March 29, 2012

TO: County Personnel Policy Board Members

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

A G E N D A

ITEM 1: Request for appeal hearing – Precious Lomack-Perry — Youth Services Center.

ITEM 2: Miscellaneous Discussion.

pc: Jon Rehm
Precious Lomack-Perry
Michelle Schindler

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REHM, BENNETT & MOORE
ATTORNEYS AT LAW, P.C., L.L.O.

March 14, 2012

Douglas J. McDaniel
555 S 10th Street
Room 302
Lincoln, NE 68508

Thomas Fox
575 S 10th Street
Lincoln, NE 68508

Re: Precious Lomack-Perry
Delivered by Fax and Hand

Dear Gentleman:

Pursuant to Lancaster County Personnel Rule 11.2 (e) and Articles 19 and Article 20 of the Collective Bargaining Agreement between the County and AFSCME Local 2468, Precious Lomack-Perry, through her attorney Jon Rehm, is serving notice of her appeal of her termination from the Lancaster County Youth Services Center to the Lancaster County Personnel Board. Notice of Ms. Perry's termination was mailed to her on Wednesday February 22, 2012. This appeal should supersede previous appeals filed by me and Kim Kaspar. I have been retained by Ms. Perry to assist Kim Kaspar in representing Ms. Perry in front of the County Personnel Board. The basis for this appeal is that the County did not have cause as defined by the collective bargaining agreement, to terminate Ms. Perry. Ms Perry alleges the following about her termination:

a. the county did not act in good faith in their decision to terminate Ms. Perry;
b. the county had insufficient evidence to prove the alleged misconduct committed by Ms. Perry;
c. a reasonable employer would not have terminated Ms. Perry for her alleged misconduct;
d. termination is too harsh of a punishment for any alleged misconduct committed by Ms. Perry;
e. that termination and any discipline leading up to the termination was arbitrary and capricious;
f. the County did not follow the disciplinary procedures laid out in the collective bargaining agreement and/or the county personnel rules in their termination of Ms. Perry;

Knowledge. Experience. Toughness.
Rod Rehm | Todd D. Bennett* | Roger D. Moore*
Jon Rehm | Brody Ockander
*Also Licensed in Iowa
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g. that the County did not consider mitigating factors in their decision to terminate Ms. Perry

Very truly yours,

Jon Rehm
jonrehm@rehmlaw.com

JR:mpb

1200 Radcliff Street
Lincoln, NE 68512
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February 22, 2012

Precious Lomack-Perry
Lancaster County Youth Service Center.
1200 Radcliff Street
Lincoln, NE 68512

RE: Disciplinary Decision

Dear Ms. Lomack-Perry:

On or about January 31, 2012, you received a letter proposing to terminate your employment based on violations of Lancaster County Personnel Rules 11.2(h)(4) and (5); Lancaster County Juvenile Detention Center Policy 1100.3 - Resident Counts (A), (B), and (D); Lancaster County Juvenile Detention Center Post Order Appendix-Resident Counts (Personal Observation Checks) (D), (E), and (F); Lancaster County Juvenile Detention Center 1100.3 - Post Order Appendix-Resident Counts (Formal Counts) (A), (B), (C) and (D); Lancaster County Juvenile Detention Center Policy 900.1 - General Programming (C); Lancaster County Youth Services Center Code of Ethics (l)(4); and Nebraska Minimum Jail Standards for Youth Detention Facilities -Title 83, Chapter 8, .001-Personal Observation and .003 - Head Counts. A pre-disciplinary meeting was held on February 15, 2012. During the meeting, you and your Union representatives were provided the opportunity to present information and mitigating factors 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 (5); Lancaster County Juvenile Detention Center Policy 1100.3 - Resident Counts (A), (B), and (D); Lancaster County Juvenile Detention Center Post Order Appendix-Resident Counts (Personal Observation Checks) (D), (E), and (F); Lancaster County Juvenile Detention Center 1100.3 - Post Order Appendix-Resident Counts (Formal Counts) (A), (B), (C) and (D); Lancaster County Juvenile Detention Center Policy 900.1 - General Programming (C); Lancaster County Youth Services Center Code of Ethics (l)(4); and Nebraska Minimum Jail Standards for Youth Detention Facilities -Title 83, Chapter 8, .001-Personal Observation and .003 - Head Counts. Therefore, I have decided to terminate your employment with the Lancaster County Youth Services Center. I have made my decision based on the facts set forth below.

