

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. 1583

) ORDER ON MOTIONS FOR
) TEMPORARY RELIEF

NEBRASKA COMMISSION
OF INDUSTRIAL RELATIONS
FILED

OCT 30 2025

CLERK

This matter comes before the Commission on the Petitioner's Motion for Temporary Relief and brief in support and Respondent's Motion for Temporary Relief and brief in support, all filed on October 8, 2025. A motion hearing was held via video conference on October 17, 2025.

NEB. REV. STAT. § 48-816(1)(a) grants the Commission authority, upon its own initiative or upon request of a party to the dispute, to make temporary findings and orders as may be necessary to preserve and protect the status of the parties and the public interest involved pending final determination of the issues. In the event of an industrial dispute between a public employer and labor organization where one has "failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to begin or resume... and may make any such order or orders as appropriate to govern the situation pending such bargaining...." NEB. REV. STAT. § 48-816(1)(a).

The Commission has authority to enter orders preserving the status quo until the industrial dispute is resolved. *Transport Workers Union of America, Local 223 v. Transit Auth. of the City of Omaha*, 216 Neb. 455 (1984). The Commission's authority to enter a status quo order is discretionary, and this authority will be used when it appears appropriate. *International Union of Operating Engineers Local 571 v. City of Plattsmouth*, 265 Neb. 817 (2003).

The Nebraska Supreme Court has defined status quo as the employment status, wages, hours, or terms and conditions of employment which existed *prior to the dispute*. *Transp. Workers Union Local 223 v. Transit Auth. of Omaha*, 216 Neb. 455, 461 (1984). (Emphasis added). Preservation of the status quo is automatic upon the filing of a Petition pursuant to NEB. REV. STAT. §48-811(1). NEB. REV. STAT. §48-811(1) states that “...the employment status of such employee *shall not* be altered in any way pending disposition of the petition by the commission”.

Prior to this dispute, effective since May 28, 2024, Respondent’s Policy 203.04 governed the use of body scanners within the Nebraska Department of Correctional Services (“NDCS”). The relevant section of that policy stated “SCANNING OF NDCS TEAM MEMBERS- Scanning of NDCS team members, including officer interns and all other SOS temporary team members, is prohibited. See Policy 203.13 Security and Control Staff Searches for the search process for NDCS team members.” Motion Ex. 4, pg. 5. The policy was revised on August 4, 2025. The Prohibited Practices Petition, filed on September 9, 2025, alleges that “[o]n August 1, 2025, Davis provided Department of Correctional Services Policy 203.04 “Body Scanner Policy” revised August 4, 2025 to Hubly, and the Petitioner for the first time.” Prohibited Practices Petition, ¶16. “Respondent admits the allegations contained in Paragraph 16.” Answer and Affirmative Responses of Respondent, ¶16. The revised relevant section of NDCS Policy 203.04 now states:

“SCANNING OF NDCS TEAM MEMBERS

All team members selected by the randomizer, will be required to undergo a body scan before entering the facility. If a staff member has a medical condition (including pregnancy) or mobility issue that prevents them from using the body scanner, they must submit a written request for an exception to the HR specialist manager/grievance & ADA coordinator, accompanied by documentation from their medical provider, in advance of entering the facility. The HR specialist manager/grievance & ADA coordinator may approve such exceptions in writing, with a copy of the authorization provided to the requestor and maintained in the relevant ADA file. Those provided exceptions will undergo a pat search and must pass through the metal detector. Any team member who refuses to complete the

body scan will not be permitted to enter the facility and may be subject to disciplinary action, up to and including termination.” Motion Ex. 5, pg. 5.

The Commission must determine the status quo and address the competing requests for temporary relief. While we will not make a determination on the merits of the case here, we find that the revised NDCS Policy 203.04, specifically as applied to NCDS Team Members in this bargaining unit, is the subject of the industrial dispute before the Commission. The Commission finds that, regardless of the outcome on the merits of this prohibited practice dispute, the status quo is the terms and conditions of employment prior to the revised NDCS Policy 203.04. Motion Ex. 5. Respondent required bargaining unit members to submit to body scans beginning on or about October 6, 2025, in violation of the status quo requirement of NEB. REV. STAT. §48-811(1). Motion Ex. 2.

