

September 5, 2023

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, September 7, 2023
1:30 p.m., Commissioners Hearing Room
County-City Building, Room 112

A G E N D A

ITEM 1: Approval of Minutes from the August 3, 2023 meeting.

ITEM 2: Request to revise the following classification:

CLASS

CODE CLASS TITLE

5765 Jail Administrator (C27)

ITEM 3: Request to create the Workplace Weapons Human Resources Policy Bulletin.

ITEM 4: Request to amend the Workplace Violence Prevention Human Resources Policy Bulletin.

ITEM 5: Request for grievance hearing FOP #32 – On behalf of all bargaining unit members impacted – Modified Duty Program - Corrections.

ITEM 6: Miscellaneous Discussion

pc: Department Heads
Matt Hansen
Kristy Bauer
Barb McIntyre
Tom McCarty
Ashley Bohnet

LANCASTER COUNTY JAIL ADMINISTRATOR

NATURE OF WORK

This is administrative and professional work developing, supervising and coordinating services and programs within the County Department of Corrections.

Work involves responsibility for administration and coordination of all activities, personnel, facilities and programs within a division of the Department of Corrections. Work also includes the coordination of correctional activities with all elements of the criminal justice system including state and local law enforcement agencies, judicial systems, and the general public. An employee in this class works with considerable independence complying with established policies and guidelines. Supervision is received from the Corrections ~~Administrator~~ Director with work reviewed in the form of reports, conferences, and day-to-day operational effectiveness. Supervision is exercised over subordinate jail staff members.

EXAMPLES OF WORK PERFORMED

Supervise, direct and evaluate the work of Correctional training, facility maintenance and records management personnel; plan and assign the work of subordinate personnel.

Plan, coordinate and implement security and custodial programs; develop and evaluate programs to promote inmate welfare and improve correctional services; analyze data and institute changes necessary to ensure proper and efficient management of Department facilities.

Resolve routine departmental problems in accordance with established policies and procedures; coordinate correctional activities with state and local law enforcement agencies, judicial systems and the general public; respond to complaints or requests from inmates, families, attorneys or the courts concerning inmate status or the actions of correctional staff; prepare required reports and compose correspondence as necessary.

Prepare annual budget for the jail complex; review and approve routine budgetary expenditures; operate within approved budgetary guidelines.

Develop and maintain operational policies and procedures for jail complex; make routine and non-routine inspections of the facility to ensure procedures are equitably and properly enforced and programs delivered as scheduled and assigned; oversee compliance with Federal, State and local statutes regarding facility operation and administration.

Assume designated Corrections ~~Administrator's~~ Director's responsibilities in their absence or as directed.

DESIRABLE KNOWLEDGE, ABILITIES AND SKILLS

Considerable knowledge of state and local laws and regulations pertaining to the operation of a correctional facility.

Considerable knowledge of correctional institution management practices of administration and execution of the legal process.

Considerable knowledge of research and analytical methodologies as they pertain to residential correctional operations and penology.

Considerable knowledge of best practice standards in the field of criminal justice.

Considerable knowledge of the principles, practices, and methods required in the delivery of human services to incarcerated individuals and those being released back into the community.

Knowledge of the principles and methods used in public budgeting.

Ability to plan, assign and evaluate the work of subordinate facility staff members.

Ability to develop, implement and evaluate programs established to meet departmental goals and objectives.

Ability to communicate effectively both orally and in writing.

Ability to interpret rules, regulations and policies and to make decisions in accordance with established precedent.

Ability to establish and maintain effective working relationships with law enforcement and governmental officials, co-workers, and the general public.

MINIMUM QUALIFICATIONS

Graduation from high school with college-level coursework in public administration, criminal justice, sociology or related field plus two years of experience in correctional institution management in a responsible supervisory capacity; or any equivalent combination of training and experience that provides the desirable knowledge, abilities and skills.

NECESSARY SPECIAL REQUIREMENTS

Must be a citizen of the United States and be at least nineteen (19) years of age or older.

