

County Personnel Policy Board Meeting

A G E N D A

TO: County Personnel Policy Board Members

SUBJECT: Personnel Policy Board Meeting
Thursday, July 30, 2026;12:30 p.m.
County-City Building, 555 S. 10th St., 3rd Floor
303 Conference Room

ITEM 1: Approve Minutes of May 7, 2026, May 26, 2026, and June 4, 2026, meetings.

ITEM 2: Request to create the following classifications:

<u>Class Code</u>	<u>Class Title</u>	<u>Pay Grade</u>
7883	Youth Services Manager of Administrative Services	C19 (\$78,249.60 - \$100,235.20)
7884	Youth Services Detention Administrator	C22 (\$87,006.40 - \$111,467.20)

ITEM 3: Request to delete the following classification:

<u>Class Code</u>	<u>Class Title</u>
7882	Youth Services Administrator (C18)

ITEM 4: Official Termination Appeal of Brian Rayburn – Corrections – Fraternal Order of Police, Lodge #32

ITEM 5: Public Comment

ITEM 6: Miscellaneous Discussion

cc: County Agencies
Union Presidents
Barb McIntyre
Kristy Bauer
Candace Berens

COUNTY PERSONNEL POLICY BOARD MEETING

May 7, 2026

Minutes

A meeting was held Thursday, May 7, 2026, Commissioners Hearing Room, County-City Building, Room 112, Lincoln, Nebraska.

Members present: Jaydon Pence, Sherri Wimes, Greg Meyer, Cori Beattie; ABSENT: Mark Munger. Human Resources Department resource staff attending: Carmen Flynn.

The meeting was opened at 1:30 p.m. by Co-Chair Jaydon Pence.

ITEM 1: Approval of March 5, 2026, meeting minutes. Moved by Sherri Wimes and seconded by Greg Meyer to approve the minutes as presented. Absent: Mark Munger. Motion passed.

ITEM 2: Request to revise and change the title of the following classification – 9760 Mental Health Program Manager to Community Corrections Program Manager. Amy Sadler from the Human Resources Department came forward to speak on this matter. Several from Community Corrections. Used to be used in mental health, they are no longer using this class. Minimum qualifications have been changed to meet the accredited standards. Jaydon questioned about the transportation of this role. Jeff Kirkpatrick, Community Corrections, maybe they spend 20% of their time transporting. Cori, clarification of 1st paragraph, is it necessary to include Community Corrections? For consistency, Amy followed up by we can make that change. Do they spend a lot of time on the computer? Jeff followed up yes. Following discussion, it was moved by Jaydon Pence and seconded by Cori Beattie to approve the request as amended. Motion passed. Absent: Mark Munger.

ITEM 3: Request to revise the following classifications, following discussion these were split into categories for discussion as follows:

1. 4750 Noxious Weed Inspector, 4751 Chief Noxious Weed Inspector – Amy Sadler came forward to discuss the changes within these classifications. Weed Authority Department, these classes had not been updated for a while. Mostly the spray and the special applicator license needed. Only the special requirement if you are spraying. Following discussion, it was moved by Jaydon Pence and seconded by Greg Meyer to approve the request with changes as amended. Motion Passed. Absent: Mark Munger.

2. 5761 Community Corrections Coordinator, 5764 Screening Specialist, 9738 Mental Health Specialist. Amy Sadler came forward to discuss the changes to these classifications. It does include the accreditation language also. We are changing these to a 4-year college. Cori mentioned housekeeping language to be consistent throughout the job descriptions. On the mental health specialist, no major degrees. Following discussion, it was moved by Cori Beattie and seconded by Jaydon Pence to approve the request with changes as amended. Motion passed. Absent: Mark Munger.

ITEM 5: Public Comment. None.

ITEM 6: Miscellaneous Discussion. None.

There being no further business, motion was made by Cori Beattie and seconded by Jaydon Pence to adjourn. Motion unanimously approved by roll call vote. Adjourned: 1:50 p.m.

There will be a special session held May 26, 2026, beginning at 12:30 p.m. for grievance hearings.

The next regular meeting will be held June 4, 2026, at 1:30 p.m.

