December 28, 2011

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, January 5, 2012
1:30 p.m., Commissioners Hearing Room
County-City Building, Room 112

A G E N D A

ITEM 1: Request to revise Overtime Pay Policy Personnel Policy Bulletin.

ITEM 2: Elect Vice-Chair.

ITEM 3: Request for appeal hearing – John Hornung — County Engineer.

ITEM 4: Miscellaneous Discussion.

pc: Joy Shiffermiller
John Hornung
Department Heads

Personnel Policy Bulletin

Lancaster County

Number: ~~2003-3~~2012-1

Date: ~~November, 2003~~January, 2012

Reference:	Title:
Personnel Rule 17 Supercedes Personnel Policy Bulletin ~~2001-6~~ 2003-3	OVERTIME PAY POLICY

OVERTIME PAY

A Department Head may prescribe reasonable periods of overtime work to meet operating needs. Overtime pay may not be used to affect pay adjustments nor in payment for work that can be scheduled in a routine manner. Only employees allocated to non-exempt classifications are eligible to receive overtime pay. Overtime must be approved by the appropriate Department Head prior to it being worked.

Unless otherwise specifically provided for in a collective bargaining agreement or other provisions of this Personnel Policy Bulletin, overtime shall be compensated by monetary payment and not time off, i.e. compensatory time. Any County Department wanting to authorize the use of compensatory time first must gain the written approval of the County Board and Personnel Director.

Overtime will be paid only if such time has been previously approved by the appropriate Department Head. No employee, by his/her own volition will work any time prior to or immediately following his/her normally scheduled working hours without the approval of his/her supervisor. No employee who is non-exempt will be permitted to conduct the County's business while on their authorized lunch break. Any employee who elects to forego his/her authorized rest breaks shall not be entitled to payment for overtime for breaks not taken. An employee who, without supervisor approval, works either before or after his/her scheduled hours or during an authorized lunch break, will be subject to progressive discipline. The employee's work week is hereby defined as Thursday at 0001 through the following Wednesday at 2359.

Employees in any of the classifications set forth in this Personnel Policy Bulletin may work in more than one department if approval to do so is granted, in writing, by both Department Heads, provided however, that in no event shall the total time in pay status exceed forty (40) hours per week.

The County supports the concept of a flexible working schedule where it can be implemented by Department Heads in a manner which improves the delivery of services to the public. An essential requirement is that all work positions be adequately staffed during the normal business or regular hours. Where less than full-time (i.e., less than 40 hours per week) employees are used, they shall be paid at the straight time hourly rate established for their classification unless they exceed 40 hours per week which will be compensated at one and one-half times regular rate. Flex time must be arranged during the work week or paid if it exceeds forty (40) hours.

The Personnel Officer will determine overtime pay eligibility and assign classifications to either non-exempt or exempt status. The Personnel Officer may develop a reporting system which will be used in all County Departments to report overtime usage. Department Heads will be responsible for the proper administration of the overtime provisions.

Personnel Policy Bulletin

Lancaster County

Number: ~~2003-3~~2012-1

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NON-EXEMPT CLASSIFICATIONS

Employees allocated to classifications identified in the pay plan index as non-exempt are eligible to receive pay for overtime work in accordance with the provisions of the Fair Labor Standards Act, this Personnel Policy Bulletin, the applicable collective bargaining agreement, or the Lancaster County Personnel Rules.

A.F.S.C.M.E. ('A' PAY GRADES) AND EXCLUDED X ('X' PAY GRADES) NON-EXEMPT CLASSIFICATIONS

Work performed by employees in excess of forty (40) hours per work week ~~(except Lancaster Manor)~~ shall be compensated at the rate of one and one-half (1 ½) times the regular hourly rate of the employee. No overtime work or compensation will be allowed without prior approval by the Department Head or his designee. All paid leaves of absence shall be counted as hours worked in computing overtime, with the exception of sick leave, which shall not count as hours worked for the purpose of computing weekly overtime.

