December 2, 2013

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Monday, December 9, 2013
9:00 a.m., Commissioners Hearing Room
County-City Building, Room 112

NOTE: SPECIAL MEETING DATE & TIME

A G E N D A

ITEM 1: Request to create the following classification:

CLASS CODE	CLASS TITLE	PROPOSED PAY RANGE
2449	Records Courier	A16 ($30,567.68 - $39,151.84)

ITEM 2: Request to amend Rule 18.1 of the Personnel Rules - Compensation for Absence on Holidays

ITEM 3: Request to amend Rule 19.2 of the Personnel Rules - Vacation Leave

ITEM 4: Request to amend Rule 19.3 of the Personnel Rules - Sick Leave

ITEM 5: Request to amend Rule 19.4 of the Personnel Rules - Injury Leave

ITEM 6: Request to revise Workers Compensation Personnel Policy Bulletin

ITEM 7: Reconsideration of Chad Anderson appeal hearing - Corrections

ITEM 8: Miscellaneous Discussion

pc: Department Heads
Chad Anderson
Tom McCarty
Richard Grabow

LANCASTER COUNTY
RECORDS COURIER

NATURE OF WORK

This is entry level manual and clerical work receiving, storing and distributing records.

Work involves receiving, storing and distributing records. Work may also include maintaining inventory and location of records; disposing of eligible records; performing a daily delivery route; and maintaining a clean, orderly and secure records storage facility. An employee in this class may be responsible for the operation of a records storeroom. General supervision is received from an administrative or technical superior with work being reviewed in the form of accuracy, thoroughness, and compliance with written policies and standard operating procedures.

EXAMPLES OF WORK PERFORMED

Fill user requests for records, deliver the requested records and re-file the records when they return.

Transfer records to storage and record location information for each box using a bar code reader.

Upon approval from agencies, dispose of eligible records by using on-site shredder.

Utilize a computer database of records in storage to print reports for requested records, to look up records and to verify index of records in storage.

Maintain security of records storage facility; maintain a clean and orderly environment

Use a county vehicle to perform a daily delivery route; deliver boxes, files and mail to County and City departments.

DESIRABLE KNOWLEDGE, ABILITIES AND SKILLS

Knowledge of records inventory processes and procedures.

Knowledge of basic accounting principles and practices pertaining to the operation of a storeroom or inventory system.

Knowledge of proper storage and distribution procedures for records.

Ability to maintain statistical information and reports.

Ability to maintain routine records inventory.

Ability to perform heavy lifting.

Ability to communicate effectively both orally and in writing.

Ability to perform routine mathematical calculations.

Ability to establish and maintain effective working relationships with co-workers and the general public.

DESIRABLE TRAINING AND EXPERIENCE

Graduation from a senior high school or equivalent with experience in records inventory.

MINIMUM QUALIFICATIONS

Graduation from a senior high school or equivalent with some experience in records inventory or any equivalent combination of training and experience that provides the desirable knowledge, abilities and skills.

12/13

PS2449

18.1 Compensation for Absence on Holidays (Revised ~~08/13~~11/13)

(a) All full-time and part-time status and probationary employees with the exception of those identified in paragraph ~~(g)~~(h) below shall receive pay for one-fifth (1/5) of their regularly scheduled work week not to exceed eight (8) hours for the following legal holidays or any other day proclaimed by the County Board as a holiday:

New Year's Day	Labor Day
Martin Luther King Jr.'s Day	Veteran's Day
President's Day	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Fourth of July	Christmas Day

(b) ~~In addition to the established holidays listed above, employees in pay grades prefixed by 'C', 'E', 'J' or 'Y', with the exception of those identified in paragraph (g) below, will receive twenty-four (24) hours of noncumulative personal holiday time each year beginning with the pay period in August that results in the first pay check in September.~~In addition to the established holidays listed above, employees who are new or re-hired in pay grades prefixed by 'C', 'E', or 'Y' shall receive noncumulative personal holiday hours based on the following schedule in their first year of employment:

(1) If the employee's hire date is on or after the beginning of the pay period in August which results in the first pay check in September, but before January 1st, the employee shall receive twenty-four (24) hours of noncumulative personal holiday leave hours.

(2) If the employee's hire date is on or after January 1st but prior to May 1st, the employee shall receive sixteen (16) hours of noncumulative personal holiday leave hours.

(3) If the employee's hire date is on or after May 1st, but prior to the beginning of the pay period in August which results in the first pay check in September, the employee shall receive eight (8) hours of noncumulative personal holiday leave hours.

All other employees already employed, with the exception of those identified in

paragraphs (e) and (h) below shall receive twenty-four (24) hours of noncumulative personal holiday leave hours each year beginning with the pay period in August that results in the first pay check in September.

(c) In addition to the established holidays listed above, employees who are new or re-hired in pay grades prefixed by 'J' shall receive noncumulative personal holiday hours based on the following schedule in their first year of employment:

(1) If the employee's hire date is on or after the beginning of the pay period in August which results in the first pay check in September, but before January 1st, the employee shall receive twelve (12) hours of noncumulative personal holiday leave hours.

(2) If the employee's hire date is on or after January 1st but prior to May 1st, the employee shall receive eight (8) hours of noncumulative personal holiday leave hours.

(3) If the employee's hire date is on or after May 1st, but prior to the beginning of the pay period in August which results in the first pay check in September, the employee shall receive four (4) hours of noncumulative personal holiday leave hours.

~~(c)~~(d) In addition to the established holidays listed above, employees in pay grades prefixed by 'A' or 'G', with the exception of those identified in paragraph (g) below, will receive twenty (20) hours of noncumulative personal holiday time each year beginning with the pay period in August that results in the first pay check in September.

~~(d)~~(e) Part-time employees will receive personal holiday hours at one-fifth (1/5) of their regularly scheduled work week not to exceed eight (8) hours.

~~(e)~~(f) Personal holiday hours may be taken anytime during the year that begins with the pay period in August that results in the first pay check in September (or be forfeited), provided the days and times selected by the employee have the prior approval of the Department Head.

~~(f)~~(g) Employees will be required to use personal holiday hours in increments of not less

than two (2) hour blocks of time.

~~(g)~~(h) Part-time status and probationary shift employees of facilities open seven (7) days a week or twenty-four (24) hours a day shall earn legal and personal holidays on a prorated schedule at the rate of 0.05 per hour worked which shall be added to the holiday bank each pay period. Accumulated holiday hours must be taken during the year that begins with the pay period in August that results in the first pay check in September (or be forfeited), provided the time selected by the employee has the prior approval of the Department Head.

19.2 Vacation Leave (Revised ~~08/07~~12/13)

(a) Probationary and status employees shall earn vacation leave with pay according to the following schedule:

(1) Less than five (5) years of service — at the factored hourly equivalent of eighty (80) hours per year.

(2) After five (5) years of service — at the factored hourly equivalent of one hundred twenty (120) hours per year.

(3) After ten (10) years of service — at the factored hourly equivalent of one hundred fifty-two (152) hours per year.

(4) After fifteen (15) years of service — at the factored hourly equivalent of one hundred sixty-four (164) hours per year.

(5) After twenty (20) years of service — at the factored hourly equivalent of one hundred ninety-eight (198) hours per year.

(b) Employees shall earn but not be granted vacation leave during the first six (6) months of employment.

(c) Part-time employees shall earn vacation leave based on total hours worked in each pay period.

(d) Vacation leave shall be requested and approved in advance of its use, except in circumstances beyond the employee's control. Each Department Head shall schedule vacation leaves to accord with operating requirements and, insofar as possible, to coincide with the request of the employee.

(e) Accumulation of vacation leave credit shall be on a continuous basis not to exceed two hundred forty (240) hours. Unused vacation leave accumulation shall be paid upon separation. Employment may not be extended by using vacation at the time of separation.

(f) Vacation leave shall not accrue during any leave of absence without pay.

