

July 19, 2024

TO: City of Lincoln Personnel Board Members

SUBJECT: Personnel Board Meeting  
Friday, July 26, 2024  
1:30 p.m., Council Chambers  
County-City Building

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|-----------------------|
| NOTE: Special<br>Date |
|-----------------------|

### **AGENDA**

- ITEM 1: Approval of Minutes from the June 18, 2024 meeting.
- ITEM 2: Review and adoption of the updated guidance on personnel board hearings
- ITEM 3: Public Comment
- ITEM 4: Miscellaneous Discussion
- End of Open Meeting
- ITEM 5: Request for appeal hearing – PAGE – Health Department – Molly Johnson - PPL.
- PC: City Directors  
City Clerk  
Union Presidents  
Molly Johnson

### **ACCOMMODATION NOTICE**

*The City of Lincoln complies with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 guidelines. Ensuring the public's access to and participating in public meetings is a priority for the City of Lincoln. In the event you are in need of a reasonable accommodation in order to attend or participate in a public meeting conducted by the City of Lincoln, please contact the Lincoln Commission on Human Rights, at 402 441-7624, or the City Ombudsman at 402-441-7511 as soon as possible before the scheduled meeting date in order to make your request.*



LINCOLN

## **PROCEDURES REGARDING SUBPOENAS FOR CITY OF LINCOLN PERSONNEL BOARD MATTERS**

The City Personnel Board shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books and records as provided in Article IX-A of the City Charter and §2.76.055 of the Lincoln Municipal Code.

Upon written request to the secretary of the Board (Human Resources Director) by the City, a grievant, appellant or of the parties' attorney of record, the secretary shall cause to be prepared a subpoena to be issued by the Board Chair or Vice Chair directing the attendance of the named witnesses or the production of books and records.

Grievants, appellants, the City, and their attorneys of record are encouraged to have as many of their necessary witnesses attend matters before the Board on a voluntary basis. In the event a City employee is compelled to attend a hearing before the Board in response to a subpoena, on behalf of the grievant or appellant, such employee shall receive their regular wages for all hours in attendance at a hearing which correspond to the employee's normal work schedule and workday.

No written request for the preparation or issuance of a subpoena shall be honored unless such written request is received by the secretary not less than 6 calendar days prior to the date upon which the matter is to be heard by the Board.

Service of subpoenas shall be in strict accordance with Nebraska Revised Statutes §25-1223 and §25-1226 except that the subpoena shall be served not less than 48 hours prior to the commencement of the City Personnel Board meeting. Please note that the LCEA bargaining agreement states in Article 9, Section 4 "The parties shall not be required to serve subpoenas by the process set out in statute, but may serve them in person or by first class U.S. mail."

All costs associated with the preparation, issuance and service of a subpoena shall be borne by the requesting party. The City Personnel Board shall not be liable for any fees or costs associated with the preparation, issuance or service of a subpoena compelling the attendance of any witnesses or the production of books and records for purposes of conducting any hearing or investigation by the City Personnel Board.



LINCOLN

## PERSONNEL BOARD HEARING PROCEDURES

### LMC 2.76.055

#### **Powers and Duties:**

The Personnel Board is comprised of five members appointed by the Mayor and confirmed by council. They should have the qualifications listed in Charter, Article III, Section 4 and one member shall be a city employee, but no other city officer or employee of the city shall be eligible for appointment to the board. The board shall annually elect a chairperson and such other officers as it desires. They shall establish their own rules of procedure, provided that three members of the board shall constitute a quorum. Three affirmative votes are required for final action on any matter acted upon by the Board.

**Hear an Appeal from employee aggrieved by a decision:** One of the powers of the Board is to hear appeals by any employee in the classified service from a decision by the appointing authority with respect to a discharge, suspension, or a reduction in a classification or pay; and report in writing to the appealing employee and the appointing authority its findings and decisions, which decisions shall be binding upon the appointing authority. See LMC 2.76.055 (c).

Note that there are union contracts that provide further guidance on personnel hearing rules and scope of review:

LCEA – Article 9 is the grievance procedure. Article 9 further describes the scope of review of the Personnel Board and indicates that the Board shall determine whether or not the terms of an Agreement, city personnel policy, department rule and regulation, Charter or Code have been violated and whether the action was taken for good cause.

IAFF (LFR), pg. 40 of contract indicates any regular employee who is suspended, or demoted may appeal for a hearing in writing to the Personnel Board or to arbitration within ten working days of notice of such action. There is no appeal for a reprimand. Dismissals may be appealed to the Personnel Board by submitting an appeal in writing to the HR Director no later than 10 days after the date of termination. Article 24 sets out the grievance procedure.

