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IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

RACHEL HARTGRAVE,

Petitioner,

v.

STATE OF NEBRASKA, DEPARTMENT  
OF HEALTH AND HUMAN RESOURCES,

Respondent.

Case No. CI 25-333

**ORDER**

LANCASTER COUNTY  
2025 DEC 11 AM 9:56  
CLERK OF THE  
DISTRICT COURT

This matter came before the Court on a Petition for Review under the Administrative Procedure Act on October 1, 2025. Abby K. Osborn appeared on behalf of Petitioner Rachel Hartgrave (“Hartgrave”). Tyrone E. Fahie appeared on behalf of Respondent State of Nebraska, Department of Health and Human Resources (“DHHS”). The Court heard arguments and took the matter under advisement. Now being fully advised, the Court reverses the State Personnel Board’s official decision and remands the case for further proceedings.

**BACKGROUND**

On July 3, 2023, Hartgrave began employment with DHHS in a position covered by the NAPE/AFSCME Labor Contract (“Labor Contract”). Section 8.1 of the Labor Contract requires all new hires to serve an original probationary period of six months from the date of hire. Hartgrave’s original probationary period was set to end on January 3, 2024. Section 8.3 of the Labor Contract permits extension of an employee’s original probation for performance or other reasons, not to exceed a total of one calendar year from the date of hire. Hartgrave’s offer letter stated that her first six months of employment would be an original probation period which may be extended for up to one year from the date of hire.

On December 20, 2023, Hartgrave received an “Extension of Original Probation Period” letter dated December 19, 2023. The letter stated, in pertinent part: “Your original probationary



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period is being extended through July 3, 2024 for job performance. This action is being taken in accordance with Article 8 of the NAPE/AFSCME Labor Contract. You will be receiving a performance improvement plan which will include performance improvement expectations.” (T55.) DHHS issued a Performance Improvement Plan (“PIP”) to Hartgrave on January 30, 2024. On April 12, 2024, Hartgrave was given a letter titled “Termination of Employment During Original Probation Period,” effective immediately.

Hartgrave filed a grievance on April 30, 2024, alleging that DHHS violated Section 10.1 of the Labor Contract by failing to provide notice of allegations or a pre-disciplinary meeting prior to terminating her employment. The grievance proceeded to Step 3 and was transferred to the State Personnel Board’s hearing process. DHHS moved for summary dismissal, arguing that Hartgrave was still on her extended original probation when she was terminated and therefore had no grievance rights to challenge her termination. After a hearing, the hearing officer issued a recommended order that the grievance appeal should be dismissed on the basis that Hartgrave lacked standing to file a grievance due to her extended probationary status. On January 7, 2025, the State Personnel Board adopted the hearing officer’s recommended decision as its official decision and dismissed Hartgrave’s grievance appeal.

This appeal follows. Hartgrave seeks an order reversing the State Personnel Board’s official decision, finding that her original probation was not properly extended, and allowing her grievance to be heard. Hartgrave also requests attorney fees under Neb. Rev. Stat. § 25-1803. In her brief, Hartgrave assigns that the State Personnel Board erred in finding that (1) DHHS properly extended her original probationary period and (2) she lacked grievance rights to grieve her termination.

## **STANDARD OF REVIEW**

Under the Administrative Procedure Act (“APA”), a district court reviews an agency’s action without a jury *de novo* on the record of the agency. Neb. Rev. Stat. § 84-917(5)(a) (Reissue 2024). “The court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.” *Id.*

The court with jurisdiction over an action for judicial review against the state pursuant to the APA shall award fees and expenses to the prevailing party unless the prevailing party is the state, “except that the court shall not award fees and expenses if it finds that the position of the state was substantially justified.” Neb. Rev. Stat. § 25-1803(1) (Reissue 2016). Substantial justification exists where the position has a reasonable basis both in law and in fact. *In re A.A.*, 308 Neb. 749, 754, 957 N.W.2d 138, 142 (2021) (citation omitted).

## **ANALYSIS**

Under Section 8.5 the Labor Contract, “[e]mployees may be separated at any time during the original probationary period,” and “[e]mployees on original probation do not have grievance rights.” (T45.) Section 8.1 provides that an employee “shall be removed from original probation status on the day following the end of the original probationary period, unless notified in writing of extension or separation.” (T44.) Section 8.3 permits DHHS to extend an employee’s original probation for performance or other reasons, not to exceed one year from the date of hire. DHHS issued a letter on December 19, 2023, extending Hartgrave’s original probation through July 3, 2024, citing performance concerns. The PIP was provided on January 30, 2024. The parties dispute whether DHHS properly extended Hartgrave’s original probation and disagree on the interpretation of Section 8.4 of the Labor Contract, which states:

- 8.4 The notification of extension shall be in writing and shall include the specific period of extension. In cases of extension for performance reasons

the employee shall be provided specific performance improvement requirements.  
(T45.)

