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IN THE NEBRASKA COURT OF APPEALS

MATTHEW SCHIFFMANN,

Appellant,

v.

STATE OF NEBRASKA, GAME AND PARKS COMMISSION,

Appellee.

On Appeal from the
Lancaster County District Court
Honorable Darla S. Ideus, District Court Judge

BRIEF OF APPELLANT

Dated: April 10, 2026

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STATEMENT OF JURISDICTION

The Lancaster County District Court had jurisdiction under Neb. Rev. Stat.§ 84-917 over Appellant's petition for review of the decision of the Nebraska State Personnel Board ("Board"). On November 10, 2025, the District Court entered its final Order affirming the Board's decision. Appellant filed his Notice of Appeal from the District Court's Order on December 8, 2025. The Appellant deposited his docket fee on December 8, 2025. This Court has appellate jurisdiction of the District Court's decision pursuant to Neb. Rev. Stat.§ 84-918(1).

STATEMENT OF THE CASE

This case involves a dispute over whether a particular type of employer decision—a denial of a reclassification request—is grievable under the collective bargaining agreement ("CBA") between the Nebraska Association of Public Employees, Local 61 ("NAPE") and the State of Nebraska ("State"). The CBA contains a broad grievance definition in Article 4, which describes the parties' grievance-arbitration procedure. Article 19 of the CBA, which addresses classification/reclassification matters, does not provide an exclusion from Article 4's comprehensive grievance definition. In this respect, Article 19 differs from two other CBA provisions covering matters that the parties explicitly made non-grievable. Despite the absence of a specific exclusion, the District Court below affirmed a determination of the State Personnel Board ("Personnel Board") that reclassification request denials are not grievable and that the decisions of the State Personnel Director ("Personnel Director") on such requests are final and unreviewable. In doing so, the District Court committed reversible errors by applying the wrong legal standard for whether contractual disputes fall within the grievance procedure's ambit and by misinterpreting the parties' agreement.

Appellant Matthew Schiffmann is employed by the Nebraska Game and Parks Commission ("Games and Parks Commission"). He

sought to be reclassified from his Maintenance Technician position to a Maintenance Specialist I, based on the nature of his actual responsibilities and the duties assigned to him. To initiate the reclassification process, he filed a reclassification request under the CBA's Article 19, which provides the procedure for processing such requests. (E11, pp.60-63, Vol. II). Article 19.1 provides that: "Employer agrees to classify/reclassify positions based on the duties performed, the scope and level of responsibilities assigned, the nature and extent of supervision received and/or exercised, and the knowledge, abilities and skills required." *Id.* at 60. The Personnel Director ultimately denied Mr. Schiffmann's reclassification request.

Mr. Schiffmann then filed a grievance over that denial pursuant to the CBA's grievance procedure. Article 4.1 of the CBA defines a "grievance" broadly: "A grievance is a written complaint alleging a violation involving the application and interpretation of the provisions of this labor contract." *Id.* at 7. Mr. Schiffmann contended that the Personnel Director had misapplied Article 19.1's requirements that the Game and Parks Commission reclassify his job "based on the duties performed, the scope and level of responsibilities assigned, the nature and extent of supervision received and/or exercised, and the knowledge, abilities and skills required." A Personnel Board Hearing Officer held that the denial of Mr. Schiffman's reclassification request was grievable, but he recommended denying the grievance on the merits.

The Personnel Board rejected the Hearing Officer's recommended decision. (T121-22). It held that Article 19 lacked any language providing for subsequent review of the Personnel Director's final reclassification decision and therefore that decision was non-grievable. The District Court affirmed the Personnel Board's decision. (T131-36). As both the Personnel Board and the District Court determined that the denial of Mr. Schiffmann's reclassification request was non-grievable, neither considered the merits of his grievance.

This Court should reverse the District Court. The well-established law requires that the parties must specifically agree to exclude matters from a broadly defined grievance-arbitration procedure like that contained in Article 4. The District Court committed reversible error by applying the wrong legal standard. Rather than requiring that Article 19 specifically exclude reclassification request denials from the grievance procedure, the District Court affirmed the Personnel Board's determination that the absence in Article 19 of affirmative language requiring further review meant that the Personnel Director's decisions denying reclassification requests were final, unreviewable, and non-grievable.

The District Court also erred by finding that Article 19.7's provision for an appeal to a Classification Appeal Panel—a provision that the parties agreed did not apply to Mr. Schiffmann's situation because Article 19.7 limits such appeals to situations where the position is downgraded and the employee suffers immediate adverse financial consequences—was a specific contractual provision which took precedence over Article 4's more general grievance procedure under the contractual interpretation canon described in *Panwitz v. Miller Farm-Home Oil Service, Inc.*, 228 Neb. 220 (1988). As Article 19.7 applies to a situation different from Mr. Schiffmann's, there was no conflict between it and Article 4, there was no occasion to apply *Panwitz*, and the District Court erred by misinterpreting the CBA to find such a conflict and give Article 19.7's inapplicable procedure precedence over Article 4.1's encompassing grievance definition.

As both the Personnel Board and the District Court relied on the non-grievability determination and did not review the merits of Mr. Schiffmann's reclassification request, upon reversal this Court should remand the case to the District Court with instructions to remand the matter to the Personnel Board to review and determine the merits of Mr. Schiffmann's reclassification request.

