June 29, 2011

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, July 7, 2011
1:30 p.m., Commissioners Hearing Room
County-City Building, Room 112

A G E N D A

ITEM 1: Request for grievance hearing – Kim Kaspar — Youth Services.

ITEM 2: Miscellaneous Discussion.

pc: Kim Kaspar
Joy Shiffermiller
Sheli Schindler

F:\FILES\PERSONL\FILES\BOARDS\KE4325D.wpd - 1
F:\FILES\PERSONL\FILES\BOARDS\COUNTYweb\070711AGE.pdf

SHIFFERMILLER LAW OFFICE, P.C., L.L.O.

JOY SHIFFERMILLER
Attorney at Law

ABBY OSBORN
Associate Attorney

1002 G Street
Lincoln, NE 68508
(402) 484-7700 – Phone
(402) 484-7714 – Fax

2011 JUN 13 PM 2 50
CITY - COUNTY PERSONNEL

June 13, 2011

Personnel Officer
Lancaster County Personnel Dept.
555 S. 10th Street
Lincoln Nebraska 68508

Ladies and Gentlemen:

Please consider this the Step 2 Appeal of the Grievance of Kim Kaspar, with respect to her grievance, and the department heads response, both of which are attached.

No satisfactory settlement having been reached, Ms. Kaspar hereby re-submits this grievance for submission to the board, incorporating all issues more fully set out therein.

Thank you for your attention to this matter.

Very truly yours,

JOY SHIFFERMILLER

JS/cl
Enc:
cc: Kim Kaspar
Michelle Schindler

e-mail: joy@joyshiffermiller.com

SHIFFERMILLER LAW OFFICE, P.C., L.L.O.

JOY SHIFFERMILLER
Attorney at Law

ABBY OSBORN
Associate Attorney

1002 G Street
Lincoln, NE 68508
(402) 484-7700 – Phone
(402) 484-7714 – Fax

May 12, 2011

Michelle Schindler
Facility Director
Lancaster County Youth Services Center
1200 Radcliff Street
Lincoln, Nebraska 68512

Dear Ms. Schindler:

Please consider this to be the grievance of Kim Kaspar.

On April 16, 2011, Ms. Kaspar presented a leave slip under the AFSCME contract Article 3, Section 4, Paragraph 2 which states:

Section 4. Stewards who use time during their regular shift hours for investigating grievances or attending grievance meetings will be paid their regular hourly rate for such time used, up to a maximum of one and one-half (1 1/2) hours per grievance but not to exceed a total of three (3) hours per week. All stewards will be considered on a regular eight (8) hour shift as far as grievance pay is concerned. A steward who spends time representing an employee at a Board hearing shall be paid for time spent during his regular shift at his regular rate.

The Union president or his designated representative shall be allowed to attend meetings as requested by department heads. These meetings may be for the purpose of the supporting and implementation of increasing department productivity and maintaining safe work places. This time is in addition to any time already granted in the agreement.

Her request was unilaterally changed in the official county payroll records by you to leave under which states:

Article 2, Section 5. The Union president or his designated representative may be allowed to absent themselves from work without pay for up to one (1) work day per month in order to attend to Union business provided a forty-eight (48) hour notice is

e-mail: joy@joyshiffermiller.com

present in writing by the president or his representative to, and is approved by, the Department Head and the Personnel Officer. Approval shall not be unreasonably denied. In so doing, Ms. Kaspar was deprived of leave as designated and as provided in the union contract, Article 26, Section 7.

Ms. Kaspar seeks to have her leave record restored to the leave which was requested by Ms. Kaspar and to be paid for the leave as she would have been paid.

Ms. Kaspar also believes the modification of her requested leave violates Article 12, Section 1, by discriminating against Ms. Kaspar on the basis of her union membership and Article 12, Section 2, by intimidating, coerce restrain or interfering with her assistance of the labor organization.

Please respond pursuant to Article 20, Step 1, to the undersigned, as well as Ms. Kaspar.

