

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

RYAN STUTZMAN,	)	Case No. CI 25-1809
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	
NEBRASKA DEPARTMENT OF	)	
REVENUE,	)	
	)	
Respondent.	)	

This is one of eight consolidated cases before the Court on petitions for judicial review under the Administrative Procedure Act. In each case, Abby Osborn appeared for the Petitioners and Joseph McKechnie appeared for the Respondent.

II. BACKGROUND

On August 1, 2024, the Petitioner, an employee of the Nebraska Department of Revenue and member of NAPE, filed a grievance alleging a violation of Articles 1.4 and 1.5 of the labor contract between NAPE/AFSCME and the State of Nebraska due to changes at the agency following Governor Pillen's Executive Order No. 23-17, *Bringing Nebraska's Public Servant Workforce Back to the Office*. The grievance was denied and ultimately the matter was set for hearing in front of a hearing officer designated by the State Personnel Board.

A hearing was held on the agency's motion to dismiss the grievance for lack of jurisdiction and based on collateral estoppel. On April 29, 2025, the hearing officer dismissed the grievance and found the issues are not grievable under Article 1.4 and the Petitioner is precluded from grieving the work assignment changes under Articles 1.4 and 1.5 because the issue was fully adjudicated by the Commission of Industrial

Relations. Further the hearing officer found the changes resulting from EO 23-17 are not “work rules” under Article 1.5 because workplace assignments do not involve the “personal conduct of employees.” A “Grievability Order of the Personnel Board” was later entered and on May 28, 2025, the Petitioner timely filed this petition for judicial review.

On April 17, 2026, the Nebraska Supreme Court decided *Nebraska Assn. of Pub. Employees v. State*, 321 Neb. 208 (2026), and this Court ordered supplemental briefing. In supplemental briefing, Petitioner withdrew the grievance under Article 1.4 but requested this Court address the remaining questions under Article 1.5.

III. 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.*

IV. ANALYSIS

A. Jurisdiction.

Before turning to the merits of the petition for review, this Court must first determine if it has jurisdiction. This case is different than the matters at CI 25-1800; CI 25-1801; CI 25-1805; CI 25-1806; CI 25-1807; and CI 25-1813 because the grievance and proceedings below do not include any named grievants other than the Petitioner. Accordingly, it does not appear to have the jurisdictional deficiencies

identified in those cases. However, this matter does raise two other jurisdictional issues.

i. Request for class-wide relief under the APA.

The first question is whether a petitioner under the Administrative Procedure Act can institute a proceeding for review seeking class-wide relief from a final decision by an agency on an individual grievance. On this point, Petitioner has not identified any case law or statutory authority that would allow class actions under the APA. And the Respondent correctly notes that the text of the APA does not contemplate class-wide relief.

In *Davio v. Neb. HHS*, for different reasons, both parties on appeal disputed the certification of a class. 280 Neb. 263, 270 (2010). The Supreme Court did not hold that there can never be a class action under any provision of the APA but did distinguish between relief requested under Neb. Rev. Stat. §§ 84-911 and 84-917. For good reason. A challenge to the validity of a rule or regulation is substantially different than a proceeding for review instituted by a person aggrieved by a final decision in a contested case. Whether class-wide relief is available under § 84-911 is a question for another case. But here, much like in *Davio*, a large number of the members of the purported class under § 84-917 did not first challenge before a hearing officer the underlying decision. Without doing so, the Court cannot find sovereign immunity has been waived for claims by members of the purported class.

That said, even if this Court has jurisdiction under the APA to grant class-wide relief here, the Court denies Petitioner's request. No motion for class certification was

made before the agency or during this proceeding for review. The only reference to a purported class is in the first sentence of the Petition and no factual allegations regarding numerosity, commonality, typicality, or adequacy are made. *See Roadrunner Dev., Inc. v. Sims*, 213 Neb. 649 (1983) (petition that failed to allege facts establishing that joinder was impracticable failed to state a cause of action as a class action). And the Court finds the Petitioner has not met Petitioner's burden of establishing that the requirements for a class action have been met. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Blankenship v. Omaha Public Power Dist.*, 195 Neb. 170 (1976).

ii. Issue preclusion.