At the time of employment, must be fingerprinted and the fingerprint cards promptly submitted to the Nebraska State Patrol for a criminal history search; must be free of any convictions of crimes punishable by imprisonment in a state or federal penitentiary for a term of one (1) year or more, from which a pardon has not been received.

Must submit to and successfully pass a substance abuse test.

Must be examined by a licensed physician and meet the medical requirements of the Corrections Department.

Possession of a valid driver's license when operating a vehicle is required in the performance of assigned duties.

11/129/23
PS5765

Human Resources Policy Bulletin

Lancaster County

Number: 2023-4

Date: September, 2023

Reference:	Title:
	<u>Workplace Weapons Policy</u>

I. OVERVIEW

This policy establishes guidelines and restrictions regarding weapons in the workplace. Lancaster County ("County") recognizes the importance of maintaining a safe and secure work environment for all employees and County volunteers. Possession of weapons is strictly prohibited within County property, County vehicles and other County worksite locations unless authorized by this policy.

II. DEFINITIONS

- A. "County property" is defined as any premises under the care and control of the County to include, but is not limited to, owned or leased property or property contracted to be managed by the County, and common areas including, but not limited to public sidewalks, approach sidewalks, steps, verandas, parking lots, vestibules, interior hallways and atriums under the County's ownership or control.
- B. "County vehicle" is defined as county owned, leased or personal vehicles utilized in the performance of the employee's work responsibilities.
- C. "County volunteers" are uncompensated persons who perform services directly related to the business of the County for their benefit, to support the humanitarian, charitable, or public service activities of the County, or to gain experience in specific endeavors.
- D. "County worksite" is any location to which a County employee has been dispatched or posted to perform their responsibilities. This location shall be considered a premises under the care and control of the County.
- E. "Possession" is defined as a person knowing of an item's presence and having physical control of it or knows of an item's presence and has the power and intention to control it. A person is deemed to be in possession of a weapon in a vehicle when the person is inside or in control of the vehicle and shall be treated under this policy as if the weapon were being carried on their person.
- F. "Weapon" is defined as any firearm, stun gun, taser, knife with a blade length longer than 3.5 inches, any device which releases any propelled object by spring mechanism, compressed air, or compressed gas, explosive, or any other instrument the use of which is intended or likely to cause death or serious bodily injury, or immobilize another person.

Human Resources Policy Bulletin

Lancaster County

Number: 2023-4

Date: September, 2023

Reference:	Title:
	<u>Workplace Weapons Policy</u>

III. POLICY

No County employee or County volunteer shall possess or cause to be present a weapon in or on County property, County worksite, or County vehicle while carrying out their job or volunteer responsibilities or when present at their workplace or worksite even during nonwork hours. This policy applies regardless of whether a person possesses a valid concealed carry permit or license issued by any jurisdiction.

IV. EXPECTATIONS

- A. A County employee or County volunteer is responsible for making sure that any item in their possession is not prohibited by this policy. Whether or not a weapon is concealed does not matter for the purposes of this policy.
- B. If a weapon is present in the workplace, the County employee or County volunteer who notices the weapon is expected to contact their supervisor or Human Resources. Under no circumstances should any County employee take any unnecessary risk or compromise their safety.
- C. If a County employee or County volunteer is unsure whether an item is covered by this policy, they should contact Human Resources.

V. EXCEPTIONS

- A. Law Enforcement Personnel: An officer, agent, law enforcement trainee, or County employee who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law. This person must be carrying proof of employment while possessing a weapon on County property.
- B. Detention Personnel: Employees at a County detention facility who are authorized to utilize a taser, stun gun or other approved device per department policy.
- C. Security Personnel: Employees serving in a security position are authorized to utilize a taser, stun gun or other approved device per department policy.
- D. Other Personnel: Employees of the Court, County Attorney's office, Public Defender's office and Records and Information Management performing their official job responsibilities are authorized to be in possession of evidence, which may include weapons.