ASSIGNMENT OF ERRORS

1. The District Court erred in its determination that Article 4 and Article 19 of the CBA are inconsistent. (T135-136).
2. The District Court erred in its determination that Article 19 was a more specific CBA article than Article 4 and controlled classification review and appeals. (T136).
3. The District Court erred in its determination that the denial of Mr. Schiffmann's reclassification request was not grievable under the CBA's Article 4. *Id.*
4. The District Court erred by not addressing the merits of Mr. Schiffmann's reclassification appeal. *Id.*

PROPOSITIONS OF LAW

1. "A judgment or final order rendered by a district court in a judicial review under the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing such an order, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable." *Parker v. State ex rel. Bruning*, 276 Neb. 359, 365 (2008).
2. "The collective bargaining agreement . . . is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate." *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S.574, 578 (1960).
3. "But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. . . . The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement." *Id.* at 581.
4. "Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come

within the scope of the grievance and arbitration provisions of the collective agreement. The grievance procedure is, in other words, a part of the continuous collective bargaining process. It, rather than a strike, is the terminal point of a disagreement." *Id.*

5. "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Id.* at 582-583. *Accord AT&T Techs. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986).
6. A grievance is the predicate to an unresolved dispute being arbitrated. Elkouri & Elkouri, *How Arbitration Works*, ch. 5 (Elizabeth J. Fabrizio ed., 2021) (ebook) ("Grievances: Prelude to Arbitration").
7. Public sector Nebraska employees are legally prohibited from striking. Neb. Rev. Stat. § 48-802(2).
8. The Nebraska Uniform Arbitration Act applies to arbitrations between employers and employee representatives, Neb. Rev. Stat. § 25-2602.01(c), and judicial review of arbitrators' decisions interpreting collective bargaining agreements is severely circumscribed. *See State, Dep't of Health & Hum. Servs. v. NAPE, Local #61 of AFSCME*, 313 Neb. 259, 269 (2023).
9. "A contract must be construed as a whole and, if possible, effect must be given to every part thereof." *Baker's Supermarkets, Inc. v. Feldman*, 243 Neb. 684, 691 (1993) (quoting *Crowley v. McCoy*, 234 Neb. 88, 91 (1989)).
10. The maxim *expressio unius est exclusio alterius* (to express one thing is to exclude another) is often applied in the interpretation of collective bargaining agreements. Elkouri & Elkouri, *supra* at ch. 9, § 9.3.A.xi.
11. Where there are two contractual provisions concerning the same matter in conflict, the specific provision controls over the general. *Panwitz*, 228 Neb. at 223-24.

12. Restatement (Second) of Contracts, in listing "Standards of Preference in Interpretation" states, at § 203(c), "specific terms and exact terms are given greater weight than general language." The subsequent Comment at e, addressing "General and specific terms," states, in pertinent part: "If the specific or exact can be read as an exception or qualification of the general, both are given some effect, in accordance with the rule stated in Subsection (a)." Subsection (a) of § 203 provides the interpretative rule that "an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." Restatement (Second) of Contracts § 203 (A.L.I. 1981).
13. Congress does not hide elephants in statutory mouseholes. *Whitman v. Am. Trucking Ass'ns., Inc.*, 531 U.S. 457, 468 (2001).

STANDARD OF REVIEW

A judgment or final order rendered by a district court in a judicial review under the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing such an order, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Parker v. State ex rel. Bruning*, 276 Neb. 359, 365 (2008).

STATEMENT OF FACTS

NAPE is a labor organization representing State employees, including those like Mr. Schiffmann who work for the Games and Parks Commission. NAPE and the State are parties to a CBA covering the terms and conditions of employment of, inter alia, the Commission's employees. (E11, Vol. II). The CBA lists a number of job classifications covered by the agreement, including Mr. Schiffmann's classification, Maintenance Technician, and Maintenance Specialist 1,

a classification Mr. Schiffmann believed more accurately characterized the work that he was doing.

Contractual Terms. Article 4 of the CBA, *id.* at 7-15, is the parties' grievance procedure. Article 4.1 defines a grievance broadly: "A grievance is a written complaint alleging a violation involving the application and interpretation of the provisions of this labor contract." *Id.* at 7. Article 4 follows this definition with more than seven pages of extensive and detailed procedures for processing a grievance, including multiple steps concluding in voluntary and binding arbitration, *id.* at 13, if the matter has not been resolved or withdrawn earlier in the procedure. As an alternative to arbitration, the Administrator of the Nebraska Department of Administrative Services ("DAS") Employee Relations Division retains the discretion to order that individual cases be processed through the Personnel Board procedure. *Id.* at 12-13.

The CBA provides only very limited exceptions to the Article 4 grievance procedure. Thus, Article 14.9, involving "Catastrophic Illness Donation," provides in pertinent part: "The provisions of this section are non-grievable." *Id.* at 47. Similarly, Article 14.27.6, involving the "Maternity Leave Donation (MLD) Program," provides: "The provisions of this section are non-grievable." *Id.* at 56.

The CBA's Article 19, *id.* at 60-63, addresses classification and reclassification of jobs. As stated in Article 19.1:

> Employer agrees to classify/reclassify positions based on the duties performed, the scope and level of responsibilities assigned, the nature and extent of supervision received and/or exercised, and the knowledge, abilities and skills required -- the end result being that all classifications/reclassifications shall be in balance with the classification for similar work being performed by other state employees. The Employer retains the right to assign and/or reassign work, which may affect the classification assignment of each position.

Id. at 60.

An employee who believes their job is misclassified may initiate a review to have their job reclassified by submitting a written request for review of their current job classification. Article 19.2 of the CBA requires the employee to complete a State Personnel Division Questionnaire ("PDQ") and outline why they think their current job classification is not appropriate and why they think the classification they seek is appropriate. *Id.* at 60-61. The request for review goes first to the employing Agency, and, per Article 19.3, "The Agency Head or Designee shall issue a written response advising the employee of the Agency's decision regarding accuracy of the description and any changes made in assigned job duties." *Id.* at 61.