Very truly yours,

JOY SHIFFERMILLER

JS/cl
cc: Kim Kaspar

Lancaster County Youth Services Center
Leave Request for Union Business

Name: K. Kasper

Request Date: 12-22-10

Shift (✓) 1st ( ) 2nd ( ) 3rd

INITIAL HERE 12/22/10

Leave Type	Date From:	Date To:	Time From:	Time To:	Total Hours:
Union Absence:					
Article 2, Section 5 (48hr notice) - *LWOP for union business					
Article 2, Section 6 (1 week notice) - *conferences, seminars					
Article 3, Section 4, para 1 - **investigation upon employee request					
Article 3, Section 4, para 2 dept head requested mtg, please indicate which department Gen. Asst	12-29-10	9:30 ~~09:45~~		1100 (?)	1.5
Comments: Disciplinary Hearing		**Employee Signature**			
		Agency Director Approved (			
Request Denied ( )					

* Leave under these sections must be approved by the Department Head and Personnel Director.
** Investigations upon an employee's request are limited to 1.5 hours per grievance, not to exceed 3 hours per week.

original: Administration, cc: Employee, Scheduling Supervisor

YOUTH
SERVICES
CENTER

1200 Radcliff Street
Lincoln, NE 68512
(402) 441-7090
FAX: (402) 441-5626
www.lancaster.ne.gov

May 24, 2011

Kim Kaspar
President
Local 2468, AFSCME
1200 Radcliff Street
Lincoln, NE 68512

Joy Shiffermiller
Shiffermiller Law Officer, P.C., L.L.O.
1002 G Street
Lincoln, NE 68508

RE: Grievance regarding leave for Union president to attend meetings, received May 12, 2011.

Dear Ms. Shiffermiller:

This letter will serve as a response to the attached grievance received May 12, 2011. Article 20 of the 2008/2011 Agreement between the County of Lancaster and Local 2468 of the American Federation of State, County, and Municipal Employees, AFL-CIO (the "AFSCME Bargaining Agreement") covers grievance procedures. The first paragraph of Article 20 defines a grievance as any disagreement arising during the term of the AFSCME Bargaining Agreement which is expressly limited to matters of interpretation or uniform enforcement of express provisions of the AFSCME Bargaining Agreement, the Lancaster County Personnel Rules, and any and all conditions of employment. Article 20, Section 1, of the AFSCME Bargaining Agreement states that, "In reducing a grievance to writing the following information must be stated with reasonable clearness: the exact nature of the grievance, the act or acts of commission or omission, the exact date of the act or acts of commission or omission, the identity of the party or parties who claim to be aggrieved, the identity of the party or parties alleged to have caused the grievance, the specific provisions of this [AFSCME Bargaining] Agreement that are alleged to have been violated, and the remedy which is sought."

Ms. Kaspar's grievance, alleges violations of Article 2, Section 5; Article 3, Section 4, paragraph 2; and Article 12, Sections 1 and 2 of the AFSCME Bargaining Agreement. The Union and Ms. Kaspar have alleged that Ms. Kaspar's requested leave under Paragraph 2 of Article 3, Section 4 of the AFSCME Bargaining Agreement should have been granted, pursuant to that section, and that Ms. Kaspar's leave request should not have been granted pursuant to

Article 2, Section 5. It is also alleged that Article 26, Section 7, and Article 12, Sections 1 and 2 were violated by approving Ms. Kaspar's leave under Article 2, Section 5.

On or about April 16, 2011, Kim Kaspar, AFSCME Union President, submitted a leave request slip requesting two hours of leave, between 10 a.m. and noon, on April 27, 2011. It was my understanding that Ms. Kaspar was using the leave to attend, and watch, a Lancaster County Personnel Policy Board disciplinary appeal hearing scheduled for 10:30 a.m. on April 27, 2011. The Personnel Policy Board appeal hearing was concerning a disciplinary appeal filed by AFSCME on behalf of Debbora Day, an AFSCME Union represented employee. The disciplinary appeal stemmed from the termination of Ms. Day's employment, which occurred on January 5, 2011. Ms. Day received legal representation at the Personnel Policy Board appeal hearings, regarding her appeal, from AFSCME legal counsel. Ms. Day was not represented at her appeal hearings by Ms. Kaspar.

Prior to Ms. Kaspar submitting her leave slip on April 16, 2011, Ms. Kaspar had previously attended Ms. Day's pre-disciplinary meeting on December 29, 2010. In order to attend the December 29, 2010 pre-disciplinary meeting, Ms. Kaspar had requested and received one and one-half (1 ½) hours of paid leave under Paragraph 2 of Article 3, Section 4 of the AFSCME Bargaining Agreement (see attached leave request dated December 22, 2010). Paragraph 2 of Article 3, Section 4, states,

> The Union president or his designated representative shall be allowed to attend meetings as requested by department heads. These meetings may be for the purpose of supporting and implementation of increasing department productivity and maintaining safe work places. This time is in addition to any time already granted in the agreement.

Ms. Kaspar's leave request to attend the December 29, 2010 pre-disciplinary meeting, clearly gave the impression that Ms. Kaspar was going to a meeting which the Director of the Lancaster County General Assistance Department had requested Ms. Kaspar's presence at.

