February 18, 2016

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, March 3, 2016
9:30 a.m., Commissioners Hearing Room
County–City Building, Room 112

NOTE: SPECIAL MEETING TIME

A G E N D A

ITEM 1: Request for appeal hearing - Gerald Hauder - Corrections

ITEM 2: Request for appeal hearing - FOP #32 - Training Officer Pay

ITEM 3: Miscellaneous Discussion

pc: Mike Thurber
Gerald Hauder
Tom McCarty
Kristy Bauer

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CITY - COUNTY PERSONNEL
2015 OCT 22 AM 8 09

October 21, 2015

VIA HAND DELIVERY

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

RE: Corrections Officer Gerald M. Hauder and FOP #32; Appeal of Denial of Grievance

Dear Doug:

This firm represents Fraternal Order of Police Lodge #32, and Corrections Officer Gerald Hauder. On October 15, 2015, Corrections Director Mike Thurber denied the grievance of Officer Hauder, which I have attached hereto. Officer Hauder received the grievance reply on October 19, 2015.

Pursuant to the bargaining agreement between Lancaster County and FOP #32, Officer Hauder 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 within the time period specified in the governing collective bargaining agreement. Thank you.

Yours very truly,

Thomas P. McCarty
FOR THE FIRM

ENCLOSURE

Lois Osburn 9-28-15

IN RE GRIEVANCE OF FOP 32 ON BEHALF OF ALL MEMBERS IMPACTED; and GERALD HAUDER) September 28, 2015

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

FROM: Officer Gerald M. Hauder and Fraternal Order of Police Lodge #32

COME NOW Officer Gerald M. Hauder and Fraternal Order of Police Lodge #32 on behalf of all bargaining unit members affected, and for their grievance state as follows:

NATURE OF GRIEVANCE AND ACTS OF COMMISSION OR OMISSION GRIEVED:

Article 16 of the bargaining agreement between FOP #32 and the County governs the Department's voluntary overtime procedures. Under Article 16, Section 7, if the Department identifies an overtime need in advance and an officer voluntarily accepts the overtime, the officer must work the shift. Article 16, Section 7 further provides, "If the overtime is later not required, the Department will allow the officer to work a minimum of four (4) hours."

On Tuesday, September 22, 2015, Officer Gerald Hauder contacted his superior, Lt. Caulfield, to determine if there was any overtime work available for the following day, Wednesday, September 23, 2015. Lt. Caulfield advised Officer Hauder the Department needed overtime to be worked on the back half of second shift on September 23, 2015. Lt. Caulfield offered the shift to Officer Hauder, and Officer Hauder accepted.

On September 23, 2015, as Officer Hauder was preparing to go into work to cover the overtime shift, he was directed by Sgt. Goodman to not come to work because the overtime requirement no longer existed. The Department, therefore, denied Officer Hauder the ability to work a minimum of four (4) hours on September 23, 2015, in violation of Article 16, Section 7 of the Contract. The Department has further refused to pay Officer Hauder premium pay or compensatory time for the four (4) hours he was not permitted to work on September 23, 2015, in violation of Article 16, Section 7 and 8.

DATE OF ACTION GRIEVED: The FOP became aware of this action on or about September 24, 2015. Officer Hauder became aware of this action on or about September 22, 2015.

IDENTITY OF GRIEVING PARTIES: FOP #32 on behalf of all affected unit members. Officer Hauder on behalf of himself.

IDENTITY OF PERSONS ALLEGED TO HAVE CAUSED GRIEVANCE: Sgt. Goodman, Sgt. Shafer, Lt. Anderson, Lt. Caulfield and, upon information and belief, Director Michael Thurber and other unknown persons.

PROVISIONS OF AGREEMENT THAT WERE VIOLATED: Article 16's voluntary overtime provisions, including Sections 7 and 8.

REMEDY SOUGHT: The Department shall give full effect to Article 16, Section 7 of the bargaining agreement, and shall compensate Officer Hauder as if he had worked the minimum of four (4) hours he was barred from working on Wednesday, September 23, 2015. Officer Hauder shall have the option to accept compensatory time in lieu of overtime payment for such hours, in accordance with Article 16, Section 8.

