However, per Step 4 of the City's Grievance Policy & Procedure, the IHO may determine that no hearing is necessary and that she can make a determination based solely on the submission of written documents. I requested that the parties submit their written documentation by December 1, 2025. On November 25, 2025, Jacobson notified the Commission of new counsel. On December 1, 2025, Jacobson submitted written documentation. The City submitted written documentation after the close of business on December 1, 2025, which was untimely. I then requested that the parties file a response by December 8, 2025. On December 2, 2025, the City notified the Commission that it retained representation. By mutual request of the parties, the deadline for the parties' responses to the initial submission was extended to the end of business on December 15, 2025. On December 8, 2025, the City filed its Response Brief. On December 15, 2025, Jacobson filed her Reply to the City's Response. Due to scheduling conflicts, the hearing was rescheduled to February 23, 2026. Per the City's Grievance Policy and mutual request of the parties, on January 16, 2026, I determined that no hearing was necessary given the submission of documents. The hearing scheduled for February 23 was cancelled. Having considered the evidence, the arguments of the parties, and the record as a whole, I issue the following decision.

### ISSUE

Was the City of Wausau's decision to issue the written reprimand to Anne Jacobson arbitrary or capricious?

### FINDINGS OF FACT

1. Anne Jacobson (Jacobson) is employed as the City Attorney for the City of Wausau, Wisconsin.
2. City of Wausau Mayor Doug Diny is Jacobson's supervisor.
3. Jacobson provided erroneous legal counsel during the June 10, 2025, City Council meeting, which altered the course of the subsequent proceedings.
4. The City of Wausau's decision to issue a written reprimand to Jacobson was not arbitrary or capricious.

### ANALYSIS

According to Step 4 of the City's Grievance Policy & Procedure, the IHO may determine that no hearing is necessary and that he/she can make a determination based solely on the submission of written documents. In all cases, the Grievant shall have the burden of proof to support the grievance. Further, the IHO shall have the power to issue a written response to the grievance. The response shall contain findings of fact, analysis and recommendation. The IHO shall have no power to issue any remedy. The sole question to be answered by the IHO is whether the City's decision, which is the subject of the grievance, was arbitrary or capricious.

The City issued a written reprimand to Attorney Jacobson based on its conclusion that she appeared to have deviated from the established role of the city attorney under municipal code 2.16 related to voting thresholds and/or the Roberts Rules of Order related to Motions and the Role of the Parliamentarian.

The June 23, 2025, written reprimand states as follows:

This letter is to formally address concerns regarding your conduct and procedural guidance during the June 10, 2025 City Council meeting, where your actions appeared to deviate from the established role of the city attorney under municipal code 2.16 and Roberts Rules of Order Ch 4:1-4 Motions and 47:46 Role of Parliamentarian.

#### **1. Misapplication of Voting Thresholds**

Mr. Larson appeals the chair's ruling on Mayor's Comment agenda item, after the clerk announced the vote passed 5-4 with 2 abstentions to sustain the chair's ruling, you interrupted and advised the clerk that

the motion failed and needed 6 votes. Under Chapter 2.16 (Rule 9 B.) “In all other cases, a majority of votes shall be necessary for Council or Committee action, provided a quorum has voted.” This misapplication caused a procedural error that undermines the public’s confidence in our proceedings.

## 2. **Improper Involvement in Motion Drafting**

Later in the same meeting, you provided substantive assistance to District 1 alder in crafting the language of her motion during the public meeting. While you may be called upon by the chair to clarify legal implications or procedural rules, **council members must independently formulate and state their motions**. Your direct involvement exceeded the advisory boundaries appropriate to your position and risked compromising the integrity of the legislative process. RONR Ch 4: 1-4 and 47: 46.