Carmen Flynn
Human Resources Representative

PC: County Agencies
Barb McIntyre
Kristi Bauer
Candace Berens
Union Presidents

COUNTY PERSONNEL POLICY BOARD MEETING

May 26, 2026

Minutes

A special session was held Tuesday, May 26, 2026, Commissioner's Hearing Room, County-City Building, Room 112, Lincoln, Nebraska.

Members present: Sherri Wimes, Greg Meyer, Cori Beattie; ABSENT: Jaydon Pence, Mark Munger. Human Resources Department resource staff attending: Carmen Flynn.

The meeting was opened at 12:30 p.m. by Member Sherri Wimes.

Agenda Item 1 was the conclusion of Coaching Papers grievance, request of Rick DeBoer, Justin Plugge, Brian Schwabauer, Richard Switzer, Erick Rodriguez, Louis Gasper, Anthony Craft, Simon Walker and any other similarly situated employee - Article 12, Section 2 of the CBA. John Corrigan of Dowd & Corrigan, LLC represented the appellant. Candace Berens of the County Attorney's office represents the County Engineering Department. The proceedings were recorded by Patrick Quinn and are on file with his office. John Corrigan presented #7 partial transfer of the prior testimony. Candace Berens presented Exhibits #1 - #2. John Corrigan gave opening statement. Candace Berens gave opening statement. Following discussion, it was moved by Cori Beattie and seconded by Greg Meyer to sustain the appeal and moved by Sherri Wimes and seconded by Greg Meyer to remove coaching papers from employee file. Motion unanimously approved by roll call vote.

Agenda Item 2 was the Official Appeal request of Brock Adkins – Engineering – Article 12, Section 3 of the CBA – Continued to June 4, 2026, meeting due to time restraints.

Agenda Item 3 was the Official Appeal request of Ezra Puchalla – Engineering – Article 12, Section 3 of the CBA – Continued to June 4, 2026, meeting due to time restraints.

Agenda Item 3 was Public Comment. There was no comment.

Agenda Item 4 was Miscellaneous Discussion. There was no discussion.

There being no further business, motion was made by Cori Beattie and seconded by Greg Meyer to adjourn. Motion unanimously approved by roll call vote. Adjourned: 3:30 p.m.

The next regular meeting will be held June 4, 2026, at 1:30 p.m.

Carmen Flynn
Human Resources Representative

PC: County Agencies
Barb McIntyre
Kristi Bauer
Candace Berens
Union Presidents

COUNTY PERSONNEL POLICY BOARD MEETING

June 4, 2026

Minutes

Meeting was held Thursday, June 4, 2026, County-City Building, 555 S. 10th St., 3rd Floor, 303 Conference Room, Lincoln, Nebraska.

Members present: Sherri Wimes, Greg Meyer, Cori Beattie; Jaydon Pence. Members absent: Mark Munger. Human Resources Department resource staff attending: Carmen Flynn.

The meeting was opened at 1:30 p.m. by Co-Chair Jaydon Pence.

Co-Chair Jayden Pence asked if it was permissible to begin with the grievances and Barb McIntyre from Human Resources Department stated that the County business would have to be addressed.

Agenda Item 1 was the request to revise Personnel Rule 14.4 Layoff (Revised 12/00). Kari Hockemeier of Human Resources Department came forward to speak on this subject. Clarify working or non-working notice during a layoff and update working days to calendar days. Following discussion, it was moved by Cori Beattie upon revisions to approve the request once verbiage is updated consistently throughout the document, i.e., department to agency, pronouns to be gender neutral, spell out any number references followed by their numerical premises in parenthesis. Cori asked if “board” was personnel or County Board, Kari said it is defined in the definitions, then seconded by Sherri Wimes. Motion unanimously approved by roll call vote.

Agenda Item 2 was the request to revise Human Resources Policy Bulletin 2003-1 Reduction in Force Policy for Non-Union Classified Employees. Kari Hockemeier came forward to speak on this subject. Changed to standard formatting and to align the format. We revised the non-working notice. Following discussion, it was moved by Cori Beattie upon revisions to approve the request once verbiage is updated consistently throughout the document, i.e., department to agency, pronouns to be gender neutral, spell out any number references followed by their numerical premises in parenthesis, along with a few other small changes in verbiage, then seconded by Jaydon Pence. Motion unanimously approved by roll call vote.