The reclassification request then goes to the DAS Administrator, and, under Article 19.6, he or she issues a written decision on the request. *Id.* Article 19.7 provides "the employee may appeal the decision of the Administrator to the Classification Appeal Panel. This appeal may be initiated only if the action had an immediate adverse financial impact (reduction in salary) on the employee;" that is, an appeal to the Classification Appeal Panel may only be lodged if the reclassification request results in downgrading the employee's classification with an immediate adverse financial impact on the employee. *Id.* at 61-62. Article 19 provides for no appeal to the Classification Appeal Panel if the reclassification request is denied and the employee remains in their current job classification. There is no language in Article 19 stating that denial of reclassification requests which do not result in adverse financial impact to the employee are non-grievable.

Reclassification request. The Commission has employed Mr. Schiffmann as a Maintenance Technician since November 2021. (T67). On April 18, 2023, he initiated a reclassification review by submitting a Personnel Description Questionnaire ("PDQ") to his supervisor, seeking to be reclassified to a Maintenance Specialist 1. *Id.* In the PDQ, he described his responsibilities and duties, why his current classification was inappropriate, and why the classification he sought

better described the responsibilities and duties he was assigned. (T131). His supervisor commented on the PDQ and signed it on April 30, 2023; the Agency Director or Designee signed off on it on May 8, 2023. *Id.* On June 26, 2023, Sean Davis, the State Personnel Director, sent a written decision to the Commission's Personnel Director denying the reclassification request, finding that Mr. Schiffmann's job was properly classified as a Maintenance Technician. (T131-32). Mr. Schiffmann was advised of the decision on July 23, 2023. (T132).

The next day, July 24, 2023, Mr. Schiffmann filed a grievance over the reclassification denial. *Id.* He contended that the denial was a misapplication of Article 19.1, which obligates the State to classify jobs properly. His grievance was denied at the first and second steps of the grievance procedure, and the DAS Employee Relations Administrator exercised his contractual prerogative to have the matter heard through the State Personnel Board's procedures. The Personnel Board then assigned a Board Hearing Officer to hear the case. *Id.*

Personnel Board Proceedings. On February 2, 2024, James C. Zalewski, a Personnel Board Hearing Officer, held a hearing on Mr. Schiffmann's grievance. The Commission argued that the matter was not grievable, and that employees, like Mr. Schiffmann, whose reclassification requests were denied but whose positions were not reclassified downward and did not sustain adverse monetary impact had no right to have the determination reviewed. (8:2-9:3, Vol. I). The Commission relied on the Classification Appeal Panel provisions of Article 19.7. *Id.* at 8:4-15. Both parties agreed that Article 19.7 did not apply in Mr. Schiffmann's situation since his position had not been downgraded and he had not suffered any immediate adverse financial impact. *Id.* at 10:1-10. For his part, Mr. Schiffmann argued that Article 19.1 required the Commission to properly classify employees and that the (mis)application of the classification process to his reclassification request was properly grievable. *Id.* at 10:11-19.

At the hearing, Personnel Director Sean Davis testified about the reclassification process. *Id.* at 17:10-21:5. He estimated that his

office received approximately 800 reclassification requests per year forwarded from the various State agencies, and that these requests were processed in the first instance by four classification specialists. *Id.* at 20:9-12, 22:22-23. The classification specialist assigned to a particular matter reviews the entire file for that request and provides Mr. Davis with a recommendation. *Id.* at 20:13-25. Mr. Davis admitted that he did not review the request files, but rather relied on the recommendation of the classification specialists. *Id.* at 21:18-23:8. He indicated that his letter deciding whether to grant or deny Mr. Schiffmann's request relied on information from the classification specialist. *Id.* at 26:23-27:3. He testified that 80-85% of reclassification requests were granted. *Id.* at 32:15-23. He said very few reclassification requests ended up in a downgrade of the classification. *Id.* at 32:24-33:2. Mr. Davis could not remember any time in the past five years when the Classification Appeal Panel had met. *Id.* at 33:13-15. Mr. Davis also could not remember any point in the bargaining history in which he was involved when the question of the grievability of a reclassification decision that did not result in an employee losing money had come up. *Id.* at 37:1-6.

The Hearing Officer issued a recommended decision on April 4, 2024. He determined that the matter was grievable, but that Mr. Schiffmann's reclassification request failed on its merits. (T11).

In a decision issued on August 21, 2024, the Personnel Board reviewed the Hearing Officer's recommended decision and rejected it, finding the denial of Mr. Schiffmann's reclassification request non-grievable. At the outset, the Personnel Board acknowledged the parties' differences on the grievability question. It found "neither party's grievability argument persuasive." (T7). With respect to the Commission's argument that the Classification Appeal Panel was the only contractual path to review reclassification decisions, the Personnel Board found that:

> [T]he Agency's argument overstates Article 19.7's scope because the language "immediate adverse financial impact (reduction in

> salary)" is not dispositive to the grievablility issue under Article 4. Instead, Article 19.7's "salary reduction" language is a very limited pre-condition to appealing a demotion to the Classification Appeal Panel, only. It is not dispositive on whether the Director's decision to deny Schiffmann's reclassification request is grievable under Article 4.

Id.

Turning to Schiffmann's argument, the Personnel Board stated:

> Schiffmann's argument that he only needs to allege his reclassification denial was a "violation" of Article 19.1 to pursue an Article 4 Grievance ignores the finality of Article 19's "Classification Appeals" process. In essence, Schiffmann asks the Board to expand Article 19's scope by adding a new level of appeals after the Director finally decides a reclassification request. The Board declines to do so because Article 19 expressly carves out classification/reclassification requests, defines a very exact process for reviewing those requests and nothing in Article 19 allows an additional level of review or appeal through the Article 4 Grievance Procedure after the Director's final decision.

Id.

