

August 27, 2015

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, September 3, 2015
1:30 p.m., Commissioners Hearing Room
County-City Building, Room 112

A G E N D A

ITEM 1: Request for grievance hearing - Brett Wheeler - Corrections

ITEM 2: Miscellaneous Discussion

PC: Tom McCarty
Brett Wheeler
Mike Thurber
Kristy Bauer

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July 21, 2015

VIA HAND DELIVERY

Mr. Doug McDaniel
Human Resources Director
Secretary, County Personnel Board
555 S. 10th Street
Lincoln, NE 68508

RE: Fraternal Order of Police #32; Corrections Officer Wheeler

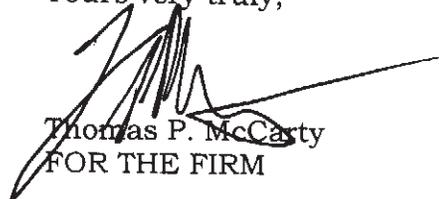
Dear Doug:

This firm represents Fraternal Order of Police Lodge #32 on behalf of Officer Brett Wheeler and all members impacted (hereinafter "Grievants"). On July 20, 2015, Corrections Director Mike Thurber denied the grievance of the Grievants, which I have attached hereto. The Grievants received the grievance reply on July 20, 2015.

Pursuant to the bargaining agreement between Lancaster County and FOP #32, the Grievants hereby give their notice of appeal of this denial of the grievance and hereby submit the attached grievance to the Lancaster County Personnel Board.

We request that the appeal be scheduled for the August meeting of the County Personnel Policy Board. Thank you.

Yours very truly,



Thomas P. McCarty
FOR THE FIRM

ENCLOSURE

Lancaster County

Department of Corrections

3801 West O Street
Lincoln, NE 68528
(402) 441-1900
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Michael Thurber, Director

July 20, 2015

Tom McCarty
Keating, O'Gara, Nedved & Peter, P.C.
530 South 13th Street, Suite 100
Lincoln, NE 68508

Re: Officer Brett Wheeler and FOP Lodge #32 Grievance received June 30, 2015

Dear Mr. McCarty:

This letter will serve as a response to a grievance dated June 30, 2015, regarding an alleged violation of Article 16, Section 5(B) of the FOP #32 Bargaining Agreement (the "Agreement"). Specifically, the grievance alleges that the Corrections Department gave a four-hour overtime shift, for July 4, 2015, to an officer on the Advance Voluntary Overtime Sign-up sheet who has less seniority than Officer Wheeler.

The facts that form the basis of Officer Wheeler's grievance are as follows: On Friday, June 19, 2015, an Advance Voluntary Overtime (AVOT) Sign-up sheet was posted for 2 full shifts, available on Saturday, July 4, 2015. This posting was done pursuant to Article 16, Section 5(B), which states in part, "[w]hen an overtime requirement is identified in advance, the Department may post the opening and allow staff to sign up." The AVOT Sign-up sheet has been in place since 2007 or before. The AVOT Sign-up sheet lists several details including the day/date, shift, and the number of shifts available for advance overtime. The sheet further details whether the shift is a full shift, the first ½ of a shift, or the last ½ of a shift. Officers are expected to print their names and sign up for a specific shift including "1st 4", "2nd 4", or "All 8." There is also a space for the Officer to include any "Notes." Pertinent to this grievance, the sheet also provides the following instruction to Officers signing up for AVOT: "If you check more than one area, circle your preference." This instruction is not a new process, and it gives the Officers the option to sign up for a specific part of the shift, the entire shift, or a combination of both. However, the Officer must specify his/her preference.

At some point prior to June 24, 2015, On-Call Officer Topil was scheduled to work the full day shift on July 4, 2015. Additionally, at some point after the AVOT Sign-up sheet was posted on June 19, 2015, it was determined that only half of the shift (0700-1100) was required to adequately staff the day shift on July 4, 2015. Thus, the AVOT requirement was for the first 4 hours ("1st 4") on July 4, 2015. Simply because the AVOT Sign-up sheet originally listed 2 full shifts available for overtime on July 4, 2015, does not mandate the Department to ultimately award 2 full shifts. In fact, Article 16, Section 5(C), of the Agreement provides that "it is understood that not all slots may be readily covered using the above guidelines. In those cases, supervisors will use discretion in allocating the overtime in a fair and effective manner." Additionally, pursuant to Article 4, Section 2, management has the right to "manage and supervise all operations and functions of the [Corrections Department]", "establish, allocate, schedule, assign, modify, change, and discontinue [Corrections Department] operations, work shifts, and working hours", and "establish, modify, change, and discontinue work standards." Implicit in these management rights is the Department's ability to set and determine minimum staffing levels at the Jail.