Respectfully submitted this 28th day of September, 2015.

FOP #32, on behalf of its members, and Officer Gerald Hauder,

BY: _____

Thomas P. McCarty, Esq. (#24171)
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Attorney for the Grievants

Lancaster County
Department of Corrections

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Michael Thurber, Director

October 15, 2015

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

Re: Officer Gerald M. Hauder and FOP Lodge #32 Grievance received September 28, 2015

Dear Mr. McCarty:

This letter will serve as a response to a grievance dated September 28, 2015, regarding an alleged violation of Article 16, Section 7 of the FOP #32 Bargaining Agreement (the "Agreement"). Specifically, the grievance alleges that the Corrections Department denied Officer Hauder the ability to work a minimum of four (4) hours on September 23, 2015, in violation of Article 16, Section 7 of the Bargaining Agreement. The grievance further alleges the Department has refused to pay Officer Hauder premium pay or compensatory time for the four (4) hours he was not permitted to work on September 23, 2015, in violations of Article 16, Sections 7 and 8.

The facts that form the basis of Officer Hauder's grievance are as follows: On September 22, 2015, Officer Hauder asked his supervisor, Lt. Caulfield, if any overtime was available for the following day, September 23, 2015. At that time, there was an inmate at the hospital which had required a "two person post" (supervision by two correctional officers due to the inmate's behavior) for about a week. As a result of this ongoing hospital post, Lt. Caulfield offered Officer Hauder overtime on September 23, 2015, for a four (4) hour shift (6:45pm to 10:45pm). It is important to note that this shift was not posted in the AVOT book, as it was not an opening that was identified ten to fourteen days in advance. Rather, the overtime for September 23, 2015, developed on short notice as a result of the "two person post" at the hospital. On September 23, 2015, at approximately 1:00pm, the inmate was released from the hospital and returned to the jail. As a result, the "two person post" at the hospital was no longer needed and the overtime was cancelled. At the direction of Lt. Anderson, Sgt. Goodman contacted Officer Hauder at approximately 5:00pm, by phone, and informed Officer Hauder the overtime had been cancelled.

As a point of clarification, the Department utilizes three forms of overtime, Advance Voluntary Overtime (AVOT), Voluntary Overtime (VOT) and Mandatory Overtime (MOT). The Agreement also references these three types of overtime. Article 16, Section 5(B) addresses advance voluntary overtime (AVOT) and states in full:

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When an overtime requirement is identified in advance, the Department may post the opening and allow staff to sign up. The senior officer will be scheduled and expected to work the overtime. Officers completing a minimum of four (4) consecutive hours of voluntary time beyond their regular shift time will have their name moved to the top of the mandatory hold list.

AVOT are openings that are identified ten to fourteen days in advance. These openings are often the result of military leave, pre-planned vacations, open slots and so forth. AVOT openings are placed in the AVOT book fourteen days in advance and officers are allowed to sign up. Approximately 10 days in advance of the shift coverage needed, Sgt. Daryl Shafer reviews the AVOT Sign-up Sheet and awards the overtime based on seniority and the hours the officer is requesting to work. Once the correctional officer has been awarded the advance overtime, the Department must allow the officer to work a minimum of four (4) hours pursuant to Article 16, Section 7, which states, "if any overtime is offered as advance voluntary overtime and is approved, the officer is expected to work. If the overtime is later not required, the Department will allow the officer to work a minimum of four (4) hours." Section 7 is specific to advance voluntary overtime.

Article 16, Section 5(A) addresses voluntary overtime (VOT) and states in full:

When an overtime requirement develops, the overtime will be offered in the most prudent and expedient manner to persons who have expressed an interest in working overtime. Any officer may contact the supervisor arranging coverage and request to work any open slot.

The Department utilizes VOT for openings that haven't been covered by AVOT, either because a correctional officer did not sign up in advance or the opening is short term. These openings are often the result of needed coverage for a hospital post, funeral leave, short-notice vacation requests and so forth. With this type of overtime, the shift supervisors advertise an opening for the next shift or in some cases, advertise the opening one to three days out asking officers to contact a supervisor if the officer is interested in the opening. If a correctional officer volunteers for a VOT slot, the supervisor signs that officer up in the schedule book. There are no requirements concerning seniority, it is simply first come first serve. This VOT practice has been utilized by the Department since the late 1990's.