The Personnel Board then reviewed the number of jobs covered by the CBA and the number of reclassification requests received and concluded: "So, it is logical that the Classification/Reclassification Appeal process was expressly carved out as an independent and standalone Article in the Labor Contract with its own defined review process separate and independent from the Article 4 Grievance Procedure." *Id.*

The Personnel Board additionally relied on *Panwitz v. Miller Farm-Home Oil Service, Inc.*, 228 Neb. 220 (1988), for the proposition that where two contractual provisions concerning the same matter are in conflict, the specific provision controls over the general. The

Personnel Board characterized Article 19 as the specific provision and Article 4 as the general one, and, as a result: "The Board finds that Article 19's specific review procedure controls reclassification requests. And since nothing in Article 19 authorizes an additional level of review or appeal beyond the Director's final decision the Board concludes that reclassification request denials generally, and Schiffmann's reclassification request denial specifically, are not grievable under Article 4." (T7).

The Personnel Board concluded: "[T]he Board now clarifies that Article 19 classification/reclassification request denials are not grievable under Article 4." (T8). As it found the matter non-grievable, the Personnel Board did not address the merits of the denial of Mr. Schiffmann's grievance.

District Court decision. On a Petition for Review under the Administrative Procedure Act, the District Court affirmed the Personnel Board's decision. Judge Ideus reviewed the facts, and the provisions of Article 4 and 19 of the CBA. She found that the two CBA provisions were inconsistent, and that Article 19 "governs classification and carves out a specific procedure for classification review and appeals, but it does not allow Schiffmann to seek further review beyond the DAS State Personnel's final decision denying reclassification." (T135). Relying on canons of contract construction described in *Panwitz*, 228 Neb. at 223, a case involving conflicting provisions of a contract for the sale of a business, the District Court held that Article 19, which the Court characterized as the more specific term of the contract, controlled over Article 4, characterized as the more general term. (T135-36). Since she concluded that the Personnel Board correctly determined that the denial of Schiffmann's reclassification request was not grievable, Judge Ideus decided she "need not address the merits of Schiffmann's grievance appeal." (T136).

SUMMARY OF ARGUMENT

This case involves a dispute over whether a particular type of employer decision—a denial of a reclassification request—is grievable under the CBA between NAPE and the State. Well-established labor policy encourages the voluntary, peaceful resolution of labor disputes through grievance-arbitration procedures like the one found at the CBA's Article 4. Consistent with that policy, Article 4.1 of the CBA defines a "grievance" broadly: "A grievance is a written complaint alleging a violation involving the application and interpretation of the provisions of this labor contract." (E11, p.7, Vol. II). The District Court below committed reversible error when it upheld the Personnel Board's determination that reclassification request denials involving the application of the CBA's Article 19.1 were not covered by this comprehensive definition.

The ability to grieve a matter is the predicate to having the matter's merits determined through the parties' agreed-upon dispute resolution mechanism, and grievability should not be denied unless it may be said with positive assurance that the grievance-arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage. "Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement." *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581 (1960).

When the negotiators of the NAPE-State CBA wanted to specifically exclude a matter from Article 4's comprehensive scope, they did so explicitly. Both Article 14.9 and Article 14.27.6 contain identical clear exclusionary language: "The provisions of this section are non-grievable." (E11, pp.47, 56, Vol. II). In light of these specific exclusions, the *expressio unius est exclusio alterius* canon of contract interpretation, often applied to collective bargaining agreements, supports the conclusion that where specific grievance procedure

exclusions are listed, all other unlisted matters are to be included within the grievance procedure's scope.

Here, the Appellant, Matthew Schiffmann, sought to be reclassified from a Maintenance Technician position with the Games and Parks Commission to a Maintenance Specialist I, based on the nature of his actual responsibilities and the duties assigned to him. The State Personnel Director denied his request.

The reclassification procedure Mr. Schiffmann invoked is described in the CBA's Article 19. (E11, pp.60-63, Vol. II). Article 19 *does not* contain language excluding from the comprehensive grievance process questions concerning its application or interpretation, and Mr. Schiffmann filed a grievance over the denial. (E1, p. 1, Vol. II). He contended that the Personnel Director had misapplied Article 19.1, where the "Employer agree[d] to classify/reclassify positions based on the duties performed, the scope and level of responsibilities assigned, the nature and extent of supervision received and/or exercised, and the knowledge, abilities and skills required." (E11, p.56, Vol. II). Despite the lack of any language specifically excluding Article 19 matters from the grievance procedure, the State Personnel Board found the denial of Mr. Schiffmann's reclassification request—indeed, all classification/reclassification request decisions—non-grievable, determining that Article 19's language made the Personnel Director's determinations final and unreviewable. (T121-22). The District Court affirmed. (T131-36).

In upholding the Personnel Board's non-grievability determination, the District Court committed two reversible errors. It got the relevant test exactly backwards, upholding the Personnel Board's requirement that Article 19 contain specific affirmative language allowing for review, rather than relying on the absence of specific language excluding reclassification request denials from the grievance procedure. The District Court also mistakenly agreed with the Personnel Board that Article 19 and Article 4 were in conflict, and that Article 19 was the more specific clause and Article 4 the more

general. (T135-36). Relying solely on the same precedent as the Personnel Board—*Panwitz v. Miller Farm-Home Oil Service, Inc.*, 228 Neb. at 223—the District Court found that the specific clause prevailed over the more general. However, there is no conflict between, on the one hand, a contractual provision, here Article 19.7, providing an inapplicable specific review provision limited to an entirely different type of reclassification decision—a demotion with immediate financial consequences—and, on the other hand, allowing a grievance over a reclassification denial decision where there is no demotion; in fact, the parties agreed that Article 19.7's procedures did not apply to Mr. Schiffmann's case.

Moreover, characterizing the Personnel Director's decision as "final" does not equate to "unreviewable." Without a "final" employer decision an employment matter is not ripe for consideration, in much the same way that generally only "final" district court decisions are reviewable in the appellate courts. "Final" in this context does not mean "committed to sole discretion and unreviewable;" it means "ripe for review."