(g) Classified employees who accept permanent appointment to an elected position shall have their vacation balance paid out to them at their rate of pay in the classified position. Such payment shall be made on the paycheck following the employee's last day in their classified position.

19.3 Sick Leave (Revised ~~08/13~~12/13)

(a) Sick leave is only to be used for sickness, family illness, personal and family medical appointments, injury, disability or funeral leave as outlined in these Rules and for no other purpose. An employee who uses sick leave for any other purpose may be subject to discipline.

(1) Each employee in a pay grade prefixed by ‘C’, ‘E’ or ‘Y’ shall earn Sick Leave hours at the factored hourly rate specified to equate to thirteen (13) days per year or one hundred four (104) hours per year for a full-time employee.

(2) Each employee in a pay grade prefixed by ‘A’ or ‘G’ shall earn sick leave hours at the factored hourly equivalent of ninety-nine (99) hours per year for a full-time employee.

(3) Sick Leave shall not accrue during any period of absence without pay.

(4) Sick Leave shall be earned, but not granted, during the first six (6) months of employment.

(5) No refund of vacation shall be allowed due to illness incurred while on vacation.

(6) Sick Leave for part-time employees will be earned based on the number of hours worked each pay period.

(b) The Department Head may require a doctor's certificate be obtained on an annual basis for the continued medical condition.

(c) An employee may use up to forty (40) hours per calendar year for illness in the immediate family or family medical appointments. Upon written request, the Personnel Director may waive the forty (40) hour limit after reviewing the individual circumstances in support of the request.

(d) Immediate family for the purpose of sick leave usage is defined to be spouse, child, grandchild, parent, step-parent, sister, brother, employee's grandparents and the parents of the employee’s spouse. Immediate family will also include any other family member, whether it be by blood or legal marriage, or legal adoption or foster children, residing in the same household.

(e) Accumulation of sick leave credit shall not exceed two thousand eighty (2,080) hours at any one time. Disability retirement shall not be effective until accumulated sick leave has been used.

(1) Upon retirement or death, employees in a pay grade prefixed by ‘C’, ‘E’ or ‘Y’, shall receive fifty-five percent (55%) of accumulated sick leave, one hundred percent (100%) of which will be distributed into the employee’s PEHP premium account.

(2) Upon retirement or death, employees in a pay grade prefixed by ‘A’ or ‘G’

shall receive forty-five percent (45 %) of their accumulated sick leave into the employee's PEHP account.

(3) Payment shall be made based on the employee's current hourly rate of pay at the time of retirement or death.

(f) An employee who is absent because of sickness shall inform his immediate supervisor of the fact and the reason therefore as soon as possible; failure to do so within a reasonable time may be cause for denial of pay for the period of absence. The Department Head may require a doctor's certificate or other evidence of illness before approving sick leave with pay; such certificates shall be transmitted to the Personnel Officer with the report of sick leave for entry in the employee's records. Sick leave may be denied when the County has facts showing that an employee is abusing sick leave.

(g) An employee, at his discretion, may supplement his worker's compensation payment to bring the total sum of worker's compensation payment and sick leave to a figure equivalent to a full pay check.

(h) An employee in a pay grade prefixed by 'C', 'E' or 'Y' who voluntarily separates, other than retirement, from employment with the County after fifteen (15) consecutive years of service with the county shall be paid fifty percent (50%) of their accumulated sick leave balance that is in excess of one thousand hours. This pay out shall be distributed as one-third (⅓) cash and two-thirds (⅔) PEHP.

(1) An employee in a pay grade prefixed by 'A' or 'G' who voluntarily separates, other than retirement, from employment with the County after fifteen (15) consecutive years of service with the County shall be paid forty-five percent (45%) of their sick leave balance in excess of 1000 hours, and shall be paid in cash.

(2) Payment shall be made based on the employee's current hourly rate of pay.

(i) Once an employee has exhausted all sick leave, the department head may automatically deduct as necessary from any available paid leaves.

<u>(j)</u> <u>For classified employees who have accepted an elected position:</u>

<u>(1)</u> <u>Employees who accept appointment to an elected position shall have their accrued sick leave banked at the time of their appointment.</u>

<u>(2)</u> <u>Upon termination of employment, the employee's sick leave bank will be paid in accordance with the provisions of this Rule based on what their pay grade designation was in the classified position. Payment will be based upon the employee's hourly rate of pay they earned when they left their classified position.</u>

19.4 Injury Leave ~~(Revised 8/05)~~(Revised 12/13)

Any probationary or status employee who is injured in the performance of his duties shall receive the difference between his regular pay and the worker's compensation payment for ~~a period not to exceed~~ up to ten (10) working days ~~from date of injury~~, not to exceed a total of eighty (80) hours, as injury leave.

Injury leave shall be taken within two (2) years from the date of the injury for which the leave was being paid and may be taken non-consecutively over the two (2) year period.

Failure to immediately report an incident which may have resulted in injury may cause forfeiture of the additional benefit.

Such injury leave shall not be deducted from vacation or sick leave credits.

Personnel Policy Bulletin

Lancaster County

Number: ~~2005-2~~2013-4

Date: ~~August, 2005~~December, 2013

Reference:	Title:
Supercedes Personnel Policy Bulletin ~~2002-5~~2005-2	WORKERS' COMPENSATION POLICY

WORKERS' COMPENSATION POLICY

I. Workers' Compensation Defined. Workers' Compensation benefits are provided to eligible employees who sustain injury by accident or occupational disease arising out of and in the course of their employment, and who are not willfully negligent at the time of the injury.

II. Reporting Requirements. Any job related injury or disease shall be immediately reported to the employee's department head or available supervisor as soon as possible. The department shall immediately report the incident to the County Risk Manager. A "First Report of Alleged Occupational Injury or Illness", completed by the ~~department~~employee and an "Employee Injury or Illness Report", completed by the injured employee and his/her supervisor, should be forwarded to the County Risk Manager in all cases. (See attached sample forms). The employee will have the burden of proof to document the claim by submitting an injury report and medical evidence to support his or her claim.

County Risk Management will investigate the claim to determine if it should be approved as a workers' compensation injury. During this investigation the employee may elect to use other leave options such as sick leave, vacation or personal holiday. If the claim is approved by Risk Management the injured employee's department will convert any sick leave, vacation or personal holiday hours paid to the employee, to injury leave, for hours missed during the first 10 working days. If sick leave, vacation, or holiday pay is paid during a period of Temporary Total Disability beyond 10 working days ~~from the date of the accident~~ the employee will be credited for two-thirds (.6667) of all such hours used during the period of disability.

III. Medical Documentation. Employees requesting time off work due to a work related injury or disease must provide medical documentation that states he/she is unable to perform his/her normal work duties. All medical documentation must be provided to the Risk Manager. Prior to returning to duty, the employee must provide a full medical release from a medical provider which specifies all restrictions, if any, upon the employee's ability to perform his or her full range of duties. Modified Duty will be allowed only as specified in Paragraph VII herein.

IV. Injury Leave. All probationary or status classified employees shall receive ~~the difference between his/her regular pay and the workers' compensation payment for a period not to exceed 10 working days from the date of injury. FOP, Lodge 29, employees shall receive the difference between his/her regular pay and the workers' compensation payment for a period not to exceed 60 calendar days from the date of injury.~~ injury leave benefits pursuant to County Rule 19.4 - Injury Leave, or the employee's applicable labor contract.

Reference:	Title:
Supercedes Personnel Policy Bulletin ~~2002-5~~2005-2	WORKERS' COMPENSATION POLICY

Such injury leave shall not be deducted from vacation or sick leave credits and will be listed as injury leave on the employee paycheck.

Failure to immediately report an accident which resulted in an injury may cause forfeiture of this additional benefit.

Unclassified employees, other than sheriff deputies, are not entitled to injury leave but are entitled to workers' compensation benefits provided in the Nebraska Workers' Compensation Act.