Sometime after Ms. Kaspar attended Ms. Day's pre-disciplinary meeting, it was discovered that at no time was Ms. Kaspar requested by the Director of Lancaster County General Assistance to attend Ms. Day's pre-disciplinary meeting. Ms. Kaspar had apparently been requested to attend the pre-disciplinary meeting by Ms. Day. Additionally, it was obvious that Ms. Day's pre-disciplinary meeting could hardly be considered a meeting "for the purpose of supporting and implementation of increasing department productivity and maintaining safe work places." Therefore, Ms. Kaspar incorrectly and inaccurately requested paid time to attend Ms. Day's pre-disciplinary meeting pursuant to Paragraph 2 of Article 3, Section 4 of the AFSCME Bargaining Agreement.

It was assumed, at the time, that Ms. Kaspar's December 22, 2010 leave request was correct and stated accurate facts, so Ms. Kaspar's leave was granted pursuant to Paragraph 2 of Article 3, Section 4. However, Ms. Kaspar should have requested leave under Paragraph 1 of Article 3, Section 4 of the AFSCME Bargaining Agreement to attend the pre-disciplinary meeting on December 29. Paragraph 1 of Article 3, Section 4 provides,

> Stewards who use time during their regular shift hours for investigating grievances or attending grievance meetings will be paid their regular hourly rate for such time used, up to the maximum of one and one-half (1 ½) hours per grievance but not to exceed a total of three (3) hours per week. All stewards will be considered on a regular eight (8) hour shift as far as grievance pay is concerned. A steward who spends time representing an employee at a Board hearing shall be paid for time spend during his regular shift at his regular rate.

Had Ms. Kaspar correctly and accurately requested the time to attend Ms. Day's pre-disciplinary meeting under Paragraph 1 of Article 3, Section 4 of the AFSCME Bargaining Agreement, the one and one-half (1 ½) hours of paid leave that Ms. Kaspar received to attend the pre-disciplinary meeting would have been counted toward the one and one-half (1 ½) hour per grievance maximum provided by the AFSCME Bargaining Agreement. Once it was discovered that Ms. Kaspar provided an inaccurate leave request to attend the pre-disciplinary meeting on December 29, the one and one-half (1 ½) hours Ms. Kaspar spent at the pre-disciplinary meeting were correctly allocated to the maximum time allowed per grievance. Therefore, since Ms. Kaspar had reached the maximum leave time allowed for Ms. Day's specific disciplinary action, Paragraph 1 of Article 3, Section 4 was no longer available for Ms. Kaspar to use to attend Ms. Day's Personnel Policy Board appeal hearing regarding the same disciplinary action.

Paragraph 2 of Article 3, Section 4 of the AFSCME Bargaining Agreement was also not available for Ms. Kaspar to use in order to attend Ms. Day's Personnel Policy Board appeal hearing. As indicated above, Ms. Day was represented by AFSCME legal counsel at the appeal hearings, and not Ms. Kaspar. Additionally, Ms. Kaspar was not requested to attend the Personnel Policy Board appeal hearing by a department head, nor was Ms. Kaspar a witness in the appeal hearing.

The only provision which was available to Ms. Kaspar to provide her with leave to attend the Personnel Policy Board appeal hearing was Article 2, Section 5 of the AFSCME Bargaining Agreement , which states,

> The Union president and/or his designated representatives may be allowed to absent themselves from work without pay for up to one (1) work day per month in order to attend to Union business provided forty-eight (48) hour notice is presented in writing by the president or his representative to, and is approved by, the Department Head and the Personnel Officer. Approval shall not be unreasonably denied.

It was determined that Ms. Kaspar's ability to observe AFSCME legal counsel perform legal services at Ms. Day's appeal hearing might be considered to be Union business. Therefore, Ms. Kaspar's leave was granted to attend the appeal hearing on April 27, 2011, pursuant to Article 2, Section 5 of the AFSCME Bargaining Agreement; Ms. Kaspar was not prevented from attending the appeal hearing; and Ms. Kaspar did attend the appeal hearing on April 27.

As indicated above, Ms. Kaspar was granted leave pursuant to the AFSCME Bargaining Agreement to attend Ms. Day's appeal hearing on April 27, 2011, and Ms. Kaspar did attend Ms.

