

July 7, 2023

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, July 13, 2023
1:00 p.m., Commissioners Hearing Room
County-City Building, Room 112

NOTE: Special Meeting Date & Time

A G E N D A

ITEM 1: Approval of Minutes from the June 1, 2023 meeting.

ITEM 2: Request to revise the following classification:

<u>CLASS</u>	<u>CLASS TITLE</u>
<u>CODE</u>	
2850	Accounting Operations Manager (C21)

ITEM 3: Request for appeal hearing FOP #32 – Justin Braunsroth – FMLA - Corrections.

ITEM 4: Request for appeal hearing FOP #32 – Joseph Grothe – FMLA - Corrections.

ITEM 5: Miscellaneous Discussion

pc: Matt Hansen
Kristy Bauer
Barb McIntyre
Brad Johnson
Tom McCarty
Ashley Bohnet
Justin Braunsroth
Joseph Grothe

LANCASTER COUNTY
ACCOUNTING OPERATIONS MANAGER

2850

NATURE OF WORK

This is ~~responsible~~ administrative and professional work directing county-wide ~~operations accounting functions conducted by the Lancaster County Clerk's Office, including the automated financial and payroll systems. County~~ which includes budgeting, regulatory compliance, disbursement and receipt of funds, auditing, maintenance of financial software and cash management activities.

Work involves oversight responsibility for the preparation of and reviewing of accounting entries ~~and the preparation of accrual based and modified accrual based accounting entries including designing and managing systems to compile, synthesize and analyze financial data and reports.~~ Work also involves acting as an internal liaison with ~~accounting, clerical, and managerial~~ personnel across County departments to assist in ~~resolution of~~ operational budgeting ~~and~~; accounting ~~processes or payroll problems.~~ Supervision is exercised over subordinate accounting personnel involved in the operation of the ~~automated financial and payroll systems accounting functions.~~ Work is performed under the general supervision of the County Clerk with work reviewed in the form of system expansion, employee development and compliance with department, State and Federal guidelines and regulations. Work also involves ensuring compliance with local, State and Federal regulations. Work requires independent judgement on accounting procedures and is performed under the general supervision of the County Clerk.

EXAMPLES OF WORK PERFORMED

~~Design and implement~~ Oversee information systems which compile, ~~synthesize,~~ and analyze data from vouchers, ledgers, journals, ~~and other sources computer printouts, files and/or microfiche~~ to prepare reports and to evaluate data for administrative planning, budgeting, and decision making; compile, ~~synthesize~~ and analyze data to calculate tax levies for political subdivisions in Lancaster County; maintain and recommend enhancements to the financial ~~and payroll system~~ computer applications including requirements for input documents, processing controls, and output reports; research errors, reported compliance issues and reconciliation problems.

~~Develop annual budget for the office of the County Clerk; a~~ Assist in preparing fiscal notes for the County budget; audit county expenditures to ensure maintenance of proper financial controls in accordance with budgetary authorization and established policies; coordinate external audit proceedings and special year-end/interim processing, balancing and reporting; present expense documentation to County Board for review and approval.

Plan, assign, supervise and evaluate the work performed by subordinate accounting personnel; provide education, training and reinforcement in the support of employees' work performance; coordinate office work flow and work process improvement efforts; monitor daily financial operations; review system reports and automation processes for quality, completeness and efficiency.

Develop objectives, procedures and policies governing the management of revenues and expenditures in accordance with the principles of governmental accounting, and relevant State and Federal regulations and statutes; explore and plan financial and accounting information system improvements through community, professional and civic contact and associations; monitor changes to

and interpret appropriate Federal and State laws, rules, regulations, and standards to ensure County compliance and efficient work operations.

Act as County liaison to assist with automated ~~payroll~~, accounting and operational budgeting problems; advise county personnel concerning system inquiries and provide professional guidance in the resolution of referred problems.

Respond to appropriate public records requests and develop and implement other methods for contributing to transparency, including creating reports and graphics to share with the public and other departments.

DESIRABLE KNOWLEDGE, ABILITIES AND SKILLS

Considerable knowledge of current governmental budgeting and professional accounting principles, methods, and practices.

