

May 28, 2015

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting  
Thursday, June 4, 2015  
1:30 p.m., Commissioners Hearing Room  
County-City Building, Room 112

## A G E N D A

ITEM 1: Request for appeal hearing - Lynn Forsgren - County Engineer

ITEM 2: Request for grievance hearing- Kaela Howard - Corrections

ITEM 3: Miscellaneous Discussion

PC: Lynn Forsgren  
Kaela Howard  
Pam Dingman  
Mike Thurber  
Rick Deboer  
Kristy Bauer  
Tom McCarty



2015 MAR 25 AM 7 57

# OFFICIAL APPEAL FORM

Name of Employee: Lynn Forsgren Department: Engineering  
 Classification: Senior Operator  
 Work Location: Waverly Immediate Supervisor: David Hall

### STATEMENT of APPEAL:

List applicable appeal:

AFSCME 2468 believes the discipline Mr. Forsgren received was excessive, and the County did not follow progressive discipline.

Adjustment required:

Over turn the one day suspension and retro back the pay he did not receive on March 17, 2015. Make him whole again.

I authorize the A.F.S.C.M.E Local 2468 as my representative to act for me to disposition of this appeal.

Signature of Union Representative [Signature] Title Union President

Date Presented to Management Representative \_\_\_\_\_ Signature \_\_\_\_\_

**THIS STATEMENT OF APPEAL TO BE MADE OUT IN TRIPLICATE. ALL THREE ARE TO BE SIGNED BY THE EMPLOYEE AND/OR THE AFSCME REPRESENTATIVE HANDLING THE CASE.**

ORIGINAL TO: Human Resource

COPY: Employee

COPY: Local Union Grievance File

**NOTE: ONE COPY OF THIS GRIEVANCE AND ITS DISPOSITION TO BE KEPT IN GRIEVANCE FILE OF LOCAL UNION.**

LANCASTER  
COUNTY

Pamela L. Dingman, P.E.  
County Engineer

ENGINEERING

DEPARTMENT

Kenneth D. Schroeder, R.L.S.  
Deputy County Surveyor

March 5, 2015

Lynn Forsgren  
3231 Richard Court  
Lincoln, NE 68521

Dear Mr. Forsgren:

On February 11, 2015, you received a letter proposing to suspend you without pay for one (1) working day pursuant to Lancaster County Personnel Rule 11.2(d) and Article 19 of the 2014-2015 Bargaining Agreement between AFSCME-Engineering and the County. On February 18, 2015, a pre-disciplinary meeting was held and attended by Pam Dingman, Bob Jacobs, Pat Kant, Rick DeBoer, and yourself regarding the following alleged performance issues. I have determined that there were no mitigating factors; therefore, it is my decision to suspend you without pay for one (1) day, on Tuesday, March 17, 2015. The following rules, policies and provisions were violated:

1. Lancaster County Personnel Rule 11.2(h)(5), "The employee has violated any department, division, or institution regulation or order, or failed to obey any proper direction made and given by a supervisor"; and
2. Lancaster County Personnel Rule 11.2(h)(9), "The employee has been careless or negligent with the monies or other property of the County"; and
3. Personnel Policy Bulletin 93-3 "Use of Cellular Phone Policy" (Paragraph 4), "Employees will not use cellular telephones while operating any County vehicles or equipment."

I have made my decision based on the facts set forth below:

On Monday, February 2, 2015, at approximately 9:40 p.m., I (Pam Dingman) was reviewing Facebook when I discovered that you had taken a video of yourself driving a County owned motor grader during a snow storm on Sunday, February 1, 2015. When you took the video of yourself, you were plowing county roads as part of your employment as a Senior Equipment Operator. On February 3, 2015, County Engineer Pam Dingman spoke with you about the Facebook video. You explained that you were on a break when you took the video, but that you were actively driving the County owned motor grader during the video.

You have the right to appeal this unpaid suspension to the Lancaster County Personnel Board in accordance with Article 19, Section 4 of the AFSCME-Engineering Agreement.