~~In accordance with Union contract Article 22 and 29 U.S.C. 207 (j) work performed by Lancaster Manor employees in excess of eight (8) hours per day or eighty (80) hours in the fourteen (14) day work cycle shall be compensated at the rate of one and one-half (1 ½) times the regular rate of the employee. All paid leaves of absence shall be counted as hours worked in computing overtime with the exception of sick leave which will not count as hours worked for the purpose of computing weekly overtime.~~

Hours paid at a premium rate during the work week will offset other overtime hours due in accordance with the Fair Labor Standards Act. If an employee is called to duty during his off-duty time, and such time does not merge with his scheduled work week, the employee will be paid for a minimum of two (2) hours at one and one-half times his regular hourly pay or one and one-half times the actual hours worked, whichever is greater. All such call-back hours will be paid as overtime hours regardless of the number of paid leaves of absence during the employee's work week.

FRATERNAL ORDER OF POLICE, LODGE 32, NON-EXEMPT CLASSIFICATIONS

Work performed by employees in excess of ~~forty (40)~~ eighty-six (86) hours in any ~~work week~~ fourteen (14) day work cycle shall be compensated at the rate of one and one-half (1 ½) times the regular hourly rate of the employee. No overtime work or compensation will be allowed without prior approval by the Department Head or his designee. The Department will develop a standard operating procedure for the granting of voluntary and mandatory overtime.

Personnel Policy Bulletin

Lancaster County

Number: ~~2003-3~~2012-1

Date: ~~November, 2003~~January, 2012

Reference:	Title:
Personnel Rule 17 Supercedes Personnel Policy Bulletin ~~2001-6~~ 2003-3	OVERTIME PAY POLICY

Vacation and holiday leaves shall be counted as ~~time~~ hours worked in computing overtime with the exception of sick leave and compensatory time, which will not count as hours worked for purposes of computing overtime. If an employee is called to duty during his off-duty time, and such time does not merge with his scheduled tour of duty, the employee will be paid for a minimum of two (2) hours at a rate of one and one-half (1 ½) times his regular hourly pay or one and one-half (1 ½) times the actual hours worked, whichever is greater. In such cases, all call-back hours will be paid as overtime regardless of the number of paid leaves of absence during the employee's work week.

UNREPRESENTED ('C' PAY GRADES) AND EXCLUDED E ('E' PAY GRADES) NON-EXEMPT CLASSIFICATIONS

Work performed by employees in excess of forty (40) hours in any work week ~~(except Lancaster Manor)~~ shall be compensated at the rate of one and one-half (1 ½) times the regular hourly rate of the employee. No overtime work or compensation will be allowed without prior approval by the Department Head or his designee. All paid leaves of absence shall be computed as hours worked in computing overtime, with the exception of sick leave, which shall not count as hours worked for the purpose of computing overtime.

~~In accordance with 29 U.S.C. 207 (j) work performed by nonexempt employees working at Lancaster Manor in excess of eight (8) hours per day or eighty (80) hours in the fourteen (14) day work cycle shall be compensated at the rate of one and one-half (1 ½) times the regular rate of the employee. All paid leaves of absence shall be counted as hours worked in computing overtime with the exception of sick leave which will not count as hours worked for the purpose of computing weekly overtime.~~

EXEMPT CLASSIFICATIONS

Employees who are determined to be Exempt from the requirements of the Fair Labor Standards Act and who are identified in the pay plan index as exempt are presumed to be paid for the complete job and are not eligible to receive compensation for additional hours. Employees may work more or less than forty (40) hours per week at the discretion of the Department Head. In addition a Department Head may grant additional time off in recognition of extra work but under no circumstance will time be granted on a one-for-one basis or hours counted after forty (40) per week. Exceptions to this overtime policy may be granted by the Personnel Officer when requested by the Department Head after demonstrating the exception to this policy is in the best interest of the County.

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Employees in the unclassified service, with the exception of those represented by the Deputy Sheriff's Association, are not eligible to receive compensation for work in excess of forty (40) hours per week, and are not covered by this Personnel Policy Bulletin.