In *Nebraska Assn. of Pub. Employees v. State*, the question was whether the State had violated Nebraska labor statutes by declining to negotiate over EO 23-17. The Nebraska Supreme Court held that Article 3.8 of the labor contract "gives the State the authority to change the location where covered employees are expected to perform their work." *Id.* at 217. And after NAPE argued about the implementation of EO 23-17, the Supreme Court stated "[i]t is more natural, in our view, to interpret an agreement that gives the employer the authority to make a particular decision to also confer the authority to the employer to choose the procedures it will follow in implementing that decision." *Id.* at 224. The question here is whether this discussion about implementation from NAPE's CIR proceeding estops an individual member of NAPE from grieving the implementation of EO 23-17 under another provision of the contract. This Court finds that it does not.

Issue preclusion applies where (1) an identical issue was decided in a prior action, (2) the prior action resulted in a final judgment on the merits, (3) the party against whom the doctrine is to be applied was a party or was in privity with a party to the prior action, and (4) there was an opportunity to fully and fairly litigate the issue in the prior action. *Jordan v. LSF8 Master Participation Trust*, 300 Neb. 523, 542 (2018). “The first step in determining whether issue preclusion applies is to decide whether there is an identity of issues in the successive proceedings.” *Id.* “The party relying on issue preclusion in a present proceeding has the burden to show that a particular issue was involved and necessarily determined in a prior proceeding.” *Id.* at 542-43.

Petitioner’s grievance under Article 1.5 challenges the implementation of EO 23-17 as an alleged violation of the contract. In *Nebraska Assn. of Pub. Employees v. State*, NAPE argued the contract does not cover remote work at all. These are not identical issues. Respondent is correct that the Supreme Court stated that a natural interpretation of the contract would allow the employer to choose the procedures it will follow in implementing a decision it has authority to make. But that determination was not essential to the judgment regarding the demand to bargain. *See Schneider v. Lambert*, 19 Neb. App. 271, 276 (2011), *quoting Bobby v. Bies*, 556 U.S. 825 (2009) (“Issue preclusion bars successive litigation of an issue of fact or law that is actually litigated and determined by a valid and final judgment, and . . . is essential to the judgment.”). The Supreme Court was responding to an argument made by NAPE in the context of whether the State was obligated to bargain over the

procedures it would follow in implementing EO 23-17. Of course, the discussion in both the Supreme Court opinion and CIR Order inform this Court's conclusion that EO 23-17 did not change a "work rule" and is not grievable under Article 1.5, but these issues were not decided in that proceeding and that discussion does not preclude this Petitioner from grieving the implementation.

B. No violation of Article 1.5 occurred.

Even though not precluded, Petitioner's argument fails because the labor contract gives the employer the authority to choose the procedures it will follow in implementing EO 23-17. And it fails because Petitioner's grievance does not pertain to a "work rule" under Article 1.5 of the labor contract.

First, although not essential to the prior judgment, this Court agrees with the Supreme Court's statement that a natural interpretation of the contract would allow the employer to choose the procedures it will follow in implementing a decision it has authority to make. As outlined by the Supreme Court, that understanding is reinforced by Articles 3.8 and 3.12. And as found by the Personnel Board, Petitioner "cannot grieve indirectly under Article 1.5 what [Petitioner] cannot grieve directly under Article 3."

Second, under Article 1.5, "work rules are defined as and limited to rules promulgated by the Employer within its discretion which regulate the job related personal conduct of employees." The article also requires that the employer "establish or amend work rules in a reasonable manner." Petitioner's grievance alleged a violation of Article 1.5 because "the changes [as a result of EO 23-17] amend policy

and work rules in an arbitrary, inconsistent, and unreasonable manner not due to any bona fide business need.” And the grievance sought the agency’s “return to implementing its remote work rules and policies in a reasonable and consistent manner.”

But remote work policies are not rules promulgated at the Respondent’s discretion regulating the job related personal conduct of employees because the location where a state employee performs job functions does not regulate how the employee acts, behaves, or conducts themselves at work. Although the Supreme Court in *Dep’t of Health and Hum. Servs. v. Neb. Ass’n of Pub. Emps.*, did not define “personal conduct of employees,” it accepted that a dress code is a “work rule,” illustrating the on-site conduct contemplated by Article 1.5. 313 Neb. 259 (2023). Here, changing the location of where covered employees are expected to perform their work does not regulate their personal conduct in the workplace.

V. CONCLUSION

The April 29, 2025, decision of the Personnel Board is affirmed.

DATED this 18th day of August, 2026.

BY THE COURT:



Ryan S. Post
District Court Judge