LPU (Police)- Article 9 is the grievance procedure.

PAGE (public association of govt employees) – Article 9 is the grievance procedure.

**Investigative Powers of Board:** The Personnel Board for purposes of conducting a hearing or investigation shall have the authority to administer oaths, subpoena witnesses, and compel the production of pertinent records and books. Any person who fails to respond to a subpoena, to answer any question, or to produce any books or records pertinent to any hearing or investigation, or who shall knowingly give false testimony shall be subject to dismissal and shall also be guilty of a misdemeanor, punishable by imprisonment in the

county jail for a period not to exceed 6 months or by a fine not to exceed \$100 recoverable with costs, or both. See LMC 2.76.485(b). Please see the handout on procedures regarding subpoenas for City of Lincoln personnel board matters.

**Secretary of Board:** The Human Resources Director, or designee, is the secretary of the Personnel Board. The Director shall attend meetings of the Personnel board and provide secretarial services for the Board and the keeping of the minutes for its meetings. See LMC 2.28.010.

**Notice of Hearing:** A hearing on an appeal by an individual employee or department head provided for by the charter or code shall be preceded by written notice sent by certified mail at least three working days in advance of the date of the hearing to each grievant and the administrative officers affected. The notice shall specify the time, date, place, and subject matter of the hearing. LMC 2.76.490.

**Hearings will be informal and conducted by the Chairman.** The intent is an inquiry into the facts, not an adversary action. The Personnel Board shall not be bound by the strict rules of evidence and shall have full authority to control the procedures of the hearing, including the admission or exclusion of testimony or other evidence. The Chairman may limit testimony where it appears irrelevant or redundant.

**Hearings are public but they are not meetings subject to the Open Meetings Act.** The purpose of a meeting is to discuss public business, form tentative policy or take public policy action. It is for the business of policymaking. A grievance hearing is a judicial proceeding where the Board decides a dispute of adjudicative facts. Adjudicative facts are those ascertained from proof adduced at an appeal hearing where evidence is offered which relates to a specific party. LMC 2.75.055 (c) expressly indicates the board has the power to hear appeals by any employee in the classified service from a decision by the appointing authority with respect to a discharge, suspension, or reduction in classification or pay. See *Thomas v LPS*, 228 Neb. 11, 421 N.W.2d 8 (1988).

See also NRS 84-1409 (b) a Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (iii) the Judicial Resources Commission or subcommittees or subgroups of the commission

**Joint Exhibits:** Prior to the scheduled beginning of the board, the initiating party and the respondent shall make every attempt to offer joint exhibits to avoid delays at the time of the hearing and stipulations.

**Exchange of exhibits:** Copies of any exhibits shall be provided at least three days prior to the hearing to opposing parties. Note that grievance procedure for LCEA requires both parties to provide the other party with a listing of all exhibits to be introduced at the hearing, a copy of each exhibit, and a listing of witnesses at least seven days prior to the hearing.

**Copies of all exhibits** must be provided by each party for each Personnel Board member in attendance. Exhibits will be marked by a court reporter at the meeting. All costs associated with copies of exhibits shall be borne by the responsible party.

The Board shall have access to all City records of the City/County Personnel Department and the office of the appointing authority. Other relevant data may be presented by either the grievant or the appointing authority and entered as exhibits.

All witnesses will be sworn by the court reporter prior to their testimony.

Any member of the Board may question the grievant, appellant, witnesses or any person who has relevant information of said situation.

A transcript of any or all of the hearing may be obtained from the court reporter. All costs associated with receipt of a transcript shall be borne by the requesting party.

Three affirmative votes shall be required for final action on any matter acted upon by the Board.

**Burden of Proof:** By a preponderance of the evidence

**The customary order of proceedings is as follows for a grievance:**

1. Opening statement by the initiating party/grievant, followed by a similar statement by the respondent. (See LCEA contract, page 21, if it is not a matter of discipline, the employee grievant goes first and has the burden of proof)
2. Presentation of evidence, witnesses, and arguments by the initiating party/grievant.
3. Cross-examination by the respondent.
4. Presentation of evidence, witnesses, and arguments by the respondent.
5. Cross-examination by the initiating party.
6. Summation by both parties, usually following the same order as in the opening statements.
7. In all cases, the burden of proof and persuasion shall be on the party filing the grievance.
8. A written decision as per LMC 2.76.475(d)(3) shall be rendered by the Board within fifteen (15) working days.

