

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

FRATERNAL ORDER OF POLICE )  
LODGE #88, )

Petitioner, )

v. )

NEBRASKA ASSOCIATION OF )  
PUBLIC EMPLOYEES and STATE OF )  
NEBRASKA, )

Respondents. )

Case No. 1564  
Rep. Doc. No. 596

FINDINGS OF FACT AND ORDER

NEBRASKA COMMISSION  
OF INDUSTRIAL RELATIONS  
FILED

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CLERK

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Before Commissioners Carlson, Neuhaus, and Blake.

**NATURE OF THE CASE**

This matter came before this Commission upon the Petition to Amend or Clarify a Bargaining Unit filed on February 20, 2024, by Petitioner, Fraternal Order of Police Lodge #88 (“FOP”). An Amended Petition to Amend or Clarify a Bargaining Unit was filed on March 15, 2024. Respondent State of Nebraska (“State”) filed its Answer and Affirmative Defenses on

April 3, 2024. Respondent Nebraska Association of Public Employees (“NAPE”) filed its Answer on April 4, 2024. A Second Amended Petition to Amend or Clarify a Bargaining Unit was filed on January 27, 2025. Each Respondent filed their respective Answer to the Second Amended Petition on February 5, 2025. A trial was held on February 12, 13, and 14, 2025, to hear arguments and receive evidence. Post trial briefs were filed by all parties. Following briefing, Petitioner’s Motion for Leave to File Third Amended Petition was granted, and the Third Amended Petition to Amend or Clarify a Bargaining Unit was filed on June 6, 2025. Additional Answers from the Respondents were not required due to the nature of the changes in the Third Petition.

The Petitioner requests, pursuant to CIR Rule 12, the amendment of two bargaining units, created by NEB. REV. STAT. § 81-1373, to move certain employees from one bargaining unit to another. Specifically, the Petitioner requests that Training Specialists with the Nebraska Department of Corrections (“NDCS”) be moved from the Administrative Professional Bargaining Unit, created by NEB. REV. STAT. § 81-1373(1)(e), to the Protective Service Bargaining Unit, created by NEB. REV. STAT. § 81-1373(1)(f).

The Respondent State made an unopposed motion on the record for a protective order relative to all testimony and exhibits in this proceeding for the reason of institutional security. Vol. I, 166:18-23, 167:9-13. The Commission granted the motion and ordered that all testimony and exhibits in this matter be deemed confidential and kept under seal, accessible to the parties for their purposes and to the Commission for its purposes. Vol. I, 167:19-168:8.

### **FINDINGS OF FACT**

The State Employees Collective Bargaining Act (“SECBA”) creates twelve horizontal bargaining units and directs that “the units shall consist of state employees whose job classifications are occupationally and functionally related and who share a community of interest.” NEB. REV. STAT. § 81-1373(1). Petitioner FOP is a labor organization as defined by NEB. REV. STAT.

§ 48-801(7) and is the exclusive certified bargaining representative for employees in the Protective Services Bargaining Unit (“PSBU”). The PSBU “is composed of institutional security personnel, including correctional officers, building security guards, and similar classes;” NEB. REV. STAT. § 81-1373(1)(f). Respondent NAPE is a labor organization as defined by NEB. REV. STAT. § 48-801(7), and is the exclusive certified bargaining representative for the Administrative Professional Bargaining Unit (“APBU”), which “is composed of professional employees with general business responsibilities, including accountants, buyers, personnel specialists, data processing personnel, and similar classes;” NEB. REV. STAT. § 81-1373(1)(e). Respondent State is the employer as defined in NEB. REV. STAT. § 48-801(12) and § 81-1371(5) and collectively bargains with each of these Unions for their respective units. Both unions had current bargaining agreements with the State, expiring on June 30, 2025. Exs. 2 and 3. As the exclusive certified bargaining agent for employees in the Protective Services Bargaining Unit, the FOP has proper standing to file the present petition requesting that a position which allegedly belongs within its statutorily defined PSBU be moved into the proper unit.