Considerable knowledge of evolving data management systems, automated financial ~~and payroll~~ systems and their application to relevant governmental operations.

Knowledge of auditing techniques and concepts.

Ability to plan, supervise and evaluate the work of subordinate employees including the ability to promote professional development of those relevant employees ~~work attributes~~.

Ability to establish and maintain effective working relationships with County ~~legislative~~ and community officials, co-workers and the general public.

Ability to communicate effectively both orally and in writing.

Ability to incorporate ~~changing legislative mandates~~ changes such as new legislation into current fiscal and office data management systems and processes.

Ability to define, evaluate and develop recommendations and courses of action to accommodate planned and evolving organizational changes and demands.

MINIMUM QUALIFICATIONS

Graduation from an accredited four-year college or university with coursework in accounting, ~~finance, computer science~~, business or public administration or related field and ~~two~~ three years of experience working with governmental accounting or auditing procedures ~~an automated financial system including six months of supervisory experience~~ or any equivalent combination of training and experience that provides the desirable knowledge, abilities and skills.

Revised 6/007/23

KEATING | O'GARA

KEATING
O'GARA
NEDVED
& PETER
PC, LLO

Gary J. Nedved

Joel D. Nelson

Brenna M. Grasz

Paul J. Peter

Joel Bacon

Alyssa R. Slama

Anne E. Winner

Thomas P. McCarty

Remington S. Slama

Jefferson Downing

Tara L. Gardner-Williams

Milissa D. Johnson-Wiles

Gary L. Young

OF COUNSEL:

Doug Peterson

EMERITI:

Con M. Keating

Robert M. O'Gara

February 22, 2023

Barb McIntyre
Lancaster County Human Resources Director
555 South 10th Street
Lincoln, NE 68508
bmcintyre@lincoln.ne.gov

RE: FOP #32 Appeal of Grievance Denial

Dear Ms. McIntyre:

On February 7, 2023, FOP #32 filed a grievance on regarding the County's violations of Personnel Policy Bulletin 2009-1 (February 2009), as amended December 6, 2022. A true and correct copy of the Grievance is attached hereto. On or about February 22, 2023, Director Brad Johnson denied the grievance. A true and correct copy of Director Johnson's Grievance denial is attached hereto. Director Johnson's denial does not challenge the underlying facts alleged in the Grievance.

FOP #32 hereby appeals Director Johnson's denial of said Grievance to the Lancaster County Personnel Policy Board in accordance with Step 2 of the grievance procedure set forth in the bargaining agreement between FOP #32 and Lancaster County and the Lancaster County Personnel Rules.

Very truly yours,

/s/Thomas P. McCarty

Thomas P. McCarty

FOR THE FIRM

CC: Ashley Bohnet, Deputy Lancaster County Attorney

Keating, O'Gara, Nedved & Peter, PC, LLO

P.O. Box 82248 • Lincoln NE 68501-2248

PHONE: 402.475.8230 • TOLL FREE: 888.234.0621

FAX: 402.475.8328 • www.keatinglaw.com

IN RE GRIEVANCE OF FOP 32 ON BEHALF)
OF ALL BARGAINING UNIT MEMBERS, INCLUDING)
JUSTIN BRAUNSROTH.)

February 7, 2023

TO: Brad Johnson, or his designated representative

FROM: Fraternal Order of Police Lodge #32, on behalf of all bargaining unit members impacted, including Officer Justin Braunsroth

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

NATURE OF GRIEVANCE AND ACTS OF COMMISSION OR OMISSION GRIEVED:

Under the Family and Medical Leave Act (FMLA), fathers are permitted to take up to 12 weeks of leave over a 12-month period for the purpose of bonding with their newborn child. Lancaster County Personnel Policy Bulletin 2009-1 (February 2009) states that 12 weeks of FMLA leave may be granted “[f]or the birth and care of a newborn child of the employee,” and “FMLA **will be counted concurrently with other paid leaves (sick leave, personal holidays, vacation, injury leave, workers’ compensation leave and/or catastrophic leaves. Therefore, the 12 weeks of leave will be paid to the extent the employee has other paid leaves available.**” (emphasis added).