Article 16, Section 5(E) addresses mandatory overtime (MOT) and states in full:

When a mandatory overtime hold requirement develops, the slot will be covered by holding an officer over from the preceding shift. This will normally be the officer on the bottom of a rotating mandatory hold list.

The Department utilizes MOT when an open slot has not been covered voluntarily. These openings are mainly the result of a last minute sick call or when a correctional officer doesn't show up for a shift. Pursuant to Article 16, Section 5(E-G), the Department maintains a mandatory overtime list and the correctional officer at the bottom of the list who is currently working is held over to cover the open spot for the next shift. After working, the correctional officer's name is moved to the top of the list. With respect to the facts that form the basis of Officer Hauder's grievance, the four (4) hour slot on September 23, 2015, was not placed in the AVOT book, nor was the slot identified on an AVOT Sign-up Sheet. Rather, the open slot arose

as a result of a short-notice hospital post. It is the Department's position that Article 16, Section 7 does not control as Section 7 relates to overtime offered as advance voluntary overtime. Thus, the provision requiring the Department to allow an officer to work a minimum of four (4) hours is not applicable to the case at hand. The Department has always operated under the practice that the "advance overtime" provisions of Article 16, Section 5(B) and Section 7, apply only to the overtime awarded based upon the AVOT procedure, which is awarded at least ten days in advance of the open shift and based primarily on seniority and the hours the officer is requesting to work.

Outside of Article 16, Section 7, which requires the Department to allow an officer to work a minimum of four (4) hours once advance voluntary overtime is approved, there is nothing in the Agreement that restricts the Department from cancelling voluntary (VOT) or mandatory overtime (MOT). In fact, pursuant to Article 4, Section 2, 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." Implicit in these management rights is the Department's ability to set and determine minimum staffing levels. The cancellation of Officer Hauder's overtime shift on September 23, 2015, was based upon legitimate operating needs and minimum staffing needs determined by the Department. It did not violate Article 16, Section 7, of the Agreement as the overtime was not offered, nor approved as advance voluntary overtime.

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
Brad Johnson, Jail Administrator
Gerald Hauder, Correctional Officer
Personnel File

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June 29, 2015

VIA HAND DELIVERY

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

RE: Fraternal Order of Police #32 Grievance dated June 10, 2015

Dear Doug:

This firm represents Fraternal Order of Police Lodge #32 (hereinafter "Grievant"). On June 22, 2015, Corrections Director Mike Thurber denied the grievance of Grievant, which I have attached hereto. Grievant received the grievance reply on June 25, 2015.

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

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

Yours very truly,

Thomas P. McCarty
FOR THE FIRM

ENCLOSURE

Lancaster County
Department of Corrections

3801 West O Street
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Michael Thurber, Director

June 22, 2015

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

Re: FOP Lodge #32 Grievance received June 10, 2015

Dear Mr. Young:

This letter will serve as a response to a grievance dated June 10, 2015, regarding the allegation that the Corrections Department has created a new special assignment, to wit: "Training Officer." Specifically, FOP #32 alleges that the Department's creation of the "Training Officer" assignment occurred in or about May 2015, and the Department permits the "Training Officers" to be exempt from the shift bidding process found in Article 17 of the 2014-2016 Bargaining Agreement between the Fraternal Order of Police, Lodge 32 and Lancaster County (FOP Agreement).

As a point of clarification, there is not currently a special assignment of "Training Officer" within the Corrections Department. All correctional officers, excepting those correctional officers assigned to Property Sanitation Officer, Transport Officer, and Classifications Officer, participated in the most recent shift bid conducted on March 10, 2015. Once the shift bid results went into effect on April 2, 2015, one officer per shift (2nd and 3rd shifts) was selected to assist in the training of other officers on those shifts. These two officers may assist in the training of new officers, or may assist in refreshing the skills of senior officers when they bid into a shift they have not worked for quite some time. Again, the two officers that were selected to assist in training participated in the most recent shift bid; therefore, there is no violation of Article 17 of the Bargaining Agreement. These officers were not exempted from the shift bidding process as alleged in FOP #32's grievance.

