

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

NEBRASKA ASSOCIATION OF)
PUBLIC EMPLOYEES, LOCAL 61 of)
the AMERICAN FEDERATION OF)
STATE, COUNTY AND MUNICIPAL)
EMPLOYEES,)
Petitioner,)
v.)
THE STATE OF NEBRASKA,)
NEBRASKA BOARD OF PAROLE,)
and FRATERNAL ORDER OF)
POLICE, LODGE #88,)
Respondent.)

Case No. 1532

FINDINGS OF FACT AND ORDER

NEBRASKA COMMISSION
OF INDUSTRIAL RELATIONS
FILED

DEC 23 2022

CLERK

For Petitioner:

Joy Shiffermiller
Shiffermiller Law, PC, LLO
1002 G Street
Lincoln, NE 68508

For Respondent State of
Nebraska, Board of Parole:

Mark A. Fahleson
Rembolt Ludtke LLP
3 Landmark Centre
1128 Lincoln Mall, Ste. 300
Lincoln, NE 68508

For Respondent Fraternal Order
Of Police, Lodge #88:

Braden W. Storer
Keating, O'Gara, Nedved & Peter, PC, LLO
530 S 13th Street, Ste. 100
Lincoln, NE 68508

Before Commissioners Blake, Carlson, and Neuhaus

NATURE OF THE CASE

The Petitioner, Nebraska Association of Public Employees, Local 61 of the American Federation of State, County, and Municipal Employees ("NAPE") filed a Petition on April 19, 2022, alleging the Respondent State of Nebraska, Board of Parole ("State") committed prohibited practices in violation of *Neb. Rev. Stat.* §§ 81-1386(2)(b) and (f). Further, the Petition alleges that

Respondent Fraternal Order of Police, Lodge #88 (“FOP”) committed prohibited practices in violation of *Neb. Rev. Stat.* §§ 81-1386(3)(b). A trial was held on November 21, 2022, before the Honorable William G. Blake.

FINDINGS OF FACT

Petitioner is a labor organization as that term is defined in *Neb. Rev. Stat.* § 48-801. Petitioner is the exclusive certified collective bargaining agent for the Social Services and Counseling bargaining unit. The Social Services and Counseling bargaining unit, established by *Neb. Rev. Stat.* §§ 81-1373(d), represents employees of the State of Nebraska that occupy the classifications Parole Officer Trainee, Parole Officer Senior, and Parole Officer/Specialized. Respondent State is an employer as that term is defined in *Neb. Rev. Stat.* § 81-1371(5). Respondent Fraternal Order of Police, Lodge #88 is a labor organization as that term is defined in *Neb. Rev. Stat.* § 48-801. Petitioner and Respondent State have been covered by an effective collective bargaining agreement between the Petitioner and the Respondent State covering wages, hours and conditions of employment. The agreement applies to the Social Services and Counseling bargaining unit and covers the period July 1, 2021 through June 30, 2023.

In early 2021, certain Parole employees began exploring the possibility of being reclassified into the Protective Services Bargaining Unit under *Neb. Rev. Stat.* § 81-1373(l)(f), which is represented by Respondent FOP. They engaged in a conversation with the leadership team of FOP and circulated a petition among all the parole officers employed by the State. Over ninety (90) percent of parole officers signed the petition indicating that they desired a change in their classification to the Protective Services bargaining unit and a change in their representation to FOP. Based on this information, FOP began taking steps to seek a change in the applicable statute to move these employees from one statutory bargaining unit to another. Specifically, FOP supported a legislative proposal (LB 1003) during the 2022 Nebraska Legislative session which would have amended *Neb. Rev. Stat.* § 81-1373(l)(f) to specifically include Parole Officers in the protective services bargaining unit. A hearing was held before the Judiciary Committee of the Nebraska Legislature on February 9, 2022, where testimony was elicited from supporters and opponents of LB 1003. In anticipation of this hearing, FOP asked some parole officers to testify in support of the bill. These employees reached out to their supervisors to arrange to be excused from work to testify. At the legislative hearing, FOP testified in support of LB 1003, as did multiple parole officers. NAPE was the sole party testifying in opposition to the bill. No vote was held on

LB 1003, and the Legislative Session ended without any action being taken on the bill. Soon after the end of the session, NAPE filed this action.

DISCUSSION

Jurisdiction

Under Nebraska's Industrial Relations Act, the Commission has the authority to decide industrial disputes (Neb. Rev. Stat. § 48-819.01) and to determine whether any party to an agreement has committed a prohibited practice.

The State Employees Collective Bargaining Act shall be deemed controlling for state employees and state employers covered by such act and is supplementary to the Industrial Relations Act except when otherwise specifically provided or when inconsistent with the Industrial Relations Act, in which case the State Employees Collective Bargaining Act shall prevail.

The State of Nebraska, its employees, employee organizations, and exclusive collective-bargaining agents shall have all the rights and responsibilities afforded employers, employees, employee organizations, and exclusive collective-bargaining agents pursuant to the Industrial Relations Act to the extent that such act is not inconsistent with the State Employees Collective Bargaining Act.

Neb. Rev. Stat. § 81-1732.

The Commission finds that it has jurisdiction to determine whether the Respondents have committed a prohibited practice as alleged by the Petitioner.

Prohibited Practice Allegations

Neb. Rev. Stat. § 81-1386 provides in relevant part:

- (2) It shall be a prohibited practice for any employer or the employer's negotiator to:
- (b) Dominate or interfere in the administration of any employee organization;
 - (f) Deny the rights accompanying certification or exclusive recognition granted in the Industrial Relations Act or the State Employees Collective Bargaining Act;

(3) It shall be a prohibited practice for any employees, employee organization, or bargaining unit or for any of their representatives or exclusive collective-bargaining agents to:

(a) Interfere with, restrain, coerce, or harass any state employee with respect to any of the employee's rights under the Industrial Relations Act or the State Employees Collective Bargaining Act;

(b) Interfere, restrain, or coerce an employer with respect to rights granted in the Industrial Relations Act or the State Employees Collective Bargaining Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances;

The evidence and testimony received at trial failed to establish that either Respondent State or Respondent FOP committed a prohibited practice. Specifically, there was no evidence that Respondent State dominated or interfered in the administration of any employee organization or denied the rights accompanying certification or exclusive recognition granted in the Industrial Relations Act or the State Employees Collective Bargaining Act. There was also no evidence that Respondent Fraternal Order of Police, Lodge 88 interfered with, restrained, coerced, or harassed any state employee or employer with respect to any of the rights granted under the Industrial Relations Act or the State Employees Collective Bargaining Act. Rather the testimony showed that a majority of the relevant bargaining unit employees were dissatisfied with their current representation, sought to change their representation, and took actions to do so. The bargaining unit is defined by statute. As such, a statutory change would be required to move the Parole employees to a different bargaining unit.

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CONCLUSION

We find the Petitioner failed to meet their burden in this case and that its Petition should be dismissed.


IT IS THEREFORE ORDERED that the Petition is dismissed.

All Panel Commissioners join in the entry of this Order.

Entered December 23, 2022.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

By



William G. Blake, Hearing Commissioner