V. Temporary Total Disability Benefits. If injury leave has expired and the employee still requires time off work, the employee is eligible to receive Temporary Total Disability workers' compensation benefits (TTD) administered by Risk Management. TTD is based on two-thirds (.6667) of the employee's Average Weekly Wage (AWW) at the time of the injury, with a maximum benefit set each year by the Nebraska Workers' Compensation Act. AWW is established from a wage history covering the time period 26 weeks prior to the date of the injury.

All employees have the option of supplementing the amount of TTD benefits received with sick, vacation or personal holiday hours so that the benefit equals the employee's normal salary for the pay period. ~~Unrepresented classified employees, unclassified employees and members of the FOP, Lodge 29 (Deputy Sheriffs), FOP, Lodge 32 (Corrections) and AFSCME, Local 2468, bargaining units may also supplement their workers' compensation benefits with sick leave hours.~~ It is the employee's responsibility to inform his/her department head that he/she intends to supplement workers' compensation benefits with paid leave. No employee shall receive a salary (workers' compensation plus regular pay or paid leave) in excess of his/her normal wage.

VI. Temporary Partial Disability Benefits. If the employee can return to work on a part-time basis and provides the department head written permission from his/her medical provider to do so, the employee will receive injury leave, if not yet expired, or Temporary Partial Disability (TPD) if all injury leave has expired, for the amount of time still spent away from work. TPD is calculated as the Average Weekly Wage at the time of the injury minus salary earned for the week(s) in question and then multiplied by .6667. Again, employees may opt to supplement their TPD benefits with eligible paid leave benefits in order to equal a full paycheck in the manner described in Paragraph V., above.

VII. Modified Duty and Recovery Time. A department, based upon operational needs and at the department head's discretion, may offer modified duty to status and probationary employees who have suffered a work related injury. Prior to modified duty being approved, the employee must provide

medical documentation from his/her treating physician which states the employee is unable to perform the essential duties of his/her current position but is able to work a modified duty assignment. Modified duty is considered temporary and will be reviewed three months after the assignment to determine whether it will be extended beyond the initial three-month period.

The maximum amount of recovery time, including modified duty, should not exceed 6 calendar months from the date of injury. If the employee cannot return to full duty after 6 months from the date of injury, the employee may be separated from employment. However, if the employee provides medical documentation indicating a strong likelihood that the employee can return to full duty within a reasonable time period, the department head may extend the recovery time depending upon business needs and pursuant to the Americans with Disabilities Act (ADA), if applicable. Likewise, if the employee can perform the essential functions of his/her position with some modifications, the department will make reasonable efforts to accommodate the employee. If the employee cannot return to full duty and there are no reasonable accommodations available, the employee may be eligible for workers' compensation benefits such as retraining or vocational rehabilitation.

VIII. Insurance Premiums And Other Benefits. Health insurance, dental insurance and other applicable insurance benefits will continue with the appropriate employer contribution. Employees must continue to pay the employee share of the insurance premiums and are responsible for coordinating payment of said premiums with the County Clerk's Office.

In order to continue accruing vacation and sick leave hours, and to qualify for holiday pay, an employee must be in a pay status. Vacation and sick leave hours will accrue based upon the number of hours the employee is in a pay status. To be in a pay status the employee must request that his/her workers' compensation benefits be supplemented with available paid leave benefits in order to equal a full paycheck in the manner described in Paragraph V. If the employee is not supplementing his workers' compensation benefits with available paid leaves, the employee is in a non pay status.

In order to qualify for holiday pay an employee must be in pay status on his/her regular work day immediately before and after the holiday. If a holiday occurs during the time period injury leave is paid, holiday hours are paid in lieu of injury leave hours. If a holiday occurs after injury leave has expired and the employee is receiving workers' compensation benefits, the employee will receive holiday pay only if the employee is in a pay status on his/her regular work day immediately before and immediately after the holiday. An employee in pay status shall receive enough holiday hours to a figure equivalent to a full work day for that day. The employee should not receive the full eight hours of holiday pay. An employee on workers' compensation leave who is not supplementing his/her leave with paid benefits, is not in a pay status and therefore does not qualify for holiday pay.

Personnel Policy Bulletin

Lancaster County

Number: ~~2005-2~~2013-4

Date: ~~August, 2005~~December, 2013

Reference:	**Title:**
Supercedes Personnel Policy Bulletin ~~2002-5~~2005-2	WORKERS' COMPENSATION POLICY

Pursuant to County Personnel Rule 19.7, the Personnel Officer must be notified in writing when an employee's leave without pay status exceeds thirty (30) calendar days. Additionally, any employee on leave without pay status exceeding thirty (30) calendar days will have their eligibility date adjusted pursuant to County Personnel Rule 19.12.

IX. Other Provisions. This policy should be read in conjunction and coordinated with all applicable contract provisions, personnel rules and all state and federal laws including, but not limited to, the Nebraska Workers' Compensation Act, the Americans With Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA).

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

Larry Hudkins, Chairman
Board of County Commissioners — Date

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LANCASTER COUNTY
Risk Management Office
Report of Minor Employment Injury

This report is to be used only when the employee incurs a minor job injury that requires only first aid or personal treatment at the time of the injury. This form should be completed immediately and given to the appropriate department authority for placement in the employee's department file.

A copy of this form should be sent to County Risk Management. Risk Management will enter the data into the claims system for tracking and reporting purposes.

If the employee seeks medical care or has lost time as a result of this accident and after the initial report has been filed, a Workers' Compensation First Report of Alleged Occupational Injury or Illness report must be completed and sent to the County Risk Management Office.

Injured Employee's Name_____ Social Security #_____

Department_____ Phone_____

Accident Date_____ Time_____AM/PM

Place where accident occurred_____

Nature and extent of injury_____

_____

_____

Description of how injury occurred_____

_____

_____

_____

What first aid was given or applied_____

Signatures

Employee_____ Date_____

Supervisor_____ Date_____

Any questions regarding reporting of injuries should be referred to:

Kari Wiegert - 441-6593
kwiegert@lancaster.ne.gov

Sue Eckley - 441-6510
seckley@lancaster.ne.gov

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Nebraska Workers' Compensation Court

First Report of Alleged Occupational Injury or Illness

NWCC Form 1
Revised 06/2006

Employer

Employer FEIN 47-6006482 SIC Code SI047 Report Purpose ____ OSHA Log Case # ____

Employer Name(s) County of Lancaster, c/o Sue Eckley
Address Risk Management Office
233 South 10th Street / Suite 220
City Lincoln
State NE Zip Code 68508 Phone (402) 441-6510

Insured Name *(If different from employer name)*
Same

Insured Address *(If different)*
Same

Location ____

Insurance Carrier

Carrier FEIN 47-6006482

Administrator FEIN ____

Name County of Lancaster, c/o Sue Eckley
Address Safety and Training Office
233 South 10th Street / Suite 220
City Lincoln
State NE Zip Code 68508 Phone (402) 441-6510
Policy Number ____
Policy Period: From ____ To ____
Insurance Carrier/Self-Insured Code # ____

Claim Administrator *(Name, address & phone number)*
Sue Eckley
Risk Management Office
233 South 10th Street / Suite 220
Lincoln, NE 68508

Self Insured ☑ *Check if Appropriate*

Claim Administrator Claim # ____
Jurisdiction Claim # ____

Insured Report # ____ Jurisdiction ____

Employee

Name *(Last, First, Middle)* ____
Address ____
City ____
State ____ Zip Code ____ Phone ____