Human Resources Policy Bulletin

Lancaster County

Number: 2023-4

Date: September, 2023

Reference:	Title:
	<u>Workplace Weapons Policy</u>

- E. Practice Facilities: A County employee or County volunteer may possess a weapon in or on a shooting range or archery range operated, supervised, or maintained by the County or the State of Nebraska or any other political subdivision in compliance within the applicable practice facility rules.
- F. Personal Vehicles: A County employee or County volunteer may secure their weapon in their personal vehicle on County property or County worksite. The vehicle must be locked, and the weapon shall not be visible from outside the vehicle. This exclusion does not override any Department policy which prohibits such activity.
- G. Department Kitchen or Break Room: A County employee or County volunteer may utilize knives during the preparation of food on County Property.
- H. Special Circumstances: In exceptional circumstances, where there is a legitimate business need to possess a weapon in or on County property or a County worksite, a person may request permission from the Human Resources Director. After consulting with the Lancaster County Sheriff, and in compliance with all applicable laws and regulations, the Human Resources Director will issue a written decision. In locations managed by the Public Building Commission or another entity, additional authorization may be needed.
- I. These exceptions do not authorize any person to possess a weapon on County property for personal protection.

VI. REPORTING

Any County employee who believes that an unauthorized person is in possession of a weapon on the County property or County worksite must report this immediately to their supervisor or Human Resources, who will contact local law enforcement if necessary. If immediate threat exists, a County employee shall call 911.

VII. RIGHT TO SEARCH

The County reserves the right at any time and at its discretion to search all County property and County worksites when there is a reasonable belief that there is a violation of this policy. Where security reasons justify, County property or County worksites may require a thorough search of the County employee. For example, security may require the County employee and County employee's personal items be searched while in or on County property or County worksite. County employees who fail or

Human Resources Policy Bulletin

Lancaster County

Number: 2023-4

Date: September, 2023

Reference:	Title:
	<u>Workplace Weapons Policy</u>

refuse to promptly permit a search under this policy may be subject to discipline, up to and including termination.

VIII. ACCOUNTABILITY

Violations of this policy may be subject to disciplinary action, up to and including termination.

Barb McIntyre
Human Resources Director

Date

Christa Yoakum, Chair
Board of County Commissioners

Date

Personnel Human Resources

Policy Bulletin

Lancaster County

Number: 2023-0502-1

Date: April,
2002September,
2023

Reference:	Title:
This policy supersedes Personnel Policy Bulletin 2002-1 – Workplace Violence Prevention Policy	Workplace Violence Prevention Policy

I. Policy Statement.I. POLICY

~~It is the policy of Lancaster County~~ is committed to promoting and maintaining a safe work environment, free from violence, threats of violence, harassment, intimidation, ~~and~~ other disruptive behavior. Lancaster County will not tolerate such behavior committed by or against County employees or individuals~~members of the public~~ on County owned or leased property or while conducting County business. ~~All reports of workplace violence will be taken seriously and will be investigated appropriately. Corrective action will be taken as warranted by the facts.~~

II. SCOPE/PROVISIONS

- A. This policy applies to all threats or acts of violence committed by or against County employees, ~~on or~~ County owned or leased property, or while conducting County business. Workplace violence does not include reasonable force in the defense of oneself or others. ~~This policy may not apply with respect to incidents involving law enforcement officials, security guards, correctional and detention officers, mental health technicians, health care professionals or other county employees, who are acting in the course of their duties and, due to the nature of their positions, are at times confronted with violent behavior or are required to exercise reasonable force pursuant to their department's operating procedures and all applicable State and Federal laws.~~

III. Examples of Prohibited Conduct.

EXAMPLES OF PROHIBITED CONDUCT

- B. Workplace violence may include oral or written statements, gestures or expressions that communicate a direct or indirect threat of physical harm. Specific examples of conduct that may be considered workplace violence ~~prohibited under this policy, may~~ include, but are not limited to, the following:
- 1) Hitting, shoving, or ~~otherwise~~ physically assaulting an individual.
 - 2) Stalking an individual.
 - 3) Throwing objects or ~~pounding striking~~ objects, including, but not limited to a desk, wall, or door, in a manner that would be reasonably perceived as being threatening.