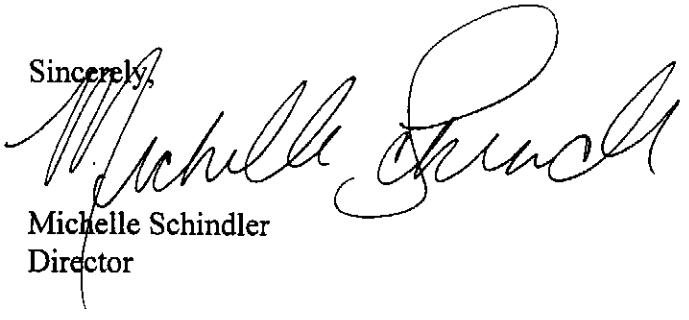
Day's appeal hearing on that date. Ms. Kaspar was also provided with the one and one-half (1 ½) hour maximum time per grievance, allowed pursuant Paragraph 1 of Article 3, Section 4 of the AFSCME Bargaining Agreement, to attend Ms. Day's pre-disciplinary meeting on December 29, 2010. Additionally, it is clear that Ms. Kaspar incorrectly and inaccurately submitted a leave slip under the wrong provision of the AFSCME Union Bargaining Agreement for the December 29, 2010 meeting. It is also clear that Ms. Kaspar was not asked to attend the pre-disciplinary meeting on December 29, 2010 or the Personnel Policy Board appeal hearing on April 27, 2011, by the Director of Lancaster County General Assistance or any other department head. There are no facts which indicate Ms. Kaspar was discriminated against, intimidated, coerced or restrained due to her union membership. There are also no facts presented that Ms. Kaspar's rights to assist a labor organization were interfered with. Therefore, at no time was Article 12, Sections 1 and 2 of the AFSCME Bargaining Agreement violated.

Ms. Kaspar and the Union have also alleged that Article 26, Section 7 of the AFSCME Bargaining Agreement has been violated by granting Ms. Kaspar's leave under Article 2, Section 5, rather than granting the leave pursuant to the incorrect provision which Ms. Kaspar attempted to maintain leave under. Article 26, Section 7 states,

> All leaves of absence must be requested in writing to and approved by the Department Head in advance of leave being taken. Exceptions may be made in an emergency.

It is unclear how Article 26, Section 7 was violated. As indicated above, Ms. Kaspar requested leave in writing under the incorrect AFSCME Bargaining Agreement, and her leave was granted under the appropriate provision of the AFSCME Bargaining Agreement. For the foregoing reasons, I must deny the grievance.

Sincerely,



Michelle Schindler
Director

cc: Mark Koller, Personnel Director
Thomas Fox, Deputy County Attorney

LANCASTER COUNTY PERSONNEL POLICY BOARD

IN RE GRIEVANCE OF KIM KASPAR	)	OBJECTION AND MOTION
	)	FOR A PROTECTIVE ORDER
	)	

COMES NOW the County of Lancaster, Nebraska, by and through its attorney, Thomas W. Fox, Deputy Lancaster County Attorney, and objects and moves the Lancaster County Personnel Policy Board as follows:

1. Objects to grievant calling the legal counsel for the County of Lancaster, Nebraska as a witness at the Lancaster County Personnel Policy Board hearing concerning the grievance filed by Kim Kaspar with the Board on or about June 13, 2011.

2. To enter a Protective Ruling prohibiting grievant, Ms. Kaspar, from calling the County's legal counsel as a witness.

CITY - COUNTY PERSONNEL
2011 JUL 1 PM 1 33

In support of its objection and motion, the County has attached hereto and incorporates herein the affidavit of Thomas Fox.

DATED this 1 day of July, 2011.

COUNTY OF LANCASTER,
NEBRASKA.

JOE KELLY
County Attorney

BY: _____

Thomas W. Fox #21578
Deputy Lancaster County Attorney
555 South 10th Street
Lincoln, NE 68508
(402) 441-7321

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Objection and Motion was served, by sending a true and correct copy thereof by United States First Class Mail, postage prepaid, on this __1__ day of July, 2011, to the following parties of record.

Joy Shiffermiller
Shiffermiller Law Office P.C., L.L.O.
1002 G Street
Lincoln, NE 68508

Thomas W. Fox

LANCASTER COUNTY PERSONNEL POLICY BOARD

IN RE GRIEVANCE OF KIM KASPAR	)	AFFIDAVIT
	)	
	)	

STATE OF NEBRASKA)
) ss.
County of Lancaster)

COMES NOW Thomas W. Fox, being first duly sworn upon oath, and states and deposes as follows:

1. That he is a Deputy County Attorney in and for the County of Lancaster, Nebraska, and is the attorney of record for the above-captioned case.