Agenda Item 3 was the request to revise Human Resources Policy Bulletin 2024-1 Overtime Pay and Compensatory Time Policy. Kari Hockemeier came forward to speak on this subject. Kari stated we went through and made the necessary changes to align with the union contract that was approved in 2025. We created a chart to make it easier for them to see where they stand overtime. Following discussion, it was moved by Jaydon Pence and seconded by Cori Beattie to approve the revisions as presented. Motion unanimously approved by roll call vote.

Agenda Item 4 was the official appeal request of Brock Adkins – Engineering – Article 12, Section 3 of the CBA. The proceedings were recorded by Matthew Quinn, which are on file with his office. Rick DeBoer represented the appellant. Rick DeBoer offered exhibits #1-#14. Candace Berens objected to exhibits #8-#14. Exhibits #8-#9 were not admitted. Witnesses: Pam Dingman, Brock Adkins, Shawn Selezak. Candace Berens of the County Attorney’s office represented the County Engineering Department. Candace Berens offered exhibits #1-#13. Rick DeBoer had no objections. Co-Chair Jayden Pence and all members received exhibits #1-#13. Witnesses: Brock Adkins, Pam Dingman, Laura Leppky, Amy Sadler. Following discussion, it was moved by Jaydon Pence and seconded by Greg Meyer to deny the appeal. Motion unanimously approved by roll call vote.

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Agenda Item 5 was the official appeal request of Ezra Puchalla – Engineering – Article 12, Section 3 of the CBA. Due to hard stop time, item has been continued.

Agenda Item 6 was Public Comment. Josh Bassen came forward to speak about his opinion on Rule 17.3 and there should be a policy about how they hire and determine how they decide on where a new hire's pay is started at. There needs to be policies.

Agenda Item 7 was Miscellaneous Discussion. There was no discussion.

There being no further business, motion was made by Jaydon Pence and seconded by Cori Beattie to adjourn. Motion unanimously approved by roll call vote. Adjourned: 4:30 p.m.

The next regular meeting will be held July 2, 2026, at 1:30 p.m.

Carmen Flynn
Human Resources Representative

PC: County Agencies
Barb McIntyre
Kristi Bauer
Candace Berens
Union Presidents

LANCASTER COUNTY
YOUTH SERVICES MANAGER OF ADMINISTRATIVE SERVICES

NATURE OF WORK

This is responsible administrative work assisting in the overall coordination and management of administrative operations at the Youth Services Center.

Work involves responsibility for supporting facility management by performing a wide range of administrative, fiscal, personnel, and operational functions. Duties include assisting with the preparation and administration of the facility budget; monitoring revenues and expenditures; developing and maintaining financial and operational tracking systems; overseeing administrative processes related to personnel actions, payroll, and staffing levels; and coordinating service contracts and purchasing activities. Work also involves administering non-security information systems, maintaining records management systems, and assisting in the oversight of facility safety and security systems. An employee in this class provides administrative support to the Director by coordinating administrative functions and ensuring compliance with County policies, procedures, and regulatory requirements. The employee may represent the facility in meetings, serve as a liaison with other County departments, and assist with operational planning and policy development. General supervision is received from the Youth Services Center Director, with work reviewed through conferences, reports, and results achieved. Supervision is exercised over administrative or technical support staff.

EXAMPLES OF WORK PERFORMED

Assist in the preparation and administration of the facility's annual budget; monitor revenues and expenditures; develop financial tracking systems; review invoices, purchase orders, and payment vouchers; and provide financial reports and updates to the Director, County Budget Manager, or County Board.

Track and forecast facility revenue sources and monitor expenses to ensure fiscal accountability; assist with required reporting for grant or federal funding programs and recommend improvements to financial processes and controls.

Serve as liaison with the County Purchasing Department regarding service contracts and procurement activities; assist in the development, review, and renewal of contractual agreements and ensure compliance with contractual requirements.

