January 5, 2017

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, January 12, 2017
1:30 p.m., Commissioners Hearing Room
County–City Building, Room 112

NOTE: SPECIAL MEETING DATE

A G E N D A

ITEM 1: Request to amend Rule 19.2 of the Personnel Rules - Vacation Leave

ITEM 2: Request for grievance hearing – FOP 32 – Christina Wulf and Gideon Gillispie – Corrections

ITEM 3: Miscellaneous Discussion

pc: Christina Wulf
Gideon Gillispie
Tom McCarty
Kristy Bauer
Department Heads

19.2 Vacation Leave (Revised ~~12/13~~01/17)

(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.

~~(a)~~(b) Probationary and status employees in a pay grade prefixed by 'A' 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 two hundred (200) hours per year.

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

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

~~(d)~~(e) 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)~~(f) 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)~~(g) Vacation leave shall not accrue during any leave of absence without pay.

~~(g)~~(h) 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.

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October 11, 2016

VIA HAND DELIVERY

Mr. Doug McDaniel
Secretary, Lancaster County Personnel Board
555 S. 10th Street
Lincoln, NE 68508

RE: FOP #32: Appeal of Denial of Grievance

Dear Doug:

This firm represents Fraternal Order of Police Lodge #32. On September 7, 2016, FOP #32 filed a grievance on behalf of all officers impacted, including Officers Christi Wulf and Giddeon Gillispie. FOP #32 granted the Department an extension to respond to the Grievance until Thursday, October 6, 2016. On October 8, 2016, we received the Department's response, dated October 5, 2016, which denies the grievance. I have attached a copy of the grievance and denial hereto.

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

Yours very truly,

Thomas P. McCarty
FOR THE FIRM

ENCLOSURE

Lancaster County
Department of Corrections

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

October 5, 2016

Tom McCarty
Keating, O'Gara, Nedved & Peter, P.C.
530 South 13th Street, Suite 100
Lincoln, NE 68508

Re: Officer Christi Wulf, Officer Gideon Gillispie, and FOP Lodge #32 Grievance received September 7, 2016

Dear Mr. McCarty:

This letter will serve as a response to a grievance dated September 7, 2016, regarding alleged violations of Article 11, Sections 1 and 4, and Article 16, Section 8 of the FOP #32 Bargaining Agreement (the "Agreement"). Specifically, the grievance alleges that the Corrections Department's failure to approve the leave requests of Officers Wulf and Gillispie was unreasonable and violated Article 11, Sections 1 and 4, and Article 16, Section 8 of the Agreement.

The facts that form the basis of Officer Wulf's grievance are as follows: On August 21, 2016, at 0900 hours, Officer Wulf submitted a Leave Request to the Corrections Department to utilize vacation leave on Sunday, September 4, 2016, and holiday leave on Monday, September 5, 2016. On Monday, August 29, 2016, Lt. Voboril emailed Officer Wulf and informed her that the Department had been unable to find adequate coverage to cover her absence on Sunday, September 4th, and thus, her leave request had not been approved. Lt. Voboril's email further indicated that the Department would continue its efforts to find coverage for Officer Wulf's leave request on September 4th with the understanding that Officer Wulf may not know until the morning of September 4th if the leave had been approved. The email then asked Officer Wulf how she would like the Department to handle her leave request going forward. On Wednesday, August 31st, at 0906 hours, Officer Wulf emailed Lt. Voboril and informed her that she was cancelling her leave request for both September 4th and 5th, due to the uncertainty of getting Sunday, September 4th off. At this time, Lt. Voboril recalls making contact with Officer Wulf at her training class, and informed Officer Wulf that the Department was close to finding coverage for her request on September 4th, and asking Officer Wulf if she was sure she wanted to cancel her leave request. Officer Wulf replied that she had already cancelled her hotel reservation and again indicated that she wanted to cancel her leave request.

On Thursday, September 1st, Lt. Voboril notified Sgt. Cartwright that Officer Wulf had cancelled her leave request, and to make the appropriate changes in the scheduling book because Sgt. Cartwright had the scheduling book open at that time and access is only granted to one computer at a time. Lt. Voboril knew that Officer Elrod had signed up to work overtime on September 4th, but thought she had been cancelled and didn't notice that her name had just been moved to cover a different slot. The shift on September 4th did result in being one over minimum as alleged; however, the decision to not cancel the extra officer was made by Sgt. Cartwright based upon the following factors: 1) it was a three day weekend; 2) it was a Nebraska football game weekend; and 3) there was a warrant sweep planned that ultimately resulted in booking almost 100 individuals. It should also be noted that Officer Elrod was still assigned to a position and was not just placed on the schedule without a slot to cover. The shift on

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September 5th was also one over minimum, but this was a result of transport officers working their normal shift on the holiday. It is important to note that there was never an issue as to coverage on September 5th. At the time Officer Wulf cancelled her leave request for both September 4th and 5th, the Department had coverage for September 5th, but could not find coverage for September 4th. The slot on the 5th was covered by a transport officer who was working that day. The Department was not required to force a transport officer off the schedule when he was normally scheduled to work on September 5th. Ultimately, the Department did not deny Officer Wulf's leave request; rather, she cancelled her leave request for September 4th and 5th.