Sincerely,



Pamela L. Dingman, P.E.  
Lancaster County Engineer

cc: Doug McDaniel, Human Resources Director  
Karen Eurich, Human Resources Operations Specialist  
Kristy Bauer, Deputy County Attorney

Handwritten notes and initials: DM, PK, MM, and a vertical stamp: 2015 MAR 9 AM 6 45

LANCASTER  
COUNTY

Pamela L. Dingman, P.E.  
County Engineer

Dim  
PETER  
DINA

ENGINEERING  
DEPARTMENT

Kenneth D. Schroeder, R.L.S.  
Deputy County Surveyor

February 11, 2015

Lynn Forsgren  
3231 Richard Court  
Lincoln, NE 68521

Dear Mr. Forsgren:

The purpose of this letter is to inform you that I am proposing to suspend you without pay for one (1) working day pursuant to Lancaster County Personnel Rule 11.2(d), and Article 19 of the 2014-2015 Bargaining Agreement between AFSCME-Engineering and the County. This proposed suspension is based upon violations of the Lancaster County Personnel Rules and Lancaster County Engineer policies. It appears that the following rules, policies and provisions were violated:

1. Lancaster County Personnel Rule 11.2(h)(5). "The employee has violated any department, division, or institution regulation or order, or failed to obey any proper direction made and given by a supervisor"; and
2. Lancaster County Personnel Rule 11.2(h)(9). "The employee has been careless or negligent with the monies or other property of the County"; and
3. Personnel Policy Bulletin 93-3 "Use of Cellular Phone Policy" (Paragraph 4). "Employees will not use cellular telephones while operating any County vehicles or equipment."

The facts that have been reported to me are as follows:

On Monday February 2, 2015, at approximately 9:40 PM, I (Pam Dingman) was reviewing Facebook when I discovered that you had taken a video of yourself driving a County owned motor grader during a snow storm on Sunday, February 1, 2015. When you took the video of yourself, you were plowing county roads as part of your employment as a Senior Equipment Operator. On February 3, 2015, County Engineer Pam Dingman spoke with you about the Facebook video. You explained that you were on a break when you took the video, but that you were actively driving the County owned motor grader during the video.

2015 FEB 11 9 57 AM '15

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TRACY A. FOLLMER  
DONALD R. STADING

March 18, 2015

**HAND DELIVER**

VIA HAND DELIVERY

Mr. Doug McDaniel  
Secretary, County Personnel Board  
555 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

RE: Corrections Officer Kaela Howard; Appeal of Denial of Grievance

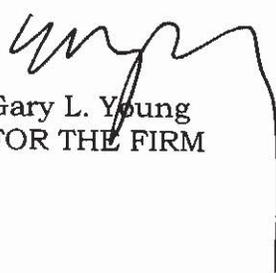
Dear Doug:

This firm represents Fraternal Order of Police Lodge #32, and Corrections Officer Kaela Howard. On February 23, 2015 the Corrections Director Mike Thurber denied the grievance of Kaela Howard, which I have attached hereto. Officer Howard received the grievance reply on February 25, 2015.

Pursuant to the bargaining agreement between Lancaster County and FOP #32, Officer Howard hereby gives his notice of appeal of this denial of the grievance to the Lancaster County Personnel Board.

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

Yours very truly,

  
Gary L. Young  
FOR THE FIRM

ENCLOSURE

2015 MAR 18 PM 4 08

2015 MAR 18 PM 4 08

# Lancaster County

## Department of Corrections

3801 West O Street  
Lincoln, NE 68528  
(402) 441-1900  
Fax: 441-8946

Michael Thurber, Director

February 23, 2015

Gary Young  
Keating, O'Gara, Nedved & Peter, P.C.  
530 South 13<sup>th</sup> Street, Suite 100  
Lincoln, NE 68508

Re: Officer Howard and FOP #32 Grievance received February 9, 2015

Dear Mr. Young:

This letter will serve as a response to a grievance dated February 9, 2015, regarding denial of vacation leave for Correctional Officer Kaela Howard. Officer Howard has alleged a violation of Article 11, Section 4, of the 2014-2016 Bargaining Agreement between the Fraternal Order of Police, Lodge 32 and Lancaster County (FOP Agreement). Specifically, Officer Howard has alleged that Lt. Jane Voboril denied Officer Howard's vacation leave request on an arbitrary basis and without consideration of the actual shift schedule.

