October 30, 2014

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, November 6, 2014
1:30 p.m., Commissioners Hearing Room
County-City Building, Room 112

A G E N D A

ITEM 1: Request to create Vacation Usage Upon Retirement Personnel Policy Bulletin

ITEM 2: Request for grievance hearing – Larry Carr - County Engineering

ITEM 3: Miscellaneous Discussion

pc: Department Heads
Kristy Bauer
Larry Carr
Joy Shiffermiller

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Human Resources Policy Bulletin

Lancaster County

Number: 2014-3

Date: November, 2014

Reference:	Title:
County Rule 14.3 – Retirement	Vacation Usage Upon Retirement Policy

VACATION USAGE UPON RETIREMENT POLICY

I. POLICY

It shall be the policy of the County of Lancaster to allow employees to use their accrued vacation leave hours after their last physical day worked, upon retirement from Lancaster County employment.

II. PROCEDURE

A. Employees will be eligible for retirement upon attaining age sixty (60), or upon attaining age fifty-five (55) and completing ten (10) years of service.

B. Employees shall produce their intent of retirement in writing to their supervisor at least ten (10) working days before their final work day.

C. The employee shall designate their choice of the following options in their retirement letter:

1. Designate their last day of work and receive their vacation balance payout to be included in their final paycheck as a lump sum.

2. Designate their last day of work and request that their vacation be used until it is depleted. The date the employee's vacation is depleted will become the effective date of their retirement.

3. Designate their last day of work and request that their vacation be used until a specific date, with the remaining vacation balance after that date to be paid out as a lump sum in their final paycheck. The date the employee's vacation is depleted will become the effective date of their retirement.

Human Resources Policy Bulletin

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D. The employee's retirement letter must be attached to the Personnel Action Form.

Departments will be able to recruit for the retiring employee's vacancy by completing a Requisition and submitting a copy of the employee's retirement letter to the employment office.

Retiring employees will continue to receive all County benefits while in a pay status (i.e. legal holiday pay, vacation and sick leave accruals, insurance benefits, etc.).

Retiring employees may not use any other type of leave while running out their vacation leave hours.

Retiring employees will not have access to their retirement or PEHP benefits until after receipt of their final paycheck with Lancaster County.

_____ _____

Doug McDaniel
Human Resources Director

Date

_____ _____

Larry Hudkins, Chair
Board of County Commissioners

Date

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

JOY SHIFFERMILLER
Attorney at Law

ABBY OSBORN
Associate Attorney

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

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September 30, 2014

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

Ladies and Gentlemen:

Please consider this the Step 2 Appeal of the Grievance of Larry Carr and AFSCME Local 2468-engineering, with respect to his grievance, and the department head's response, both of which are attached.

No satisfactory settlement having been reached, and AFSCME Local 2468-Engineering hereby re-submits this grievance for submission to the board, incorporating all issues more fully set out therein. Grievant would further highlight that he and AFSCME were specifically told that that all interested individuals would be eligible to request transfer and she would consider who would be given the position. The handling of this transfer was in violation of the union contract, County personnel rules and state Civil Service Statute as demonstrated in *Blakely V Lancaster County 284 Neb 659, (Neb 2012).*

Thank you for your attention to this matter.

Very truly yours,

JOY SHIFFERMILLER

JS/cl
Enc:
cc: Larry Carr
Rick DeBoer
Kristy Bauer

LANCASTER COUNTY ENGINEERING DEPARTMENT

Pamela L. Dingman, P.E.
County Engineer

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

September 17, 2014

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

Re: Larry Carr Grievance dated August 27, 2014

Dear Ms. Shiffermiller:

This letter will serve as a response to a grievance dated August 27, 2014, regarding allegations that a senior equipment operator position in the Davey district was not posted or open to interview. Mr. Carr has alleged violations of Article 16, Section 6, and Article 17, Section 1, of the 2012-2014 Bargaining Agreement between AFSCME-Engineering and the County (AFSCME-Engineering Agreement), various sections of Rule 5 of the Lancaster County Personnel Rules, and Neb. Rev. Stat. Section 23-2525(3) and (4).