The facts that form the basis of Officer Gillispie's grievance are as follows: Officer Gillispie is assigned to Transport. As a point of historical background, since April 2015, transport officers have been factored in as part of the overall leave system with regard to first shift meaning that the Department will use the transport officers to help fill leave requests on first shift on those holidays the transport officers are scheduled to work. Transport officers must also submit leave requests for holidays off and their requests are considered along with first shift requests based on the date/time they are submitted. On August 18, 2016, I informed Lt. Gray (Transport Lieutenant) that he needed to remind his Transport officers that they were required to submit a leave request if they wanted Labor Day (September 5th) off; otherwise, they would be assigned to first shift so others could have the day off. On August 23, 2016, I again met with Lt. Gray and asked him how many transport officers had asked for Labor Day off. Lt. Gray indicated that there were 5 transport officers that asked for the day off. Subsequently, on the morning of August 24, 2016, a sixth transport officer requested leave for Labor Day which was approved. Officer Gillispie had not asked for Labor Day (September 5th) off at this time. I instructed Lt. Gray to approve the leave requests for the 6 transport officers, and subsequently informed Lt. Voboril that she could approve leave requests accordingly for her first shift officers based on the knowledge that 6 transport officers (out of 12 total transport officers) would be working on Labor Day. Lt. Gray approved the leave requests for the 6 transport officers on August 24, 2016. Shortly thereafter, Officer Gillispie approached Lt. Gray and stated that he wanted Labor Day off and that he had submitted a leave request that same day. Lt. Gray indicated to Officer Gillispie that his leave request was not in the system and approval at this point would not be likely. At some point, Officer Gillispie contacted Nate Atkins, Systems Programmer, and inquired as to why his leave request was not in the system. Mr. Atkins had Information Systems pull back up files for August 24, 2016, the date Officer Gillispie indicated he submitted a leave request, but there was no record of a leave request from Officer Gillispie. Officer Gillispie did not submit another leave request, nor did he approach Lt. Gray and reiterate that he wanted Labor Day off. If Officer Gillispie would have submitted a leave request, it would have been handled as any other short notice leave request; however, because there was not a leave request to consider, coverage was not sought. If Officer Gillispie had submitted a leave request for Labor Day, the Department likely could have had an on-call cover the request. The Department did not deny Officer Gillispie's leave request as there was never a leave request to consider.

The grievance alleges the Department's failure to approve the leave requests of Officer Wulf and Officer Gillispie is unreasonable, and violated Article 11, Sections 1 and 4, and Article 16, Section 8 of the Agreement. Article 11, Section 1 of the Agreement sets for the paid core holidays and states, "[a]ll holiday leave hours must be taken during the contract year or be forfeited and shall not be unreasonably denied." Article 11, Section 4, sets for the vacation accrual rates and states, "[v]acation time shall not be unreasonably denied." Article 16, Section 8, states "All requests to use compensatory time shall be handled in the same manner as vacation requests." Officer Gillispie did not submit a leave request for September 5th; therefore, both Articles 11 and 16 are inapplicable to his portion of the grievance, and his grievance is without merit.

With respect to Officer Wulf, she did not request compensatory time for September 4th or 5th; therefore, Article 16, Section 8, is also inapplicable to her portion of the grievance. In response to the allegation that her vacation leave was unreasonably denied, the Department asserts that it followed its policies and procedures and did not violate the Agreement. Pursuant to Article 4, Section 2, of the 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 the 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 applicable 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 Officer Wulf's case, on August 21, 2016, she requested vacation leave for September 4th and holiday leave for September 5th. Pursuant to Corrections Policy 2.10, 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 Wulf of approval or denial until immediately before the leave would start. As previously mentioned, on Monday, August 29, 2016, Lt. Voboril emailed Officer Wulf and informed her that the Department had been unable to find adequate coverage to cover her leave request on Sunday, September 4th. Lt. Voboril's email further indicated that the Department would continue its efforts to find coverage for Officer Wulf's leave request, with the understanding that Officer Wulf may not know until the morning of September 4th if the leave had been approved. However, on Wednesday, August 31st, Officer Wulf emailed Lt. Voboril and informed her that she was cancelling her leave request for both September 4th and 5th; thus, the Department ceased looking for coverage. Additionally, it should be noted that nothing in the Agreement or Corrections Policy 2.10 requires the Department to operate at the minimal staffing level when operational needs dictate otherwise.
The Department did not deny Officer Wulf's leave request, as she cancelled her leave request on August 31, 2106. The Department does not have record of a leave request from Officer Gillispie. Therefore, the

facts that form the basis of this grievance do not support a violation of either Article 11 or Article 16 of the Agreement.

For the foregoing reasons, I must deny the grievance.