On or about December 6, 2022, the Lancaster County Board adopted revisions to Personnel Policy Bulletin 2009-1, which, among other things, similarly stated “Accrued sick leave may be used for any FMLA-qualifying events.” The County Board indicated the amendments to Personnel Policy Bulletin 2009-1 would go into effect February 1, 2023. Therefore, under both Personnel Policy 2009-1, and the December 6, 2022 amendments thereto, employees are permitted to use sick leave to bond with their newborn children.

On or about January 20, 2023, Officer Braunsroth’s spouse gave birth to their infant son. On or about January 20, 2023, Officer Braunsroth followed up with County Leave Manager Shannon Anderson to determine how he needed to code his leave from on or about January 20, 2023 through February 13, 2023. Ms. Anderson replied that if Officer Braunsroth wanted to use sick leave prior to February 1, 2023, Officer Braunsroth would need a doctor’s certification stating that his use of sick leave was necessary to care for his spouse, and such time would be subject to the FOP #32 CBA’s 56-hour family sick leave cap. Ms. Anderson also stated that, after February 1, 2023, Officer Braunsroth was free to use sick leave for bonding time, and this would not be subject to the 56-hour cap. A true and correct copy of the email Ms. Anderson sent to Officer Braunsroth is attached hereto. Officer Braunsroth relied upon Ms. Anderson’s email to code his time off and plan his paid time off work.

On or about January 31, 2023, the County Board purported to “rescind” *all* modifications it made to Personnel Policy Bulletin 2009-1 on December 6, 2022, including the language modification set forth above (“Accrued sick leave may be used for any FMLA-qualifying events.”).¹ The rescission of the December 6, 2023 amendment

¹ To be sure, in separate litigation, FOP #32 has requested the District Court to declare revisions to the 12-week FMLA period calculation in the December 6, 2022 amendments void. FOP #32 did *not* request the District Court to deem any other provisions of the December 6, 2022 amendments void. The County has unilaterally rescinded *all*

at issue in this case was not requested in litigation, decreed by a District Court, or first proposed to the Lancaster County Personnel Policy Board. FOP #32 was also not given notice of the intended rescission and an opportunity to appear before the Personnel Policy Board. Therefore, the purported revision of the December 6, 2022 language modification referenced above is void as violative of Neb. Rev. Stat. § 23-2525.

Furthermore, Officer Braunsroth detrimentally relied upon the County's representations regarding how he could use leave to bond with his child, and the County should be estopped from altering course in the middle of Officer Braunsroth's leave.

Finally, Officer Braunsroth's ability to use sick leave for bonding time is permitted under Personnel Policy Bulletin 2009-1. Therefore, Officer Braunsroth is entitled to use sick leave to bond with his child under Personnel Policy Bulletin 2009-1 (February 2009) as well as the December 6, 2022 amendments thereto.

DATE OF ACTION GRIEVED: FOP #32 became aware of this action on or about January 31, 2023.

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

IDENTITY OF PERSONS ALLEGED TO HAVE CAUSED GRIEVANCE: County Leave Manager Shannon Anderson, County Human Resources personnel, County Board, and other unknown persons.

PROVISIONS OF AGREEMENT, COUNTY POLICY, OR CONDITIONS OF EMPLOYMENT THAT WERE VIOLATED:

Personnel Policy Bulletin 2009-1 (February 2009), and the County Board's December 6, 2022 amendments thereto ("Accrued sick leave may be used for any FMLA-qualifying events.).

REMEDY SOUGHT:

Officer Braunsroth shall be permitted to use sick leave for bonding with his newborn child, both before and after February 1, 2023, in accordance with Personnel Policy Bulletin 2009-1 (February 2009) and the relevant December 6, 2023 amendment thereto. Said bonding time shall not be counted against Officer Braunsroth's 56-hour family leave cap.

Respectfully submitted this 7TH February, 2023.

December 6, 2022 changes without those changes first being proposed by the Personnel Policy Board.

FOP #32, on behalf of its all affected members of the bargaining unit, including Officer Braunsroth.

