

March 28, 2024

**TO:** County Personnel Policy Board Members

**SUBJECT:** Personnel Policy Board Meeting  
Thursday, April 4, 2024  
**11:30 a.m.**, Bill Luxford Studio  
County-City Building, 113 Studio

|                                     |
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| NOTE: Special<br>Time &<br>Location |
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### A G E N D A

- ITEM 1: Approve Minutes from the March 19, 2024 meeting.
- ITEM 2: Request for appeal hearing – FOP# 32 – Scott Schaefer - Termination - Corrections.
- ITEM 3: Miscellaneous Discussion

pc: County Agencies  
Union Presidents  
Barb McIntyre  
Tom McCarty  
Ashley Bohnet  
Kristy Bauer  
Scott Schaefer

# KEATING | O'GARA

ST. LOUIS, MO  
FEB 26 2 41 PM '24

Gary J. Nedved  
Paul J. Peter  
Anne E. Winner  
Jefferson Downing  
Gary L. Young

Joel D. Nelson  
Joel Bacon  
Thomas P. McCarty  
Tara L. Gardner-Williams

Milissa D. Johnson-Wiles  
Brenna M. Grasz  
Courtney R. Faller

OF COUNSEL:  
Doug Peterson  
EMERITUS:  
Con M. Keating

February 23, 2024

## VIA EMAIL

Barbara McIntyre  
Lincoln-Lancaster County Human Resources Director  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508  
[bmcintyre@lincoln.ne.gov](mailto:bmcintyre@lincoln.ne.gov)

Eric Brown  
Chairperson  
Lancaster County Personnel Policy Board  
[ebrown@atwoodlawyers.com](mailto:ebrown@atwoodlawyers.com)

RE: TERMINATION APPEAL OF SCOTT SCHAEFER AND FOP #32

Dear Ms. McIntyre and Chairperson Brown,

This firm represents Fraternal Order of Police, Lodge #32 and Corrections Officer Scott Schaefer ("Grievants").

On February 5, 2024, Officer Scott Schaefer was subjected to an unprovoked attack by an unrestrained inmate in the Segregation unit, consisting of the inmate repeatedly punching Officer Schaefer. Officer Schaefer was alone with the inmate, who has a history of violent behavior, and it took responding officers approximately 44 seconds to come to Officer Schaefer's aid. By the time other officers arrived, Officer Schaefer had successfully subdued the inmate. The inmate suffered no known injuries, lacerations, or bruises, and he did not receive medical treatment. The inmate has since been charged with a Class 4 felony related to the attack.

In his report of the incident, Officer Schaefer truthfully recounted that he delivered "3 closed fist strikes to [the inmate's] torso. Due to [the inmate] moving 2 of my strikes landed by his left neck area." Video of the incident shows that while Officer Schaefer was attempting to strike the chest area of the inmate, the inmate was moving,

pushing his hands into Officer Schaefer's face/jaw, and pushing into Officer Schaefer's chest, shoulder, and arm.

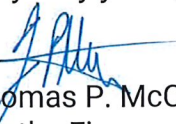
On February 23, 2024, Director Johnson terminated Officer Schaefer. Director Johnson claims—based solely on video of the incident—that Officer Schaefer intended to punch the inmate in the head, not the chest.

Pursuant to Article 8, Section 2 of the bargaining agreement between Lancaster County and FOP #32, Grievants hereby give notice of their appeal of the termination to the Personnel Policy Board, for the reason that the termination of Officer Schaefer is: not supported by just cause; is not supported by sufficient evidence; is not necessary to correct employee behavior; is not proportionate to the actions alleged; is not consistent with prior discipline; is not progressive; fails to give consideration to mitigating factors; is not based upon substantiated policy violations; is not based upon a substantiated deviation from training; is not based upon an unbiased, thorough, or fair investigation; and is arbitrary and capricious.

Since Officer Schaefer has been terminated and is without wages, Grievants request that the hearing be scheduled before the Lancaster County Personnel Policy Board on or before April 4, 2024, as is their right in accordance with Article 8, Section 2 of the bargaining agreement between FOP #32 and Lancaster County. Specifically, with respect to disciplinary appeals, Article 8, Section 2 of the bargaining agreement states: "The Board shall hold a hearing with the employee or his designated representative within thirty (30) working days after receipt of the appeal **unless one of the parties requests that the hearing be held at the second County Personnel Board hearing to be held after the date the appeal is filed . . . .**"

Under Lancaster County Personnel Rule 4.8(b), the hearing in this matter shall be "at such time and place as shall be fixed by the Chairperson of the Board." Grievants respectfully request Chairperson Brown to set the hearing date in this matter as requested above. Further, since the issue in this case revolves around the interpretation of video evidence, Grievants respectfully request that the hearing in this case be held at the law offices of Keating, O'Gara, Nedved & Peter, P.C., LLO, which would permit the Board and the parties to adequately view and inspect video evidence. Grievants also respectfully request that no additional business be heard at the Board's meeting before the disciplinary appeal to preserve Officer Schaefer's due process right to having a reasonable amount of time to present his case.

