

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

NEBRASKA ASSOCIATION OF)
PUBLIC EMPLOYEES LOCAL 61 of)
the AMERICAN FEDERATION OF)
STATE, COUNTY, AND MUNICIPAL)
EMPLOYEES,)
Petitioner,)
v.)
STATE OF NEBRASKA,)
Respondent.)

Case No. 1561

ORDER ON MOTION FOR
TEMPORARY RELIEF

NEBRASKA COMMISSION
OF INDUSTRIAL RELATIONS
FILED

DEC 29 2023

CLERK

This matter comes before the Commission on Petitioner’s Motion for Temporary Relief and Brief in Support of Motion for Temporary Relief filed on December 13, 2023. Respondent’s Brief in Opposition to Motion for Temporary Relief was filed on December 20, 2023. A hearing was held on December 21, 2023, before Commissioners William G. Blake and Dallas D. Jones, at which time evidence was received and argument was heard on the record. Commissioner Patricia L. Vannoy participated on the pleadings, the record of the hearing and the Briefs. Petitioner was represented by its attorney, Abby Osborn, and Respondent was represented by its attorneys, Mark A. Fahleson and Tara L. Paulson. Post Hearing Briefs were received on December 27, 2023.

The Commission has jurisdiction to adjudicate alleged violations of the Industrial Relations Act by virtue of Neb. Rev. Stat. §§ 48-824 and 48-825. The Commission finds that the Prohibited Practice Petition sufficiently alleges prohibited practice claims which invoke the jurisdiction of this Commission. The Commission has the power and authority to make such findings and to enter such temporary or permanent orders as the Commission may find necessary to provide adequate remedies, to effectuate the public policy enunciated in § 48-802, and to resolve the dispute. Neb. Rev. Stat. § 48–819.01. Neb. Rev. Stat. § 48-816(1)(a) provides in part:

The commission may, upon its own initiative or upon request of a party to the dispute, make such temporary findings and orders as necessary to preserve and protect the status of the parties, property, and public interest involved pending final determination of the issues.

Neb. Rev. Stat. Section § 48-823 states:

The Industrial Relations Act and all grants of power, authority, and jurisdiction made in such act to the commission shall be liberally construed to effectuate the public policy enunciated in section 48-802. All incidental powers necessary to carry into effect the

Industrial Relations Act are hereby granted to and conferred upon the commission.

Neb. Rev. Stat. § 48–819.01 instructs that:

Whenever it is alleged that a party to an industrial dispute has engaged in an act which is in violation of any of the provisions of the Industrial Relations Act, or which interferes with, restrains, or coerces employees in the exercise of the rights provided in such act, the commission shall have the power and authority to make such findings and to enter such temporary or permanent orders as the commission may find necessary to provide adequate remedies to the injured party or parties, to effectuate the public policy enunciated in section 48-802, and to resolve the dispute.

The public policy enunciated in Neb. Rev. Stat. § 48-802 includes, in part, “[t]he continuous, uninterrupted and proper functioning and operation of the governmental service . . .”

Turning to Petitioner’s Motion for Temporary Relief, to preserve and protect the public interest and the status of the parties prior to the final determination of the issues, the legislature conferred on the Commission the authority to “make such temporary findings and orders as necessary.” Neb. Rev. Stat. § 48-816(1)(a). When exercising that authority, Neb. Rev. Stat. § 48-823 compels that such authority “shall be liberally construed to effectuate the public policy enunciated in section 48-802.”

The Nebraska Supreme Court has observed that “it may very well be that it is in the public interest to be assured that public employees, who do not have the right to strike or hinder, delay, limit, or suspend the continuity or efficiency of governmental services, should continue to receive their previous salaries or be afforded the same terms and conditions of employment while the employer, the employee, and the CIR attempt to resolve the differences.” *Int’l Union of Operating Engineers Loc. 571 v. City of Plattsmouth*, 265 Neb. 817, 825, 660 N.W.2d 480, 486 (2003) (citing *Transport Workers v. Transit Authority of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984)).

Applying, as we must, a liberal construction of the authority conferred on the Commission to effectuate the public policy enunciated in Neb. Rev. Stat. § 48-802, we find that a Temporary Order maintaining the status quo, pursuant to Neb. Rev. Stat. § 48-816, must be granted.

The analysis does not end there, however. What remains is a determination of what constitutes the status quo under the circumstances presented by this matter. The parties agree that the status quo is to be maintained during the pendency of this dispute. The parties disagree as to what the status quo is. Respondent’s general argument and position regarding the status quo is that

the implementation of Executive Order 23-17 on January 2, 2024, during the pendency of this industrial dispute, is permissible because “what the executive order does is what it (the Respondent) has always been able to do; and, therefore, the status quo is maintained” (by allowing the Executive Order to be implemented as planned). (Tr. 32:25-33:3). The affidavit of Jason Jackson states that Executive Order 23-17 seeks to return the workforce to its 2019 pre pandemic posture. (Exhibit 9, ¶ 17). The Petitioner argues that the “employment status is the continuation of the terms and conditions of employment without the unilateral change to the mandatory subjects of bargaining.” (Post Hearing Brief of the Petitioner, pg. 9).

The Nebraska Supreme Court has defined status quo to be the employment status, wages, hours, or terms and conditions of employment which existed prior to the dispute. *Transport Workers Union Local 223 v. Transit Authority of Omaha*, 216 Neb. 455, 461, 344 N.W.2d 459, 463 (1984). Respondent’s argument that the status quo the management right to “unilaterally determine the site of work for bargaining unit employees, which may be changed at the discretion of the State” (Respondent’s Post Hearing Brief, pg. 8), is an invitation to make a determination on the merits of the underlying prohibited practice case, a determination we are prohibited in making at this juncture. We find that pursuant to the holding in *Transport Workers Union Local 223*, the dispute in this matter arose upon the issuance of the Executive Order in question. Accordingly, we are compelled to find that the status quo in this matter consists of the agency policies relating to remote work assignments, and the application of those policies, which were in place just prior to the issuance of the Executive Order.

The Commission finds that a Temporary Order pursuant to Neb. Rev. Stat. § 48-816 should be granted to preserve the status quo as set forth herein pending final determination of the issues raised by the Prohibited Practices Petition.

WE THEREFORE ORDER that the implementation of Executive Order 23-17 may not be applied to the bargaining unit employees represented by the Petitioner during the pendency of this case.

All Panel Commissioners join in the entry of this Order.

Entered December 29, 2023.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS


William G. Blake, Hearing Commissioner