

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

BRIANNA WALKER,

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Case No. CI 25-3089

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Petitioner,

)

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v.

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STATE OF NEBRASKA

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DEPARTMENT OF HEALTH AND

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HUMAN SERVICES,

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Respondent.

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JULIE BUBAK,

)

Case No. CI 25-3090

)

Petitioner,

)

)

v.

)

)

STATE OF NEBRASKA

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DEPARTMENT OF HEALTH AND

)

HUMAN SERVICES,

)

)

Respondent.

)

)

ORDER

ORDER

On May 18, 2026, these consolidated cases came before the Court on petitions for judicial review under the Administrative Procedure Act. Abby Osborn appeared for the Petitioners. Joseph McKechnie appeared for the Respondent. Being fully advised on the premises, the Court affirms the decision of the agency in each case.

I. BACKGROUND

The Petitioners, Brianna Walker and Julie Bubak, are employees of the Nebraska Department of Health and Human Services who assert that they were “called back for duty” under Article 7.8 of the labor contract and therefore DHHS is

required to pay them a minimum of two hours at the appropriate rate of pay in each of those instances. These matters are before the Court on the record of the agency which includes a joint stipulation of facts.

A. Factual background.

Walker and Bubak are employed as Registered Nurses for DHHS at the Youth Rehabilitation and Treatment Center – Hastings. Both are covered by the labor contract between NAPE/AFSCME and the State of Nebraska. Both are eligible for overtime and may be placed into on-call status. While in on-call status, nurses are not on DHHS's premises but may be called to perform work at any time and are paid 12% of their normal hourly rate of pay for each hour in on-call status. When DHHS nurses who are in on-call status are called to perform work, they are paid their regular salary for time actually worked, rounded to the nearest quarter hour, but are not paid an additional 12% for on-call pay while performing work.

Walker

Walker was placed into on-call status from 2:30 p.m. on April 8, 2024, to 8:00 a.m. on April 9, 2024. During on-call status, Walker was called at 7:46 p.m. on April 8 to perform a seven-minute nurse consultation over the phone. Walker was paid her regular salary for time actually worked and 12% of her salary for the remaining time in on-call status.

Walker was again placed into on-call status from 2:30 p.m. on April 9, 2024, to 8:00 a.m. on April 10, 2024. During on-call status, Walker was called at 8:22 p.m. on April 9 to perform a six-minute nurse consultation over the phone. And she was called

at 9:02 p.m. on April 9 to perform a six-minute nurse consultation over the phone. Walker was paid her regular salary for time actually worked and 12% of her salary for the remaining time in on-call status.

Next, Walker was placed into on-call status from 2:30 p.m. on April 10, 2024, to 8:00 a.m. on April 11, 2024. During on-call status, Walker was called at 7:00 p.m. on April 10 to perform a five-minute nurse consultation over the phone. She was called at 8:48 p.m. on April 10 to perform a five-minute nurse consultation over the phone. She was called at 9:01 p.m. on April 10 to perform a six-minute nurse consultation over the phone. And she was called at 9:43 p.m. on April 10 to perform a seven-minute nurse consultation over the phone. Walker was paid her regular salary for time actually worked and 12% of her salary for the remaining time in on-call status.

Lastly, Walker was placed into on-call status from 2:30 p.m. on April 12, 2024, to 8:00 a.m. on April 15, 2024. During on-call status, Walker was called at 7:30 p.m. on April 12 to perform an eight-minute nurse consultation over the phone. She was called at 8:39 a.m. on April 13 to perform a four-minute nurse consultation over the phone. She was called at 8:48 a.m. on April 13 to perform a five-minute nurse consultation over the phone. She was called at 9:04 a.m. on April 13 to perform a four-minute nurse consultation over the phone. She was called at 9:28 a.m. on April 13 to perform a six-minute nurse consultation over the phone. She was called at 9:37 a.m. on April 13 to perform a seven-minute nurse consultation over the phone. She was called at 10:00 a.m. on April 13 to perform a ninety-minute nurse consultation at