BY: /s/Thomas P. McCarty
Thomas P. McCarty, Esq. (#24171)
Keating, O'Gara, Nedved & Peter, P.C.
530 South 13th Street, Suite 100
Lincoln, NE 68508
Ph: (402) 475-8230
Fax: (402) 475-8328

Attorney for the Grievants

From: "Shannon M. Anderson" <SMAnderson@lincoln.ne.gov>
To: "justin.Braunsroth@yahoo.com" <justin.Braunsroth@yahoo.com>
Sent: Mon, Jan 23, 2023 at 2:00 PM
Subject: Follow-up to your FMLA questions today

Good Afternoon, Justin:

As promised, I said I would visit with a colleague about your questions. I understand that you will be filing for FMLA. You told me in our phone conversation this morning that you intend to file for FMLA for the care of a family member and obtain a medical certification from your wife's doctor regarding her need for your care. Her medical provider will need to provide documentation and information regarding the care you will provide to her. If appropriate, you would be able to use up to 56 hours of family sick leave for this care. You also said you wanted to apply for FMLA coverage for bonding with your newborn. A reminder that your leave would be under the same rules and regulations set forth by the Department of Corrections and Human Resources until the amended FMLA bulleting goes into effect, February 1, 2023. Once that amended bulletin is in effect, the leave request for FMLA-approved bonding would be subject to the terms of the new policy, which does state that 'accrued sick leave may be used for any FMLA-qualifying events.' Bonding would be considered a FMLA-qualifying event under that amended bulletin.

I have attached two forms relevant to your request. You may request both on the Notice of Eligibility and Rights and Responsibilities form. Please be certain to fill out your leave on the Request form.

Justin, if you have any questions, please let me know.

Sincerely,

Shannon

ATTACHMENT A

Lancaster County

Department of Corrections

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

Brad Johnson, Director

February 22, 2023

Tom McCarty
Keating, O'Gara, Nedved & Peter, P.C.
200 S. 21st Street, Suite 400
Lincoln, NE 68510

RE: IN RE GRIEVANCE OF FOP 32, INCLUDING JUSTIN BRAUNSROTH

Dear Mr. McCarty:

This letter will serve as a response to the grievance received February 7, 2023, regarding an alleged violation of Personnel Policy Bulletin 2009-1 by not allowing the use of sick leave to bond with a newborn child.

The grievance provides the facts as follows: On or about January 20, 2023, Officer Justin Braunsroth's spouse gave birth to their infant son. On or about that date, Officer Braunsroth followed up with County Leave Manager Shannon Anderson regarding his Family Medical Leave Act (FMLA) leave. Ms. Anderson told Officer Braunsroth that he would be able to use up to 56 hours of family sick leave for his wife's care if there was medical documentation and if it was appropriate. She stated that once the amended bulletin went into effect¹, his leave would be subject to the new policy, which included that 'accrued sick leave may be used for any FMLA-qualifying event.'

Personnel Policy Bulletin 2009-1 states that "FMLA leave will be counted concurrently with other paid leaves (sick leave, personal holidays, vacation, injury leave, workers' compensation leave and/or catastrophic leave). Therefore, the 12 weeks of leave will be paid to the extent the employee has other paid leaves available. After **all applicable paid leaves** are exhausted, any remaining FMLA leave will be unpaid." (emphasis added).

Sick leave is only to be used for sickness, family illness, personal and family medical appointments, injury, disability, or funeral leave as outlined in [the Personnel Policy] Rules and for **no other purpose.**" Personnel Policy Rule 19.3. (emphasis added). FOP #32 Bargaining Agreement also reiterates under Article 12, Section 5(A) that sick leave is "**only to be used** for sickness, family illness, personal and family medical appointments, injury, or disability as outlined in this article **and for no other purpose.**" (emphasis added). FOP #32 Bargaining Agreement limits family sick leave to fifty-six (56) hours per calendar year under Article 12, Section 5(C) and states that under "no circumstances can an employee use more than a total of fifty-six (56) hours for family medical appointments or illness in the immediate family."

¹ Grievant states that Ms. Anderson stated that Officer Braunsroth could use sick leave after February 1, 2023. Ms. Shannon actually stated that Officer Braunsroth was subject to the current bulletin until the amended bulletin went into effect. Once that amended bulletin was in effect, the leave for bonding would be subject to the amended bulletin.