Personnel Human Resources

Policy Bulletin

Lancaster County

Number: 2023-0502-1

Date: April,
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- ~~3)4)~~ Threatening to harm an individual or his/her/their family, friends, associates, or their property.
 - ~~4)5)~~ Intentional destruction or threat of destruction of property owned, operated, or controlled by Lancaster County, or individuals.
 - ~~5)6)~~ Making or/ sending harassing or threatening communications, including but not limited to telephone calls, letters, faxes, texts, emails, and social media posts. or other forms of written or electronic communications.
 - ~~6)~~ * ~~Unauthorized possession or inappropriate use of firearms, weapons, ammunition, explosives or any other dangerous devices on County owned or leased property, County vehicles, or in any personal vehicle which is being used for County business.~~
 - ~~7)~~ Coercing, or attempting to coerce, an individual into acts of workplace violence that may affect the interests of the County. ~~or its employees~~ Attempting to coerce an employee to do wrongful acts that would affect the interests of the County.
- Violation(s) of the Workplace Weapons Prohibition Policy

~~IV.~~ Reporting Requirements. ~~III.~~ PROCEDURES REPORTING

- A. Employees who believe they have experienced or witnessed workplace violence, are encouraged to immediately report such behavior to their supervisor, Department Head, Human Resources, or other person of authority. In emergency situations in which serious injury occurs, or could occur, emergency responders such as Police, Sheriff, Fire or Ambulance personnel should be immediately notified.
- B. All employees are encouraged to be alert to the possibility of violence on the part of employees, former employees, members of the public, contractors, customers ~~customers,~~ and acquaintances. Employees should include safety as among their highest concerns, and ~~concerns~~ and are encouraged to report all acts of violence and threats of violence which they have experienced or witnessed. Employees are encouraged to report to their supervisor ~~supervisors'~~ s Employees should report S situations that occur outside of the workplace which may affect workplace safety, i.e. i.e., including, but not limited to: stalking, instances where protection/restraining orders, should also be reported to their supervisor, Department Head, Human Resources, or other person of authority. ~~have been issued, etc~~
- C. The County prohibits retaliation against any employee who reports a violation or an alleged violation of this policy or is a witness in a workplace violence investigation. ~~involving a violation of this policy~~

Personnel Human Resources Policy Bulletin

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Number: 2023-0502-1

Date: April,
2002September,
2023

~~Employees who believe they have experienced or witnessed workplace violence, are encouraged to immediately report such behavior to his/her/their supervisor, Department Head, the City County Personnel Human Resources Director, or other person of authority. In emergency situations in which serious injury occurs, emergency responders such as Police, Sheriff, Fire or Ambulance personnel should be immediately notified~~

~~C.D. Department Management, with the assistance of tThe Personnel Human Resources Director, with the cooperation of the Department Management and and, if appropriate, in conjunction with law enforcement authorities, shall assess and investigate the incident and determine the appropriate action to be taken.~~

- ~~1. If law enforcement is involved, the internal investigation shall be conducted in such a manner that does not interfere with the law enforcement investigation.~~
- ~~2. Employees may be required to participate in workplace investigations and provide information regarding alleged incidents of workplace violence.~~

IV. EXCEPTIONS

~~This policy may not apply with respect to incidents involving law enforcement officials, security guards, correctional and detention officers, mental health technicians, health care professionals or other county employees, who are acting in the course of their job responsibilities and in accordance with department policies.~~

V. ACCOUNTABILITY

~~Violations of this policy may be subject to disciplinary action, up to and including termination, at the discretion of the Department Head.~~

~~V. — Employee Assistance Program.~~

EMPLOYEE ASSISTANCE PROGRAM

~~The employee assistance program is available to assist employees and departments in coping with the effects of a workplace violence incident. Employees who have committed or threatened to commit an act of workplace violence may be referred to the employee assistance program for assistance.~~