Parties are only required to bargain over mandatory subjects of bargaining. Under the State Employee Collective Bargaining Act (“SECBA”), mandatory subjects of bargaining are those subjects of negotiation that employers must negotiate pursuant to the Industrial Relations Act (“IRA”). NEB. REV. STAT § 81-1371(9). Mandatory subjects are those subjects that relate to “wages, hours, and other terms and conditions of employment, or any question arising thereunder.” NEB. REV. STAT § 48-816(1)(a). Additional mandatory subjects of bargaining are those which “vitally affect” the terms and conditions of employment. *Fraternal Order of Police, Lodge No. 8 v. Douglas County*, 16 CIR 401 (2010). Mandatory subjects of bargaining are not just topics for discussion during negotiations. Unless clearly waived, mandatory subjects must be bargained for before, during, and after the expiration of a collective bargaining agreement. *Omaha Police Union Local 101 v. City of Omaha*, 15 CIR 292 (2007). Failure to bargain for any changes to these items is a per se violation of the Act and a prohibited practice.

“Nothing in the State Employees Collective Bargaining Act shall be construed to prohibit supplementary bargaining on behalf of employees in part of a bargaining unit concerning matters uniquely affecting such employees.... Any agreements entered into pursuant to this section may be adjusted after March 15 only to reflect any order issued by the commission or the Supreme Court.” NEB. REV. STAT. §81-1379.

The Commission finds that while the status quo in this matter has been violated, we cannot ignore the public safety implications regarding the introduction of contraband into NDCS facilities. Motion Ex. 6; See also *NAPE Local 61 v. NDCS*, 20 CIR 15 (2018). As a matter of public policy, we decline to ban the use of body scanners during the pendency of this proceeding while noting that the merits of the case may show the unilateral change in the NCDS Policy 203.04 was a prohibited practice in violation of both the Industrial Relations Act and the State Employee Collective Bargaining Act. However, the Commission is also required to preserve and protect the status of the bargaining unit members. Some potentially valid concerns regarding subjection to radiation may not fall under the existing ADA exceptions, e.g. breastfeeding, fertility, medical implants not related to a covered disability. Motion Ex. 2; Attachment to Motion Ex. 6. We find that terms and conditions of employment have been unilaterally changed in violation of the bargaining unit’s status quo protections, including the possibility of termination for refusal to submit to body scans.

The Commission finds that neither ordering the return to status quo during the pendency of these proceedings, nor ordering the Union to simply comply with the revised NDCS Policy 203.04 fully “preserve and protect the status of the parties and the public interest involved pending final determination of the issues.” The parties have also expressed concern over the length of time that full resolution of this matter, including possible appeals, may take.

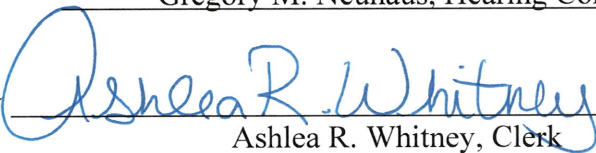
IT IS THEREFORE ORDERED:

1. The Parties shall enter into supplementary good faith bargaining regarding potential reasonable exceptions to the NCDS Body Scanning Policy 203.04 not already covered under the ADA, as well as the disciplinary terms and conditions related to the policy.
2. During the pendency of supplementary bargaining, NAPE members with current health-related concerns may submit a written request for a temporary exemption as otherwise set out in the policy. While the Commission declines to order the Respondent specifically which exceptions to allow in the interim, these requests should be reasonably and fairly considered by the Respondent and not denied simply for being outside of ADA coverage.
3. The Respondent shall not terminate or otherwise discipline a NAPE member who has submitted a written request for a health-related exception, regardless of whether the request is approved, pending final determination of the issues.

Entered October 30, 2025.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

Gregory M. Neuhaus, Hearing Commissioner

By  _____
Ashlea R. Whitney, Clerk