This Court should reverse the District Court and determine that the reclassification matter is grievable in light of the CBA's broad grievance language, the public policy in favor of resolving labor-management contractual disputes through grievance-arbitration procedures, and the parties' failure to explicitly exclude Article 19 reclassification denials from the grievance procedure. As both the Personnel Board and the District Court relied on the non-grievability determination and did not review the merits of Mr. Schiffmann's reclassification request, this Court should remand the case to the District Court with instructions to remand the matter to the Personnel Board to review and determine the merits of the reclassification request.

ARGUMENT

I. In order for a dispute to be non-grievable under a comprehensive grievance procedure like the NAPE-State CBA's Article 4, the parties must affirmatively agree to exclude the matter. [Assignments 1-3].

The question before this Court—whether the denial of Mr. Schiffmann's reclassification request was grievable pursuant to the grievance procedure contained at Article 4 of the NAPE-State CBA—implicates a crucial aspect of collective bargaining agreements that differentiates them from other types of contracts: the central role of CBA grievance-arbitration procedures in assuring workplace fairness. Particularly for Nebraska public employees prohibited from striking, a broadly applicable grievance procedure is the sole means for challenging arbitrary employer action. The precedent outlining the grievance-arbitration's central role strongly favors including disputes within the grievance procedure's ambit, absent specific agreement by the parties to exclude a particular matter. As our subsequent review of the NAPE-State CBA demonstrates *infra*, there is no such specific language excluding reclassification request denials from the Article 4 process. Thus, the District Court erred in upholding the Personnel Board's determination that such matters are non-grievable.

The U.S. Supreme Court articulated the grievance-arbitration procedure's central role in labor-management collective bargaining relationships in three 1960 cases—*United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960)—colloquially known as the "Steelworkers Trilogy," because the Steelworkers Union was a party to each case. For this Court's purpose here, the most instructive of these cases is *Warrior & Gulf*, which involved the question of whether a subcontracting dispute was subject to the relevant CBA's grievance-arbitration procedure.

In *Warrior & Gulf*, the Fifth Circuit had held that "the collective agreement had withdrawn from the grievance procedure 'matters which are strictly a function of management' and that contracting out fell [with]in that exception." 363 U.S. at 577. The Supreme Court reversed, and, in doing so, articulated the special nature of collective bargaining agreements and the crucial role of grievance-arbitration procedures in their ongoing interpretation. Starting from the proposition that,

> The collective bargaining agreement . . . is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate.

Id. at 578, the Court then described the role of the grievance process in interpreting that "generalized code":

> But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. . . . The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement.

Id. at 581.

Given the importance of the grievance machinery in interpreting the agreement, the Court found it was imperative that disputes be channeled through its processes.

> *Apart from matters that the parties specifically exclude*, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement. The grievance procedure is, in other words, a part of the continuous collective bargaining process. It, rather than a strike, is the terminal point of a disagreement.

Id. (emphasis added). Thus, absent specific evidence that the parties agreed to exclude a matter from the grievance procedure, the matter is grievable.

> An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

Id. at 582-583. *Accord AT&T Techs. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986); *Minot Builders Supply Ass'n v. Teamsters Loc. 123*, 703 F.2d 324, 327-328 (8th Cir. 1983) (As the collective bargaining agreement did not state explicitly that discharges are not subject to arbitration and doubts should be subject to coverage, discharge was arbitrable.). Since a grievance is the predicate to an unresolved dispute being arbitrated, *see generally*, Elkouri & Elkouri, *How Arbitration Works*, ch. 5 (Elizabeth J. Fabrizio ed., 2021) (ebook) ("Grievances: Prelude to Arbitration."), the above quote applies with equal force to issues of grievability: doubts should be resolved in favor of coverage.

Notably, the *Warrior & Gulf* Court emphasized that the alternative to grievance-arbitration for labor-management disputes in the private sector was the industrial strife of a strike. Public sector Nebraska employees like those covered by the NAPE-State CBA are legally prohibited from striking. Neb. Rev. Stat. § 48-802(2). For these workers, robust grievance procedures are all the more important. Such procedures act as a crucial, peaceful alternative for resolving disputes over contract terms, discipline, and other workplace matters. Because these workers are prohibited from using work stoppages to gain leverage, they are dependent on the grievance-arbitration provision's formalized procedures to ensure fairness and prevent management from dominating the employment relationship. Thus, the Nebraska Uniform Arbitration Act applies to arbitrations between employers and employee representatives, Neb. Rev. Stat. § 25-2602.01(c), and judicial review of arbitrators' decisions interpreting collective bargaining

agreements is severely circumscribed. *See* *State, Dep't of Health & Hum. Servs. v. NAPE, Local #61 of AFSCME*, 313 Neb. 259, 269 (2023).

Having established: 1) the central importance of grievance-arbitration procedures; 2) that doubts are resolved in favor of disputes being covered; and 3) the need for specific agreement to exclude a dispute from coverage, we now review the text of the CBA to demonstrate that the parties to the NAPE-State CBA did not agree to exclude reclassification request denials from the scope of the grievance procedure.

II. The plain text of Article 4 comprehensively covers alleged violations involving the application and interpretation of the provisions of the NAPE-State CBA; reclassification request denial grievances, like Mr. Schiffmann's, that allege an Employer violation of Article 19.1's commitment to properly classify jobs fit comfortably within that broad definition and are nowhere explicitly excluded as non-grievable. [Assignments 1-3].

To determine whether the CBA makes reclassification request denials non-grievable, this Court must begin with the CBA's text. In that regard, the Court needs to review the entire CBA to see how its provisions interrelate, for a contract must be construed as a whole and, if possible, effect given to every part thereof. *Baker's Supermarkets v. Feldman*, 243 Neb. 684, 691 (1993), (quoting *Crowley v. McCoy*, 234 Neb. 88, 91-93 (1989)). In addition, the maxim *expressio unius est exclusio alterius* (to express one thing is to exclude another) is often applied in the interpretation of collective bargaining agreements. Elkouri & Elkouri, *supra*, ch. 9, § 9.3.A.xi.