**The customary order of proceedings is as follows for an appeal (dismissal, suspension, demotion or reduction in force):**

1. Opening statement by the City/employer, followed by a similar statement by the employee.
2. Presentation of evidence, witnesses, and arguments by the City.
3. Cross-examination by the employee.
4. Presentation of evidence, witnesses, and arguments by the employee/appellant.
5. Cross-examination by the City.
6. Summation by both parties, usually following the same order as in the opening statements.
7. In all cases, the burden of proof and persuasion shall be on the City.
8. A written decision as per LMC 2.76.475(d)(3) shall be rendered by the Board within fifteen (15) working days

**After presentation of evidence:**

When the parties are done presenting their evidence and closing arguments, the public hearing is closed, and the Board deliberates. The Board has a few options:

Option 1: The Board can retreat to the separate room in the back of council to deliberate. The board can discuss the evidence and materials, but a vote cannot be taken in private. When done deliberating, the Board can get back on the record with the court reporter and vote on

the record to affirm or deny the matter of the grievance or appeal. Final action needs 3 votes. The Board has fifteen days to provide a written answer to the employee. If the Board has made a decision on the record, the Board can ask the prevailing party to prepare a proposed findings of fact and conclusions of law to forward to the Chair within seven days of the Board's decision made at the hearing. The Chair will then review, make any appropriate edits, and sign and forward a final decision to the Board secretary and to each party or to their designated representative.

Option 2: The Board can ask both parties to submit a proposed Findings of Fact and Conclusions of Law and forward the same to the Chair within seven days of the hearing. The Board can meet and deliberate in private same as in Option 1. But when ready to take a vote, which must be before the 15 working day deadline, there should be a notice for the resumption of the public hearing and notice to the parties, and the Board must go back on record with the court reporter to vote. The Board will likely have a few days to finalize a written order to meet the 15-day working deadline. The Chair will review, make any appropriate edits, and sign and forward a final decision to the Board secretary and to each party or to their designated representative

Per LMC 2.76.475 (d)(3) the Board has fifteen working days after the hearing to transmit a written answer to the employee or the employee's designated representative.

2.76.475 (d)(3): Step Three. If satisfactory settlement is not reached under Step Two, the employee or the employee's designated representative shall resubmit the grievance described in Step One above in writing within fifteen working days of receipt of the response from the department head as outlined under Step Two above to the Human Resources Director or the director's designated representative for submission to the Personnel Board. The Personnel Board shall hold a hearing with the employee or the employee's designated representative within twenty-five working days, or as soon as reasonably possible, after the receipt of the grievance in an attempt to settle the grievance. The Personnel Board shall transmit a written answer to the employee or the employee's designated representative within fifteen working days after such meeting. The decision of the Personnel Board shall be final and binding upon the appointing authority.

LMC 2.76.055 (c) indicates that the Personnel Board may hear appeals by any employee in the classified service from a decision by the appointing authority with respect to a discharge, suspension, or a reduction in classification or pay; and report in writing to the appealing employee and the appointing authority its findings and decisions, which decision shall be binding upon the appointing authority. Historically, this has been presented as facts, findings, and a conclusion/decision.

#### **Format of Decision:**

The Board shall report in writing to the appealing employee and the appointing authority its findings and decisions, which decision shall be binding upon the appointing authority. See LMC 2.76.055 (c)



LINCOLN

## **PERSONNEL BOARD HEARING PROCEDURES HANDOUT TO EMPLOYEE GRIEVANTS**

### **LMC 2.76.055**

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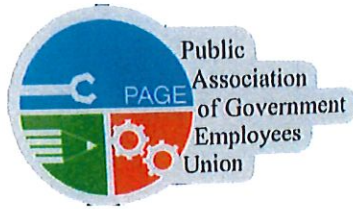
Per LMC 2.76.475 (d)(3) the Board has fifteen working days after the hearing to transmit a written answer to the employee or the employee's designated representative.

2.76.475 (d)(3): Step Three. If satisfactory settlement is not reached under Step Two, the employee or the employee's designated representative shall resubmit the grievance described in Step One above in writing within fifteen working days of receipt of the response from the department head as outlined under Step Two above to the Human Resources Director or the director's designated representative for submission to the Personnel Board. The Personnel Board shall hold a hearing with the employee or the employee's designated representative within twenty-five working days, or as soon as reasonably possible, after the receipt of the grievance in an attempt to settle the grievance. The Personnel Board shall transmit a written answer to the employee or the employee's designated representative within fifteen working days after such meeting. The decision of the Personnel Board shall be final and binding upon the appointing authority.