Date of Birth | Social Security Number | Date Hired

Full Pay for DOI Yes ☐ No ☐
Salary Continued Yes ☐ No ☐

Number of Days Worked Per Week ____

Sex Male ☐ Female ☐

Number of Dependents ____

Marital Status: Married ☐ Separated ☐ Unmarried ☐ Unknown ☐

Wage $ ____: Hourly ☐ Daily ☐ Weekly ☐ Bi-Weekly ☐ Monthly ☐

Occupational Job Title

Occupational Code ____

Date Employee Began Work-Related Duties ____

Employment Status FT ☐ PT ☐ Other ☐

Occurrence/Treatment

Date of Injury/Illness

Time Employee Began Work AM ☐ PM ☐

Time of Occurrence (Cannot be determined ☐) AM ☐ PM ☐

Last Work Date

Where Did Injury/Illness Occur?
County ____ State ____ Zip ____

Did Injury/Illness Occur On Employer's Premises? Yes ☐ No ☐

Date Employer Notified

Date Disability Began

Date Returned to Work

If Fatal, Give Date of Death

Type of Injury/Illness *(Briefly describe the nature of the injury or illness; e.g. lacerations to forearm)*

Nature of Injury Code

Part of Body Affected *(Indicate the part of the body affected by the injury/illness; e.g. right forearm, lowerback; and how it was affected)*

Part of Body Code

How Injury/Illness Occurred *(Describe activity and tools, materials, equipment the employee was using; how injury occurred)*

Cause of Injury Code

Initial Treatment: *No medical treatment* ☐ *First aid by employer* ☐ *Minor clinic/hospital* ☐ *Emergency Room* ☐ *Hospitalized overnight* ☐ *Hospitalized > 24 hours* ☐ *Future major medical/lost time* ☐

Name of physician or other health care provider:

Date Administrator Notified

Form Preparer's Name, Title and Phone

Date Prepared

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CHAD ANDERSON,	)	
Plaintiff,	)	**CI 13-1960**
vs.	)	
LANCASTER COUNTY,	)	**JUDGMENT**
Defendant.	)	

THIS MATTER CAME on appeal from the Lancaster County Personnel Board (Board) on August 23, 2013. The record and Bill of Exceptions being present, the matter was argued. Briefs have been received.

The plaintiff does not contest the findings of the Board that there was a basis for discipline in this case. He does, however, claim that the discipline imposed is excessive based on the nature of his offense and in comparison to discipline imposed on other employees accused of similar offenses.

In coming to its decision on this matter, Board members Eicher and Neary indicated that they believed the discipline imposed was excessive in view of the nature of the transgression and in view of other disciplines imposed in the county. However, member Eicher indicated that he did not believe he had the authority to modify the decision of the department head and voted to affirm.

The plaintiff contends that the Board had the authority to modify. The defendant

asserts that the Board did not have the authority to modify the discipline imposed. In any event, the defendant further asserts the Board does not have the authority to consider whether the discipline imposed is excessive.

Authority of the Board

Statutorily the Board is clothed with the authority and responsibility to "review any grievance or case of disciplinary action ... when appealed by [an] employee ..." NEB. REV. STAT. § 23-2522(5). It is commonly accepted that the authority to "review" a decision provides a full array of remedies. See ***Black's Law Dictionary***, 9th Ed. Also see, e.g., ***Robertson v. Jacob Cattle Co.***, 285 Neb. 859 (2013), ***Bridgeport Ethanol LLC v. Department of Revenue***, 284 Neb. 291 (2012) (judicial review of an appeal under the Administrative Procedures Act); ***State ex rel Comm. On Judicial Qualifications v. Marcuzzo***, 278 Neb. 331(2009) (review of recommendation to Supreme Court), ***Smeal Fire Apparatus v. Kreikemeier***, 279 Neb. 661 (2010) (appellate court review of finding of contempt). Courts of other states have found similarly. See ***Ramsey County Conn. Human Servs. Dept. v. Davila***, 387 N.W.2d 421 (Minn. 1986), and ***City of Louisville ex rel. Kuster v. Milligan***, 798 S.W.2d 454, 457 (Ky. 1990).

While the plaintiff is correct that the county may not restrict powers and duties imposed on the Board by statute, it is an unnecessary argument. An examination of Rules 4.3 and 4.8 disclose that the Rules do not restrict the Board's powers or duties bestowed by statute. Rule 4.3 specifically expresses that the Board has the powers "assigned to it by statute *and* by these Rules." Emphasis supplied. Consequently, even if the Rules provided a different set of powers, the Rules are complimentary to,

rather than restrictive of, the statutory powers of the Board.

The defendant argues that even if the Board is clothed with the full breadth of powers authorized by statute, the Board has the power by rule to restrict its own review. It does not. § 23-2522(5) is not only an expression of power; it is one of duty, as well. Likewise, Rule 4.8a provides "it shall be the duty of the Board to ascertain to the best of its ability the facts of the case and, after weighing all available evidence, to report its findings and decision for such disposition as the Board may deem appropriate. . ." The duties imposed by these provisions may not be shirked, by rule, or otherwise.

Of course, the Board has the power in any particular case to select from among its array of powers that which is appropriate to the case being decided. That is an exercise of its authorized power rather than a restriction of it.

Excessive Discipline

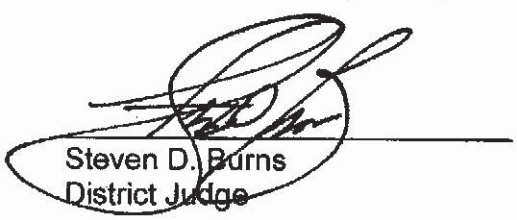
The defendant argues that the rules under which the plaintiff undertook his appeal provides a grievance procedure only for claims that the alleged transgression did not occur, the discipline imposed was not authorized, or failure of the Department Head to consider mitigating factors. Rule 4.8(f)(1). The plaintiff concedes that at least some of the transgressions presented occurred. See Plaintiff's Brief. Thus, there is just cause for some disciplinary action. Lancaster County Personnel Rules 11.2(h)(3) and (4). Suspension, the discipline imposed, is among those which are available to the department head. Lancaster County Personnel Rules 11.2(d) and Labor Contract Art. 28, Sections 1 and 3. The plaintiff does not claim otherwise. Likewise, the plaintiff does not claim that the department head failed to consider mitigating factors. The defendant thus argues that the Board may go no further in its inquiry.

The defendant's narrow reading of its Rules is not sustainable. Rule 4.8(f), in the introductory language to subpart (1) (discussed above), states: "In its review of an employee appeal, the Board shall limit itself to the question of the *appropriateness of the action and* related matters, *and* to the following ..." Emphasis supplied. Whether the discipline imposed is excessive is within the context of "the appropriateness of the action."

The record in this case demonstrates that the Board erred in concluding that it did not have the power to modify a decision of the department heard. The record also demonstrates that this error by the Board prejudiced the plaintiff. The matter should be remanded for the Board for reconsideration of its decision in view consistent with the breadth of powers it has by statute as discussed herein.

IT IS THEREFORE HEREBY ORDERED that the decision of the Board is remanded for further proceedings consistent with this order. Costs are assessed to Lancaster County, Nebraska.

Dated: September 10, 2013.



Steven D. Burns
District Judge

JOE KELLY
LANCASTER COUNTY ATTORNEY
575 South 10th Street
Lincoln, NE 68508-2810
402.441.7321/FAX 402.441.7336
November 27, 2013

Lancaster County Personnel Policy Board
c/o Karen Eurich
Lincoln-Lancaster County Personnel Dept.
555 South 10th Street
Lincoln, Nebraska 68508

Re: *Chad Anderson v. County of Lancaster*

Dear Personnel Policy Board Members:

This matter is back before you as a result of an order of the Lancaster County District Court. In short, the court found that the ten day suspension imposed on Mr. Anderson by Director Thurber was excessive and that the Board had the authority to modify the ten day suspension. However, the court did not make a finding on the appropriate discipline to be imposed on Mr. Anderson. That finding is left to your discretion.