Sincerely,

Brad Johnson
Interim Director

BJ/lo

cc: Doug McDaniel, Human Resources Director
Kristy Bauer, Deputy County Attorney
Ken Prey, Interim Jail Administrator
Jane Voboril, Corrections-Lieutenant
Rick Gray, Corrections-Lieutenant
Christi Wulf, Correctional Officer
Gideon Gillispie, Correctional Officer

9/07/16

IN RE GRIEVANCE OF FOP 32 ON BEHALF)
OF ALL BARGAINING UNIT MEMBERS, INCLUDING)
CHRISTI WULF and GIDDEON GILLISPIE.)

September 7, 2016

TO: Brad Johnson, Interim Department Head, or his designated representative

FROM: Fraternal Order of Police Lodge #32, on behalf of all bargaining unit members impacted, including Officers Christi Wulf and Giddeon Gillispie

COMES NOW Fraternal Order of Police Lodge #32 on behalf of all bargaining unit members affected, including Officers Christi Wulf and Giddeon Gillispie, and for its grievance states as follows:

NATURE OF GRIEVANCE AND ACTS OF COMMISSION OR OMISSION GRIEVED:

Article 11, Sections 1 and 4 of the bargaining agreement between FOP #32 and the County provide that holiday and vacation leave "shall not be unreasonably denied." Article 16, Section 8 states that compensatory time off shall be handled "in the same manner as vacation requests"—i.e., compensatory time off also cannot be "unreasonably denied."

Officer Christi Wulf's regularly scheduled days off are Friday and Saturday. On or about August 18, 2016, Officer Wulf submitted a paid leave request for Sunday, September 4 and Monday, September 5, 2016 so she could attend a Labor Day weekend soccer tournament with her child in St. Louis, Missouri. Sometime during the week of August 29, 2016, Lt. Voboril notified Officer Wulf that her leave request may not approved due to a lack of staffing to cover the request. Officer Wulf informed Lt. Voboril that she needed to know for sure whether her vacation would be approved by noon on Wednesday, August 31 so she could cancel hotel reservations and avoid cancellation fees, if possible. At noon on August 31, 2016, Officer Wulf was informed there was still not sufficient staffing to cover her leave requests. Officer Wulf therefore notified Lt. Voboril that she was forced to cancel her leave request as well as her hotel reservations for the soccer tournament.

Officer Wulf reported for work on Sunday, September 4 to work her regularly scheduled shift. When she arrived, she found that Officer Elrod had been scheduled to work Officer Wulf's entire shift for the day. Officer Wulf was, therefore, an extra officer during that entire shift—i.e., the shift was one officer over its minimum staffing level.

Officer Wulf also reported for work on Monday, September 5 to work her shift. When she arrived, she found that she was not assigned a position on the shift because she had been scheduled off, despite the fact that she cancelled her vacation request on August 31, 2016 due to an alleged lack of coverage. This resulted in Officer Wulf working as an extra officer on the shift. Another officer working that shift, Officer Gillispie, had his leave request for Monday, September 5 denied due to lack of coverage. Thus, there was at least one extra officer working on Monday, September 5 even though both Officers Wulf and Gillispie had their paid leave requests denied due to an alleged lack of coverage.

Upon information and belief, the leave requests of Officers Wulf and Gillispie were not offered to all on-call officers for coverage, including Officer Goracke. In

addition, other on-call officers had signed up for hours over Labor Day weekend but those hours were cancelled by the Department.

Officer Wulf incurred a cancellation fee of approximately $113 due to the cancellation of her hotel reservations.

The Department's failure to approve the leave requests of Officers Wulf and Gillispie is unreasonable. The Department could have employed various methods, including offering the shifts to on-call officers, to ensure coverage for the leave.

DATE OF ACTION GRIEVED: The FOP became aware of this action on or about September 5, 2016.

IDENTITY OF GRIEVING PARTIES: FOP #32 on behalf of all affected unit members, including Officers Gillispie and Wulf.

IDENTITY OF PERSONS ALLEGED
TO HAVE CAUSED GRIEVANCE: Lt. Jane Voboril and, upon information and belief, Interim Director Brad Johnson and other unknown persons.

PROVISIONS OF AGREEMENT
THAT WERE VIOLATED: Article 11's leave provisions, including Sections 1 and 4 which provide that leave requests may not be unreasonably denied. Compensatory time is treated as a vacation leave request, per Article 16, Section 8, and may also not be unreasonably denied.

REMEDY SOUGHT: The Department shall give full effect to Article 11, Sections 1 and 4 of the bargaining agreement, and shall cease and desist unreasonably denying paid leave requests. In addition, the Department shall:

1. Compensate Officers Wulf and Gillispie for any cancellation fees (e.g., hotel costs, travel costs, etc.) they incurred due to the unreasonable denial of their paid leave requests.

2. Permit Officers Wulf and Gillispie to take paid leave at some point in the future, at their discretion, in the amount of leave they requested during Labor Day weekend 2016. Such leave requests shall be granted.

3. Pay Officers Wulf and Gillispie, at their straight-time hourly rate, for each hour of leave they requested for Labor Day weekend 2016 but were not able to take off.

4. Take such other action as the Personnel Policy Board deems just under the circumstances.

Respectfully submitted this 7th day of September, 2016.

FOP #32, on behalf of its all affected members of the bargaining unit, including Officers Wulf and Gillispie,

BY: _____

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Attorney for the Grievants