2. That on June 28, 2011, affiant received from Joy Shiffermiller, the grievant's attorney of record, a witness and exhibit list informing him that grievant was intending to call him as a witness at the hearing in front of the Lancaster County Personnel Policy Board on July 7, 2011. A true and correct copy of that letter is attached hereto as Exhibit "A" and is incorporated herein by this reference.

3. That on May 12, 2011 grievant filed a written grievance with Michelle Schindler, Director of the Lancaster County Youth Services Center, identifying Michelle Schindler as the party alleged to have cause the grievance. Such written grievance does not identify affiant as a party alleged to have caused the grievance, nor do the facts alleged in the written grievance provide any indication that affiant was involved in the conduct which is being grieved. A copy of the May 12, 2011 written grievance is attached hereto as Exhibit "B".

4. That on or about May 24, 2011, Michelle Schindler provided a written response to the May 12, 2011, written grievance. In the response the County provided

grievant with the County's interpretation of the relevant AFSCME contract language and the basis for the actions which have been grieved. A copy of the May 24, 2011 written grievance response is attached hereto as Exhibit "C".

5. That Article 20 of the 2008/2011 Agreement between County of Lancaster and Local 2468 of the American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME Agreement) defines grievance as any disagreement arising during the term of the AFSCME Agreement which is expressly limited to matters of interpretation or uniform enforcement of express provisions of the AFSCME Agreement, the Lancaster County Personnel Rules, and any and all conditions of employment.

6. That Lancaster County Personnel Rule 4.8(f)(2) indicates that in the Personnel Policy Board's review of a Department Head's answer to an employee's grievance, the Personnel Policy Board shall limit itself to interpretation of the Relevant Rules and/or the relevant union contract cited in the grievance, and the facts which are the basis for the grievance.

7. That based upon the information and material made available to the grievant in May 24, 2011 response to the May 12, 2011 written grievance, and based upon the availability of other County officials and employees for testimony, it is affiant's belief that except for mental impressions, conclusions, opinions, and legal theories developed in response to the grievance and in response to client legal questions, affiant cannot provide any information at a hearing that grievant has not already obtained or could not obtain from another source.

8. That based on the allegations contained in the written grievance filed on May

12, 2011, it is affiant's belief that affiant is not a material or necessary witness and that his testimony will not be necessary.

9. That the legal opinions and advice provided to the County and to County Department Heads by affiant is protected by attorney-client privilege unless waived by the client.

Further affiant saith not.

Dated this 1 day of July, 2011.

BY: _____
Affiant

SUBSCRIBED AND SWORN to before me this 1 day of July, 2011.

_____
Notary Public

GENERAL NOTARY - State of Nebraska
KRISTINE KAPUSTKA
My Comm. Exp. Jan. 29, 2012

JS

SHIFFERMILLER LAW OFFICE, P.C., L.L.O.

JOY SHIFFERMILLER
Attorney at Law

1002 G Street
Lincoln, NE 68508
(402) 484-7700 – Phone
(402) 484-7714 – Fax

June 28, 2011

Karen Eurich
Personnel Department
555 South 10th Street
Lincoln, Nebraska 68508

Re: Kim Kaspar Grievance

Dear Ms. Eurich:

I represent Kim Kaspar with respect to Her grievance which is scheduled for the 7th of July, at 1:30.

I anticipate calling the following witnesses:
Kim Kaspar
Melvin Moore
Tom Fox
Mark Kohler
Michelle Schindler

We reserve the right to call the County's witnesses.

Ms. Kaspar reserves the right to call rebuttal witnesses and all witnesses listed by any other party to this action. Ms. Kaspar reserves the right to supplement this list in a timely manner with any additional witnesses not anticipated by Ms. Kaspar at this time.

Ms. Kaspar may offer any or all of the following exhibits at the hearing.

1. The Grievance record
2. Predisciplinary notice- Day
3. Email Schindler to Kaspar "3-2-10"
4. Email Schindler to Kaspar "3-5-10"
5. Leave Request "2-25-05"
6. Leave request "2-25-05" altered
7. Email Schindler to Kaspar "4-22-11"
8. Leave request 4-16-11
9. Email Schindler to Kaspar "4-22-2011"
10. Print Out Leave

We reserve the right to offer all exhibits marked by the county.

Very truly yours,

JOY SHIFFERMILLER

JS/cl

e-mail: joy@joyshiffermiller.com

SHIFFERMILLER LAW OFFICE, P.C., L.L.O.