City Municipal Code Chapter 2.16, Section 2.16.010, Rules 2 and 9 provides in relevant part:

### RULE 2 QUORUM REQUIRED

A quorum is necessary for the transaction of any council business. Two-thirds (2/3) of all members of the council, excluding the mayor, shall constitute a quorum. Vacant seats shall be counted to determine whether or not a quorum is present.

...

### RULE 9 VOTING

...

B. *Majority of vote required.* A majority vote of all members of the Council or Committee in favor of any proposed ordinance, resolution or appointment shall be necessary for passage or approval, unless a larger number is required by law. In all other cases, a majority of the votes cast shall be necessary for Council or Committee action, provided a quorum has voted.

...

### D. *Abstentions.*

(1) All Council or Committee members present shall vote on all matters or issues placed before them; unless required to abstain due to a direct pecuniary or personal interest not common to other members of the Council or Committee. Members shall identify for the record whether the conflict is pecuniary or personal.

- (2) A Council or Committee member who is required by law to abstain from voting on any particular matter shall not be counted for determining (a) the number of "members present" if passage of that measure requires a favorable vote by a majority or other fractional vote (i.e., two-thirds or three-fourths) of the Alder or Committee member "present," or (b) the presence of a quorum for purposes of that particular vote.

An arbitrary and capricious decision is one that is irrational and unreasonable. *See Steffens v. BlueCross BlueShield of Illinois*, 2011 WI 60, ¶ 50, 335 Wis. 2d 514, 804 N.W.2d 196. The Wisconsin Employment Relations Commission has held that to be arbitrary and capricious, an employer's conduct "must border on bad faith or be so lacking in factual basis as to be irrational." *Gerdin v. Fox Valley Technical College*, Dec. No. 30669-B (WERC, 2/04). "A decision is arbitrary if a reasonable person could not rationally have arrived at it." *Robinson v. Milwaukee Public Schools*, Dec. No. 29482-F (WERC, 12/00).

During the June 10, 2025, City Council meeting, an alderperson objected to an agenda item listed as "Communications and Recommendations of the Mayor." City of Wausau Mayor Doug Diny overruled the alderperson's objection. The alderperson then appealed Mayor Diny's decision to overrule the objection. After some discussion about how to proceed with the vote on the objection, the Council voted 5-4 to affirm the mayor's ruling and permit the agenda item to proceed. Subsequently, the City Clerk correctly stated that the motion had passed.

Paragraph B of Rule 9 distinguishes between two scenarios. First, a majority of all members of the City Council must approve "any proposed ordinance, resolution or appointment...unless a larger number is required by law." In the second scenario, a majority of votes cast "shall be necessary for Council...action, provided a quorum has voted. During the June 10, 2025, City Council meeting, the second scenario applied. The matter before the Council was not a proposed ordinance, resolution or appointment, a quorum voted, and a majority of the nine votes for Council action were cast.

After the Clerk had announced that the motion had passed, Jacobson interjected and advised the clerk that the motion had failed because it needed six votes.

Now however, Jacobson concedes that only five votes were required for the mayor to proceed with the "Communications and Recommendations from the Mayor" agenda item over the alderperson's objection. Based on the record and Jacobson's concession, she clearly and incorrectly advised the City Council that six votes were necessary. Consequently, I find that it was reasonable for Mayor Diny to conclude that a written reprimand was warranted, given Jacobson's erroneous advice to the Council which altered the course of the subsequent proceedings. Mayor Diny's decision to issue the written reprimand was not irrational or unreasonable, and therefore, was not arbitrary or capricious.

Given the above finding, it is unnecessary to address the second reason for the written reprimand related to the improper involvement in motion drafting.

**RECOMMENDATION**

The City of Wausau's decision to issue a written reprimand to Anne Jacobson was not arbitrary or capricious. Accordingly, her grievance is denied.

Issued at Madison, Wisconsin, this 29<sup>th</sup> day of April 2026.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

**Electronically signed by Anfin J. Wise**

Anfin J. Wise, Impartial Hearing Officer