RETALIATION PROHIBITED

~~This policy prohibits retaliation against any employee who, in good faith, reports a violation of this policy or is a witness in an investigation involving a violation of this policy.~~

~~VI. — Sanctions. Employees who violate any provision of this policy may be subject to appropriate disciplinary action up to and including dismissal from employment. Employees and non-employees who~~

Personnel Human Resources Policy Bulletin

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Number: 2023-0502-1

Date: April,
2002September,
2023

~~commit or threaten to commit an act of violence in violation of this policy may be subject to criminal penalties and/or asked to leave County property if warranted by the facts.~~

~~VII. Retaliation. This policy prohibits retaliation against any employee who, in good faith, reports a violation of this policy or is a witness in an investigation involving a violation of this policy.~~

Barb McIntyre, Personnel Director

Date

Christa Yoakum, Chairperson
Board of County Commissioners

Date

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

May 8, 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 April 18, 2023, FOP #32 filed a grievance on regarding the County's implementation of a new Modified Duty Program. A true and correct copy of the Grievance is attached hereto. On or about May 8, 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

Lancaster County

Department of Corrections

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

Brad Johnson, Director

May 8, 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

Dear Mr. McCarty:

This letter will serve as a response to the grievance received April 18, 2023, regarding an alleged violation of Personnel Policy Bulletin 2013-4.

Personnel Policy Bulletin 2013-4 is a bulletin involving Worker's Compensation. This is a bulletin that provides a department, based upon operational needs and at the department head's discretion, may offer modified duty to status and probationary employees who have suffered a work-related injury.

On March 22, 2023, a grievance involving Lynn Kemper was heard by the Personnel Policy Board. In that matter, the Board held that Officer Kemper should have been permitted to work modified duty. FOP 32 requested that the Board rule non-work-related injuries could not work modified duty, but the Board declined to issue that ruling.

On April 11, 2023, the Department issued a modified duty plan consistent with Personnel Policy Bulletin 2013-4 as well as the decision made by the Personnel Policy Board. The Department has not violated Personnel Policy Bulletin 2013-4. For these reasons, the grievance is denied.

Sincerely,



Brad Johnson
Corrections Director

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

IN RE GRIEVANCE OF FOP 32 ON BEHALF) April 18, 2023
OF ALL BARGAINING UNIT MEMBERS)
)

TO: Brad Johnson, or his designated representative
FROM: Fraternal Order of Police Lodge #32, on behalf of all bargaining unit members impacted

COMES 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:

During negotiations for the 2018 bargaining agreement between FOP #32 and the County, the County requested, for the first time, to implement a Modified Duty Program at the Lancaster County Department of Corrections. Those present at the bargaining table for the County included Doug McDaniel, Kristy Bauer, Brad Johnson, and Ken Prey. The County's proposal was to implement the Modified Duty Program contained within Personnel Policy Bulletin 2013-4 at the jail. Personnel Policy Bulletin 2013-4, which was provided to the Union during negotiations, is a Worker's Compensation Policy that expressly applies solely to injuries "arising out of and in the course of . . . employment." Under Paragraph III of the Bulletin, "Modified Duty will be allowed *only as specified in Paragraph VII herein.*" (emphasis added). Paragraph VII then states, "A department . . . may offer modified duty to status and probationary employees *who have suffered a work related injury.*" (emphasis added). Thus, the Bulletin expressly limits modified duty assignments to work-related injuries.

Furthermore, the County's August 9, 2018, written proposal to implement a Modified Duty Program at the Department of Corrections, which was accepted by FOP #32, expressly stated: "Modified Duty Program pursuant to section VII of Workers' Compensation Personnel Policy Bulletin (2013-4) to be effective September 1, 2018 **for new worker's compensation injuries only.**" The County offers its assurance the employee will not be forced off their assigned shift."