JOY SHIFFERMILLER
Attorney at Law

ABBY OSBORN
Associate Attorney

1002 G Street
Lincoln, NE 68508
(402) 484-7700 – Phone
(402) 484-7714 – Fax

May 12, 2011

Michelle Schindler
Facility Director
Lancaster County Youth Services Center
1200 Radcliff Street
Lincoln, Nebraska 68512

EXHIBIT
B

Dear Ms. Schindler:

Please consider this to be the grievance of Kim Kaspar.

On April 16, 2011, Ms. Kaspar presented a leave slip under the AFSCME contract Article 3, Section 4, Paragraph 2 which states:

Section 4. Stewards who use time during their regular shift hours for investigating grievances or attending grievance meetings will be paid their regular hourly rate for such time used, up to a maximum of one and one-half (1 1/2) hours per grievance but not to exceed a total of three (3) hours per week. All stewards will be considered on a regular eight (8) hour shift as far as grievance pay is concerned. A steward who spends time representing an employee at a Board hearing shall be paid for time spent during his regular shift at his regular rate.

The Union president or his designated representative shall be allowed to attend meetings as requested by department heads. These meetings may be for the purpose of the supporting and implementation of increasing department productivity and maintaining safe work places. This time is in addition to any time already granted in the agreement.

Her request was unilaterally changed in the official county payroll records by you to leave under which states:

Article 2, Section 5. The Union president or his designated representative may be allowed to absent themselves from work without pay for up to one (1) work day per month in order to attend to Union business provided a forty-eight (48) hour notice is

MAY 12 '11 14:29

e-mail: joy@joyshiffermiller.com

present in writing by the president or his representative to, and is approved by, the Department Head and the Personnel Officer. Approval shall not be unreasonably denied. In so doing, Ms. Kaspar was deprived of leave as designated and as provided in the union contract, Article 26, Section 7.

Ms. Kaspar seeks to have her leave record restored to the leave which was requested by Ms. Kaspar and to be paid for the leave as she would have been paid.

Ms. Kaspar also believes the modification of her requested leave violates Article 12, Section 1, by discriminating against Ms. Kaspar on the basis of her union membership and Article 12, Section 2, by intimidating, coerce restrain or interfering with her assistance of the labor organization.

Please respond pursuant to Article 20, Step 1, to the undersigned, as well as Ms. Kaspar.

Very truly yours,

JOY SHIFFERMILLER

JS/cl
cc: Kim Kaspar

MAY 12 '11 14:29

Lancaster County Youth Services Center
Leave Request for Union Business

Name [illegible]

Request Date: 12-22-10

Shift (✓) 1st ( ) 2nd ( ) 3rd

Leave Type	Date From:	Date To:	Time From:	Time To:	Total Hours:
Union Absence:					
Article 2, Section 5 (48hr notice) - *LWOP for union business					
Article 2, Section 6 (1 week notice) - *conferences, seminars					
Article 3, Section 4, para 1 - **investigation upon employee request					
Article 3, Section 4, para 2 dept head requested mtg, Gen. Asst please indicate which department	12-29-10	9:30 ~~0945~~		1100 (?)	1.5
Comments: Disciplinary Hearing		Employee Signature [illegible]			
		Agency Director Approved ( ) [illegible]			
Request Denied ( )					

* Leave under these sections must be approved by the Department Head and Personnel Director.
** Investigations upon an employee's request are limited to 1.5 hours per grievance, not to exceed 3 hours per week.
original: Administration, cc: Employee, Scheduling Supervisor

YOUTH
SERVICES
CENTER

1200 Radcliff Street
Lincoln, NE 68512
(402) 441-7090
FAX: (402) 441-5626
www.lancaster.ne.gov

May 24, 2011

Kim Kaspar
President
Local 2468, AFSCME
1200 Radcliff Street
Lincoln, NE 68512

Joy Shiffermiller
Shiffermiller Law Officer, P.C., L.L.O.
1002 G Street
Lincoln, NE 68508

RE: Grievance regarding leave for Union president to attend meetings, received May 12, 2011.

Dear Ms. Shiffermiller:

This letter will serve as a response to the attached grievance received May 12, 2011. Article 20 of the 2008/2011 Agreement between the County of Lancaster and Local 2468 of the American Federation of State, County, and Municipal Employees, AFL-CIO (the "AFSCME Bargaining Agreement") covers grievance procedures. The first paragraph of Article 20 defines a grievance as any disagreement arising during the term of the AFSCME Bargaining Agreement which is expressly limited to matters of interpretation or uniform enforcement of express provisions of the AFSCME Bargaining Agreement, the Lancaster County Personnel Rules, and any and all conditions of employment. Article 20, Section 1, of the AFSCME Bargaining Agreement states that, "In reducing a grievance to writing the following information must be stated with reasonable clearness: the exact nature of the grievance, the act or acts of commission or omission, the exact date of the act or acts of commission or omission, the identity of the party or parties who claim to be aggrieved, the identity of the party or parties alleged to have caused the grievance, the specific provisions of this [AFSCME Bargaining] Agreement that are alleged to have been violated, and the remedy which is sought."