Oversee administrative aspects of the personnel system including reviewing staffing needs, assisting with recruitment and hiring processes, processing personnel actions, maintaining personnel records, and advising management on human resource matters in coordination with the Human Resources Department.

Supervise, train, assign work to, and evaluate administrative or accounting staff; review attendance records and staffing schedules and report issues to the Director.

Prepare reports, correspondence, and other administrative documents; develop and maintain operational and statistical reports to support facility operations and decision making.

YOUTH SERVICES MANAGER OF ADMINISTRATIVE SERVICES

Review and recommend updates to agency policies, procedures, employee handbook sections, and operational guidelines to ensure compliance with regulations and industry standards.

Administer non-security computer information systems including coordinating with Information Services, troubleshooting technology issues, managing user access levels, assisting staff with system use, and maintaining internal systems such as attendance or invoicing programs.

Assist with the development, implementation, and maintenance of records management and records retention systems for the facility.

Assist in the oversight and coordination of facility safety and security systems including surveillance equipment, electronic access systems, and related technology; coordinate with maintenance staff or vendors for repair and replacement of equipment.

Relieve the Director of designated administrative responsibilities related to the overall operation of the facility and represent the facility at meetings or committees as directed.

Perform related administrative duties as assigned.

DESIRABLE KNOWLEDGE, ABILITIES AND SKILLS

Considerable knowledge of the principles and practices of public administration, organizational management, and administrative operations.

Considerable knowledge of governmental budgeting, accounting practices, and financial reporting procedures.

Knowledge of human resource administration including recruitment, personnel records management, employee relations, and personnel policies.

Knowledge of office technology, information systems, and records management practices.

Ability to analyze administrative and operational problems and recommend effective solutions.

Ability to develop and maintain financial, statistical, and operational tracking systems.

Ability to interpret and apply County policies, procedures, and applicable regulations.

Ability to prepare clear and concise reports and correspondence.

Ability to establish and maintain effective working relationships with County officials, employees, vendors, and the general public.

Ability to communicate effectively both orally and in writing.

YOUTH SERVICES MANAGER OF ADMINISTRATIVE SERVICES

MINIMUM QUALIFICATIONS

Graduation from an accredited four-year college or university with major coursework in public administration, business administration, finance, accounting, human resources, or a related field, plus two years of experience in a responsible administrative capacity; or any equivalent combination of training and experience that provides the desirable knowledge, abilities and skills.

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LANCASTER COUNTY
YOUTH SERVICES DETENTION ADMINISTRATOR

NATURE OF WORK

This is advanced professional and managerial work coordinating, supervising; and evaluating the overall operation of a secure community-based coed juvenile correctional/detention facility.

Work involves monitoring the daily needs of the department and ensuring compliance and safety among the employees and population served. Work also involves assisting in the planning, development, implementation, revision, and evaluation of departmental programs, services, and policies and procedures; assisting in the budget process; developing organizational short-term and long range goals/objectives; planning, developing, coordinating, and implementing agency programs; participating in the recruitment, selection, evaluation and discipline of employees; and locating and/or developing community resources to assist detained juveniles. Supervision is received from the Youth Services Center Director with work being reviewed in the form of conferences, reports submitted and program effectiveness. Supervision is exercised over staff.

EXAMPLES OF WORK PERFORMED

Ensure staff compliance in implementing detention policies, procedures, and post orders; review supportive documentation; conduct regular communications with subordinate personnel; conduct daily visits throughout the program to monitor staff interactions with youth and promptly address concerns if needed.

Serve as supervisor on duty in the absence of supervisory personnel; transport youth to outside appointments and court, when necessary.

Assume full responsibility for management of emergency situations in absence of the Director, including critical decision making and direction of staff until the situation is resolved; ensure proper communication

Oversee the Behavior Management, Educational and Life Skills, and Resident Orientation programs; provide continuous supervision of detention personnel to ensure the programs are implemented in adherence to departmental policy and procedure, as well as agency philosophy; annually review the programs and make any necessary adjustments.

Manage the resident grievance process by serving as the Grievance Officer for the facility; review and investigate resident discipline and grievances to ensure resident discipline is implemented fairly and with best interest of all parties and that all rights of the juvenile residents are upheld.