Hartgrave argues that DHHS did not properly extend her original probation because it failed to provide specific performance improvement requirements at the time of the extension, as required by Section 8.4 of the Labor Contract. Although DHHS eventually provided Hartgrave with the PIP on January 30, 2024, it was effective as of that date and made no reference to probation extension. Hartgrave argues that the January 30, 2024, PIP was issued after her original probation ended on January 3, 2024, and was not in connection with the performance-based extension notice. Hartgrave claims that she was no longer in probationary status and therefore had grievance rights when terminated in April 2024. On the other hand, DHHS maintains that its December 19, 2023 notice properly extended Hartgrave's original probation through July 3, 2024 for performance reasons. DHHS argues that Section 8.4 of the Labor Contract requires only written notice specifying the extension duration and does not mandate how or when performance improvement requirements must be delivered. The question here is whether Section 8.4 of the Labor Contract requires an employee to be provided with specific performance improvement requirements at the time of the extension of their original probation when the extension is for performance reasons.

“In interpreting a contract, a court must first determine, as a matter of law, whether the contract is ambiguous.” *Brush & Co. v. W.O. Zangger & Son*, 314 Neb. 509, 517-18, 991 N.W.2d 294, 301 (2023). “A determination as to whether an ambiguity exists in a contract is to be made on an objective basis, not by the subjective contentions of the parties.” *Seemann v. Seemann*, 318 Neb. 643, 651, 18 N.W.3d 118, 125 (2025). “The fact that the parties have suggested opposite meanings of a disputed contract does not necessarily compel the conclusion

that the contract is ambiguous.” *Id.* “A contract is ambiguous when a word, phrase, or provision in the contract has, or is susceptible of, at least two reasonable but conflicting interpretations or meanings.” *Brush & Co.*, 314 Neb. at 518, 991 N.W.2d at 302. “When a contract is ambiguous, the court may consider all facts and circumstances leading up to the contract’s execution, the nature and situation of the subject matter, and the apparent purpose of the contract.” *Id.* “A contract must receive a reasonable construction and must be construed as a whole. If possible, effect must be given to every part of a contract.” *Id.* at 518, 991 N.W.2d at 301.

Reviewing the agency’s record de novo, the Court finds that Section 8.4 of the Labor Contract is ambiguous, as it has, or is susceptible of, at least two reasonable but conflicting interpretations. It is reasonable for DHHS to interpret the second sentence of Section 8.4 as not imposing a specific timeframe for delivering performance improvement requirements. It is also reasonable to interpret Section 8.4 as requiring that performance improvement requirements be provided along with the written notification of extension when the extension is for performance reasons. Reading Section 8.4 in its entirety and together with other provisions of the Labor Contract, the Court concludes that when original probation is extended for performance reasons, specific performance improvement requirements must be provided to the employee no later than the final day of the original probation before the extension. Delay in providing those requirements undermines the purpose of a performance-based probation extension, which is to give the employee a meaningful opportunity to meet the employer’s performance improvement expectations. This purpose is reflected in the December 19, 2023 probation extension letter, in which Hartgrave’s supervisor expressed his hope that Hartgrave would “continue to focus on learning [her] job and make the improvements needed in order to be successful in [her] position.” (T55.)

Hartgrave was notified of the extension of her original probation for performance reasons on December 20, 2023, but was not provided with the necessary PIP until nearly a month into the purportedly extended probation. Absent a proper extension, Hartgrave's original probation of six months ended on January 3, 2024. The Court agrees with Hartgrave that the PIP was not timely issued in connection with the extension notice and therefore concludes that her original probation was not properly extended under Section 8.4 of the Labor Contract. As a result, Hartgrave was no longer in probationary status when DHHS terminated her employment in April 2024 and had grievance rights. Because the State Personnel Board erred in concluding otherwise and in summarily dismissing Hartgrave's grievance appeal, the Court reverses the State Personnel Board's official decision and remands the cause for further proceedings. However, because DHHS's interpretation of the Labor Contract was reasonable, the Court denies Hartgrave's request for attorney fees under Neb. Rev. Stat. § 25-1803(1).


### **CONCLUSION**

For the reasons set forth above, the Court reverses the State Personnel Board's official decision dated January 7, 2025, and remands the cause for further proceedings consistent with this Order. Hartgrave's request for attorney fees is denied.

**IT IS SO ORDERED.**

DATED this 11 day of December, 2025.

BY THE COURT:

  
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Darla S. Ideus  
District Court Judge