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AGENDA ITEM
REQUEST/JUSTIFICATION FORM

(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY BEFORE THE TUESDAY MEETING

Agenda item: Consent
(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)
Date to be on agenda: August 2, 2016

Exact wording to be used for the agenda: Resolution to deny contract claim filed pursuant to Neb. Rev. St. § 23-135: Contract claim from Bryan Laux, Alicia Laux, and Jeff Geho, et al., and Fraternal Order of Police Lodge #8.

Action requested: Deny Contract Claim as recommended by County Attorney

Amount requested: N/A Object Code: N/A

Is item in current year's budget? Yes N/A No ____

Does this item commit funds in future years? Yes N/A No ____

If yes, explain: ____

If an agreement or contract, has the County Attorney reviewed and approved? N/A Yes No____

Previous action taken on this item, if any: Previously referred to County Attorney for review and recommendation.

Recommendations and rationale or action: Deny claim to allow complaint to be filed in District Court.

Will anyone speak on behalf of this item, if so who? No.

If this is a rush agenda item, please explain why: ____

Submitted by (Name & Dept.:) Jimmie L. Pinkham III Ext. 7622
Date submitted: 7/25/16
List Attachments: Resolution, February 2, 2016 Contract Claim Agenda Item Packet
(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)

Certified resolutions can be obtained at the County Clerk's website:
http://www.douglascountyclerk.org/county-board-records/search-for-resolutions

Completed by receiving office
Received in Administrative Office: Date 7/25/16 Time

4841-4260-5354.1

BOARD OF COUNTY COMMISSIONERS
Douglas County Nebraska

Resolved

WHEREAS, on January 29, 2016, a claim on behalf of Bryan Laux, Officer Alicia Laux and Officer Jeff Geho et, al., and the Fraternal Order of Police Lodge #8 was submitted to the Douglas County Clerk, a copy of which is attached hereto; and.

WHEREAS, the County Board referred the claim to the County Attorney's Office for its review and recommendation; and

WHEREAS, the County Attorney's Office recommends that the County Board deny the claim.

NOW THEREFORE, BE IT RESOLVED BY THIS BOARD OF COUNTY COMMISSIONERS, Douglas County, Nebraska, that the attached claim is hereby denied.

Dated this _____ day of August, 2016.

AGENDA ITEM
REQUEST/JUSTIFICATION FORM

(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY
BEFORE THE TUESDAY MEETING

Agenda item: Action Item
(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)
Date to be on agenda: February 2, 2016

Exact wording to be used for the agenda: Mr. Daniel A. Esch, Douglas County Clerk/Comptroller – presenting the following contract claim filed pursuant to Neb. Rev. Stat. §23.135 (refer to County Attorney for review and recommendation):
Contract claim from: Bryan Laux, Officer Alicia Laux and Officer Jeff Geho et, al... and Fraternal Order of Police Lodge #8.

Action requested: Refer to County Attorney for review and recommendation.

Amount requested: $ undetermined at this time (per claim) Object Code: N/A

Is item in current year's budget? N/A Yes _____ No _____

Does this item commit funds in future years? N/A Yes _____ No _____

If yes, explain: _____

If an agreement or contract, has the County Attorney reviewed and approved? N/A Yes __ No____

Previous action taken on this item, if any: None

Recommendations and rationale or action: Comply with state statute.

Will anyone speak on behalf of this item, if so who? No

If this is a rush agenda item, please explain why: N/A
Submitted by (Name & Dept.:) Daniel A. Esch, County Clerk Ext. 402-444-6767
CHIEF DEPUTY
Date submitted: February 1, 2016
List Attachments: Claim
(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)
Certified resolutions can be obtained at the County Clerk's website:
http://www.douglascountyclerk.org/county-board-records/search-for-resolutions

Completed by receiving office
Received in Administrative Office: Date Time

Dowd Howard & Corrigan, LLC

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January 29, 2016

Via Hand Delivery
Daniel Esch
Douglas County Clerk
1819 Farms RM. H08
Omaha Ne. 68183