The facts that form the basis of Mr. Carr's grievance are as follows: On or about May 21, 2014, a senior equipment operator position became available as a result of a senior equipment operator in the Davey district resigning. On or about May 29, 2014, another senior equipment operator, Ricky Phillips, was transferred from the County Shop to the Davey district in order to meet operational needs; thus, filling the available senior equipment operator position. The vacancy resulting from the senior equipment operator resigning on May 21, 2014, was not posted internally to all County employees, or to the general public, as the vacancy was filled by the transfer of Mr. Phillips on May 29, 2014. As a result of the vacancy created initially by the resignation on May 21st, on or about June 16, 2014, a senior equipment operator position, to be located at the County Shop, was posted and opened internally to all Lancaster County employees pursuant to Article 17, Section 4, of the AFSCME-Engineering Agreement. No employees within the County Engineering Department or any other County Department applied at that time. Therefore, on or about June 23, 2014, a senior equipment operator position was posted and opened to the general public. On or about August 21, 2014, after interviews with candidates from the general public, the senior equipment operator position was filled.

Pursuant to Article 17, Section 2, of the AFSCME-Engineering Agreement, "a transfer is the movement of an employee from a position of a class to another position of the same class from one work site to another work site within the Department." It is appears that the transfer of Mr. Phillips from the County Shop to the Davey district on May 29, 2014, is the employment action that Mr. Carr is grieving. Article 20, Section 1, Step 1, of the AFSCME-Engineering Agreement states that the "aggrieved employee shall present in writing his grievance to his Department Head within fifteen (15) working days from the date on which the employee became aware of or should reasonably have been aware of the incident giving rise to the grievance." Mr. Carr is beyond the time limit set forth in the AFSCME-Engineering Agreement to grieve said incident. The transfer to fill the senior equipment operator position at the Davey district took place on May 29, 2014. Certainly, Mr. Carr was aware of that transfer prior to August 8, 2014 (the date Mr. Carr seems to allege he became aware of the employment action).

Additionally, even if Mr. Carr was timely in filing his grievance, his allegations that the filling of the senior equipment operator position at the Davey district violated specific sections of the AFSCME-Engineering Agreement, Personnel Rules, and the Civil Services Statutes are unfounded. Neither the Agreement or the Rules required the vacancy to be posted or open on a competitive basis. As stated before, the vacancy was filled by the transfer of a senior equipment operator from another district based upon operational needs. Such transfer is authorized under Article 17, Section 2, of the AFSCME-Engineering Agreement, and Rule 9.2 of the Personnel Rules. Additionally, Article 6, Section 2(E) of the AFSCME-Engineering Agreement sets forth the concept of inherent management rights and provides that management has "the right to...transfer...employees." The senior equipment operator vacancy resulting from the May 21st resignation in the Davey district was not a new position at the Engineering Department, nor was it ever posted by the City-County Human Resources Department (as alleged by Mr. Carr). The vacancy was filled within approximately one week of the resignation by the transfer of a senior equipment operator (Mr. Phillips) from another work site. This action clearly lies within the management rights of the County Engineer.

In the event that Mr. Carr is grieving the hiring of a senior equipment operator (to be located at the County Shop) on August 21, 2014, said position was posted and opened internally to all Lancaster County employees on or about June 16, 2014, pursuant to Article 17, Section 4, of the AFSCME-Engineering Agreement. No employees within the County Engineering Department or any other County Department applied at that time. Therefore, on or about June 23, 2014, a senior equipment operator position was posted and opened to the general public. On or about August 21, 2014, after interviews with candidates from the general public, the senior equipment operator position was filled. At no time during this process did Mr. Carr apply for the senior equipment operator position that was posted internally to all County employees, and subsequently posted and opened to the general public. In fact, our records indicate that Mr. Carr hasn't applied internally for a County position since 2009. Mr. Carr's allegations that the hiring of this senior equipment operator violated specific sections of the AFSCME-Engineering Agreement, Personnel Rules, and the Nebraska Civil Service Statutes are without merit. Contrary to Mr. Carr's grievance, the provisions of Lancaster County Personnel Rule 5 (Application

and Examination Process) were followed by the County in posting the senior equipment operator position on June 16th and June 23rd. Seniority was not an issue in this hiring process because there were no County employees that applied for the senior equipment operator position posted on the aforementioned dates.

Contrary to Mr. Carr's allegations, the transfer of the senior equipment operator from the County Shop to the Davey district, on May 29, 2014, was carried out pursuant to the AFSCME-Engineering Agreement and the Lancaster County Personnel Rules. More importantly, it seems apparent that Mr. Carr is grieving the transfer that occurred on May 29th; and thus, he is beyond the fifteen day time limit to file a grievance, as specified in Article 20, Section 1, of the AFSCME-Engineering Agreement. Additionally, the senior operator position that was posted on June 16th and ultimately filled on August 21st, was carried out pursuant to the AFSCME-Engineering Agreement, the Lancaster County Personnel Rules, and applicable sections of the Nebraska Civil Service Statutes. For the foregoing reasons, I must deny your grievance.