1. On or about Thursday January 5, 2012 a 14 year old female youth arrived at the Youth Services Center in the early morning hours and was being held for 3rd degree assault against a foster parent. During intake the youth indicated she was Bi-polar and currently using four psychotropic medications. The youth had been up all night with the police, and processing of the youth into the Youth Services Center was finished at approximately 5:00 a.m.. The youth was placed in E-pod in cell E5, and the youth was considered to be on orientation status. During first shift briefing it was mentioned that the youth in E5 would likely want to sleep for a while due to her being awake most of the night. This was the first time the youth had been to the Lancaster County Youth Services Center.

On Thursday, January 5, 2012, Ms. Lomack-Perry was assigned to supervise E-Pod for her entire shift between 6:30 a.m. and 2:30 p.m. Six female youths were housed in E-Pod, including the female youth in E5 who arrived during the early morning hours. After Ms. Lomack-Perry's shift, it was discovered that Ms. Lomack-Perry had left the female youth in E5 in her room for an entire shift without completing security checks on the youth. Nebraska Minimum Jail Standards and department policy require that visual checks be made on youth every 30 minutes.

According to security video, Ms. Lomack-Perry entered E/F Unit at 6:55 a.m. The Tour Pro Report, which documents security checks, documents that a security check on the youth in E5 was completed at 6:56 a.m. and the next security check was not completed until 2:34 p.m. Ms. Lomack-Perry documented in the youth's individual Resident Log that the resident was in her room the entire shift.

Ms. Lomack-Perry was asked about whether she had completed security checks on the youth in E5 during her shift. Ms. Lomack-Perry did not mention at any time that she had documented checks by hand using a paper check sheet. Ms. Lomack-Perry indicated she had opened the door to E5 numerous times to try to wake the youth up, and that was Ms. Lomack-Perry's reason for not doing any security checks. However, the Informer Door Action report shows E5 opened at 7:20 a.m. when Ms. Lomack-Perry offered breakfast, at 9:46 a.m. when the nurse came to dispense medication to the youth in E5, at 10:45 a.m. when Ms. Lomack-Perry offered lunch, and at 1:03 p.m. A total of Eleven (11) security checks on the youth in E5 were not done by Ms. Lomack-Perry. This does not include the times the door to E5 was opened.

Additionally, the other youth on E-Pod were also in their rooms for extended periods of time during Ms. Lomack-Perry's shift without security checks being completed. A total of forty (40) checks were missed or not completed by Ms. Lomack-Perry on E-Pod during her shift on January 5, 2012. The following is a list of the security checks not completed by Ms. Lomack-Perry on the residents in E-Pod on January 5, 2012:

Rooms E1, E2, E3, E10, and E11 were not occupied.
E4 : Six 30-minute checks missed (0745, 0815, 0845, 0915, 0945, 1015, 1415)
E5 : Eleven 30-minute checks missed. (0745, 0815, 0845, 0915, 1015, 1100, 1130, 1200,

1230, 1300, 1330).
E6: Seven 30-minute checks missed. (0745, 0815, 0845, 0915, 0945, 1015, 1415).
E7: Six 30-minute checks missed. (0815, 0845, 0915, 0945, 1015, 1415).
E8: Six 30-minute checks missed. (0815, 0845, 0915, 0945, 1015, 1415).
E9: Four 30-minute checks missed. (0745, 0815, 0845, 1415).