In considering the appropriate discipline to be imposed upon Mr. Anderson, the nature of Mr. Anderson's conduct should certainly be considered. In this case, the evidence clearly established that Mr. Anderson made multiple inappropriate sexual remarks to young, probationary female corrections officers. These remarks included comparing the chest of one officer to the "back cleavage" of a female inmate and suggesting that the other officer would "make someone happy" if she purchased lingerie from a Victoria's Secret catalogue. These officers reported being made uncomfortable by the remarks made by Mr. Anderson. It is noteworthy that both officers were in the first few months of full-time employment and in the first few months of their employment with the Department of Corrections. In contrast, Mr. Anderson had been with the department for many years and was significantly older and more experienced.

Undoubtedly, Mr. Anderson and his counsel will attempt to paint the County and Mr. Thurber as oppressive, tyrannical or heavy-handed while simultaneously portraying Mr. Anderson as contrite and reasonable. That approach is both disingenuous and revisionist. The reality, as it is reflected in the record, is that Mr. Anderson did not take any responsibility for his actions until the evidence showing his culpability was so overwhelming that it left no doubt as to the truth of the allegations against him. You may recall that at his predisciplinary meeting Mr. Anderson's representatives asserted that the allegations against Mr. Anderson were false and fabricated by his accusers. (Exhibit B 59:17-60:21). At the hearing before you, counsel for Mr. Anderson questioned the veracity of the allegations against Mr. Anderson in his opening statement. (Exhibit B 13:18-24). Furthermore, Mr. Anderson testified that the allegations against him, aside from the male enhancement joke, were

false. (Exhibit B 154:15-155:12). It was not until closing arguments that Mr. Anderson's counsel gracefully pivoted from his position of defiance to one of penitence. (Exhibit B 171:2-12).

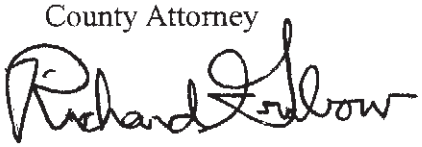
The County respectfully requests that in considering the appropriate discipline for Mr. Anderson that you consider that this case consists of three separate acts of sexual harassment and the fact that these acts were committed towards multiple probationary junior employees. The County also asks that you consider the comments of Director Thurber at the last hearing in which he discussed the challenges that his department faces in recruiting and retaining female officers. Lastly, the County asks you to consider Personnel Director Doug McDaniel's testimony that his previous employer, BryanLGH, would have terminated the employment of Mr. Anderson for this type of misconduct.

In terms of the actual number of days to be imposed, the County hopes the Board takes notice of the position of Mr. Anderson. Mr. Anderson maintains that only one incident of sexual harassment occurred in this case. His testimony at the last hearing and the arguments of his attorney, make that point clear. Mr. Anderson then further acknowledges that his misconduct is deserving of a two day suspension. The County agrees with Mr. Anderson's logic and requests the Board impose a seven day suspension. The County has arrived at this position by noting that Mr. Anderson acknowledges that his admittedly crude male enhancement joke is worth a two day suspension. At least the County surmises this is Mr. Anderson's position since he still denies that the first two inappropriate comments were ever made. The County believes the evidence clearly established that those comments were indeed made and that each comment was deserving of a two day suspension standing alone. The County would request an additional day for the repeated nature of Mr. Anderson's conduct. The County believes anything less than at least two days per incident would depreciate each incident. The County believes that its employees have a right to work in an environment free of harassment and that said right should be protected equally for all employees. Therefore, the County respectfully requests Mr. Anderson receive a seven day suspension for his three incidents of misconduct.

Lastly, on behalf of the employees and citizens of Lancaster County thank you for your service in serving on the Lancaster County Personnel Policy Board. Your participation is critical to the effective functioning of our County's personnel system.

Respectfully,

JOE KELLY
County Attorney



Richard C. Grabow
Deputy County Attorney

cc: Tom McCarty (via email)
Mike Thurber (via email)

BEFORE THE LANCASTER COUNTY PERSONNEL POLICY BOARD

IN RE THE DISCIPLINARY APPEAL OF CHAD ANDERSON	))	**BRIEF OF APPELLANT CHAD ANDERSON**

Officer Chad Anderson ("Officer Anderson") and his union, Fraternal Order of Police, Lodge No. 32 ("FOP #32"), by and through counsel, respectfully submit the following Brief for the Lancaster County Personnel Policy Board's (the "Board") consideration on remand from the Order of the District Court of Lancaster County. The sole issue before the Board is whether, based upon the evidence submitted at Officer Anderson's previous disciplinary appeal, the Board should reduce Officer Anderson's 10-day suspension for making inappropriate remarks to co-workers. For the reasons set forth herein, Officer Anderson respectfully submits that a reduction of his suspension to two (2) days would appropriate under the circumstances.[1]

I. BACKGROUND

A. Officer Anderson's Suspension and First Appeal to the Board

Officer Anderson has been employed as a corrections officer by Respondent Lancaster County (the "County") in the Department of Corrections (the "Department") since October 1999. (Ex. A at 178). Officer Anderson is a member of Petitioner FOP #32, the exclusive bargaining agent for Officer Anderson and similarly situated employees. Officer Anderson's employment relationship with the County is governed by a collective bargaining agreement ("union contract") between FOP #32 and the County.

[1] "Ex. A" contains all the exhibits introduced into evidence at the previous appeal hearing. "Ex. B" contains a verbatim transcript of the testimony at the hearing. "Ex. C." is a copy of the district court's judgment reversing the Board's previous decision to affirm Officer Anderson's discipline. "Ex. D" contains Officer Anderson's disciplinary action letter, a copy of the Board's agenda from the first hearing, Officer Anderson's appeal to the Board, and the minutes from the Officer Anderson's appeal hearing. "Ex. E" is the union contract which is currently in effect and which governs these proceedings.

(Ex. A at 2; Ex. E). The union contract in effect between August 23, 2012, and August 31, 2013, provided that the Department Head, Director Michael Thurber, could only suspend, demote, or dismiss an employee for "just cause," and provided a procedure whereby employees may appeal disciplinary actions to the Board.[2] (Ex. A at 10, 41).

In November 2012, two of Officer Anderson's female co-workers, Officers Michaela Melton and Megan Hokett, lodged complaints with their supervisors regarding inappropriate comments made to them by Officer Anderson. (Ex. A at 128). Specifically, Officer Melton alleged that, on July 18, 2012, Officer Anderson commented to her that a particular female inmate had "more cleavage on her back than you [Officer Melton] do on your chest," and that Officer Anderson seemed to stare at her chest during subsequent conversations. (Ex. A at 129). Officer Melton further alleged that, on November 15, 2012, during a work-related phone call, Officer Anderson commented, "I've seen so many male enhancement commercials that I am enhanced now." (Ex. A at 128). Finally, Officer Hokett alleged that, on November 11, 2012, Officer Anderson made a motion to a Victoria's Secret catalog in a break room and asked her if she had picked anything out for her Christmas list. When Officer Melton replied, "No," Officer Anderson allegedly said, "[W]ell you would make someone very happy." (Ex. A at 129).

On December 11, 2012, after meeting with Officer Anderson and a representative of FOP #32, Director Thurber suspended Officer Anderson for 10 days without pay based on the allegations of Officers Melton and Hokett. (Ex. A. at 131).

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[2] As set forth below, a new union contract, effective August 22, 2013, through August 31, 2014, is currently in effect. The new union contract also contains a "just cause" provision, but also provides more clarification regarding the procedures which govern the Board's review of disciplinary appeals. (Ex. E. at 39, 47-48). The new union contract went into effect after the district court's Order, and the parties agree that the new contract's procedures and provisions govern the Board's current reconsideration of Officer Anderson's discipline.

Officer Anderson and FOP #32, by and through counsel, appealed the disciplinary action to the Board via a letter of appeal dated December 26, 2012. (Ex. A at 132). The Board held a hearing to consider Officer Anderson's appeal on May 2, 2013. (Ex. D at 6).