Serve as the Safety Coordinator responsible for managing all safety and security related functions of the facility; ensure safety inspections occur and appropriate documentation is maintained; monitor the condition of security equipment and review of security system hardware on a regular bases to ensure effective operation; conduct daily walks through of the facility to assess safety and security; assist in training of employees in safety and security measures.

Oversee all sanitation and maintenance operations related to the building and equipment within; coordinate with custodial and building maintenance personnel to ensure continued sanitation and physical condition of the facilities are maintained appropriately.

Lead the planning, developing, implementing and revising of departmental programs, services and policies/procedures; Evaluate program and client services for effectiveness, efficiency and cost containment issues; administer agency policies ensuring juvenile rights, care and safety per local, state and federal guidelines.

Participate in the recruitment, selection, evaluation and discipline of agency employees; plan, organize and supervise the work of subordinate staff; plan, develop, coordinate and implement agency programs which maintain a progressive approach to the care of youth within a correctional/detention facility.

Participate in budget preparation for the agency budget; develop organizational short term and long-range planning goals and objectives.

Locate and/or develop needed community resources in order to assist detained juveniles; participate on agency and community committees, task forces and work groups involved in corrections and human service activities as assigned by the Director.

Act as the Youth Services Center Director in his/her absence.

DESIRABLE KNOWLEDGE, ABILITIES AND SKILLS

Thorough knowledge of state and local statutes and standards relating to juvenile correctional/detention facilities.

Considerable knowledge of juvenile correctional/detention management practices including legal rights, care, custody, health, security, welfare and program services for youth.

Knowledge of human service agencies and programs and correctional/detention agencies/programs related to adolescents and families.

Knowledge of personnel administration as it relates to hiring, supervising, disciplining and evaluating employees.

Ability to work with state and local law enforcement officials and human service agencies pertaining to the operations of a correctional facility for juveniles.

Ability to plan, organize, supervise and evaluate the work of subordinate staff.

Ability to interpret federal, state and local statutes and standards pertaining to juvenile correctional/detention facilities.

Ability to make professional and administrative decisions within the framework of county rules, policies and bargaining agreements.

Ability to communicate effectively both orally and in writing.

Ability to establish and maintain effective working relationships with residents, family members, co-workers, law enforcement personnel and community agency representatives.

MINIMUM QUALIFICATIONS

Graduation from an accredited four-year college or university with major coursework in business administration, public administration, criminal justice, the social or behavioral sciences or related field plus four years of experience working with juveniles in a public or private facility including two years of supervisory experience; or any equivalent combination of training and experience that provides the desirable knowledge, abilities, and skills.

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OF COUNSEL:

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March 26, 2026

VIA EMAIL

Barbara McIntyre
Lincoln-Lancaster County Human Resources Director
555 South 10th Street
Lincoln, Nebraska 68508
bmintyre@lincoln.ne.gov

RE: TERMINATION APPEAL OF BRIAN RAYBURN AND FOP #32

Dear Ms. McIntyre,

This firm represents Fraternal Order of Police, Lodge #32 and Corrections Officer Brian Rayburn ("Grievants"). On March 23, 2026, Lancaster County Department of Corrections Director Brad Johnson issued Officer Brian Rayburn a letter retroactively terminating his employment effective March 20, 2026. Officer Rayburn's termination is based solely upon his inability to return to full-duty work within 6 months of a shoulder injury, which he sustained on-duty while restraining an inmate, even though he is on "appropriate" path to recovery following surgery. A true and correct copy of the termination letter is attached hereto as **Exhibit A**.

Grievants hereby appeal the termination because it is not supported by "just cause" as required under the applicable bargaining agreement.

BACKGROUND

Prior to his termination on March 23, 2026, Officer Rayburn worked nearly 10 years as a Corrections Officer for Lancaster County. Officer Rayburn's work history is excellent. He has received no major discipline (e.g., suspension or above) and he has passed all performance evaluations with satisfactory or better reviews.

