

IN THE NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

NEBRASKA ASSOCIATION OF	)	
PUBLIC EMPLOYEES LOCAL 61	)	
of the AMERICAN FEDERATION	)	
OF STATE, COUNTY, AND	)	
MUNICIPAL EMPLOYEES,	)	
	)	
Petitioner,	)	CASE NO.
	)	
v.	)	PROHIBITED PRACTICES
	)	PETITION
STATE OF NEBRASKA,	)	
DEPARTMENT OF	)	
EDUCATION,	)	
	)	
Respondent.	)	

COMES NOW the Petitioner, Nebraska Association of Public Employees, Local 61 of the American Federation of State, County and Municipal Employees, and invokes the jurisdiction of this Commission as stated in the Rules of the Commission of Industrial Relations, Rules 14 and 42, by alleging as follows:

1. Petitioner is a labor organization representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work, with address and telephone number of 1230 O Street, Suite 120, Lincoln, Nebraska, 402-486-3911; it is a labor organization as that term is defined in Neb. Rev. Stat., § 48-801(7) and within the meaning of that statutory clause.
2. That the Petitioner [NAPE/ AFSCME or the Union] is the exclusive collective bargaining agent for The State of Nebraska Department of Education as set forth in the collective bargaining agreement between the Petitioner and Respondent and the Nebraska State

Statutes. The Bargaining Unit was certified by the Commission for Industrial Relations pursuant to the Industrial Relations Act and the State Employee Collective Bargaining Act.

3. The Respondent, State of Nebraska Department of Education is a public employer pursuant to Neb. Rev. Stat. § 48-801(12) and employer pursuant to Neb. Rev. Stat. § 81-1371(5). The administrative offices for personnel and labor relations for Respondent State of Nebraska Department of Education are located at 500 S. 84th St., Lincoln, NE 68510-2611. The statutorily designated agent for service of process is Mike Hilgers, Nebraska Attorney General, 2115 State Capitol, Lincoln, Nebraska 68509.
4. Petitioner brings this action against Respondent for prohibited practice in violation of Neb. Rev. Stat. § 48-824(1) and (2)(e) and Neb. Rev. Stat. § 81-1386(1) and (2)(e) based upon Respondent's unilateral change to, and refusal to negotiate in good faith over, a mandatory subject of bargaining detailed below.
5. That at all times relevant to this matter, the parties have been covered by an effective collective bargaining agreement between the Petitioner and the Respondent covering wages, hours and conditions of employment. The agreement applies to all regular employees of the State of Nebraska Department of Education, including those on probation, and those occupying fixed-term positions in job classification titles listed in the agreement, and has covered the period July 1, 2023 through June 30, 2025.
6. The collective bargaining agreement described in paragraph 5 contains Article 1 - Preamble. Article 1, Section 1.2 reads in relevant part as follows:
  - a. It is hereby agreed by the parties signatory hereto that it has been and will continue to be in their mutual interest to promote and encourage areas of understanding and cooperation in labor management relations; to promote procedures and methods to promptly and fairly adjust differences, misunderstandings, and disparities; to promote reasonable and fair working conditions and to encourage an

environment of good will and harmony between Agency and employees for the benefit of all.

7. The collective bargaining agreement described in paragraph 5 contains no definition or description of remote work, work site, or work location.
8. Earlier in 2023 the Respondent attempted to unilaterally change the wage scales in the collective bargaining agreement.
9. Petitioner reminded the Respondent of the obligations under the law to negotiate changes to the terms and conditions of employment.
10. On or about December 1, 2023, Commissioner Maher sent a memorandum stating that Return to Office plans will be developed by administrators and implemented no later than February 12, 2024.
11. This memorandum was sent to the employees but was not sent to the Petitioner by the Respondent despite the intention to change the terms and conditions of employment for the member employees.
12. Maher indicated that many changes will be implemented including a reapplication process in which some employees will be selected for hybrid or remote work assignments.
13. On or about December 4, 2023, in response to Commissioner Maher's memorandum, Justin Hubly, Executive Director for the Petitioner sent a letter to Amy Spellman - Human Resources Administrator for the Respondent.
14. The letter from Hubly stated that the terms and conditions of employment are mandatory subjects of bargaining. That the Petitioner had not received any communication from Spellman or any representative of the Respondent regarding the changes to the terms and conditions of employment that the Respondent planned to implement.
15. The letter included a formal demand to bargain related to the terms and conditions of employment.
16. Hubly identified the minimum terms that must be negotiated including,

- a. Eligibility for hybrid and fully remote work options;
  - b. Location of work assignments;
  - c. Requirements for work assignments, including tenures, performance, and duties;
  - d. The application process for remote work options;
17. On or about December 20, 2023, a meeting was held between Brian Halstead – Deputy Commissioner, Nebraska Department of Education, Justin Hubly, Executive Director for the Petitioner and Ryan Lawrence, Field Representative for the Petitioner.
  18. Halstead described a number of meetings that were held between October and December 2023 regarding “Return to Office” plans.
  19. The Respondent did not communicate with nor include the Petitioner regarding the December 1, 2023, memorandum and planning to implement it.
  20. At the meeting, Hubly raised the issue that the Commissioner’s memo clearly contemplated changing the terms and conditions of employment, and that therefore the Petitioner was standing on their demand to bargain.
  21. Halstead responded that the Commissioner’s memorandum should not be interpreted in the way the Petitioner had, and that it was simply meant to provide a broad timeline and guidance for employees.
  22. Halstead stated that management retained the right to assign the worksite.
  23. Hubly then stated that the Commissioner’s memorandum clearly stated that remote options will be available to some employees based on tenure, performance, and job duties, and that those are mandatory subjects of bargaining.
  24. Halstead then stated that the memorandum should not be interpreted as Hubly had and that the memorandum was not a legal document, and that it could have been sent out with better language.
  25. Halstead then stated that no changes had been made, that the memorandum dictated no changes, and that the Department would announce changes developed by management on January 22, 2024,