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Again, based upon the Department's determination of the staffing needs for July 4, 2015, at the time the AVOT hours were ultimately awarded on June 24, 2015, only coverage for the first half of the day shift was required. Officer Fowler was awarded the AVOT hours for the 1st half of the day shift on July 4, 2015, because she was the Officer with the most seniority that had requested the 1st four hours on the Sign-up sheet. Officer Wheeler was not considered for the award of AVOT hours because he had signed up for "All 8" hours only on the AVOT Sign-up sheet. In the event Officer Wheeler would have requested "1st 4" on the AVOT Sign-up sheet, he would have been awarded the hours as the most senior officer on the list. However, in allocating overtime, supervisors are not in a position to assume or guess what hours an Officer is willing to work.

The Department complied with Article 16, Section 5(A) in awarding the AVOT to Officer Fowler. As previously mentioned, Section 5(A) states in part, "[w]hen an overtime requirement is identified in advance, the Department may post the opening and allow staff to sign up. The senior officer will be scheduled and expected to work the overtime." Officer Fowler signed up for the shift that was required on July 4, 2015, to wit: the first 4 hours, and was ultimately awarded the AVOT because she was the most senior officer that had requested those specific hours. For the foregoing reasons, I must deny the grievance.

Sincerely,



Michael Thurber
Corrections Director

MT/lo

cc: Doug McDaniel, Human Resources Director
Kristy Bauer, Deputy County Attorney
Brad Johnson, Jail Administrator
Brett Wheeler, Correctional Officer
Personnel File

IN RE GRIEVANCE OF FOP 32 ON BEHALF
OF ALL MEMBERS IMPACTED; and
BRETT WHEELER

) June 30, 2015
)
)

TO: Michael Thurber, Department Head, or his designated representative

FROM: Officer Brett Wheeler and Fraternal Order of Police Lodge #32

COME NOW Brett Wheeler and Fraternal Order of Police Lodge #32 on behalf of all bargaining unit members affected, and for their grievance state as follows:

NATURE OF GRIEVANCE AND ACTS OF COMMISSION OR OMISSION GRIEVED:

Article 16 of the bargaining agreement between FOP #32 and the County governs the Department's voluntary overtime procedures. Under Article 16, Section 5(B), when an overtime requirement is identified in advance, the Department may post the opening, allow staff to sign up, and "[t]he senior officer [who signs up for advance voluntary overtime] **will** be scheduled and expected to work the overtime." (emphasis added).

The Department posted an advance voluntary overtime sheet for July 4, 2015 (Independence Day), pursuant to Article 16, Section 5(B) of the parties' bargaining agreement. On the sheet, the Department indicated that two full shifts were available for Independence Day. Officer Brett Wheeler signed up for one of the shifts. The Department thereafter altered the overtime shift availability, reducing it to one four-hour shift instead of two full shifts. On or about June 26, 2015, the Department passed over Officer Wheeler and gave the four-hour overtime shift for Independence Day to an officer on the sign-up sheet who has less seniority than Officer Wheeler, in violation of Article 16, Section 5(B).

DATE OF ACTION GRIEVED: The FOP became aware of this action on or about June 26, 2015. Officer Wheeler became aware of this action on or about June 26, 2015, after receiving an email from the Department (via Brad Johnson) verifying that the Department was giving the four-hour overtime shift to a less-senior officer.

IDENTITY OF GRIEVING PARTIES: FOP #32 on behalf of all affected unit members. Officer Brett Wheeler on behalf of himself.

IDENTITY OF PERSONS ALLEGED

TO HAVE CAUSED GRIEVANCE: Brad Johnson, Sgt. Darryl Shafer and, upon information and belief, Michael Thurber and other unknown parties.

PROVISIONS OF AGREEMENT

THAT WERE VIOLATED: Article 16's advance voluntary overtime provisions, including Section 5(B); and Article 9's provisions for calculating the seniority of officers.

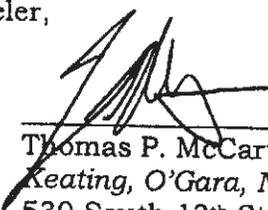
REMEDY SOUGHT: The Department shall give full effect to the advance voluntary overtime provisions in Article 16 of the bargaining agreement and properly calculate the seniority of officers seeking advance voluntary overtime in accordance with Article 9. The Department shall permit Officer Wheeler to work the voluntary overtime shift available on Independence Day and pay him appropriately for such work or, in the alternative, pay Officer Wheeler the compensation he would have received if he had

worked the shift, including but not limited to any holiday pay and/or holiday overtime pay for the Independence Day shift.

Respectfully submitted this 30th day of June, 2015.

FOP #32, on behalf of its members, and Officer Brett Wheeler,

BY:



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Attorney for the Grievants