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

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On or about September 4, 2025, Officer Rayburn suffered a shoulder injury while restraining an uncooperative inmate. Initially, Officer Rayburn's medical provider believed the injury was minor and prescribed physical therapy to remedy the issue. Some time later, Officer Rayburn's medical provider referred him for an MRI, which revealed he had a torn rotator cuff that required surgical repair. Officer Rayburn's last day of work was September 17, 2025.

Officer Rayburn underwent surgery to repair his rotator cuff on or about December 11, 2025. According to Officer Rayburn's medical provider, Nebraska Orthopaedic Center, PC, patients typically completely recover from a rotator cuff surgery and reach maximum medical improvement (MMI) within twelve (12) months from the date of surgery. Between three (3) to twelve (12) months after surgery, patients typically discontinue formal lifting restrictions. All patients progress differently between the 3 and 12-month period, however.

Following surgery, Officer Rayburn was off work but receiving County worker's compensation Temporary Total Disability (TTD) benefits equivalent to 2/3 of his compensation. On March 6, 2026, Officer Rayburn visited his medical provider, who opined that Officer Rayburn remained on a 15-pound lifting restriction until his next appointment on May 4, 2026, and clarified that there is a "[p]ossibility of Full duties at next appointment" and that Officer Rayburn was progressing "appropriately."

On March 13, 2026, Director Johnson sent Officer Rayburn a notice stating that his "six-month worker's compensation period" would expire on March 17, 2026, and the Department would terminate Officer Rayburn if the medical provider did not release Officer Rayburn to full duty. The Department then contacted Officer Rayburn's medical provider to determine when Officer Rayburn could return to duty. Officer Rayburn's medical provider replied: "This 15 lb weight restriction is an appropriate restriction at this point in [Officer Rayburn's] recovery. We will not be able to give a definite yes or no to restrictions being lifted at [Officer Rayburn's] next [appointment]. . . . We hope to have [Officer Rayburn] back to full duty with no restrictions by [his] next [appointment] 5/4/26, but again, we will assess this at [his] next [appointment]."

On March 23, 2026, the Department sent Officer Rayburn a letter terminating his employment but making his termination retroactive to March 20, 2026. Director Johnson stated: "Since you have not been released to return to work, your employment with Lancaster County will be separated effective March 20, 2026." Director Johnson also claimed the termination was "not a disciplinary action" and that Officer Rayburn would be eligible for rehire.

Upon information and belief, at the time of his separation, Officer Rayburn still had accrued sick leave, vacation leave, and/or compensatory leave on the books. Officer Rayburn is no longer able to check his leave balances because he has been locked out of the County's electronic portal.

OFFICER RAYBURN'S TERMINATION IS NOT SUPPORTED BY JUST CAUSE

Under Article 4, Section 2(E), Article 30, Sections 1 and 4, and Appendix B of the FOP #32 Labor Contract, the Department may only discharge an employee for "just cause." Under Appendix B, the term "just cause" shall mean "cause that a reasonable employer, acting in good faith, would regard as good and sufficient reason for the level and amount of discipline imposed." Appendix B further requires the County to prove, by a preponderance of the evidence, that:

the employee committed the infraction that was accused, and that the level and amount of discipline imposed is supported by just cause. In reviewing the discipline imposed the Board shall consider the nature of the infraction, the employee's prior disciplinary record, other discipline issued by the County Department Heads for similar infractions and any mitigating circumstances offered by the employee. When comparing the amount of discipline to other discipline issued by County Department Heads, the Board will bear in mind that there are differences between Departments and their concerns regarding imposition of discipline.

Here, the Department cannot establish that Officer Rayburn's termination is supported by "just cause" for numerous reasons.¹

First, the underlying facts mitigate against termination. Officer Rayburn suffered a rotator cuff surgery while restraining an inmate—a task he was obligated to perform as a Corrections Officer. Officer Rayburn's surgery was delayed for a time due to his provider's failure to recognize the severity of his injury, and Officer Rayburn has always complied with his treatment regimen. Since his surgery in December 2025, Officer Rayburn has progressed in accordance with the typical timeline for rotator cuff tears.