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### **Format of Decision:**

The Board shall report in writing to the appealing employee and the appointing authority its findings and decisions, which decision shall be binding upon the appointing authority. See LMC 2.76.055 (c)



February 23, 2024

Barb McIntyre  
City of Lincoln  
Human Resources Director  
555 So. 10<sup>th</sup>  
Lincoln, NE 68508

RE: Molly Johnson; Appeal of Grievance Denial

Dear Barb:

PAGE represents Molly Johnson, an Animal Control Officer I in the Health Department. On February 22, 2024, Pat Lopez, the Department Head of the City of Lincoln Health Department denied her grievance. I have attached the original grievance and the denial.

Pursuant to Article 9, Section 4 of the PAGE bargaining agreement, Molly Johnson requests a hearing before the City of Lincoln Personnel Board for the purpose of obtaining a resolution of the grievance.

Thank you.

Sincerely,

  
Zach Chapo  
President

Enclosures

CI-CO HR DEPT  
FEB 26 12:24 PM '24



LINCOLN LANCASTER COUNTY  
HEALTH DEPARTMENT  
3131 'O' Street Lincoln, NE 68510-1514  
402-441-8000 Fax 402-441-6229



February 22, 2024

Molly Johnson  
6111 Panama Road  
Hickman, NE 68372

Re: PAGE Step 1 Grievance

Dear Molly,

I am responding to the Step 1 grievance you submitted on February 5, 2024. The grievance is in accordance with Article 9, Section 4 of the Public Association of Government Employees contract.

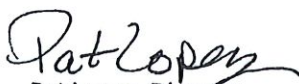
The grievance generally states that you requested to use Paid Parental Leave (PPL) in January of 2024, but this request was denied by Human Resources on January 31, 2024. It also asserts that PPL may be used in the 12-month period following a qualifying event and no limitations were placed on when the qualifying event occurs in order to qualify.

A grievance meeting was held on February 13, 2024, with you, me, Zach Chapo and Jon Thober in attendance. During this meeting, you stated your child was born in May of 2023 and, while PPL was added into the PAGE contract in August of 2023, you should be able to access PPL since you requested use within 12 months of the birth of your child. It was also stated that the PPL language in the PAGE contract does not define an effective date for this benefit, as PPL language (within the Letter Agreement) does in other City contracts.

I reviewed the information relevant to this situation, including the emails you forwarded me. Article 13, Section 6 of the PAGE contract does not explicitly state the effective date for PPL, however, Article 27 – Duration of Agreement, states the effective date of the entire agreement, including the newly added PPL benefit, is August 17, 2023. Furthermore, there is no provision that PPL may be utilized for a qualifying event occurring prior to the effective date of the agreement, so the birth of a child occurring before this date is not an eligible circumstance.

Based on the facts presented to me and my review of the information, I find no violation of the PAGE contract. As such, the grievance at Step 1 is denied.

Sincerely,

  
Pat Lopez, Director  
Health Department

cc: HR file



Grievance Form for Public Association of Government Employees

**The name of the Department Head or other City Representative whose action or non-action is the subject of the grievance:**

Beth Olsen, Barb McIntyre

**Specific Action of Non-Action:**

Denial of request to use Paid Parental Leave benefit to provide time to bond with my child.

**The date upon which the action or non-action occurred:**

01-31-2024 or earlier dates

**The specific provisions of the PAGE-CITY of Lincoln agreement or of the Personnel Code which were violated by said action or non-action:**

PAGE-City of Lincoln Agreement Article 13 section 6 Paid Parental Leave and Lincoln Municipal Code 2.76.403 Paid Parental Leave

**The name, job classification, and City Department of the employee filing the grievance:**

Molly Johnson, Animal Control Officer I, Health Department

**The name of a Union Representative or Attorney, if any presenting the grievance for the employee:**

PAGE President Zachary Chapo

**The reasons for concluding that the action or non-action complained of is in violation of the Agreement or the Personnel Code:**

The labor contract between the City of Lincoln and the PAGE bargaining unit of which the grievant is a member allows for 240 hours of Paid Parental Leave to be taken during the 12 month period following a qualifying event. No limitations were placed as to when the qualifying event or when it must occur.

**The remedy sought by the employee making the grievance:**

Approval to use the 240 hours of Paid Parental Leave.

**Respectfully Submitted:**