Furthermore, Personnel Policy Bulletin 2009-1 does not allow for employees to use sick leave for bonding purposes.

Personnel Policy Bulletin 2009-1 does not override the ability to only use sick leave for sickness, family illness or medical appointments and a FMLA-approved parental leave to bond with a child is not an illness or a medical appointment.

It is well established past practice that Lancaster County and the Department of Corrections allows for individuals to use sick leave while out on FMLA leave if the employee is sick or injured. Employees are not allowed to use sick leave for bonding; employees are to use applicable and appropriate leave for bonding, including vacation and personal holidays.

The grievance also mentions amendments to Personnel Policy Bulletin 2009-1, referring to those as the December 6, 2022 amendments. There were no amendments that went into effect on December 6, 2022. There was an announcement sent to County employees regarding an amended bulletin to Personnel Policy Bulletin 2009-1 set to take effect on February 1, 2023. That amended bulletin was rescinded prior to going into effect. That amended bulletin did have broader language regarding sick leave and did state that 'accrued sick leave may be used for any FMLA-qualifying events' but the grievant has not been subject to the terms of that amended bulletin.

An employee is permitted to twelve weeks of leave without pay to bond with his or her newborn child under the FMLA. Lancaster County does require an employee to take appropriate leave concurrently with that FMLA leave. In this case, Officer Braunsroth was permitted to use 56 hours of family sick leave to care for his wife after her pregnancy. He was also permitted to use vacation, personal holidays, or other time to bond with his newborn child. He was not permitted to use sick leave for bonding purposes. The Department did not violate Personnel Policy Bulletin 2009-1. For these reasons, the grievance is denied.

Sincerely,

A handwritten signature in blue ink that reads "Brad Johnson". The signature is written in a cursive, flowing style.

Brad Johnson
Corrections Director

cc: Barb McIntyre, Human Resources Director
Ashley J. Bohnet, Deputy County Attorney

KEATING | O'GARA

Gary J. Nedved	Joel D. Nelson	Brenna M. Grasz	OF COUNSEL:
Paul J. Peter	Joel Bacon	Alyssa R. Slama	Doug Peterson
Anne E. Winner	Thomas P. McCarty	Remington S. Slama	EMERITI:
Jefferson Downing	Tara L. Gardner-Williams	Milissa D. Johnson-Wiles	Con M. Keating
Gary L. Young			Robert M. O'Gara

March 9, 2023

Barb McIntyre
Lancaster County Human Resources Director
555 South 10th Street
Lincoln, NE 68508
bmcintyre@lincoln.ne.gov

RE: FOP #32 Appeal of Grievance Denial

Dear Ms. McIntyre:

On February 21, 2023, FOP #32 filed a grievance on regarding the County's violations of Personnel Policy Bulletin 2009-1 (February 2009), and as amended December 6, 2022. A true and correct copy of the Grievance is attached hereto. On or about March 9, 2023, Director Brad Johnson denied the grievance. A true and correct copy of Director Johnson's Grievance denial is attached hereto. Director Johnson's denial does not challenge the underlying facts alleged in the Grievance.

FOP #32 hereby appeals Director Johnson's denial of said Grievance to the Lancaster County Personnel Policy Board in accordance with Step 2 of the grievance procedure set forth in the bargaining agreement between FOP #32 and Lancaster County and the Lancaster County Personnel Rules.

Very truly yours,

/s/Thomas P. McCarty

Thomas P. McCarty

FOR THE FIRM

CC: Ashley Bohnet, Deputy Lancaster County Attorney

IN RE GRIEVANCE OF FOP 32 ON BEHALF)
OF ALL BARGAINING UNIT MEMBERS, INCLUDING)
JOSEPH GROTHE)

February 21, 2023

TO: Brad Johnson, or his designated representative

FROM: Fraternal Order of Police Lodge #32, on behalf of all bargaining unit members impacted, including Officer Joseph Grothe

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

NATURE OF GRIEVANCE AND ACTS OF COMMISSION OR OMISSION GRIEVED:

Under the Family and Medical Leave Act (FMLA), fathers are permitted to take up to 12 weeks of leave over a 12-month period for the purpose of bonding with their newborn child. Lancaster County Personnel Policy Bulletin 2009-1 (February 2009) states that 12 weeks of FMLA leave may be granted “[f]or the birth and care of a newborn child of the employee,” and “FMLA **will be counted concurrently with other paid leaves (sick leave, personal holidays, vacation, injury leave, workers’ compensation leave and/or catastrophic leaves. Therefore, the 12 weeks of leave will be paid to the extent the employee has other paid leaves available.**” (emphasis added).