During negotiations, the County rejected the Union's requests to reference or place the Bulletin in the bargaining agreement. When counsel for the Union expressed concern about this, Mr. McDaniel explained the County simply did not want to make the contract unnecessarily lengthy. When the Union expressed concern that the County would later attempt to unilaterally change the policy without bargaining, both Director Johnson and Ms. Bauer dismissed those concerns, asserting that the Director Johnson was willing to work with the Union if any changes needed to be made to the policy (through LMC meetings or otherwise). Later, Mr. McDaniel reassured that any changes to the Modified Duty Program would also need to be presented to the Personnel Policy Board because the Program was contained in a Personnel Policy Bulletin. Based on these repeated assurances, the Union took the County, Director Johnson, Ms. Bauer, and Mr. McDaniel at their word. After that date, the bargaining agreement was ratified and the Modified Duty Program was implemented at the Department of Corrections. Until sometime in 2022, the Department, in accordance with the Bulletin, reserved modified duty positions solely for work-related injuries. The County has never attempted to negotiate any changes to the Bulletin—during LMC meetings or at negotiations for the most recent bargaining agreement—and it has never attempted to petition the Personnel Policy Board to change the language of the Bulletin.

Beginning in July 2022, the Department began offering the Modified Duty Program to employees who suffered non-work-related injuries, which resulted in such employees receiving Modified Duty assignments instead of employees with work-related injuries. FOP #32 filed a grievance on behalf of one of those employees with a work-related injury, Lynn Kemper, which was heard before the Lancaster County Personnel Policy Board on March 22, 2023. At the conclusion of that hearing, the Board unanimously concluded that the County's promises on the audio recordings referenced above were clear, and that Lynn Kemper should not have been denied a Modified Duty position in favor of an employee with non-work-related injuries. The Board ordered the Department to give Kemper back all leave he used during the period he was barred from working Modified Duty.

After the Board hearing on March 22, 2023, Director Brad Johnson informed FOP #32 President Dan Goodman that the County would be contacting FOP #32 to discuss how the Modified Duty Program would operate going forward. The County did not do so, however.

Instead, without bargaining with FOP #32 or requesting a change to Personnel Policy Bulletin 2013-4, the Department sent all employees an email on April 10, 2023, announcing the development of a new "modified duty program," and attached a new Modified Duty Program to the email. (See attached). The Department noted that it had been working "closely with the Lincoln/Lancaster County Human Resources and the County Attorney's office" (but not FOP #32) to develop the Program. Director Johnson also noted that "individuals currently working a modified duty assignment will continue under the prior modified duty program."

Under the new "Modified Duty Program," modified duty is available for non-work-related injuries, and worker's compensation injuries are not given preference or priority over non-work-related injuries. Employees are instead given priority based upon the chronological order in which they were added to the modified duty list. The Department deemed the new Program effective April 11, 2023.

The Department has again unilaterally changed the Modified Duty Program it expressly agreed to implement at the Department of Corrections, and the new Program violates Personnel Policy Bulletin 2013-4 as well as the promises the County previously made to FOP #32. The Department has also disregarded the binding order of the Personnel Policy Board in the Kemper grievance.

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

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

IDENTITY OF PERSONS ALLEGED TO HAVE CAUSED GRIEVANCE: Brad Johnson, Barb McIntyre, County Human Resources personnel, and other unknown persons.

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

Personnel Policy Bulletin 2013-4, which is incorporated into and made part of the Lancaster County Personnel Rules under Rule 2.7, as well as the County's express, contractual promises made to FOP #32 during negotiations. The Department has also disregarded the "binding" nature of the Personnel Policy Board's decision regarding Lynn Kemper's grievance, in violation of FOP #32 contract Article 8, Section 1 and Personnel Rule 12.2(e).