Starting with the CBA's Article 4, that provision contains the grievance procedure. Article 4.1 defines a grievance broadly: "A grievance is a written complaint alleging a violation involving the application and interpretation of the provisions of this labor contract."

(E11, p.7, Vol. II). Nowhere in the following seven pages of the CBA extensively detailing the steps and aspects of the grievance procedure is there any list of exclusions from that broad definition; specifically, there is no language in Article 4 excluding reclassification request denials from its ambit.

When the other provisions of the CBA outside of Article 4 are reviewed, it is clear that the CBA's negotiators knew how to designate a matter as non-grievable when they wanted to. Both Article 14.9, involving "Catastrophic Illness Donation" and Article 14.27.6, involving the "Maternity Leave Donation (MLD) Program," provide an explicitly stated exclusion: "The provisions of this section are non-grievable." *Id.* at 47, 56. This language is of the type mentioned by the Supreme Court in *Warrior & Gulf*; it specifically excludes, without question, the covered topics from the grievance procedure. Given that these CBA provisions demonstrate that the parties had agreed-upon language used to exclude matters from the grievance procedure, the absence of such language in any other CBA provisions is telling.

Applying the canon of contract construction *expressio unius est exclusio alterius* (to express one thing is to exclude another), the parties' expressed exclusion of two matters from the scope of the grievance procedure means that no other matters are to be excluded, particularly in light of Article 4's broad wording. "Thus, contracts that specify certain exceptions imply there are no other exceptions, and those that expressly include some guarantees in an agreement are thought to exclude other guarantees." Elkouri & Elkouri, *supra*, ch. 9, § 9.3.A.xi. (footnotes omitted).

Turning to Article 19, governing classification and reclassification, it contains no language similar to Article 14.7 or Article 14.27.6 specifically making reclassification request denials non-grievable. Rather, Article 19.1 commits the Employer to properly classify jobs according to certain criteria. It provides:

> Employer agrees to classify/reclassify positions based on the duties performed, the scope and level of responsibilities assigned, the nature and extent of supervision received and/or exercised, and the knowledge, abilities and skills required -- the end result being that all classifications/reclassifications shall be in balance with the classification for similar work being performed by other state employees. The Employer retains the right to assign and/or reassign work, which may affect the classification assignment of each position.

(E11, p.60, Vol. II). Should the Employer not live up to its commitment in a particular instance—that is, not "reclassify [a particular position] based on the duties performed, the scope and level of responsibilities assigned, the nature and extent of supervision received and/or exercised, and the knowledge, abilities and skills required"—the affected employee's challenge alleging such a failure, like Mr. Schiffmann's here, is clearly a complaint "alleging a violation involving the application and interpretation of the provisions of this labor contract" and thus fits comfortably within the grievance procedure's ambit.

But what of Article 19.7 and its provisions for an employee to appeal a decision to the Classification Appeal Panel? That right (unexercised by anyone in the past five years, according to the testimony of State Personnel Director Davis (24:2-4, Vol. I)) is expressly limited to employees whose classification is downgraded resulting in an immediate adverse financial impact to the employee: "This appeal may be initiated only if the action had an immediate adverse financial impact (reduction in salary) on the employee." (E11, p.62, Vol. II). Both parties agreed that the denial of Mr. Schiffmann's request did not meet this criterion, because his position was not downgraded, and he did not suffer immediate adverse financial harm.

The Game and Parks Commission, however, argued that a demotion decision was the only type of reclassification decision that

was reviewable and the appeal to the Classification Appeal Panel was the only available means of review; all other reclassification decisions, including denials like Mr. Schiffmann's where the employee remained in the same position without immediate adverse financial consequences, were unreviewable. Thus, with no explicit grievance-procedure-exclusion language on which to rely, the Commission's position was that because the Classification Appeal Panel route was available for one type of reclassification decision but not others, *by implication* the parties had agreed to make those other types of decisions unreviewable.

The short answer to the Commission's argument-by-implication is the one initially provided by the Personnel Board itself in its decision:

> [T]he Agency's argument overstates Article 19.7's scope because the language "immediate adverse financial impact (reduction in salary)" is not dispositive to the grievability issue under Article 4. Instead, Article 19.7's "salary reduction" language is a very limited pre-condition to appealing a demotion to the Classification Appeal Panel, only. It is not dispositive on whether the Director's decision to deny Schiffman's reclassification request is grievable under Article 4.

(T7).

Having disposed of the argument by implication that because one avenue of appeal is available for one type of decision, grievability is foreclosed for an entirely different type of decision, we turn to whether Article 19.4's language stating that "no position shall be classified or reclassified without written authorization of the Director of State Personnel," as a textual matter, somehow makes a reclassification request denial unreviewable and non-grievable. As we have demonstrated above, the parties agreed on a comprehensive grievance procedure and knew how to make clear with explicit language that a

particular type of matter was non-grievable. Article 19.4 does not state that reclassification decisions are non-grievable; all the language says is that before the position can be reclassified, the Personnel Director must authorize such in writing. Nothing about this language forecloses the Personnel Director issuing the required written authorization *after* his initial determination has been reviewed through resort to the grievance procedure.

And, lastly, what to make of the notion that the Personnel Director's reclassification determination is "final?" Nothing about an employer representative's determination being "final" means that it is "unreviewable." Just as in most instances appellate courts require a district court to have issued a "final" order before parties are able to appeal, *Barrios v. Comm'r of Lab. of the Neb. Dep't of Lab.*, 25 Neb. App. 835, 840 (2018) (citing *Pennfield Oil Co. v. Winstrom*, 267 Neb. 288 (2004)), similarly here without a "final" decision on the reclassification request there would be nothing to grieve. It would hardly behoove Mr. Schiffmann to file a grievance over his reclassification request while it was still in process and Mr. Davis had yet to issue his determination; such a grievance would not be ripe for review, since Mr. Davis could grant the request and obviate the need for any grievance. The requirement of a "final" decision from Mr. Davis is a predicate to a grievance over a reclassification denial, not evidence of the parties' decision to exclude such final reclassification denials from the grievance procedure.