B. Hearing Before the Board

At the hearing, Officer Anderson admitted to making the "male enhancement" comment to Officer Melton, but asserted that he never told Officer Hokett that she would "make someone very happy," and did not remember making any comments to Officer Melton about her chest or an inmate's "back cleavage." (Ex. B at 143, 146, 150). This factual dispute, however, was not the primary issue on appeal. Indeed, the overarching claim of Officer Anderson was that his 10-day suspension was excessive and, therefore, not supported by "just cause" as contemplated in the union contract. (Ex. B at 11, 162, 169). To support this argument, Officer Anderson presented evidence regarding (1) his work history and disciplinary record; (2) prior cases of comparatively lenient discipline levied by the Department and other County agencies for similar or more egregious transgressions; and (3) the financial impact of losing 10 days' worth of pay on Officer Anderson and his family.

1. Work and Discipline History

It was undisputed at the hearing that, prior to November 2012, Officer Anderson had never been the subject of a disciplinary action by the Department, had never been accused of sexual harassment while working for the Department, and had never been accused of sexual harassment at any of his previous jobs in law enforcement. (Ex. B at 73-74, 136-40). In fact, Officer Anderson's work history included commendations and awards, including the County's prestigious Commissioner's Award of Excellence (Honorable Mention for Valor). (Ex. B at 80, 135; Ex. A at 182-188). In addition, Officer

Anderson presented his annual performance reviews from the three years preceding his discipline, all of which demonstrated that he met or exceeded all performance criteria, and that he followed supervisors' orders. (Ex. B at 74-81; Ex A at 148-156, 192-199).

It was also undisputed that, although some of the alleged inappropriate comments were made as early as July 2012, Officer Anderson was not confronted by Officer Hokett, Officer Melton, supervisors, or anyone else about *any* of the inappropriate comments until supervisors first notified Officer Anderson of the allegations in November 2012, which was after *all* alleged misconduct had already occurred. (Ex. B at 27, 41, 49, 51, 72, 144, 150-51). And, since the November 2012 meeting, Officer Anderson has not been accused of sexual harassment by any co-workers, inmates, or anyone else. (Ex. B at 100, 147). In other words, Officer Anderson *did not* continue making inappropriate comments after he was first made aware that Officers Hokett and Melton objected to his comments. Instead, the evidence shows that once Officer Anderson was first made aware of the complaints of Officer Hokett and Melton, there have been no further complaints of Officer Anderson making inappropriate comments.

For the Board's convenience, please refer to Appendix I, which is a timeline of relevant events.

2. *Prior Discipline Levied by the Department and Other County Agencies for Similar Conduct*

For the sake of comparison, and to demonstrate the typical discipline imposed by other County agencies for making inappropriate sexual comments, Officer Anderson introduced the disciplinary actions of several county employees, denominated as "Employee A," "Employee B," and "Employee C" to protect their privacy. The evidence offered at the hearing with respect to such employees is summarized as follows:

Employee A: Over a two-year period, Employee A, while working for the County's Public Building Commission, consistently stared at two Lincoln Police officers while they were in a state of undress in a locker room. The staring became so frequent and obvious that one officer bid for another shift to avoid Employee A. Although Employee A was given a verbal warning from a superior, the behavior continued. Employee A ultimately laid pornography on the bench in front of an officer's locker. The department head suspended Employee A for only one day without pay on April 10, 2012. (Ex. A at 157-159).

Employee B: Employee B, while working for the County's Youth Services Center, made multiple crude comments and gestures to a female co-worker in reference to oral sex, despite her repeated requests for him to stop. Employee B ultimately asked the female co-worker, over an intercom, whether she had a breast pump in her bag. The department head suspended Employee B for only two days without pay on November 4, 2011. (Ex. A at 160-162).

Employee C: Employee C, while working for the County's Engineering Department, showed a female employee a medical book containing diagrams of sexual intercourse; touched the top part of a female employee's chest, noted the lace on her collar, and suggestively asked whether she had lace anywhere else; and asked a female employee whether he could see her tattoo, which he knew was not readily visible. The department head expressly found no mitigating circumstances, but suspended Employee C for only two days without pay. (Ex. A at 163-166).

Officer Anderson also introduced evidence regarding the Department's prior discipline of two corrections officers, denominated as "Employee D" and "Employee E" to protect their privacy. Such evidence is summarized as follows:

Employee D: Employee D, while working for the Department of Corrections, shoved an inmate twice for failing to pick up shoes off the floor. The second push sent the inmate flying backwards three to four feet, where he fell to the ground. Director

Thurber found no justification for Employee D's use of force, and noted that Employee D "easily could have caused unnecessary injury to the inmate." On March 17, 2008, Director Thurber suspended Employee D for ten days without pay. (Ex. A at 167-169; Ex. B at 85-88).

Employee E: Employee E, while working for the Department of Corrections, told a female nurse in front of inmates that he liked how her jeans looked on her. Later, Employee E came up behind a nurse, made inappropriate physical contact with her, and said "Ooh la la." The nurse elbowed Employee E and told him to get away. An inmate who witnessed the incident told Employee E to leave the nurse alone and Employee E replied, "She's my woman." Employee E later confronted one of the inmates for talking about the incident, and denied the substance of the allegations in discussions with Director Thurber. Director Thurber suspended Employee E for ten days without pay on February 4, 1999, but the record reveals that said suspension was apparently reduced to seven days at some later date. (Ex. A at 170-175; Ex. B at 88-92).

Five years later, Employee E made crude sexual comments in front of a female coworker, indicating that she had sexual intercourse with another co-worker. Despite Employee E's prior discipline for sexual harassment, Director Thurber merely reprimanded Employee E for such conduct on May 19, 2004. (Ex. A at 176-177; Ex. B at 93-94).

For the Board's convenience, please refer to Appendix II, which is a chart that compares Officer Anderson's discipline to the discipline of employees from other County Departments. Please also refer to Appendix III, which compares Officer Anderson's discipline to the discipline of employees from the Department of Corrections.

3. *Financial Impact*

It was undisputed at the hearing that Officer Anderson's gross ten-day salary was over $1,800. (Ex. B at 178; Ex. A at 132-133). Officer Anderson testified that he has a wife and daughter who rely on such income, (Ex. B at 152), and presented evidence that the maximum fine for a criminal third-degree sexual assault, which requires physical contact, is $1,000. (Ex. A at 179-181; Ex. B at 97-99).

For the Board's convenience, please refer to Appendix IV, which compares Officer Anderson's misconduct to a third-degree sexual assault.

4. *Argument Regarding the Board's Standard and Scope of Review*

During the hearing, the Board's acting Chair, Kathleen Neary, directed counsel for both parties to provide argument regarding the applicability of Lancaster County Personnel Rule 4.8(f), which governed the Board's standard and scope of review. (Ex. B at 114-15, 162; Ex. A at 069). During closing arguments, Officer Anderson's attorney asserted that, under Rule 4.8(f), the Board had the authority to reverse or modify Officer Anderson's discipline if it found that the ten10-day suspension was excessive and, therefore, not "appropriate" and "not authorized" by the applicable union contract, which requires all discipline to be supported by "just cause." (Ex. B at 168-171, 175). The County Attorney, in contrast, argued that the Board may only affirm or reverse—not modify—disciplinary actions. (Ex. B at 164). The County Attorney also asserted that there was sufficient evidence to support a finding that "just cause" supported Director Thurber's disciplinary action. (Ex. B at 164-68).

5. *The Board's Decision to Affirm Officer Anderson's Discipline*

After considering the parties' evidence and arguments, the Board voted 3 to 1 to affirm Officer Anderson's discipline. (Ex. B at 180-81). Extrapolating from Board members' ruminations prior to the vote, it appears that all four members believed

Officer Anderson committed at least some of the transgressions as alleged. (Ex. B at 176-79). But, two Board members, Steve Eicher and Kathleen Neary, also concluded that Officer Anderson's discipline was excessive. Specifically, Eicher reasoned:

> [I]n viewing what I've seen the County do in the past in terms of suspension - - disciplinary suspension, it seems as if those disciplinary suspensions that were of ten days' duration typically involved a physical contact by the perpetrator, if you will, and in this case it doesn't, and that's where I'm struggling with it . . . . I'm struggling with the ten-day suspension because of the precedent set previously by the County and that being some type of physical touching or physical manipulation of the subject.