On or about December 6, 2022, the Lancaster County Board adopted revisions to Personnel Policy Bulletin 2009-1, which, among other things, similarly stated “Accrued sick leave may be used for any FMLA-qualifying events.” The County Board indicated the amendments to Personnel Policy Bulletin 2009-1 would go into effect February 1, 2023. Therefore, under both Personnel Policy 2009-1, and the December 6, 2022 amendments thereto, employees are permitted to use sick leave to bond with their newborn children.

On or about January 31, 2023, the County Board purported to “rescind” *all* modifications it made to Personnel Policy Bulletin 2009-1 on December 6, 2022, including the language modification set forth above (“Accrued sick leave may be used for any FMLA-qualifying events.”).¹ The rescission of the December 6, 2023 amendment at issue in this case was not requested in litigation, decreed by a District Court, or first proposed to the Lancaster County Personnel Policy Board. FOP #32 was also not given notice of the intended rescission and an opportunity to appear before the Personnel Policy Board. Therefore, the purported revision of the December 6, 2022 language modification referenced above is void as violative of Neb. Rev. Stat. § 23-2525.

On or about February 14, 2023, Officer Grothe’s spouse gave birth to their infant twins. On or about February 10, 2023, Officer Grothe spoke with Elisha Havick about using sick leave to bond with his twins. Ms. Havick explained that sick leave could not be used for bonding with his twins; instead, Officer Grothe would need to use vacation, compensatory time, or personal holiday leave for bonding. Alternatively, Officer Grothe would need to get a doctor’s certification to care for his wife and/or twins, which would

¹ In separate litigation, FOP #32 has requested the District Court to declare revisions to the 12-week FMLA period calculation in the December 6, 2022 amendments void. FOP #32 did *not* request the District Court to deem any other provisions of the December 6, 2022 amendments void. The County has unilaterally rescinded *all* December 6, 2022 changes without those changes first being proposed by the Personnel Policy Board.

be counted against his 56-hour family sick leave cap. An unknown representative from the County HR department also called Officer Grothe and explained that he would need to use vacation, compensatory time, or personal holiday leave to cover bonding time. While Officer Grothe has built a sizeable sick leave bank, he has fewer vacation, compensatory, and personal holiday leave hours available.

Officer Grothe's ability to use sick leave for bonding time is permitted under Personnel Policy Bulletin 2009-1. Therefore, Officer Grothe is entitled to use sick leave to bond with his child under Personnel Policy Bulletin 2009-1 (February 2009) as well as the December 6, 2022 amendments thereto.

DATE OF ACTION GRIEVED: FOP #32 became aware of this action on or about January 31, 2023 and February 10, 2023.

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

IDENTITY OF PERSONS ALLEGED TO HAVE CAUSED GRIEVANCE: County Human Resources personnel, County Board, Elisha Havick, and other unknown persons.

PROVISIONS OF AGREEMENT, COUNTY POLICY, OR CONDITIONS OF EMPLOYMENT THAT WERE VIOLATED:

Personnel Policy Bulletin 2009-1 (February 2009), and the County Board's December 6, 2022 amendments thereto ("Accrued sick leave may be used for any FMLA-qualifying events.").

REMEDY SOUGHT:

Officer Grothe shall be permitted to use sick leave for bonding with his newborn child, both before and after February 1, 2023, in accordance with Personnel Policy Bulletin 2009-1 (February 2009) and the relevant December 6, 2023 amendment thereto. Said bonding time shall not be counted against Officer Grothe's 56-hour family leave cap, nor shall Officer Grothe be required to use vacation, compensatory time, or personal holiday hours to cover bonding time.

Respectfully submitted this 21st day of February, 2023.

FOP #32, on behalf of its all affected members of the bargaining unit, including Officer Grothe.