The Department's hardline stance in this case makes little sense in context. Officers at the Department frequently get injured because their jobs require them to fight with and restrain inmates. This can cause rotator cuff tears, knee injuries, back

¹ Please note Grievants have not had an opportunity to conduct discovery regarding a variety of matters relevant to the "just cause" analysis, including how other County and Department employees have been treated. Grievants reserve the right to introduce additional evidence and arguments as they discover additional information.

injuries, and the like. The typical recovery period for a rotator cuff injury, according to Officer Rayburn's physician, is three (3) to twelve (12) months. This means any Corrections Officer who suffers a rotator cuff tear on duty is immediately at risk of losing their job solely due to the recovery period commonly associated with such an injury. A reasonable employer, acting in good faith, would not subject employees to such inherently dangerous work and then terminate them merely because they are progressing through a medically "appropriate" timeline to return to work. Indeed, the Department's hardline stance, which incorporates an arbitrary 6-month deadline, may even encourage injured employees to return to work before they are healed, leading to further injury (and additional worker's compensation liability to the County).

Second, Officer Rayburn still had sick, vacation, and compensatory leave on the books at the time of his termination. Under Article 12, Section 5(A), of the Labor Contract, Officer Rayburn is entitled to use accrued sick leave to cover absences due to "sickness . . . injury, or disability." Under Article 12, Section 5(H), an employee may supplement his worker's compensation TTD payments with sick leave "to a figure equivalent to a full pay check." This means Officer Rayburn could supplement his 2/3 TTD payments with 1/3 sick leave to remain in a pay status. The County also permits employees to supplement TTD payments with accrued vacation and compensatory leave. Director Johnson terminated Officer Rayburn even though Officer Rayburn had the ability to supplement his TTD benefits to receive a full paycheck. Director Johnson apparently did not consider allowing Officer Rayburn to simply use his paid leave to cover his absence. Now, because Director Johnson has terminated Officer Rayburn, Officer Rayburn's sick leave balance has been completely forfeited.

Third, the Department is not fully staffed with Corrections Officers. Thus, Director Johnson did not need to terminate Officer Rayburn to "make way" for a new hire. Even if Director Johnson hired a new Corrections Officer to replace Officer Rayburn, there is no guarantee the Department could do so before Officer Rayburn is cleared to return to work. Furthermore, any new Officer would be required to undergo a 12-month probationary period and Academy training; as it stands, the Department completely loses Officer Rayburn's 10-years of training and experience and his veteran presence on shift. Director Johnson completely disregarded Officer Rayburn's extensive experience and work history and the cost of his training over the years in favor of slavishly applying a hard 6-month return-to-work deadline.

Fourth, the Department loses very little if it keeps Officer Rayburn on the books as an employee until he completes his "appropriate" medical recovery. The Department is not currently paying Officer Rayburn a salary and was not paying him a salary throughout his absence. The County pays Officer Rayburn his TTD benefits regardless of his job status until he reaches MMI. The only thing the County "loses" by keeping Officer Rayburn on the books as an employee is the County's portion of Officer

Rayburn's health insurance premium, which is an insignificant cost when compared to the lost hours and money in training and experience the Department loses by terminating Officer Rayburn.

In contrast, while the Department notes that Officer Rayburn could reapply once he is fully recovered, Officer Rayburn would lose a significant amount under that scenario. Under Article 10 of the Labor Contract, Officer Rayburn would be a probationary employee upon rehire for a 12-month period and he would be at the bottom of the seniority list with respect to his use of vacation/compensatory leave and bidding his shift/days off. Officer Rayburn has already worked nearly 10 years to obtain his seniority, which allows him a better choice of paid time off and shifts/days off. If Officer Rayburn returns to work, he will be at the *complete bottom* of the seniority list, as if he had never worked for the Department. Officer Rayburn would also likely start back at Step 1 on the pay scale, losing over \$6 per hour, and he would accrue vacation leave at 84 hours per year instead of 143 hours per year (Article 12, Section 4).

