

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

FRATERNAL ORDER OF POLICE,)
LODGE 32,)
Petitioner,)
v.)
LANCASTER COUNTY, NEBRASKA,)
Respondent.)
)
)
)
)

Case No. 1550

FINDINGS OF FACT AND ORDER

NEBRASKA COMMISSION
OF INDUSTRIAL RELATIONS
FILED

JAN 30 2024

CLERK

For Petitioner: Thomas P. McCarty
KEATING, O'GARA, NEDVED & PETER, P.C., L.L.O.
200 South 21st Street, Suite 400
Lincoln, Nebraska 68501

For Respondent: Ashley J. Bohnet
Deputy Lancaster County Attorney
605 South 10th Street
Lincoln, Nebraska 68508
and
Henry L. Wiedrich
CLINE WILLIAMS WRIGHT JOHNSON & OLDFATHER, L.L.P.
12910 Pierce Street, Suite 200
Omaha, Nebraska 68144

Before Commissioners Neuhaus, Blake, and Carlson

NATURE OF THE CASE

This matter comes before the Commission upon the Prohibited Practice Petition filed on July 24, 2023 by Petitioner, Fraternal Order of Police, Lodge 32 ("Union"). The Petition alleges that actions of the Respondent, Lancaster County, Nebraska, were in violation of Neb. Rev. Stat. §§ 48-824(1), 48-824(2)(a), (b), (c), (d), (e), (f) and (g). The Petitioner's Pretrial Statement filed on October 3, 2023, presented the issue of whether Respondent violated Neb. Rev. Stat. § 48-824(2)(a). Pretrial Briefs were filed by both parties on October 13, 2023. A trial was held on

October 17, 2023, to hear arguments and receive evidence. Post Trial Briefs were filed by both parties on November 17, 2023.

FINDINGS OF FACT

The Parties filed a Joint Stipulation on October 2, 2023; the same was also offered and received at trial as Exhibit 1. Petitioner Fraternal Order of Police, Lodge #32 is a "labor organization," as that term is defined in Neb. Rev. Stat. § 48-801(7), and is the exclusive bargaining agent for the bargaining unit consisting of Lancaster County, Nebraska employees in the job classification of Correctional Officer (hereinafter referred to as the "bargaining unit"). Correctional Officers are members of the "classified service" within the meaning of Neb. Rev. Stat. § 23-2519. Respondent Lancaster County, Nebraska, is a political subdivision of the State of Nebraska. Respondent Lancaster County is a "public employer" within the meaning of Neb. Rev. Stat. § 48-801(12) and employs those employees who compose the bargaining unit. Petitioner and Respondent have been covered by a collective bargaining agreement ("CBA") between the Petitioner and the Respondent covering wages, hours, and conditions of employment for the bargaining unit, and covers the period of August 12, 2021, through August 31, 2024. Exhibit 500.

On June 27, 2023, the Lancaster County, by and through its Board of Commissioners, adopted and implemented Personnel Rule 19.8, which establishes a new Paid Parental Leave Benefit for "unrepresented" classified employees of Respondent. The County's Personnel Rules, including Personnel Rule 19.8, use the term "unrepresented" to refer to employees who are not represented by a labor organization. The term "represented" in the Personnel Rules refers to employees who, like Correctional Officers, are represented by a labor organization.

Prior to implementation of Personnel Rule 19.8, Petitioner's counsel sent an e-mail to Respondent demanding mid-term bargaining and immediate implementation of the same Paid

Parental Leave benefit for employees represented by Petitioner. Respondent declined to agree to mid-term bargaining but did state that it would be willing to negotiate on the Paid Parental Leave benefit for the new CBA and offered to open negotiations early for that contract. Exhibit 513.

DISCUSSION

Jurisdiction

The Commission has jurisdiction to adjudicate alleged violations of the Industrial Relations Act by virtue of Neb. Rev. Stat. §§ 48-824 and 48-825. The Commission has the power and authority to make such findings and to enter such temporary or permanent orders as the Commission may find necessary to provide adequate remedies, to effectuate the public policy enunciated in section 48-802, and to resolve the dispute. Neb. Rev. Stat. § 48-819.01.

Prohibited Practice Allegations

The Prohibited Practice Petition alleged violations of Neb. Rev. Stat. § 48-824(1) and § 48-824(2)(a), (b), (c), (d), (e), (f), and (g). However, the statement of issues included in Petitioner's Pretrial Statement filed on October 3, 2023, only alleges Respondent violated Neb. Rev. Stat. § 48-824(2)(a) when it promulgated, maintained, published, implemented and/or gave effect to the Paid Parental Leave Benefit (Personnel Rule 19.8), which expressly affords Paid Parental Leave to "all *unrepresented*, full -time and part-time County Employees in the classified service ... " (emphasis added). CIR Rule 22(L) states that a case will be tried upon the pleadings as finalized at the time of the pretrial conference.