Ms. Kaspar's grievance, alleges violations of Article 2, Section 5; Article 3, Section 4, paragraph 2; and Article 12, Sections 1 and 2 of the AFSCME Bargaining Agreement. The Union and Ms. Kaspar have alleged that Ms. Kaspar's requested leave under Paragraph 2 of Article 3, Section 4 of the AFSCME Bargaining Agreement should have been granted, pursuant to that section, and that Ms. Kaspar's leave request should not have been granted pursuant to

EXHIBIT
C

Article 2, Section 5. It is also alleged that Article 26, Section 7, and Article 12, Sections 1 and 2 were violated by approving Ms. Kaspar's leave under Article 2, Section 5.

On or about April 16, 2011, Kim Kaspar, AFSCME Union President, submitted a leave request slip requesting two hours of leave, between 10 a.m. and noon, on April 27, 2011. It was my understanding that Ms. Kaspar was using the leave to attend, and watch, a Lancaster County Personnel Policy Board disciplinary appeal hearing scheduled for 10:30 a.m. on April 27, 2011. The Personnel Policy Board appeal hearing was concerning a disciplinary appeal filed by AFSCME on behalf of Debbora Day, an AFSCME Union represented employee. The disciplinary appeal stemmed from the termination of Ms. Day's employment, which occurred on January 5, 2011. Ms. Day received legal representation at the Personnel Policy Board appeal hearings, regarding her appeal, from AFSCME legal counsel. Ms. Day was not represented at her appeal hearings by Ms. Kaspar.

Prior to Ms. Kaspar submitting her leave slip on April 16, 2011, Ms. Kaspar had previously attended Ms. Day's pre-disciplinary meeting on December 29, 2010. In order to attend the December 29, 2010 pre-disciplinary meeting, Ms. Kaspar had requested and received one and one-half (1 ½) hours of paid leave under Paragraph 2 of Article 3, Section 4 of the AFSCME Bargaining Agreement (see attached leave request dated December 22, 2010). Paragraph 2 of Article 3, Section 4, states,

> The Union president or his designated representative shall be allowed to attend meetings as requested by department heads. These meetings may be for the purpose of supporting and implementation of increasing department productivity and maintaining safe work places. This time is in addition to any time already granted in the agreement.

Ms. Kaspar's leave request to attend the December 29, 2010 pre-disciplinary meeting, clearly gave the impression that Ms. Kaspar was going to a meeting which the Director of the Lancaster County General Assistance Department had requested Ms. Kaspar's presence at.

Sometime after Ms. Kaspar attended Ms. Day's pre-disciplinary meeting, it was discovered that at no time was Ms. Kaspar requested by the Director of Lancaster County General Assistance to attend Ms. Day's pre-disciplinary meeting. Ms. Kaspar had apparently been requested to attend the pre-disciplinary meeting by Ms. Day. Additionally, it was obvious that Ms. Day's pre-disciplinary meeting could hardly be considered a meeting "for the purpose of supporting and implementation of increasing department productivity and maintaining safe work places." Therefore, Ms. Kaspar incorrectly and inaccurately requested paid time to attend Ms. Day's pre-disciplinary meeting pursuant to Paragraph 2 of Article 3, Section 4 of the AFSCME Bargaining Agreement.

It was assumed, at the time, that Ms. Kaspar's December 22, 2010 leave request was correct and stated accurate facts, so Ms. Kaspar's leave was granted pursuant to Paragraph 2 of Article 3, Section 4. However, Ms. Kaspar should have requested leave under Paragraph 1 of Article 3, Section 4 of the AFSCME Bargaining Agreement to attend the pre-disciplinary meeting on December 29. Paragraph 1 of Article 3, Section 4 provides,

> Stewards who use time during their regular shift hours for investigating grievances or attending grievance meetings will be paid their regular hourly rate for such time used, up to the maximum of one and one-half (1 ½) hours per grievance but not to exceed a total of three (3) hours per week. All stewards will be considered on a regular eight (8) hour shift as far as grievance pay is concerned. A steward who spends time representing an employee at a Board hearing shall be paid for time spend during his regular shift at his regular rate.