RE: Claim on behalf of Bryan Laux, Officer Alicia Laux and Officer Jeff Geho et, al... and Fraternal Order of Police Lodge #8, with professional address of 710 S 17th St. Omaha, Nebraska 68102

Dear Mr. Esch,

Please be advised that this office represents the Fraternal Order of Police Lodge #8 and in that capacity we hereby give notice of a claim on behalf of the above-referenced individuals who are employees of Douglas County and covered by a Collective Bargaining Agreement between Fraternal Order of Police Lodge #8 and Douglas County. This notice is pursuant to Neb. Rev. Stat. §23-135.

On June 17, 2015 the Department of Corrections issued a personal order identified as 2015-P-29 which indicated that as of July 16, 2015 Corrections Officer II Megan Maine would no longer be employed by the Department of Corrections. On August 14, 2015 Ms. Maine returned to work at the Douglas County Department of Corrections as a Corrections Officer II and maintained her Classification and nty Seniority. The Collective Bargaining Agreement between Douglas County and FOP 8 supersedes any contrary Civil Service Commission policy and the contract specifically provides in Article 16 that Departmental Seniority is defined as the most recent date the employee started working at the Department of Corrections in a position covered by the Bargaining Unit and that Classification Seniority is defined as an employee's continuous service within job classification without a break or interruption except as provided in Section 3 and 4 of Article 16. Ms. Maine's resignation and subsequent rehire does not constitute an exception to the break in service language under Article 16 because she was not on an unpaid leave of absence and she was not subject to County layoff of less than 30 days therefore she had a break in service and she should not get credit for previous service after her rehire by the County. Ms. Maine should have returned to work as a Corrections Officer I with the seniority date of August 15, 2015. Furthermore pursuant to Article 17 of the applicable CBA an employee must have one year of experience as a Corrections Officer I in order to be eligible for promotion to a Corrections Officer II. By allowing Ms. Maine to receive credit for her prior service after

she was rehired by the County after her resignation, the County has violated the rights under the Collective Bargain Agreement held by the employer covered by the CBA.

On January 14, 2016, Mark Foxall, Director of Corrections, issued correspondence denying the Grievance filed under the CBA on behalf of Laux and others similarly situated (attached hereto). Ms. Laux and the Union have exhausted the administrative remedies available under the Collective Bargaining Agreement for the process of Grievances. The claim accrued as of January 14, 2016 when the Union exhausted administrative procedures set forth in the CBA. The amount of the claim at this time is not known to a precise amount because of the various individuals that have been adversely affected as the result of the allowance of Officer Maine to maintain credit for prior service after being rehired by the County after her resignation. An accounting is necessary to determine the ongoing benefits and salary that will continue to be lost by adversely affected members the bargaining unit and it appears that the amount at this time is equal to and may be and excess of $5000.00.

Should you require any further information with respect to this claimed do not hesitate to contact us.

Please refer all further correspondence regarding this matter to the undersigned and acknowledge receipt of same and please advise us as to when the matter will be placed before the County Board on its agenda. Further I'd ask that you please advise me as to when the County Board takes action to approve or deny the above-referenced claim.

This claim is being pursued to collect wages due and unpaid in the form of agreed-upon wages that would have been earned by individuals who would have been eligible for promotion but for violation of the Collective Bargain Agreement therefore should in claim based on the Nebraska Wage, Payment, and Collections Act and will be seeking an attorney fee in this matter consistent with the act.