Sincerely,

Pamela L. Dingman, PE
Lancaster County Engineer

cc: Doug McDaniel, Human Resources Director
Kristy Bauer, Deputy County Attorney

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

JOY SHIFFERMILLER
Attorney at Law

ABBY OSBORN
Associate Attorney

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

August 27, 2014

Pam Dingman
County Engineer
444 Cherry Creek Rd.
Lincoln, Nebraska 68528

Re: Larry Carr

Dear Ms. Dingman:

Please consider this the grievance of Larry Carr and AFSCME Local 2468-Engineering.

Larry Carr had heard that Bill Miller, a senior operator out of the Davey yard was retiring from his position. As Carr was desirous of applying for and filling the senior operator position in the Davey yard, in June, he inquired of the district maintenance supervisor when the position would be open. There was some discussion about having the float driver, who was a probationary employee less qualified and with less seniority then Carr in the position. Carr then contacted the county engineer, Pam Dingman, to inquire if the position would be opened up for interviews or whether the float driver was going to be transferred. Carr expressed his interest in the position. Carr was assured by Dingman all positions would be filled through interview, and no transfer would be made without the opportunity for posting and interviewing. AFSCME Local 2468-Engineering officials also discussed whether the position would be open to anyone who wanted to interview for the position and they were assured it would be.

On August 5th, Carr once again texted the county engineer to ask about the status of the posting of the job. The county engineer, on August 8th, told Carr that the senior operator position at the Davey yard would not be posted. The county engineer, on August 8th, told Carr that the float driver was transferred into the position without it being posted or opened to interview.

This grievance is brought pursuant to Article 20 of the agreement between Lancaster county and AFSCME Local 2468-Engineering.

The AFSCME 2468-Engineering contract was violated as follows:

- The selection was not made with consideration of Seniority pursuant to article 16, section 6. Which states:
  Provided all other job related criteria are equal, seniority as defined in Section1 of this Article shall be the primary consideration in transfers and voluntary demotions when vacancies occur.

- The selection was not made pursuant to Article 17, Section 1 which states:
  Promotion. A promotion is the filling of a vacancy by the advancement of an employee from a position having a lower pay grade to a position having a higher pay grade.
  When a promotional position is posted internally, the County Personnel Officer shall administer a competitive examination which shall be open to all employees of the County who meet the necessary requirements and who are serving in an appropriate class as determined by the Personnel Officer.

The Lancaster County Personnel Rules were violated in each of the following respects:

- The Sr. Operator position at the Davey yard position which grievant desired was not open on a competitive basis as required by Rule 5.1(a) or (b)
- The position that grievant was interviewed for was never posted in accordance with Rule 5.1(a) or (b)
- The position was not open to all applicants pursuant to Rule 5.2.
- The examination for the position was not in accordance with Rule 5.5, in that they were not constructed to reveal the capacity of the candidate for the position, and were not read impartially, and further selection was not made on the basis of the relative fitness of the applicants.
- The Rating of said examinations was not done in accordance with Rule 5.6.
- No seniority credit was applied as required by rule 5.7
- No notification was made of the status of the examination required by 5.9
- The vacancy was not filled by promotion in accordance with Rule 9.1 which states:
  (a) Vacancies in the classified service shall be filled by promotion whenever practical and in the best interest of the service. Promotions shall be based upon merit and shall be made in accordance with the procedures established in these Rules.

The State of Nebraska Civil Service Statutes, Neb. Rev. Stat. § 23-2525 were violated in the following respects:

- § 23-2525 (3) There were no open competitive examinations to test the relative fitness of applicants. There was no public announcement of the holding of examinations and shall authorize the personnel officer to prescribe examination procedures and to place the names of successful candidates on eligible lists in accordance with their respective ratings. The examinations were not scored objectively and employment registers were not established in the order of final score. The certification of eligibility for appointment to vacancies was not in accordance with a formula which limits selection by the hiring department from among the highest ranking available and eligible candidates.
- § 23-2525 (4) The grievant should have been considered for promotions which shall give appropriate consideration to examinations and to record of performance, seniority, and conduct. The vacancy was not filled by promotion of the grievant.

Mr. Carr and AFSCME Local 2468-Engineering would hereby request as a remedy, placement of Carr into the Sr. Operator position at the Davey yard, with back pay and benefits and a commitment by Lancaster County to abide by the Agreement, Personnel Rules and State Statutes.

Very truly yours,

JOY SHIFFERMILLER

JS/cl
cc: Larry Carr