Had Ms. Kaspar correctly and accurately requested the time to attend Ms. Day's pre-disciplinary meeting under Paragraph 1 of Article 3, Section 4 of the AFSCME Bargaining Agreement, the one and one-half (1 ½) hours of paid leave that Ms. Kaspar received to attend the pre-disciplinary meeting would have been counted toward the one and one-half (1 ½) hour per grievance maximum provided by the AFSCME Bargaining Agreement. Once it was discovered that Ms. Kaspar provided an inaccurate leave request to attend the pre-disciplinary meeting on December 29, the one and one-half (1 ½) hours Ms. Kaspar spent at the pre-disciplinary meeting were correctly allocated to the maximum time allowed per grievance. Therefore, since Ms. Kaspar had reached the maximum leave time allowed for Ms. Day's specific disciplinary action, Paragraph 1 of Article 3, Section 4 was no longer available for Ms. Kaspar to use to attend Ms. Day's Personnel Policy Board appeal hearing regarding the same disciplinary action.

Paragraph 2 of Article 3, Section 4 of the AFSCME Bargaining Agreement was also not available for Ms. Kaspar to use in order to attend Ms. Day's Personnel Policy Board appeal hearing. As indicated above, Ms. Day was represented by AFSCME legal counsel at the appeal hearings, and not Ms. Kaspar. Additionally, Ms. Kaspar was not requested to attend the Personnel Policy Board appeal hearing by a department head, nor was Ms. Kaspar a witness in the appeal hearing.

The only provision which was available to Ms. Kaspar to provide her with leave to attend the Personnel Policy Board appeal hearing was Article 2, Section 5 of the AFSCME Bargaining Agreement , which states,

> The Union president and/or his designated representatives may be allowed to absent themselves from work without pay for up to one (1) work day per month in order to attend to Union business provided forty-eight (48) hour notice is presented in writing by the president or his representative to, and is approved by, the Department Head and the Personnel Officer. Approval shall not be unreasonably denied.

It was determined that Ms. Kaspar's ability to observe AFSCME legal counsel perform legal services at Ms. Day's appeal hearing might be considered to be Union business. Therefore, Ms. Kaspar's leave was granted to attend the appeal hearing on April 27, 2011, pursuant to Article 2, Section 5 of the AFSCME Bargaining Agreement; Ms. Kaspar was not prevented from attending the appeal hearing; and Ms. Kaspar did attend the appeal hearing on April 27.

As indicated above, Ms. Kaspar was granted leave pursuant to the AFSCME Bargaining Agreement to attend Ms. Day's appeal hearing on April 27, 2011, and Ms. Kaspar did attend Ms.

Day's appeal hearing on that date. Ms. Kaspar was also provided with the one and one-half (1 ½) hour maximum time per grievance, allowed pursuant Paragraph 1 of Article 3, Section 4 of the AFSCME Bargaining Agreement, to attend Ms. Day's pre-disciplinary meeting on December 29, 2010. Additionally, it is clear that Ms. Kaspar incorrectly and inaccurately submitted a leave slip under the wrong provision of the AFSCME Union Bargaining Agreement for the December 29, 2010 meeting. It is also clear that Ms. Kaspar was not asked to attend the pre-disciplinary meeting on December 29, 2010 or the Personnel Policy Board appeal hearing on April 27, 2011, by the Director of Lancaster County General Assistance or any other department head. There are no facts which indicate Ms. Kaspar was discriminated against, intimidated, coerced or restrained due to her union membership. There are also no facts presented that Ms. Kaspar's rights to assist a labor organization were interfered with. Therefore, at no time was Article 12, Sections 1 and 2 of the AFSCME Bargaining Agreement violated.

Ms. Kaspar and the Union have also alleged that Article 26, Section 7 of the AFSCME Bargaining Agreement has been violated by granting Ms. Kaspar's leave under Article 2, Section 5, rather than granting the leave pursuant to the incorrect provision which Ms. Kaspar attempted to maintain leave under. Article 26, Section 7 states,

> All leaves of absence must be requested in writing to and approved by the Department Head in advance of leave being taken. Exceptions may be made in an emergency.

It is unclear how Article 26, Section 7 was violated. As indicated above, Ms. Kaspar requested leave in writing under the incorrect AFSCME Bargaining Agreement, and her leave was granted under the appropriate provision of the AFSCME Bargaining Agreement. For the foregoing reasons, I must deny the grievance.

Sincerely,

Michelle Schindler
Director

cc: Mark Koller, Personnel Director
Thomas Fox, Deputy County Attorney