(Ex. B at 177). Shortly thereafter, Mr. Eicher prefaced his vote to affirm Officer Anderson's discipline with the following statement: "I think there is some level of sexual harassment that has taken place here, and *while I have opinions, I don't have the authority or the right to recommend a different suspension, so I vote to confirm.*" (Ex. B at 180) (emphasis added).

Likewise, acting Chair Kathleen Neary reasoned:

> [W]hat I think is frustrating in these cases is I mirror [Eicher's] comments. . . . *I think ten days is excessive, but we have to work within this silly parameter of these rules that are set out right in front of us and it's not fair.* And I think it gives an unfair advantage to the County Attorney . . . . So that's it. That's my commentary.

(Ex. B at 180) (emphasis added). But, unlike Eicher, Neary ultimately voted not to affirm Officer Anderson's discipline.

C. Appeal to the District Court of Lancaster County

Officer Anderson appealed the Board's decision to affirm his discipline to the Lancaster County District Court. The issue on appeal was whether the Board has the authority to consider whether the level of Officer Anderson's discipline was excessive—i.e., not supported by "just cause" as required under the union contract—and, if so, whether the Board has the authority to reduce such discipline. The district court held

that (1) the Board may consider whether discipline is excessive; and (2) the Board has the authority to modify discipline that is excessive. Therefore, the court reversed the Board's affirmance of Officer Anderson's discipline and remanded to the Board for reconsideration of Officer Anderson's 10 day suspension in light of its authority to modify excessive discipline. (Ex. C)

II. RECONSIDERATION

A. Issues before the Board and the County's Burden of Proof

In light of the District Court of Lancaster County's decision, the Board must now decide: (1) whether Officer Anderson's discipline is excessive; and (2) if so, the extent to which Officer Anderson's discipline should be reduced.

After the district court issued its order in this case, FOP #32 and the County negotiated a new union contract. (Ex. E). The parties agree that the new union contract governs the Board's reconsideration of Officer Anderson's discipline. Under the new union contract the following rules govern the Board's consideration of Officer Anderson's appeal:

(1) All discipline must be supported by "just cause," which is defined as cause that a "reasonable employer, acting in good faith, would regard as good and sufficient reason for the level and amount of discipline imposed." (Ex. E at 9-10).

(2) The Board's standard of review is *de novo*, meaning that the Board weighs the evidence on its own without deference to the Department Head's decision. (Ex. E at 9).

(3) The County has the burden of proving, by a preponderance of the evidence, that (a) the employee committed the infraction that was accused; and (b) that the level and amount of discipline imposed is supported by just cause. (Ex. E at 10).

(4) In reviewing discipline, the Board *shall* consider: (a) the nature of the infraction; (b) the employee's prior disciplinary record; (c) other discipline imposed by County Department Heads for similar infractions; and (d) any mitigating circumstances offered by the employee.

(5) If the Board concludes that the County did not meet its burden of proof, the Board has the power to wholly reverse the discipline, or to reduce the amount of discipline and reinstate the employee, provide for the return of back pay by the Department, and remove written disciplinary materials in the employee's personnel files as the case may require. (Ex. E at 10).

As discussed below, Officer Anderson respectfully submits that his 10-day suspension is not supported by "just cause" in light of: (1) discipline imposed by Director Thurber for similar infractions; (2) the discipline imposed by other County Department Heads for similar infractions; (3) Officer Anderson's prior disciplinary record; (4) the nature of the infraction; and (5) the financial impact on Officer Anderson and his family.

1. Discipline Imposed by Director Thurber for Similar Infractions

As Board member Eicher noted at the previous appeal hearing, the evidence demonstrates that the Department has previously reserved suspensions of 7 to 10 days for misconduct involving inappropriate physical contact with a co-worker or inmate. Specifically, Director Thurber previously suspended Employee D for 10 days after he violently pushed an inmate to the floor with no justification whatsoever. In addition, Director Thurber suspended Employee E for 7 days after he made inappropriate physical contact with a nurse in the presence of inmates, which was also accompanied by inappropriate comments. Director Thurber later gave Employee E a mere written reprimand for making inappropriate sexual comments to a female co-worker despite his previous discipline for similar misconduct.

Here, Officer Anderson's personnel file contains **no** record of prior discipline for making inappropriate comments to co-workers, and, unlike Employee D and E, Officer Anderson **never** made inappropriate physical contact with Officer Melton and Hokett. *See Appendix III.*

2. *Discipline Imposed by other County Department Heads for Similar Infractions*

The evidence demonstrates that other Department Heads have levied suspensions of 1 to 2 days upon employees for making inappropriate comments to co-workers. *See Appendix II.* Note that some of these cases involved repeated inappropriate comments after a victim or supervisor told the employee to stop.

3. *Officer Anderson's Prior Disciplinary Record*

It was undisputed at the hearing that Officer Anderson had **never** been accused of making inappropriate comments to co-workers prior to the complaints of Officers Hokett and Melton. Likewise, Director Thurber and Officer Anderson both testified that Officer Anderson had never been suspended, demoted, or issued a written reprimand prior to November 2012 for *any* reason. (Ex. B. at 73-74, 136-137). Officer Anderson's employee performance evaluations demonstrate that he met or exceeded all job requirements and that he readily follows supervisors' orders. Notations regarding Officer Anderson's propensity for following orders is consistent with the lack of complaints about Officer Anderson for making inappropriate comments since November 2012, which is when he was first confronted with the misconduct at issue.

Officer Anderson's personnel file also includes commendations, including the Commissioner's Award of Excellence (Honorable Mention for Valor).

4. *The Nature of the Infraction*

To be clear, Officer Anderson understands the gravity of sexual harassment and it is not his intention to diminish the seriousness of his misconduct. This is why he still believes 2 days' suspension is appropriate. But, at the same time, it is necessary to point out mitigating aspects of his misconduct which favor a reduction of his 10-day suspension.

It was undisputed at the hearing that, even though some of the alleged misconduct at issue occurred as early as July 2012, **no one**—not Officers Melton or Hokett, not any of the co-workers they talked to, and not any supervisors—confronted Officer Anderson regarding the misconduct until November 2012. By the time Officer Anderson was made aware of the complaints of Officers Hokett and Melton, *all* alleged misconduct had already occurred. *See Appendix I.* Thus, this is not a case where a brazen employee (like Employee E) has continued to make inappropriate comments to co-workers despite co-workers' and/or supervisors' requests for him to stop. Indeed, since Officer Anderson was first made aware of the complaints about his behavior, it is undisputed that there have been *no* further complaints about him making inappropriate comments.

It is also undisputed that Officer Anderson's inappropriate comments were **never** accompanied by physical contact with Officers Hokett or Melton.

5. *The Financial Impact on Officer Anderson*

It was undisputed at the hearing that the ten-day suspension would cost Officer Anderson about $1,900 in gross wages. Officer Anderson, like most employees, relies on his wages to support his family and to make his house payment. Director Thurber conceded at the hearing that, until the date of the hearing, he did not know Officer Anderson's gross wage (Ex. B at 97) and that he did not, but "probably should have" considered that Officer Anderson has a family to support. (Ex. B at 98-99).

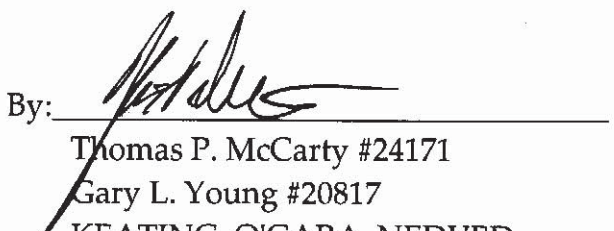
The evidence also reflects that the maximum criminal fine for a third-degree sexual assault, which requires physical contact, is $1,000. (Ex. A at 179-181; Ex. B at 97-99).