YRTCH. She was called at 5:26 p.m. on April 13 to perform a four-minute nurse consultation over the phone. She was called at 9:55 a.m. on April 14 to perform a five-minute nurse consultation over the phone. She was called at 11:27 a.m. on April 14 to perform a seven-minute nurse consultation over the phone. She was called at 2:42 p.m. on April 14 to perform a five-minute nurse consultation over the phone. She was called at 4:46 p.m. on April 14 to perform a four-minute nurse consultation over the phone. She was called at 9:55 p.m. on April 14 to perform a five-minute nurse consultation over the phone. And finally she was called at 7:36 a.m. on April 15 to perform a four-minute nurse consultation over the phone. Walker was paid her regular salary for time actually worked and 12% of her salary for the remaining time in on-call status.

In total, DHHS paid Walker her regular salary for 0.25 hours of work on April 8, 2024, paid Walker for 0.25 hours of work on April 9, 2024, paid Walker for 0.50 hours of work on April 10, 2024, paid Walker for 0.25 hours of work on April 12, 2024, paid Walker for 4.25 hours of work on April 13, 2024, and paid Walker for 0.50 hours of work on April 14 and 15, 2024, in addition to the 12% pay for the remaining time in on-call status on each of those dates. She was not paid 12% of her salary for the time actually worked.

Bubak

Bubak was placed into on-call status from 2:30 p.m. on Monday March 11, 2024, to 8:00 a.m. on March 12, 2024. During on-call status, Bubak was called at 6:41 p.m. and 8:48 p.m. to perform two nurse consultations over the phone lasting nine

minutes and two minutes, respectively. Bubak was paid her regular salary for time actually worked, and 12% of her salary for the remaining time in on-call status.

Bubak was again placed into on-call status from 2:30 p.m. on March 13, 2024, to 8:00 a.m. on March 14, 2024. During on-call status, Bubak was called at 8:27 p.m. to perform one nursing consultation over the phone lasting two minutes. Bubak was paid her regular salary for time actually worked, and 12% of her salary for the remaining time in on-call status.

Next, Bubak was placed into on-call status from 3:00 p.m. on March 16, 2024, until 8:00 a.m. on March 18, 2024. During on-call status, Bubak was called at 4:20 p.m. on March 16 to perform a five-minute nurse consultation over the phone. She was called at 9:23 p.m. on March 16 to perform a four-minute nurse consultation over the phone. She was called at 2:10 p.m. on March 17 to perform a five-minute nurse consultation over the phone. And she was called at 5:07 p.m. on March 17 to perform a thirteen-minute nurse consultation over the phone. Bubak was paid her regular salary for time actually worked, and 12% of her salary for the remaining time in on-call status.

In total, DHHS paid Bubak her regular salary for 0.25 hours of work on March 11, 2024, paid Bubak for 0.25 hours of work on March 13, 2024, paid Bubak for 0.25 hours of work on March 16, 2024, and paid Bubak for 0.25 hours of work on March 17, 2024, in addition to the 12% pay for the remaining time in on-call status on each of those dates. She was not paid 12% of her salary for the time actually worked.

B. Procedural background.

On March 26, 2024, Bubak filed a timely grievance alleging a violation of Article 7.8 of the labor contract between NAPE/AFSCME and the State of Nebraska. On April 23, 2024, Walker filed a timely grievance alleging a violation of Article 7.8 of the labor contract between NAPE/AFSCME and the State of Nebraska. Both grievances were denied and on May 29, 2024, both Petitioners filed a timely appeal to Step 2 of the grievance process. On February 28, 2025, the Nebraska Department of Administrative Services Employee Relations Administrator ordered the matters be heard by the State Personnel Board.

A hearing on each grievance was held on May 12, 2025, in Lincoln, Nebraska and later the hearing officer issued her recommendations that the Nebraska State Personnel Board grant the appeals. On August 13, 2025, the Personnel Board accepted the hearing officer's recommended findings of fact in each appeal but rejected the hearing officer's conclusions of law and denied the appeals. On September 5, 2025, the Petitioners timely filed petitions for judicial review.