REMEDY SOUGHT:

The Department shall rescind its Modified Duty Program due to failure to negotiate with FOP #32 in violation of its promise to do so; the Department shall also rescind those aspects of the Modified Duty Program that are inconsistent with Personnel Policy Bulletin 2013-4, including but not limited to basing eligibility for the Program on chronological order instead of whether the injury is work-related. The Department shall place all employees with work-related injuries in the same position they would have been in had they been given preference over employees with non-work-related injuries. The Department shall cease and desist from continuing to violate Personnel Policy Bulletin 2013-4 and its express promises to FOP #32. The Personnel Policy Board and Department shall also afford Grievant and its bargaining unit members such other relief the Board deems just under the circumstances.

Respectfully submitted this 18th day of April, 2023.

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

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 Grievant

From: Bradley L. Johnson <bjohnson@lanaster.ne.gov>

Sent: Monday, April 10, 2023 3:22 PM

To: Corrections Officers <CorrectionsOfficers@lanaster.ne.gov>

Cc: Elisha R. Havick <EHavick@lanaster.ne.gov>; Kendra K. Knauss <KKnauss@lanaster.ne.gov>; Rick C. Gray <rgray@lanaster.ne.gov>; Kenneth L. Prey <KPrey@lanaster.ne.gov>; Barb D. McIntyre <BMcIntyre@lincoln.ne.gov>; Ashley J. Bohnet <ABohnet@lanaster.ne.gov>; Corrections Sergeants <CorrectionsSergeants@lanaster.ne.gov>; Corrections Lieutenants <CorrectionsLieutenants@lanaster.ne.gov>

Subject: Modified duty

The Department has been working closely with the Lincoln/Lancaster County Human Resources and the County Attorney's office to develop a modified duty program that will best fit the operational needs of the Department at this time. I have attached the outline for the modified duty program that will take effect tomorrow.

Those individuals currently working a modified duty assignment will continue under the prior modified duty program.

Sincerely,

Brad Johnson
Director
Lancaster County Department of Corrections



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MODIFIED DUTY:

- The Department of Corrections has reviewed the operational needs for the modified duty program. Based on the cost of the modified duty program as well as the minimal amount of actionable information it has provided in the last nine months, there is not a compelling operational need for the size of the current program.
- Modified duty will remain a component of employment at the Department of Corrections. Modified duty may include but is not limited to listening to jail phone calls, reviewing inmate visits, filing and/or scanning documents and other duties compatible with an individual's medical restrictions at the discretion of the Director.
 - Modified duty will no longer be a set number of full-time slots.
 - A modified duty eligibility list will be established and maintained by the department.
 - When the Director determines there is an operational need for modified duty, the Department of Corrections will contact the appropriate individual at least 24 hours prior to the need for the modified duty.
 - Modified duty will be completed during the hours of the individual's regularly scheduled hours.
 - Individuals completing modified duty will dress in accordance with Policy 2.8 "Employee Dress and Grooming".
- Individuals qualified for modified duty.
 - The maximum amount of time an employee can utilize modified duty is six calendar months from the date of injury.
 - Individuals on Worker's Compensation status will be considered for modified duty status.
 - In order to be considered for modified duty status under Worker's Compensation, the department must receive a completed "Physician Visit" form that states the individual is unable to perform the essential duties of his/her current position but is able to work a modified duty assignment.
 - If an individual is on Worker's Compensation and FMLA status and is for some reason unable to work the modified duty, the individual will have to take the appropriate accrued leave.
 - When an individual on Worker's Compensation status has exhausted their FMLA eligibility and has exhausted all appropriate leave balances is tasked with completing a modified duty assignment, they are required to report for modified duty.
 - Individuals who have qualified as having a disability under the Americans with Disabilities Act (ADA) will be considered for modified duty status.
 - In order to be considered for modified duty status under ADA, the individual must complete the ADA form and qualify as having a disability and be unable to perform the essential functions of his or her job but is able to work a modified duty assignment.
- Modified duty list placement.
 - Qualifying individuals will be placed chronologically on a modified duty list.
 - The order of placement on the modified duty list will be determined by the date that all required documentation provided by the medical provider indicating that the individual is unable to perform the essential duties of his/her current position but is able to work a modified duty assignment is received by the County.
- This change to the program will be effective starting April 11, 2023.