III. CONCLUSION

Officer Anderson respectfully requests the Board to reduce his 10-day suspension to a 2-day suspension; to order the County to award Officer Anderson back pay for any days of his suspension that are vacated by the Board; and to remove any written disciplinary materials mentioning 10-days' suspension from his personnel file. (Ex. E at 47-48).

DATED: This 27 day of November, 2013.

OFFICER CHAD ANDERSON and
FRATERNAL ORDER OF POLICE,
LODGE NO. 32, Appellants.



By:_____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Brief was served via hand delivery this 27 day of November, 2013, upon:

Richard Grabow
Deputy Lancaster County Attorney
575 South 10th Street
4th Floor

Lincoln, NE 68508
Attorney for Lancaster County

By: _____
Thomas P. McCarty #24171

Appendix I

Timeline of Relevant Events

October 14, 1999: The Department hired Officer Anderson as a correctional officer.

July 18, 2012: The date of the incident in which Officer Anderson allegedly told Officer Melton: "Inmate Tina Mortenson has more cleavage on her back than you do on your chest." (See Ex. A at 131). Officer Melton conceded that (1) she did not report Officer Anderson's alleged comment to her supervisors until November 15, 2012 (Ex. B at 20, 26); (2) that she did never told Officer Anderson that she believed the comment was inappropriate (Ex. B 26-25, 27); and (3) that she believed Officer Anderson had made a "bad joke." (Ex. B at 26). Officer Anderson first heard of Officer Melton's allegation regarding the July 18 approximately five months later and did not recall making the comment to Officer Melton. (Ex. B at 143).

November 12, 2013: The date of the incident in which Officer Anderson allegedly asked Officer Hokett, after referencing a Victoria Secret catalogue, whether she had finished her Christmas shopping. After she responded, "No," Officer Anderson allegedly said, "Well, you would make someone very happy." (Ex. A at 130). Officer Hokett acknowledged at the hearing that (1) she did not report this alleged conversation to supervisors until November 17, 2013 (Ex. B at 41); and (2) that she had, in fact, been looking through the Victoria Secret magazine on November 12, even though she previously maintained to her supervisor that she had *not* looked at the catalogue (Ex. B at 38, 40; Ex. A at 142). Officer Anderson denied ever telling Officer Hokett that she would make someone "happy" but he did acknowledge that Officer Hokett said something about Christmas shopping in reference to the catalogue and that he asked Officer Hokett if she was finished with her Christmas shopping when she set the catalogue down. (Ex. B at 149-150).

November 15, 2013: Officer Anderson was stationed at a hospital with an inmate and called the control center to check-in. Officer Melton, who was working the control center, answered the phone and, during their brief conversation, Officer Anderson stated something to the effect of, "I've seen so many male enhancement commercials [at the hospital] that I am enhanced now." (Ex. At at 130). Officer Anderson acknowledged that he made this comment and that it was inappropriate. (Ex. B at 146-147). Officer Melton reported this comment, as well as the alleged July 18 comment, to her supervisors on November 15. (Ex. A at 137-140).

November 16, 2013: Officer Hokett reports the November 11 incident involving the Victoria Secret catalogue to her supervisors after becoming aware that Officer Melton had made a report to supervisors regarding Officer Anderson. (Ex. B at 41-42; Ex. A at 139).

Between November 16 and November 26, 2013: Officer Anderson is informed, for the first time, of Officer Hokett's and Officer Melton's allegations regarding the July 18, November 11, and November 15 incidents. (Ex. B at 143-144, 147, 150-151).

November 26, 2013: Officer Anderson receives a pre-disciplinary letter from Director Thurber. (Ex. A at 128-129).

December 11, 2012: Director Thurber suspends Officer Anderson for ten days without pay. (Ex. A at 130-131).

Appendix II

Officer Anderson's Discipline Compared to Other County Employees

Employee Name	Department	Date of Discipline	Nature of Misconduct	Did misconduct continue after victim or supervisor asked Employee to stop?	Level of Discipline
Employee A (Ex. A at 157-159)	Bldg. Comm'n	4/10/12	Staring at police officers in state of undress in locker room over a 2-year period. Caused one officer to transfer to a different shift.	**Yes.** Supervisor ordered Employee A to stop but staring continued. Later, Employee A laid pornography on a bench in front of an officer's locker.	**1**-day suspension
Employee B (Ex. A at 160-163)	Youth Servs. Center	11/4/2011	Repeated comments to female co-worker about oral sex; asked female co-worker over intercom system, "What's in your bag, your breast pump?"	**Yes.** Female co-worker asked Employee B to stop after each incident. After one such request, Employee B stated, "What are you going to do about it, tell on me?"	**2**-day suspension
Employee C (Ex. A at 163-166)	Engineering	1/24/2011	Several inappropriate sexual comments to female employee; showed female employee diagrams of intercourse; physical contact with female employee's chest.	**Yes.** Employee C was instructed not to be in the office of the female employee unless he was conducting County business, but he continued to visit the female employee.	**2**-days suspension
Ofc. Anderson	Corrections	12/11/12	Inappropriate comments to two female co-workers on three separate incidents over a seven-month period	**No.** Ofc. Anderson was first confronted with complaints of misconduct by supervisors in Nov. 2012 after all misconduct had already taken place. There have been no further complaints after that point.	**10**-days suspension

Appendix III

Officer Anderson's Discipline Compared to Other Corrections Employees

Employee Name	Date of Discipline	Nature of Misconduct	Did misconduct continue after victim/ supervisor asked Employee to stop?	Level of Discipline
Employee D (Ex. A at 167-169)	3/17/2008	When inmate refused to pick his shoes off the floor, D **shoved inmate** several times, causing him to fly backwards 3 to 4 feet and to fall on the ground. Director Thurber found "no justification" for the use of force and noted that D's actions "easily" could have injured the inmate.	No previous discipline mentioned. When the inmate turned to face D after the first shove, D shoved him again and caused him to fly backwards. It is not clear whether victim or anyone else verbally asked D to stop.	**10**-day suspension
Employee E (Ex. A at 170-173)	2/4/1999	E told nurse he liked the way her jeans looked on her; later, E came up behind a nurse, made inappropriate **physical contact** with her backside, and said "Ooh, la la." E denied making the inappropriate jeans comment, making contact with nurse's backside, or saying "Ooh, la la."	**Yes.** Both an inmate and the nurse told E to stop making contact with the nurse's backside. The nurse actually elbowed E to get him to stop. In response to the inmate, E replied, "She's my woman."	**7**-day[3] suspension
Employee E (Ex. A at 174-176)	4/19/2004	E made comments in front of female co-worker and other officers suggesting that she had sex with E and a friend.	**Yes.** E was previously disciplined on 2/4/1999 and ordered to keep all future contact with female staff "professional"	**Written reprimand**
Ofc. Anderson	12/11/12	Inappropriate comments to 2 female co-workers on 3 separate incidents over 7-month period; **no physical contact**.	**No.** All misconduct stopped after he was first made aware of complaints.	**10**-day suspension

[3] Although E's disciplinary order states that he was suspended for 10 days, a subsequent letter from Director Thurber to E suggests that he was actually only suspended for 10 days. (Ex. B at 92; Ex. A at 175).

Appendix IV

Officer Anderson's Discipline Compared to Third Degree Sexual Assault

	Nature of Misconduct	Financial penalty
Third Degree Sexual Assault (Class I Misdemeanor)	Subjecting victim to sexual **contact** without consent of the victim, and said contact does not cause serious personal injury to the victim.	Maximum $1,000 fine. (Ex. A at 179-181)
Ofc. Anderson	Inappropriate comments to 2 female co-workers on 3 separate incidents over 7-month period; **no physical contact**.	Approximately $1,900 in gross wages. (Ex. B at 152)