EXEMPT AND NON-EXEMPT CLASSIFICATIONS

For a current listing of Exempt and Non-Exempt Classifications, please refer to the City-County home page at ~~www.ci.lincoln.ne.us~~ www.lincoln.ne.gov. Under Lancaster County, click on 'Agency.' Click on 'Personnel Department.' Under County ~~Information~~, click on '~~County Rules, Contracts &~~ Pay Plans.' Finally, click on 'Alphabetic Title Listing.' This listing will be updated as changes occur. For employees who do not have access to the internet, they can find a listing in the Lancaster County Pay Plan that is distributed to each Department.

~~Don Taute~~Doug McDaniel, Personnel Director — Date

~~Bernie Heier~~Deb Schorr, Chair
Board of County Commissioners — Date

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December 6, 2011

Personnel Officer
Lincoln/Lancaster County Personnel
555 South 10th Street
Lincoln, NE 68506

Don Thomas
County Engineer
444 Cherry Creek RD
Building C
Lincoln NE 68528
Via Fax 402 4418692

Gentlemen:

This office represents AFSCME 2468 and their member John Horning. Please consider this our appeal of his termination, written notice of which was provided to him by letter dated November 16, attached to this document. Please also consider this our Grievance with respect to the failure to follow personnel policies and the union contract as fully set out below, hence the delivery to the department head.

> Article 19 Section 1. Provides Disciplinary action shall consist of written warning, written reprimand, suspension, demotion and dismissal. A Department Head may suspend, demote or dismiss an employee for just cause. Just cause shall be defined as a cause which a reasonable employer, acting in good faith, would regard as good and sufficient reason for the level of discipline issued against the employee for the infraction that led to the disciplinary action, as distinguished from arbitrary whim or caprice. In informing an employee of proposed discipline, the County can refer to the Lancaster County Personnel Rules to set forth the basis for the proposed discipline.

The disciplinary action was forced vacation leave mandated on October 28th, 2011, without written

e-mail: joy@joyshiffermiller.com

notice or an opportunity to be heard. Later, on November 16th, he was terminated for the same offense. Said dismissal was without just cause given the earlier discipline and given the The City of Lincoln/Lancaster County Federal Highway Administration (FHWA) Drug and Alcohol testing policies, as more fully set out below. In addition said discipline was provided without consideration for the employee's 28 year work record and without regard to his personal circumstances.

> Article 19 Section 1. further provides: At any meeting that may result in disciplinary action, the employee has the right to have legal counsel or a Union steward present. The employee may only waive their right to representation under this section in writing.

Mr. Hornung did not waive his right to union representation in writing, for the meeting which was held with him on November 14th or October 28th. No written notice appears in his personnel file, and no notice was given to the AFSCME Union of the meetings, or of any written waiver at any time.

> Section 5. A Department Head may dismiss any employee with status only for cause at any time and at the time of dismissal shall furnish the employee with a written statement of other reasons for the dismissal and within one (1) working day of such action, furnish the Personnel Officer with a written statement of the reasons for the dismissal. Any employee who is dismissed may appeal, in writing, to the Board within fifteen (15) working days of notice of dismissal

The dismissal of Mr. Hornung was not for cause as set out under the applicable rules and policies.

> The City of Lincoln/Lancaster County Federal Highway Administration (FHWA) Drug and Alcohol testing policy was violated. Said policy provides:
>
> 15.15 If the breath alcohol level was at or above .04, the employee is removed from service for at least 24 hours to include 8 hours suspension without pay. Before the employee can return to work, the employee will meet with the department head and will be advised of the requirement to:
>
> 1. go to the Employee Assistance Program for evaluation and to set up a rehabilitation/treatment plan (the employee will be required to sign an acknowledgment of this plan),
>
> 2. take and pass a return to duty alcohol test at the employee's expense ($35.00). NOTE: a positive test result will be cause for termination with the City and County.
>
> 3. be subject to follow-up testing. NOTE: a positive test result will be cause for termination with the City and County.

4. The employee will be required to sign EAP release forms.

15.16 Personnel is responsible for making the appointment with EAP and the department head.

15.17 Personnel will be responsible for initiating the suspension paperwork.

15.18 Personnel will contact the employee and the supervisor when the employee has passed the return to duty test, to set the date the employee can return to work.