II. STANDARD

Under the Administrative Procedure Act, a court reviews the agency's action without a jury de novo on the agency's record. Neb. Rev. Stat. § 84-917(5)(a) (Cum. Supp. 2022). A court may affirm, reverse, or modify the agency's decision, or remand for further proceedings. *Id.*

III. ANALYSIS

The parties disagree on the application of Article 7.8 of the Labor Contract between the State of Nebraska and NAPE/AFSCME for the period of July 1, 2023 – June 30, 2025. Articles 7.8 provides:

7.8 Call-Back Time/Call-In: Employees eligible for overtime who are called back for duty or called in on the employee's day off will be guaranteed a minimum of two hours at the appropriate rate of pay. This provision shall not be construed so as to provide for additional compensation if the employee is recalled back for duty within the original two hour period, except that employees who are called back to work in excess of two hours will be paid for actual time worked. To qualify for call-in compensation, the time worked cannot be contiguous to the end of an employee's scheduled work shift.

Each Petitioner argues she should be paid the guaranteed two-hour work minimum in Article 7.8 instead of only the actual time each worked because each was “called back for duty” during the specific minutes grieved. DHHS responds that since the Petitioners were “on call” under Article 7.9, these Petitioners were not “called back for duty” under Article 7.8. DHHS also worries that Petitioners’ proffered interpretation of the contract would create a windfall for on-call employees such as these who are briefly called to perform work while on call.

In interpreting a contract, a court must first determine, as a matter of law, whether the contract is ambiguous. *Daehnke v. Neb. Dep't of Soc. Servs.*, 251 Neb. 298, 303, 557 N.W.2d 17, 20 (1996). 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. *Id.* This determination is to be made on an objective basis, not by the subjective contentions of the parties; thus, the fact that the parties have suggested opposing meanings of the disputed instrument does not

necessarily compel the conclusion that the instrument is ambiguous. *Id.* Both the Petitioners and DHHS believe that the language of the labor contract is clear and unambiguous. And the Court agrees. The parties simply disagree on how the contract applies to the facts here.

A contract must be construed as a whole, and if possible, effect must be given to every part thereof. *Id.* In other words, a party may not pick and choose among the clauses of a contract, accepting only those that advantage it. *Id.* A contract written in clear and unambiguous language is not subject to interpretation or construction and must be enforced according to its terms. *Id.* The terms of a contract are to be accorded their plain and ordinary meaning as ordinary, average, or reasonable persons would understand them. *Id.*

A. The contract differentiates between an employee called back for duty and an employee called in on their day off.

Article 7.8 guarantees a minimum of two hours pay in two different scenarios. First, it applies to employees “called back for duty” and specifies the provision “shall not be construed so as to provide for additional compensation if the employee is recalled back for duty within the original two-hour period, except that employees who are called back to work in excess of two hours will be paid for actual time worked.”

Second, it applies to employees “called in” on their day off. “To qualify for call-in compensation, the time worked cannot be contiguous to the end of an employee’s scheduled work shift.”

At each stage of these proceedings Petitioners' argument has been that they were called back for duty and not called in on their day off. Accordingly, the Court will limit its analysis to the question presented.

B. Walker and Bubak, employees in on-call status, were not called back for duty.

Walker and Bubak argue they should be paid the guaranteed two-hour work minimum in Article 7.8 instead of the actual time worked because they were “called back for duty” in each instance above. DHHS responds that since Walker and Bubak were “on call” under Article 7.9, and compensated accordingly, they were not “called back for duty” under Article 7.8.

Construed as a whole, the contract does not support the argument that an employee can be on call and called back for duty at the same time. Under the contract, on-call status is not the same as on duty. Each involve different compensation and different restrictions on personal activities. On duty employees are subject to worksite and other restrictions and are compensated at their normal hourly rate. Employees in on-call status face substantial restrictions on their personal activities and are compensated at 12% of their normal hourly rate. Off duty employees do not face these same restrictions and are not compensated. An on call or off duty employee who is called back to duty is no longer on call or off duty, but is back to work.