Very truly yours,



Thomas P. McCarty  
For the Firm

[tmccarty@keatinglaw.com](mailto:tmccarty@keatinglaw.com)

cc: Ashley Bohnet, Deputy Lancaster County Attorney



# Lancaster County

## Department of Corrections

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

**Brad Johnson, Director**

February 23, 2024

Scott Schaefer  
Correctional Officer  
Lancaster County Dept. of Corrections  
4700 Kirkwood Drive  
Lincoln NE 68516

RE: Termination

Dear Officer Schaefer:

On February 9, 2024, you received a letter placing you on investigatory suspension and proposing to terminate your employment with the Lancaster County Department of Corrections and the County of Lancaster. On February 16, 2024, you, Tom McCarty, Gary Young and Dan Goodman met with me to discuss the proposed discipline. During the meeting you presented information concerning the alleged violations.

After consideration of the facts before me and the information you presented, I have determined that the mitigating factors you introduced do not justify your use of force and the following policy violations. Therefore, I have decided to terminate your employment with Lancaster County Department of Corrections pursuant to Lancaster County Personnel Rule 11.2(e) and Article 30, Section 4 of the 2021-2024 Bargaining Agreement between Fraternal Order of Police Lodge #32 and the County of Lancaster, effective immediately.

This proposed termination is based upon violations of Lancaster County Department of Corrections Policies, Lancaster County Department of Corrections training, and Lancaster County Personnel Rules. It appears that the following rules, policies, and provisions have been violated:

1. Lancaster County Personnel Rule 11.2 (h)(4), "The employee has engaged in any conduct unbecoming an officer or employee of the County which reflects on the County adversely."; and
2. Lancaster County Personnel Rule 11.2 (h)(5), "The employee has violated any department, division, or institution regulation or order..."; and
3. Lancaster County Personnel Rule 11.2 (h)(8), "The employee has been incompetent or inefficient in the performance of the duties of his position."; and
4. Lancaster County Department of Corrections Policy 2.7 (A)(10), "Employees shall not employ corporal punishment or unnecessary physical force."; and
5. Lancaster County Department of Corrections Policy 2.7 (A)(11), "Employees shall not subject inmates to any form of physical or mental abuse, demean or intentionally humiliate an inmate."; and
6. Lancaster County Department of Corrections Policy 2.7 (B)(1), "Employees are expected to conduct themselves at all times, both on and off duty, in a professional manner that shall reflect favorably on the Department and County..."; and
7. Lancaster County Department of Corrections Policy 2.7 (B)(8), "Employees shall make full, accurate and truthful reports, both written and verbal..."; and
8. Lancaster County Department of Corrections Policy 2.7 (B)(13), "Employees shall not neglect any required duty as outlined in their job description and shall abide by all department polices, post orders and similar legitimate job requirements"; and
9. Lancaster County Department of Corrections Policy 6.11 (A)(2), "Application of force, mechanical restraints and therapeutic restraints must be consistent with the department's policies, post orders and training."; and

10. Lancaster County Department of Corrections Policy 6.11 (A)(4), "The use of Excessive Force is strictly prohibited."; and
11. Lancaster County Department of Corrections Policy 6.11 (D)(3), "When implementing the force continuum, staff will assess the inmate's behavior and respond with a level of control that is one level higher than the level of resistance being employed by the inmate."; and
12. Lancaster County Department of Corrections Policy 6.11 (D)(5), "Levels of control are guidelines that will normally be followed in sequential order. However, staff are expected to evaluate each situation on its own merits and, where necessary, respond with the appropriate type of force regardless of its sequence in the force continuum."...

The facts that have been reported to me are as follows:

On February 5, 2024, you were assigned as a S-Pod Officer on second shift. On this date, you were in the process of removing an inmate from the S2 yard and escorting him to the multipurpose room. During the course of this escort, the inmate became upset about having to wait in the multipurpose room instead of being allowed to go directly back to his unit. The inmate then began attempting to strike you with several closed fist punches to your torso. You employed force against the inmate that consisted of blocking the closed fist punches, calling for other staff to respond on your radio, pushing the inmate against the wall, blocking several more closed fist punches to your torso/upper arm, and then delivering three closed fist strikes to the left side of the inmate's head or neck. Then, as the inmate moved away from you, you attempted to employ two knee strikes to his upper leg area and what appeared to be an inside forearm strike to the inmate's left brachial plexus origin. You were then able to force the inmate to the floor and restrain him until other staff arrived to assist.

Following this use of force incident, you submitted an investigative report stating that, "At this time I delivered 3 closed fist strikes to his torso. Due to (the inmate) moving 2 of my strikes landed by his left neck area".

Based on the video your 3 closed fist strikes are clearly targeted to make contact with the inmate's head and not his torso. The area of impact and the type of strike "haymaker" employed by you is not trained nor appropriate in this incident and your actions were not consistent with training and Department policy.

On December 7, 2023 you were suspended for 14 days for an incident involving using closed fist strikes to a restrained inmate's head.

The subsequent investigation and review of video of the incident corroborates the facts as stated above. Please make arrangements with Kendra Knauss (402-441-1908) for the return of County property issued to you.

You have the right to appeal this termination to the Lancaster County Personnel Board in accordance with Article 30, Section 4 of the Bargaining Agreement and Lancaster County Personnel Rule 11.2(e).

Sincerely,



Brad Johnson  
Corrections Director

cc: Barb McIntyre, Human Resources Director  
Ashley Bohnet, Deputy County Attorney  
Ken Prey, Jail Administrator  
Rick Gray, Jail Administrator  
Maria Hatfield, Jail Administrator  
Jane Voboril, Corrections Lieutenant  
Personnel File