Additionally, it should be noted that the 2nd shift officer selected to assist in training began working with new officers on April 7, 2015. The 3rd shift officer selected to assist in training began working with new officers on April 10, 2015. Article 8, Section 1, Step 1, of the FOP 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." FOP #32 should have been aware that these officers were selected to assist in training in early April 2015. As such, it is beyond the time limit set forth in the FOP Agreement to grieve said incident.

Finally, management has the right to schedule and assign work pursuant to Article 4 of the Bargaining Agreement. The officers who were selected to assist in the training of other officers on their shifts were assigned such work, much like management assigns other post positions such as lobby officer, booking officer, module officer, and so forth. In fact, the duty to train other officers is encompassed within the Correctional Officer Position Description as follows: "participates in departmental training as an instructor or with the orientation of new officers" (see "Miscellaneous" Function #5(D)).

JUN 25 2015

In conclusion, I must deny the grievance as the grievance was not timely filed pursuant to Article 8 of the Bargaining Agreement, and the two officers who were selected to assist in training on their shifts did in fact participate in the shift bidding process pursuant to Article 17 of the Bargaining Agreement. Furthermore, management has the right to assign an officer to complete a task or duty while on shift.

Sincerely,

Michael Thurber
Corrections Director

MT/lo

Cc: Doug McDaniel, Human Resources Director
Kristy Bauer, Deputy County Attorney
Brad Johnson, Jail Administrator

IN RE GRIEVANCE OF FOP 32 ON BEHALF OF ALL MEMBERS IMPACTED;) June 10, 2015
)
)

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

FROM: Fraternal Order of Police Lodge #32

COME NOW Fraternal Order of Police Lodge #32 on behalf of all bargaining unit members affected, and for its grievance states as follows:

NATURE OF GRIEVANCE AND ACTS OF COMMISSION OR OMISSION GRIEVED:

Under Article 17, Section 1 of the collective bargaining agreement between FOP #32 and the County, "[a]ll operations shift positions held by correctional officers will be open for bid on a semi-annual basis." Article 17 contains various provisions regarding shift-bidding procedures and requirements. Article 17, Section 2, however, provides that "[t]he Department reserves the right to assign Correctional Officers to Property Sanitation Officer, Transport Officer and Classification Officer." These special assignments—Property Sanitation Officer, Transport Officer, and Classification Officer—are not subject to the shift-bid procedures contained in Article 17. The contract bars the Department from creating additional special assignments and from exempting assignments other than those contained in Article 17, Section 2 from the shift bidding procedures contained in Article 17.

The Department, in or about May 2015, created the new special assignment of "Training Officer" and has not required shift bidding for the assignment. The Department's expansion of the special assignments that are not subject to Article 17's shift bidding requirements is a violation of Article 17 of the contract between FOP #32 and the County.

DATE OF ACTION GRIEVED: The Department's creation of the "Training Officer" assignment occurred in or about May 2015. The Department continues to violate Article 17 every day (through the Present) in which it permits the "Training Officers" to be exempt from the shift bidding process in Article 17.

IDENTITY OF GRIEVING PARTIES: FOP #32 on behalf of all affected unit members.

IDENTITY OF PERSONS ALLEGED
TO HAVE CAUSED GRIEVANCE: Michael Thurber and, upon information and belief, other unknown parties.

PROVISIONS OF AGREEMENT
THAT WERE VIOLATED: Article 17.

REMEDY SOUGHT: The Department shall cease and desist from exempting "Training Officers" from the shift bidding procedures contained in Article 17 of the contract, or creating any other special assignments exempt from shift bidding except those contained in Article 17, Section 2 of the contract between FOP #32 and the County.

Respectfully submitted this 10th day of June, 2015.

FOP #32, on behalf of its members.

BY: _____

Gary L. Young, Esq. (#20817)
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Attorney for the Grievants

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