- after they were approved by Respondent administration and Halstead.
26. Halstead stated that those changes would take effect after February 12, 2024.
  27. Hubly again reminded Halstead of the earlier time when the Respondent decided to unilaterally change the terms of conditions of employment without any communication to the Union outlined above and his belief that the Respondent is purposefully ignoring the Petitioner regarding addressing changes to the terms and conditions of member employees.
  28. Halstead requested that the Petitioners wait to take action until after an announcement is made on January 22, 2024.
  29. The Petitioner agreed to wait until an announcement was made on January 22, 2024, prior to taking any action related to the changes contemplated in the December 1, 2023, memorandum, noting the short time between January 22, 2024, and the proposed implementation date of February 12, 2024.
  30. Hubly reiterated the Petitioner's willingness to negotiate regarding this at any time.
  31. In March 2024, Commissioner Maher issued Nebraska Department of Education Administrative Memorandum #509 ("AM #509").
  32. AM #509 was not provided to the Petitioner or member employees by the Respondent.
  33. AM #509 was only uploaded to an internal website at an unknown time.
  34. AM #509 states the terms of telework agreements.
  35. AM #509 provides a list of factors that are to be considered for approval of telework agreements.
  36. AM #509 does not designate a process for determining who is approved for telework agreements, what weight criteria is given for denial of telework requests, or any grievance process for the denial of telework requests.
  37. On or about May 6, 2024, Hubly emailed Halstead stating, "Brian, We are hearing reports from some of our members that their remote work assignments have changed at NDE, but that they

haven't seen an official policy change. It also sounds like individual supervisors are making these decisions. Has NDE changed its policy? We haven't heard anything from you regarding remote work since our meeting in December."

38. On or about May 15, 2024, Amy Spellman responded to Hubly's email stating, "Hello Justin, The current Telework policy is attached and is available to employees on the NDE internal websites. The Deputy Commissioners and Human Resources are the final approvers of telework requests. Please let us know if you have any questions."
39. A copy of AM #509 was attached.
40. Recently some union members began contacting the Petitioner stating that some remote work assignments have been changed by individual supervisors beginning in mid-February 2024.
41. On or about May 17, 2024, Hubly sent a letter to Spellman.
42. Hubly discussed the December 20, 2023, meeting, including that "Halstead stated that no changes were being made to remote work assignments or agency policy at the time and that any changes made would be announced on January 22, 2024, and take effect on February 12, 2024."
43. Hubly stated that "[n]o changes were announced on January 22, 2024, nor did any go into effect on February 12, 2024."
44. Hubly reminded Spellman of the May 6, 2024, email asking if the Department had changed its policy and Spellman's response.
45. Hubly indicated that members of the union have not received a copy of the memorandum from the Respondent as it was not distributed to the Petitioner members.
46. Hubly notes that the memorandum clearly changes the terms and conditions of employment.
47. Hubly went on to state his disappointment that the Respondent chose not to communicate with the Petitioner regarding the changes, and that the lack of communication is not an oversight as claimed in December 2023.
48. Hubly stated "please consider this a new "demand to bargain" over remote work assignments."

49. Hubly indicated that some members have had changes made to the terms and conditions of employment which are mandatory subjects of bargaining.
50. Hubly offered to meet to negotiate at the earliest convenience of the Respondent and requested to still work collaboratively.
51. On or about May 31, 2024, Spellman wrote Hubly.
52. Spellman stated that NDE was willing to visit with the Petitioner about the applicable terms of the current contract, that NDE "declines your "demand to bargain" over remote work assignments."
53. Because AM #509 is silent on the number of items outlined by Hubly, and/or those items become in conflict with detailed portions of the CBA and is silent about the steps the Respondent would need to follow in order for AM #509 to be effectuated, therefore the parties are required to negotiate prior to implementing any changes identified in AM #509.
54. The changes unilaterally dictated in AM #509 and the position taken by Respondent through the AM #509, and their application by individual supervisors constitutes a violation of Neb. Rev. Stat. 48-824(1) and 2(e) and Neb. Rev. Stat. §81-1386(1), and 2(e).
55. Respondent's unilateral actions are deliberate and willful, and designed to undermine the rights of the petitioner and the bargaining unit members under the Nebraska Industrial Relations Act and the State Employees Collective Bargaining Act, thereby entitling the Petitioner to reasonable attorney fees and costs.

WHEREFORE, the Petitioner prays that the Commission grant relief against the Respondent and in favor of the Petitioner finding that the Respondent has committed prohibited practices and ordering that the Respondent immediately cease and desist such actions, honor the negotiated agreements and enter into bargaining regarding the terms and conditions of employment, for attorney fees and for such other relief as may be deemed appropriate by the Commission.

DATED, June 28, 2024.

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

By:   
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