Walker and Bubak argue that these cases are different than *Sanders v. Neb. Dep't of Health and Hum. Servs.*, CI 24-951 (Lancaster Cty. D. Ct. Jan. 16, 2025), because they were not paid both their regular salary and the 12% on call compensation rate during the minutes grieved. They argue that this shows, by

extension, their status changed. Petitioners' factual distinction is correct and may identify an altogether different issue, but that distinction does not show a change in status.¹

An employee may transition between statuses subject to other restrictions but the record does not show that transitions from on-call status to called back for duty to on-call status occurred here. For Walker and Bubak's argument to work, with each phone call they would be called back for duty and subsequently placed back on call by DHHS at the conclusion of the phone call. There is no evidence of that occurring. Instead, during all applicable periods, they agree they were placed in on-call status. They were paid for the time they worked (normal hourly rate), and the time they didn't work (12% of normal hourly rate), while in on-call status. On these facts, the Court cannot find the contract requires DHHS to pay Walker and Bubak for a different status they were not in.²

¹ Whether or not, under Article 7.9 of the labor contract, these employees should have also been paid at the 12% on-call compensation rate during this time that they remained in on-call status, like the employee in *Sanders*, was not grieved, not alleged in the petitions for review, and is not before this Court.

² These are now the fifth and sixth petitions for review before this Court from individual employees attempting to resolve the larger questions of when or how or if an employee in on-call status is called back for duty under the contract. As counsel are aware, there are other ways for the parties to this contract to address these larger questions. The Court's review here is de novo on the record of the agency and the principle of judicial restraint cautions against saying more than is necessary to decide a case. Based upon this record, the Court independently determines Walker and Bubak remained in on-call status during the time periods at issue and this finding is consistent with the stipulation of the parties and the hearing officer's findings of fact, adopted by the Personnel Board, finding that the work performed occurred while Walker and Bubak were placed in on-call status.

C. There is no physical location requirement for employees called back for duty under Article 7.8.

At the hearing before the agency, DHHS again argued the “called back for duty” provisions in Article 7.8 only apply to employees called back to the worksite. This argument was specifically rejected by this Court in *Sanders* and the Attorney General does not challenge that conclusion here. But, to the extent the agency continues to rely on a rejected interpretation of the contract, the Court will briefly address it.

To be clear, there is no reference to physical location in the “called back for duty” provisions in Article 7.8. There is a reference to the employer’s premises in Article 7.9, but such a reference was not included in the “called back for duty” provisions in Article 7.8. A contract is viewed as a whole and “a court is not free to rewrite a contract or to speculate as to terms of the contract which the parties have not seen fit to include.” *Equestrian Ridge v. Equestrian Ridge Estates II*, 308 Neb. 128, 953 N.W.2d 16 (2021). As argued by the counsel for DHHS at the hearing before the agency, there are reasons why adding a reference to physical location in the “called back for duty” provisions in Article 7.8 may make sense. And the parties could agree to modify the contract to do so. But they have not and “the parties to a contract must be held to the plain language of the agreement they entered into.” *Meyer Nat. Foods LLC v. Greater Omaha Packing Co.*, 302 Neb. 509, 515, 925 N.W.2d 39, 45 (2019).

IV. CONCLUSION

In sum, the Court finds that Article 7.8 of the labor contract does not require DHHS to pay these employees, who were on-call/standby pay status under Article 7.9 of the labor contract, call-back pay for the periods of time grieved.

The August 13, 2025, decisions of the Personnel Board are affirmed.

DATED this 19th day of June, 2026.

BY THE COURT:

A handwritten signature in black ink that reads "Ryan Post". The signature is written in a cursive, slightly stylized font. The "R" is large and loops around the "y". The "P" is also large and loops around the "o". The "s" is written in a simple, connected stroke. The "t" is a simple vertical stroke.

Ryan S. Post
District Court Judge