When the CBA is read as a whole, there is clearly no basis in the CBA's text to exclude reclassification request denials like Mr. Schiffmann's from the grievance procedure. We next proceed to refute the bases on which the Personnel Board reached, and the District Court affirmed, a contrary conclusion.

III. The District Court committed reversible errors in affirming the Personnel Board's determination of non-grievability. [Assignments 1-3].

To reach its decision to affirm the Personnel Board's non-grievability determination, the District Court committed two related reversible errors. First, it applied the wrong legal standard to the CBA language in question, requiring that Article 19 affirmatively state reclassification request denials were reviewable, rather than looking for a specific exclusion from the grievance procedure for such matters. Second, it misread the relevant contract language to find a conflict between Article 4 and Article 19 and resolved the conflict using an inapplicable rule of contract construction, finding Article 19 to be the more specific, and therefore, applicable article. Properly understood, however, there is no conflict between the contractual provisions, and thus there was no cause for the application of the rule enunciated in *Panwitz*, 228 Neb. at 223.

Initially, with respect to the District Court's application of an incorrect legal standard, as demonstrated in this brief's Section I *supra*, in order for a matter to be non-grievable under a broadly worded grievance-arbitration procedure like that contained in the CBA's Article 4 the parties must specifically agree to *exclude* the matter from the grievance procedure. Here, Article 19 contains no such specific exclusion for reclassification request denials; it certainly does not contain the exclusionary language—"The provisions of this section are non-grievable."— the parties used to make clear that matters under Articles 14.9 and 14.27.6 were outside the grievance procedure's scope.

Rather than looking for specific exclusionary language, however, both the Personnel Board, and the District Court in affirming the Personnel Board, flipped the applicable rule on its head and required that Article 19 contain specific language affirmatively calling for reclassification request denials to be reviewable after the Personnel Director made his decision. Thus, the Personnel Board stated: "And

since nothing in Article 19 authorizes an additional level of review or appeal beyond the Director's final decision the Board concludes that reclassification request denials generally, and Schiffmann's reclassification request denial specifically, are not grievable under Article 4." (T7) (emphasis added). And the District Court similarly stated that Article 19 "governs classification and carves out a specific procedure for classification review and appeals, *but does not allow Schiffmann to seek further review beyond the DAS State Personnel's final decision* denying reclassification." (T135) (emphasis added). By requiring such affirmative language specifying the opportunity for further review, the District Court committed reversible error.

The District Court not only applied the wrong rule, its rule would lead to absurd results. The NAPE-State CBA is 247 pages long and contains 27 separate articles, many with numerous subsections. What negotiators in their right mind would agree to, on the one hand, a broadly defined grievance procedure in Article 4 to resolve matters involving the application and interpretation of the CBA, and then separately agree that each additional article or applicable subarticle should contain an affirmative statement that matters arising under that particular article or subarticle were subject to the grievance procedure? The law does not require the CBA's negotiators to engage in such redundant drafting, but rather looks to the provisions of the contract as a whole and reads them consistently—where there are specifically stated exclusions from the grievance procedure, the absence of such exclusionary language means a matter is covered by that procedure.

Turning to the alleged conflict between Article 4 and Article 19, the Personnel Board found the latter to be the more specific provision and the former to be the more general. It then applied the contract construction rule enunciated in *Panwitz*, 228 Neb. at 223, a case involving conflicting provisions in a contract for sale of a business, and held that the specific provision prevailed over the more general, leaving the denial of Mr. Schiffmann's reclassification request non-

grievable. The District Court agreed and also cited *Panwitz* for the proposition that the specific provision prevails over the general in the case of a conflict between the two.

The contract interpretation rule stated in *Panwitz* only applies where the two allegedly conflicting contractual provisions apply to the same subject matter. "In such a situation, the proper rule of construction is that the more specific term of the contract will control over the general provision of the contract *as it relates to the same subject matter*." *Id.* at 223 (emphasis added). Here, the two provisions do not apply to the same subject matter, there is no conflict between the two provisions, and thus *Panwitz* is inapplicable.

As demonstrated in Section II *supra*, Article 4's grievance definition includes disputes over the application or interpretation of the CBA's terms, and Mr. Schiffmann's grievance alleges a misapplication of Article 19.1's employer commitment to properly classify jobs. As the Personnel Board itself initially found, and the parties agreed, the provisions of Article 19.7 providing for review by the Classification Appeal Panel of an entirely different class of matters—a downgrade of classification resulting in immediate adverse financial impact on the employee—did not answer the question of grievability: "Article 19.7's 'salary reduction' language is a very limited pre-condition to appealing a demotion to the Classification Appeal Panel, only. It is not dispositive on whether the Director's decision to deny Schiffmann's reclassification request is grievable under Article 4." (T7). Because Article 19.7 addresses a different matter and does not apply to cases like Mr. Schiffmann's—on its terms, it does not allow for his case to be appealed to the Classification Appeal Panel—there is no conflict between it and the grievance procedure and no occasion to apply the rule of *Panwitz*.