Fifth, the Department appears to have applied the County's general 6-month deadline for return-to-work to Officer Rayburn's situation without recognizing the nuances applicable to Corrections Officers. Most importantly, the 6-month deadline is not strictly applicable to Officer Rayburn; rather, the Contract's fact-intensive, multi-factor "just cause" provisions apply. Furthermore, unlike some other County agencies, the Department has refused to afford Corrections Officers modified duty accommodations. Modified duty allows employees in other agencies to continue working, save up and accrue paid leave, and avoid ever going into a without pay status while they recover from an injury. Furthermore, unlike County jobs of a clerical nature, a rotator cuff renders a Corrections Officer *completely incapable* of returning to work during the period of recovery. Officer Rayburn can perform the sort of sedentary work that is commonly available throughout various other County agencies. While very few work-related injuries may render an employee in the Assessor's Office or the Treasurer's Office from returning to work within 6 months, the same is not true for Corrections Officers given the nature of their work.

Finally, this is not a situation where Officer Rayburn's physician gave a completely indefinite timeline for his return to work. According to Officer Rayburn's physician, Officer Rayburn may well be able to return to full-duty after his next appointment on May 4, 2026, which is just over one month away. Unlike some other cases, there is absolutely *zero* indication that Officer Rayburn will *never* return to work, or that his return will be delayed indefinitely for years and years. According to Officer Rayburn's physician, Officer Rayburn is on the "appropriate" path to returning to work which, *at the earliest* would be May 4, 2026 and *at the absolute latest* would be December 2026. A reasonable employer, acting in good faith, would not have fired Officer Rayburn under these circumstances.

OFFICER RAYBURN WAS TERMINATED, DISMISSED, AND/OR DISCHARGED

Grievants anticipate that the County will claim Officer Rayburn was not terminated, dismissed, or discharged within the meaning of the Labor Contract. The County will likely claim Officer Rayburn was “medically separated” such that Officer Rayburn has no “just cause” protection under the Labor Contract. This argument draws a distinction that does not exist in the Labor Contract, however. Article 30, Section 1 of the Labor Contract expressly defines “Disciplinary action” as “written reprimand, suspension, demotion and *dismissal*.” (emphasis added). Officer Rayburn has clearly been “dismissed” within the meaning of the Contract.

Furthermore, the County Civil Service Act states that the County must adopt a procedure—here, the County, through its Personnel Rules, incorporates the FOP #32 Labor Contract by reference—for instances where the County may “suspend, reduce, demote, or *dismiss* an employee for . . . incompetence . . . or *other unfitness to render effective service*.” Neb. Rev. Stat. § 23-2525(19). The Civil Service Act simply does not establish a special category for the “separation” of those, like Officer Rayburn, whom the County claims is unfit to render effective service due to medical reasons. Indeed, Neb. Rev. Stat. § 23-2528(1) states that employees who have completed their probationary period “shall have permanent tenure until the employee resigns voluntarily or is *separated* in accordance with the rules and regulations governing retirement, *dismissal*, or layoff.” (emphasis added). Simply put, there is no difference between “separation” and “dismissal” under the Labor Contract or the Civil Service Act.

Finally, the use of the phrase “medical separation” to avoid “just cause” analysis was recently rejected by the Lancaster County District Court in a recent case involving a Lincoln City employee.² There, a longtime City employee suffered from a visual impairment and the City decided to “medically separate” his employment. In doing so, the City claimed his “medical separation” was not a “discharge” under the applicable labor contract so the employee was not entitled to disciplinary appeal rights or a “with cause” analysis under the labor contract. The Lancaster County District Court disagreed, reasoning: “[The employee’s] property interests in continued employment do not disappear just because the City considers him to have been ‘medically separated’ instead of discharged. Discharged needed to be ‘with cause’ under Article 8” Ultimately, the Court affirmed the Lincoln City Personnel Board’s decision to reverse the employee’s termination. A copy of the District Court’s Order is attached hereto as **Exhibit B**.

² Lincoln and Lancaster County share the same Human Resources and Risk Management Department.

CONCLUSION

For the foregoing reasons, Officer Rayburn's termination is not supported by "just cause" and he should be reinstated with backpay, which shall include all wages (for any period he was cleared to work), lost fringe benefits, seniority, and paid leave. Officer Rayburn should be made whole and placed in the position he would have been had he never been terminated.

Respectfully Submitted,

/s/Thomas P. McCarty

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FOR THE FIRM

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