2. During Ms. Lomack-Perry's shift she offered all the youth in E-Pod breakfast at approximately 7:20 a.m. the Door action reports indicate that all doors on E-Pod were opened at 7:20 a.m. Opening all doors at once is a security violation which is explained below. Ms. Lomack-Perry escorted two of the six youth, housed in rooms E7 and E8, to breakfast in the dining hall at 7:28.28 a.m. This was confirmed by both of the youth, the Informer System, the Internal Movement Log, security video of the hallway to the dining hall and the Individual Resident Logs. However, when Ms. Lomack-Perry was with the two youth in the dining hall she did not call for an escort to cover her security checks on the youth that were left behind in their rooms on E-Pod.

Ms. Lomack-Perry and the two youth returned to E-Pod from breakfast at 7:49.59 a.m. Mandatory programming was scheduled for the youth between 8:00 a.m and 10:50 a.m. Ms. Lomack-Perry did not have the youth participate in the programming. When asked about the events during her shift, Ms. Lomack-Perry claimed she had the youth start room clean up at approximately 10:15 a.m. However, except for one door opening for the nurse to administer medication to the youth in E5 at 9:46 a.m., and another door opening for a youth in E9 to go to visitation at 9:13 a.m., there were no door actions on the other occupied rooms in E-Pod between 7:52 a.m. and 10:44 a.m.

At 10:44 a.m. Ms. Lomack-Perry opened all of occupied rooms, with the exception of E5 and E9. Five of the six youth from E-Pod then went to the dining hall for lunch at 10:48 a.m. Again Ms. Lomack-Perry did not call for an escort to cover her security checks on the youth left behind in her room.

At 11:22 a.m. the youth returned to E-Pod from lunch, and the youth went to their rooms to allow Ms. Lomack-Perry to take her 15 minute break. Other mandatory programming events were scheduled for the youth between 12:15 p.m. to 1:45 p.m. Ms. Lomack-Perry again did not have the youth in E-Pod participate in the mandatory programming.

At the end of a shift all youth in the Youth Services Center are directed to their rooms. Staff are required to print off a Cell Count Report and with the Tour Pro Data Recorder visually check on each youth in their rooms to ensure they are safe and alive. At approximately 2:15 p.m. Ms. Lomack-Perry called in the Formal Head Count to the Youth Services Center Control Center however there is no indication that Ms. Lomack-Perry actually performed the visual check as required.

Ms. Lomack-Perry indicated in the daily logs that the youth were fairly well behaved. Additionally, during Ms. Lomack-Perry's shift, adequate staff were working, escorts and

supervisors were available for assistance upon request, and there were no incidents or significant behavior problems that would have prevented Ms. Lomack-Perry from making security checks or allowing the youth to participate in programming.

3. During Ms. Lomack-Perry's shift she did not follow security practices for opening and securing doors when letting youth in and out of their rooms. Staff are trained, and have been directed by supervisors, to open and secure doors in the following manner when letting youth in and out of their rooms: 1.) order the youth to stand by their doors prior to opening a door; 2) open one door at a time to let a single youth in or out of a room; and 3) secure the door and then move on to the next room and repeat the process. The Informer Door Action Report shows there were multiple rooms open at the same time. Additionally, doors were opened before other opened doors were secured.

In addition to the above incidences, on February 10, 2011, you received a one (1) day suspension for leaving a youth unsupervised and unsecured in their room; you received a written reprimand on August 20, 2009, for leaving a youth unsupervised and unsecured on the Pod; you received a written reprimand for missed security checks on August 1, 2006; you received a written reprimand for missed security checks on March 24, 2006; you received a written reprimand for missed security checks on March 10, 2006; you received a written reprimand for missed security checks on December 15, 2005; and you received a written reprimand for missed security checks on May 25, 2005. These instances were also taken into consideration when determining the appropriate level of discipline.

The totality of your actions justifies and requires the termination of your employment with the Lancaster County Youth Services Center effective immediately. Please make contact with Melissa Hood for the return of County property issued to you and to arrange a time for you to gather your belongings.

Sincerely,

Michelle Schindler
Director

cc: Doug McDaniel
Thomas Fox