Moreover, Restatement (Second) of Contracts (A.L.I. 1981), in listing "Standards of Preference in Interpretation" states, at § 203(c) "specific terms and exact terms are given greater weight than general language." The subsequent Comment at e, addressing "General and

specific terms," states, in pertinent part: "If the specific or exact can be read as an exception or qualification of the general, both are given some effect, in accordance with the rule stated in Subsection (a)." Subsection (a) of § 203 provides the interpretative rule that "an interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect." In light of the Comment's gloss, the proper way to reconcile Article 4 and Article 19.7 if it is determined they are in arguable conflict is to find that Article 19.7's right of appeal to the Classifications Appeal Panel for demotions with immediate financial impact is a limited exception to the general right of review through the grievance procedure applicable to reclassification denials that do not result in such financial harm. This reading gives effective meaning to all of the contractual terms and does not leave unreviewable the substantial number of reclassification denials where no immediate financial harm is felt.

However, this interpretation, giving meaning and effect to all of the contract's terms, was not the one that the Personnel Board and the District Court adopted. Inexplicably, after finding Article 19.7 did not answer the question of grievability, the Personnel Board found that it did—"*The Board finds that Article 19's specific review procedure controls reclassification requests*. And since nothing in Article 19 authorizes an additional level of review or appeal beyond the Director's final decision the Board concludes that reclassification request denials generally, and Schiffmann's reclassification request denial specifically, are not grievable under Article 4." (T7) (emphasis added). And the District Court affirmed, holding that Article 19 "governs classification and carves out a specific procedure for classification review and appeals, but it does not allow Schiffmann to seek further review beyond the DAS State Personnel's final decision denying reclassification." (T135).

How is it that, on the one hand, as all agreed, Article 19.7's provision for an appeal to the Classification Appeal Panel is

inapplicable to the denial of Mr. Schiffmann's reclassification request, yet that same (inapplicable) "specific review procedure" "controls" his case and trumps the application of the grievance procedure to reclassification request denials? To reach this result the Personnel Board, and the District Court in affirming it, leaned into the reversible error described above—they relied on the lack of affirmative language in Article 19 that specifically called for the review of reclassification denials that do not result in immediate financial loss to the employee to find that the final decision of the State Personnel Director in Mr. Schiffmann's case was not reviewable through the grievance procedure. This misreading of the contract's terms and misapplication of the relevant legal principles constitutes reversible error.

This misreading and misapplication is not simply wrong—it is also illogical and would work a substantial injustice. As to logic, Personnel Director Davis testified that his office received approximately 800 reclassification requests a year and approved 80-85% of them. (22:21-23, 32:20-23, Vol. I). Thus, approximately 120-160 requests a year are denied. The Personnel Board and the District Court apparently assume that the CBA's negotiators agreed to leave up to 160 reclassification denials per year unreviewable. Just as Congress does not hide elephants in statutory mouseholes, *Whitman v. American Trucking Assoc., Inc*,, 531 U.S. 457, 468 (2001), CBA negotiators who know how to exclude matters from the grievance procedure do not exclude elephant-sized issues from that procedure by implication, particularly where there has been no discussion in bargaining on the subject. See, in this regard, Personnel Director Davis' testimony in response to a question from the Hearing Officer:

> Do you recall any bargaining over this issue we're dealing with today, such as can somebody grieve the situation where they don't lose money but they deny -- they are denied a reclassification? Did that ever come up in the bargain you know of?
>
> A. No.

(37:1-6, Vol. I).

Finally, as to the equities of the matter, Mr. Davis also testified that, given the volume of reclassification requests, he essentially adopts the classification specialists' recommendations. In Mr. Schiffmann's situation, he admitted that he did not talk to Mr. Schiffmann or Mr. Schiffmann's management about the reclassification request. *Id.* at 22:9-14. Again, given the volume of requests, it is reasonable to assume that a) mistakes will be made by the classification specialists in denying reclassification, b) those mistakes will not be caught by Mr. Davis because he does not engage in a separate review of the entire file, and c) absent some review in the grievance procedure to correct the mistakes, the consequences of such mistakes will be suffered by the particular employee whose reclassification request is incorrectly denied, with the concomitant loss in increase in pay and possibility for further advancement. Such a result would work a manifest injustice, one easily addressed by following the proper interpretation of the CBA and allowing reclassification denials which do not result in immediate financial loss to be reviewed through Article 4's grievance procedure. And, if the State Agency employer's denial of the reclassification request is meritorious, it has nothing to fear from a review of that decision. *See Laura Steele-Leahy v. Neb. Dep't of Revenue*, Case No. 24-02 (State Personnel Board, Oct. 10, 2023) (reclassification denial review pursuant to grievance, denial upheld on the merits). (E12, Vol. II).

IV. The Personnel Board and the District Court did not address the merits of Mr. Schiffmann's grievance; the matter should be remanded to give them the opportunity to do so. [Assignment 4].

Because both the Personnel Board and the District Court relied on their determinations of non-grievability, neither considered the merits of Mr. Schiffmann's grievance. This Court should not engage, in the first instance, in a fact-intensive examination of the job duties of the two classifications and review which duties Mr. Schiffmann is in

fact performing, without the benefit of an underlying decision that considers and addresses those details. Under these circumstances, the proper course is for this Court to remand the matter to the District Court with instructions to remand it to the Personnel Board, for the Personnel Board to address the merits of Mr. Schiffmann's grievance.

CONCLUSION

For the reasons stated above, the denial of Mr. Schiffmann's reclassification request was grievable pursuant to Article 4 of the NAPE-State CBA. This Court should so find and reverse the contrary decision of the District Court. As both the District Court and the Personnel Board found the matter non-grievable, neither ruled on the merits of Mr. Schiffmann's reclassification request. This Court should therefore remand the case to the District Court with instructions to remand the matter to the State Personnel Board to rule in the first instance on the merits of Mr. Schiffmann's request.

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Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

The undersigned certified that the foregoing Brief of Appellant complies with Neb. Ct. R. App. P. § 2-103. It was generated on Microsoft Word Version 2601 and contains 9,423 words in Century 12 pt. font.

/s/*Abby Osborn*

Certificate of Service

I hereby certify that on Friday, April 10, 2026 I provided a true and correct copy of this *Brief of Appellant* to the following:

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