Pursuant to Article 4, Section 2, of the FOP Agreement, management has the right to "manage and supervise all operations and functions of the [Corrections Department]", "establish, allocate, schedule, assign, modify, change, and discontinue [Corrections Department] operations, work shifts, and working hours", and "establish, modify, change, and discontinue work standards." It is clear that the Department has the ability to set and determine operating requirements and minimum staffing needs at the Lancaster County Correctional Facility. To meet the operational requirements and minimum staffing needs set by the Department, it is also clear that the main factor in determining scheduling and approval of employee vacation leave is the operational and staffing needs of each shift.

Additionally, the Department has developed policies and procedures to facilitate both the scheduling of vacation leaves in accord with operating requirements and the approval or denial of such leaves in a timely, orderly and fair manner. Lancaster County Corrections Department Policy 2.10, Miscellaneous Personnel Rules, includes the following relevant rules for the provision of leave requests:

- B. Correctional Officer Leave
  3. The Shift Supervisor is responsible for granting approval of leave request. Leave will be approved in the order requests are received.

4. The employee will be notified by e-mail if the leave request has been approved or denied.
  
8. Leave requests submitted less than 21 days in advance of when the leave will start will be approved or denied on the department's ability to cover the position. Employees may not receive notice of approval or denial of the leave until immediately before the leave is to start.

In the case at hand, on February 2, 2015, Officer Howard requested vacation leave for February 6, 2015. Pursuant to Corrections Policy 2.1, because the leave request was submitted less than 21 days in advance of when the leave would start, the Shift Supervisor reviewing the request was not obligated to notify Officer Howard of approval or denial until immediately before the leave would start. On February 5, 2015, Officer Howard emailed Lt. Voboril inquiring as to the status of her leave request. In response to said inquiry, Lt. Voboril reviewed the coverage for first shift on February 6<sup>th</sup> and ultimately denied Officer Howard's request based upon the following reasons. First, the hospital post had been requiring two correctional officers off and on throughout the week of February 2<sup>nd</sup> through February 5<sup>th</sup>. Second, Lt. Voboril recognized that one of the female inmates was pregnant and past her due date. In the event she went into labor, one or two correctional officers, depending on the hospital's request, would need to leave the facility and accompany the inmate to the hospital. Third, Lt. Voboril was aware that the staffing needs in the infirmary the week of February 2<sup>nd</sup> through February 5<sup>th</sup> were unique. Two correctional officers were needed because two inmates in the infirmary were receiving IV fluids, and one of those inmates was control segregation (dangerous). Based upon the prior days' staffing needs, the infirmary staffing needs for February 6<sup>th</sup> were unclear to Lt. Voboril as she was considering Officer Howard's leave request. Finally, five of the correctional officers working first shift on Friday, February 6<sup>th</sup> were on probation and had not been to the academy; thus, none of those correctional officers would be able to transport inmates outside the facility if the need arose.

Contrary to Officer Howard's grievance, there were not "five employees scheduled to work on the shift in excess of the standard required amount of employees." As previously mentioned, there were two correctional officers assigned to the infirmary, and the additional two "rovers" assigned to first shift had less than four months experience and would not have been able to leave the facility to transport. It should also be noted that nothing in the FOP Agreement or Corrections Policy 2.1 requires the Shift Supervisor to provide a reason or explanation for denying a leave request. In the event Officer Howard questioned Lt. Voboril about the denial, Lt. Voboril would have explained the basis for her decision.