BY: /s/Thomas P. McCarty
Thomas P. McCarty, Esq. (#24171)
Keating, O'Gara, Nedved & Peter, P.C.
530 South 13th Street, Suite 100
Lincoln, NE 68508
Ph: (402) 475-8230
Fax: (402) 475-8328

Attorney for the Grievants

Lancaster County

Department of Corrections

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

Brad Johnson, Director

March 9, 2023

Tom McCarty
Keating, O'Gara, Nedved & Peter, P.C.
200 S. 21st Street, Suite 400
Lincoln, NE 68510

RE: IN RE GRIEVANCE OF FOP 32, INCLUDING JOSEPH GROTHE

Dear Mr. McCarty:

This letter will serve as a response to the grievance received February 21, 2023, regarding an alleged violation of Personnel Policy Bulletin 2009-1 by not allowing the use of sick leave to bond with a newborn child.

The grievance provides the facts as follows: On or about February 14, 2023, Officer Joseph Grothe's spouse gave birth to their infant twins. Prior to that date, Officer Grothe spoke with Elisha Havick about using sick leave to bond with the twins. Ms. Havick explained that sick leave could not be used for bonding with his twins. Instead, he would need to use vacation, compensatory time, or personal holiday leave for bonding.

Personnel Policy Bulletin 2009-1 states that "FMLA leave will be counted concurrently with other paid leaves (sick leave, personal holidays, vacation, injury leave, workers' compensation leave and/or catastrophic leave). Therefore, the 12 weeks of leave will be paid to the extent the employee has other paid leaves available. After **all applicable paid leaves** are exhausted, any remaining FMLA leave will be unpaid." (emphasis added).

Sick leave is only to be used for sickness, family illness, personal and family medical appointments, injury, disability, or funeral leave as outlined in [the Personnel Policy] Rules and for **no other purpose.**" Personnel Policy Rule 19.3. (emphasis added). FOP #32 Bargaining Agreement also reiterates under Article 12, Section 5(A) that sick leave is "**only to be used** for sickness, family illness, personal and family medical appointments, injury, or disability as outlined in this article **and for no other purpose.**" (emphasis added). FOP #32 Bargaining Agreement limits family sick leave to fifty-six (56) hours per calendar year under Article 12, Section 5(C) and states that under "no circumstances can an employee use more than a total of fifty-six (56) hours for family medical appointments or illness in the immediate family." Furthermore, Personnel Policy Bulletin 2009-1 does not allow for employees to use sick leave for bonding purposes.

Personnel Policy Bulletin 2009-1 does not override the ability to only use sick leave for sickness, family illness or medical appointments and a FMLA-approved parental leave to bond with a child is not an illness or a medical appointment.

It is well established past practice that Lancaster County and the Department of Corrections allows for individuals to use sick leave while out on FMLA leave if the employee is sick or injured. Employees are not allowed to use sick leave for bonding; employees are to use applicable and appropriate leave for bonding, including vacation and personal holidays.

The grievance also mentions amendments to Personnel Policy Bulletin 2009-1, referring to those as the December 6, 2022 amendments. There were no amendments that went into effect on December 6, 2022. An amended bulletin was passed by the County Board, set to take effect on February 1, 2023. That amended bulletin was rescinded prior to going into effect and employees were notified by Human Resources on January 31, 2023, that the proposed FMLA changes were not being implemented. That amended bulletin did have broader language regarding sick leave and did state that 'accrued sick leave may be used for any FMLA-qualifying events' but the grievant has not been subject to the terms of that amended bulletin.

An employee is permitted to twelve weeks of leave without pay to bond with his or her newborn child under the FMLA. Lancaster County does require an employee to take appropriate leave concurrently with that FMLA leave. In this case, Officer Grothe was permitted to use up to 56 hours of family sick leave to care for his wife after her pregnancy or to care for his children. He was also permitted to use vacation, personal holidays, or other time to bond with his newborn children. He was not permitted to use sick leave for bonding purposes. The Department did not violate Personnel Policy Bulletin 2009-1. For these reasons, the grievance is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Johnson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Brad Johnson
Corrections Director

cc: Barb McIntyre, Human Resources Director
Ashley J. Bohnet, Deputy County Attorney