Neb. Rev. Stat. § 48-824 provides in relevant part:

(2) It is a prohibited practice for any public employer or the public employer's negotiator to:

(a) Interfere with, restrain, or coerce employees in the exercise of rights granted by the Industrial Relations Act;

The Nebraska Supreme Court has stated that decisions under the National Labor Relations Act (“NLRA”) are helpful, but not controlling upon the Commission, where there are similar provisions in the Nebraska statutes. *Nebraska Public Employees Local Union 251 v. Otoe County*, 13 CIR 79 (1998), (Affirmed 257 Neb. 50, 595 N.W.2d 237 (1999)), *Int’l Union of Operating Engineers Local 571 v. City of Plattsmouth*, 265 Neb. 817, 660 N.W.2d 480 (2003). The Commission and the Nebraska Supreme Court have also previously determined that Neb. Rev. Stat. § 48-824(2)(a) is almost identical to § 8(a)(1) of the NLRA. *Omaha Police Union Loc. 101, IUPA, AFL-CIO v. City of Omaha*, 274 Neb. 70, 79, 736 N.W.2d 375, 383 (2007), *Omaha Police Union Loc. 101, IUPA, AFL-CIO v. City of Omaha*, 15 CIR 226 (2006).

A violation of Neb. Rev. Stat. § 48-824(2)(a) does not necessarily turn upon the employer’s motive, but rather the effect of the employer’s conduct. As such, it is possible for an employer’s actions to be a per se violation of the Act, absent a discriminatory intent.

In determining whether employer actions violated § 8(a)(1), the test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act. Interference, restraint, and coercion are not acts themselves but are descriptive and are the result of acts. Whatever acts may have the effect of interference, restraint and coercion are included in those terms, and are therefore prohibited. They include a great number of acts which, normally, could be validly done, but when they interfere with, restrain or coerce employees in the exercise of their rights, they are prohibited by the act.”

Nebraska Public Employees Local Union 251 v. Otoe County, 13 CIR 79 (1998), (internal quotations and citations omitted).

The Commission finds the summarization and analysis of NLRA precedent in *CuraLeaf NY, LLC*, Case No. 29-CA-298317 (2023) to be particularly instructive in the present case.

A statement violates the Act if it has a “reasonable tendency to coerce employees in their choice whether to engage in union activity.” The test is an objective one, and in evaluating the remarks, the Board does not consider the motivation behind them or their actual effect.

Employers may make truthful statements to employees concerning benefits available to their represented and unrepresented employees and may compare wages and benefits at their unionized and nonunionized facilities. An employer, however, violates Section 8(a)(1) when it threatens that benefits will not be available if the employees are represented by a union.

CuraLeaf NY, LLC at p.12-13 (internal citations omitted).

Petitioner argues that the Commission should find that the word “unrepresented” in Personnel Rule 19.8 is a per se violation of the Neb. Rev. Stat. § 48-824(2)(a). We are unable to do so. The Petitioner failed to provide any evidence that the distinction in this policy interfered with, restrained, or coerced employees in the exercise of their rights. Further, the Commission finds that there was insufficient evidence to find that the policy language could reasonably tend to interfere with, restrain or coerce employees in the exercise of their rights; especially in consideration of the Respondent’s efforts throughout to make it clear that while “[t]his benefit is specifically designated for **unrepresented** classified employees”..., “its implementation for represented employees requires negotiation and agreement between the County and the respective collective bargaining units.” Exhibit 513, p. 8.

CONCLUSION

We find the evidence fails to establish a prohibited practice occurred. The Petitioner failed to meet its burden in this case and its Petition should be dismissed.

Pursuant to CIR Rule 42, the Commission has authority to award attorney’s fees when there has been a pattern of repetitive, egregious, or willful prohibited conduct by the opposing party. The Commission has found it to be an appropriate remedy in cases where a party’s misconduct was flagrant, aggravated, persistent, and pervasive. *See Fraternal Order of Police, Lodge No. 8 v. Douglas County, et. al.*, 16 CIR 401 (2010). At this time, the Commission finds that while the Union’s Petition should be dismissed, the evidence does not show a willful pattern

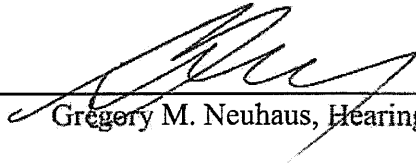
or practice of prohibited conduct. The Commission finds that the parties are to pay their own costs and fees.

IT IS THEREFORE ORDERED that the Petition is dismissed.

All Panel Commissioners join in the entry of this Order.

Entered January 30, 2024.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS



Gregory M. Neuhaus, Hearing Commissioner