The Department has the ability to set and determine operating requirements and minimum staffing needs at the Lancaster County Correctional Facility. Lt. Voboril considered all of the factors set forth above and was concerned that if she approved Officer Howard's leave request, there would not be enough experienced officers on February 6<sup>th</sup>, first shift, to meet the hospital post and infirmary staffing needs, and to ensure all policies and procedures were being followed. The denial of Officer Howard's leave request was based on legitimate operational

needs. Such denial was in no manner unreasonable, arbitrary, or effectuated without consideration of operating requirements and staffing needs. Finally, the remedy sought in your grievance, crediting Officer Howard with 8 hours time off without loss of any pay, could arguably expose the County to a taxpayer suit based upon an illegal expenditure of public funds, and would clearly violate the FOP Agreement by providing more leave than authorized under Article 11.

For the foregoing reasons, I must deny the grievance.

Sincerely,



Michael Thurber  
Corrections Director

MT/lo

cc: Doug McDaniel, Human Resources Director  
Kristy Bauer, Deputy County Attorney  
Kaela Howard, Correctional officer  
Terry Weber, Jail Administrator  
Personnel File

GRIEVANCE OF KAELA HOWARD  
AND FOP 32

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February 9, 2015

**COPY**

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

FROM: Fraternal Order of Police Lodge #32

COMES NOW Fraternal Order of Police Lodge #32 and for its grievance state as follows:

NATURE OF GRIEVANCE AND ACTS OF COMMISSION OR OMISSION GRIEVED:

On Monday, February 2, 2015, Officer Howard requested to her Lieutenant Jane Voboril to have a vacation day off on Friday, February 6, 2015. At that time, Officer Howard received no reply to the request.

On Thursday, February 5, 2015, at 7:23 AM Officer Howard contacted Lieutenant Jane Voboril by email to request an update on her leave request. Approximately 2 hours later, Lieutenant Voboril sent an email stating that the leave request had been denied. No explanation was provided.

Officer Howard completed her shift on February 6, 2015 as scheduled. At that time, she observed that there were five employees scheduled to work on the shift in excess of the standard required amount of employees, including two persons assigned to work single person posts, and two extra rovers that filled positions that are often unfilled to permit persons to take vacation days off.

On February 5, 2015, when Officer Howard requested an update on whether she would have the day off on February 6, 2015, Lieutenant Voboril knew, or should have known, the number of employees scheduled to work the 6<sup>th</sup> was more than necessary to permit a person to take a day off. Officer Howard had sufficient time in her vacation banks to take the day off. There has been no explanation for why Officer Howard was not provided the day off.

The Agreement between FOP 32 and Lancaster County provides as follows: "Vacation time shall not be unreasonably denied."

It was unreasonable for Lt. Voboril to deny Officer Howard vacation time off when there were five persons scheduled to work in excess of that number that is ordinarily required to work the shift that Officer Howard requested off. It appears that Lt. Voboril denied the request on an arbitrary basis, and without consideration of the actual shift schedule.

DATE OF ACTION GRIEVED: Officer Howard first became aware of this action on February 5, 2015.

IDENTITY OF GRIEVING PARTIES: Officer Howard and FOP #32.

IDENTITY OF PERSONS ALLEGED TO HAVE CAUSED GRIEVANCE: Lt. Jane Voboril.

PROVISIONS OF AGREEMENT

THAT WERE VIOLATED:

Article 11, Section 4

REMEDY SOUGHT:

That Lt. Voboril and the Department be directed to fully comply with the terms of Article 11, Section 4 when employees request vacation time off.

That the Department provide that any further leave requests made by Officer Howard be processed by a Lieutenant other than Lt. Voboril, and that such leave requests will be processed in compliance with Article 11, Section 4 of the County's bargaining agreement with the FOP.

The Department be required to credit Officer Howard with 8 hours time off without loss of any leave.

Respectfully submitted this 9th day of February, 2015.

OFFICER KAELA HOWARD AND FOP #32, ON  
BEHALF OF ITS MEMBERS,

BY:

  
\_\_\_\_\_  
Gary L. Young, Esq. (#20817)  
Keating, O'Gara, Nedved & Peter, P.C.  
530 South 13<sup>th</sup> Street, Suite 100  
Lincoln, NE 68508  
Ph: (402) 475-8230  
Fax: (402) 475-8328

Attorney for the Grievants



2-9-15