Very truly yours,

John E. Corrigan

JEC:wa
Enclosure

cc. Matt Lewis, President of FOP Lodge #8

Douglas County Department of Corrections

Mark Foxall, PhD, CJM
Director

John M. Hubbard, CJM
Deputy Director

To: Officer Bryan Laux, Officer Alycia Laux, Officer Jeffrey Geho

From: Mark Foxall, Ph.D, CJM, Director of Corrections

Date: 14 January 2016

Re: Director Hearing, Grievance #2015-0820-3255/C/A

PRESENT: Officer Bryan Laux, Officer Alycia Laux, Officer Jeffrey Geho, Sergeant Matthew Lewis, Director Mark Foxall, Deputy Director John Hubbard, Pretrial Release Administrator Michael Rupiper

Pursuant to Corrections Policy 1.3.107 (Employee Grievance Process/Director's Review), a hearing was held on Thursday, 17 September 2015 at approximately 1545 hours, to review grievances #2015-0820-3255/C/A. Due to the identical claims made in the grievances, it was agreed upon through your Fraternal Order of Police (FOP), Lodge #8, President Matthew Lewis to consolidate the grievances and conduct one (1) Director's Hearing to address the issues. Your grievances allege the seniority rules of Article 16 and the promotions/vacancies rules of Article 17 of the FOP, Lodge #8, Collective Bargaining Agreement were violated on 15 August 2015 when Officer Megan Maine resumed her previous rank and seniority following her resignation on 16 July 2015. The grievances request that Officer Maine be assigned the rank of Correctional Officer I and a seniority date of 14 August 2015. During the hearing with the above listed attendees present, your representative, Sergeant Lewis, argued that Officer Maine was rehired at her prior rank and seniority in violation of the rehiring procedures of Article 7, Section 6 of the Civil Service Policy Manual.

Article 12, Section 3 of the Civil Service Policy Manual states:

> *RETURN FOLLOWING RESIGNATION: An employee's length of service is not broken and all rights and benefits are retained if the employee returns to regular employment with any Civil Service covered Department of Douglas County within 30 calendar days. Return to employment within the same Department may occur only by mutual agreement of the Elected Official/Department Head concerned, the employee and the Human Resources Director.*

Pursuant to Article 12, Section #3 of the Civil Service Policy Manual, Officer Maine was allowed to return to regular employment without a break in her length of service, and all of her rights and benefits were retained. Because there was no break in her service, and because she retained her original seniority date under the authority of this Civil Service provision, there were no violations of the seniority and promotional rules of the FOP Collective Bargaining Agreement.

For these reasons, I find that your grievance has no merit. Thank you for your understanding in this grievance process.

CC: Karen Buche, Director of Human Resources
Diane Carlson, Deputy County Administrator
Sergeant Matthew Lewis, President, FOP Lodge #8
Deputy Director John Hubbard
Mike Rupiper, Pretrial Release Administrator
File

DANIEL A. ESCH
DOUGLAS COUNTY CLERK / COMPTROLLER
KATHLEEN A. HALL
CHIEF DEPUTY DOUGLAS COUNTY CLERK

February 1, 2016

COPY

Bryan Laux, Officer Alicia Laux and Officer Jeff
Geho et, al... and Fraternal Order of Police Lodge #8
c/o: John E. Corrigan
Dowd Howard & Corrigan, LLC
Attorneys at Law
1411 Harney Street, Suite 100
Omaha, NE 68102

To Whom It May Concern:

This letter is to inform you that the Douglas County Clerk's office is in receipt of your claim.

Said claim will be placed on the Douglas County Board of Commissioners' meeting agenda; to be held on Tuesday, **February 2, 2016**; at 9:00 a.m. in the Legislative Chambers of the Omaha-Douglas Civic Center, 1819 Farnam Street, Omaha, NE.

At that time, the Board will be asked to refer this claim to the Douglas County Attorney for review and recommendation. You will be notified in writing once the Board has referred your claim to the County Attorney.

If you have any questions, please do not hesitate to contact me at (402) 444-6764.

Sincerely,

Ellen M. Sechser
Administrative Assistant
Douglas County Clerk's Office

OMAHA-DOUGLAS CIVIC CENTER • 1819 FARNAM STREET, HO8 • OMAHA, NEBRASKA 68183-0008
402•444•6767 • FAX 402•444•6456
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www.douglascountyclerk.org