15.19 The employee will give Pat Kant or Ron Todd a check for $35.00 made payable to Western Pathology Consultants to cover the expense of the return to duty test.

15.110 Leave Policy: At the conclusion of the suspension the employee will request vacation and/or personal holiday, and at the expiration of his/her vacation, request leave without pay until such time that he/she is released to return to work following a negative drug/alcohol test. Should he/she be required to undergo inpatient substance abuse treatment, he/she will be allowed to utilize accrued sick leave until the completion of inpatient treatment.

15.111 Release forms: The employee will be required to sign release of information forms by the Lincoln Employee Assistance Program to specified individuals with the City of Lincoln and Western Pathology.

Mr. Hornung was never advised of his rights or requirements under such policies and he was never given the opportunities to return to work as fully set out in said policies.

For all of the above reasons, AFSCME and John Horniug request he be reinstated to his job with full back pay, and further request the department be ordered to abide by the Drug and Alcohol testing policies, and give bargaining unit members and opportunity for union representation absent a waiver.

Very Truly Yours,

Joy Shiffermiller

Kim Kaspar

LANCASTER COUNTY ENGINEERING DEPARTMENT

Don R. Thomas
County Engineer

Kenneth D. Schroeder - Deputy
County Surveyor

November 16, 2011

John Hornung
14650 N. 4th
Raymond, NE 68428

Re: Discipline

Dear John:

On or about November 1, 2011, you received a letter proposing to discipline you at a level up to and including the termination of your employment based on violations of Lancaster County Personnel Rules 11.2(h)(4) and (6), and based on violations of the Lancaster County Federal Motor Carrier Safety Administration (FMCSA) Department of Tranportation (DOT), Anti-drug and Alcohol Policies. A pre-disciplinary meeting was held on November 14, 2011. Prior to the meeting you waived union representation in writing. During the meeting, you were provided the opportunity to present information regarding the above violations.

After consideration of all of the facts, after consideration of mitigating factors that may have existed in connection with the transgressions committed, and after consideration of the information you provided, I have determined that you have violated Lancaster County Personnel Rules 11.2(h)(4) and (6), and the Lancaster County Federal Motor Carrier Safety Administration (FMCSA) Department of Tranportation (DOT), Anti-drug and Alcohol Policies. Therefore, I have decided to terminate your employment with Lancaster County. I have made my decision based on the facts set forth below.

> At approximately 8 a.m. on October 28, 2011, you were on duty when you were selected to go to Company Care for a random drug/alcohol test. You drove a County vehicle to the testing site at Company Care, and you arrived at Company Care at approximately 8:50 a.m. At Company Care you were given an alcohol breath test on the Intoxilyzer 200 machine. The initial alcohol breath test ("screening test") registered a result of 0.084 on the Intoxilyzer 200, which was a positive result for alcohol and indicated that you were under the influence of alcohol. After waiting 15 minutes, a second alcohol breath test was performed on the Intoxilyzer 200 ("confirmation test"). The confirmation alcohol breath test registered a result of 0.071, which was a positive result for alcohol and indicated that you were under the influence of alcohol. Upon receiving the report of your condition, you were relieved from duty and driven home by another employee.

The totality and seriousness of your actions justifies and requires the termination of your employment with the Lancaster County Engineering Department effective immediately.

Phone 402-441-7681 444 Cherrycreek Road, Bldg. C Lincoln, Nebraska 68528 Fax 402-441-8692

In accordance with federal regulations, I am required to provide you with the name of a substance abuse professional whom you are encouraged to contact regarding substance abuse evaluation and referral. Please contact:

Georgette Kingkade
Continuum EAP
1135 M Street
Suite 400
Lincoln, NE 68508
402-476-0186

If you would prefer to seek assistance from a different substance abuse professional, Ms. Kingkade can provided you with the names and contact information of other substance abuse professionals. Since you are no longer an employee of Lancaster County, the cost for these services would be your responsibility.

I sincerely hope that you follow through with this recommendation and wish you well in future endeavors.

Sincerely,

Don Thomas

Don Thomas
Lancaster County Engineer

cc: Personnel Director
Thomas Fox, Deputy County Attorney
Personnel File