At the time of trial, NDCS employed thirteen (13) Training Specialists. Six (6) are assigned to the Staff Training Academy (“STA”), six (6) are facility-based Training Specialists, and one (1) is assigned to Central Office. Vol. I, 141–142. In addition to the Training Specialists who work for the NDCS, there are six (6) other state employees who have the job title of "Training Specialist" who do not work for NDCS. These include four Training Specialists who work for the Nebraska Department of Health and Human Services, one who works for the Department of Motor Vehicles, and one who works for the Nebraska Public Employee Retirement System. Exhibit 4. Although they share the same job titles or job label, they do not do the same work as Training Specialists who work at NDCS and do not work alongside employees of the Nebraska Department of

Correctional Services. This action pertains only to these NDCS Training Specialists, not those in similarly named positions in other state agencies.

STA Training Specialists train every new NDCS employee that comes into the department. Vol. II 131:24-132:4; 159:17-22. STA Training Specialists are also in charge of the curriculum for the Staff Training Academy. Vol. II 159:24-160:1. The primary function of Facility Training Specialists is to facilitate in-service trainings for existing employees at their assigned facility, or other facilities if needed. Vol. II 21:8-16; 34:1-2. They also assist with new employee training functions as needed. Vol. II 34:8-12.

Depending on the job position, NDCS employees complete either the entire training academy curriculum or a modified curriculum. Vol. II 159:20-24. All new full-time employees must complete a 40-hour orientation. Vol. I 150:15-25. All employees are required to complete either Level 2 or Level 3 training for defensive tactics and subject control based on their basic job functions, and their level of direct contact with the inmate population. Vol. I 151:10-23. Level 2 is described generally as self-defense training for those whose primary job function may have them around inmates, but their specific job duties do not require them to control the inmate population. Vol. I 151:24-152:7. Level 3 training is for those whose job duties require them to control potentially dangerous situations and inmates. Vol. I 152:8-12. PSBU employees are generally required to have Level 3 training. Vol. I 153:3-8. Training Specialists are required to maintain the skills, certifications and licenses of the subjects that they train, and in some instances require higher levels of certifications that allow them to teach and certify others. Vol. I 153:11-24.

Training Specialists regularly work with Field Training Officer (“FTO”) Sergeants. FTO Sergeants are Corrections Sergeants in the PSBU who have been assigned additional training duties. They also often share work and workspaces with Facility Training Specialists. The FTO

Sergeants and the Facility Training Specialists share a supervisor. Vol. 1, 135:12-18, 255:16-256:16; Vol. II, 19:5-9, 45:3-12, 23-25.

The uniform of Training Specialists is the same uniform as PSBU custody staff, gray polos and black tactical pants. Vol. I, 362:20-363:6, 377:17-378:3; Vol. II, 25:21-24. Training Specialists are issued the same equipment as custody staff, including oleoresin capsicum (“OC”) spray and handcuffs, except that Training Specialists are not personally issued stab-resistant vests. Vol. II, 26:8-12, 28:7-9. When Training Specialists enter certain inmate areas (e.g., restrictive housing), NDCS policy requires a stab-resistant vest; vests are staged on-site for that purpose. Vol. II, 28:2-7.

Notwithstanding their assigned office locations, both STA and Facility Training Specialists routinely enter correctional facilities to conduct training and accompany new hires inside institutions, including in secured areas with inmates, where they may need to intervene to ensure staff safety. Vol II, 182:15–186:21. NDCS Training Specialists testified regarding an "Early Start" program, which is a deliberate introduction of the inmate population and correction facility environments to new correction employees in the first few days of their employment. As part of the training program, Training Specialists bring newly hired NDCS employees into the corrections facilities and they tour all parts of these facilities. These new employees are neither trained to defend themselves, nor have they been trained on or issued any of the restraint equipment that would be used to do so. Vol II 134:1-140:12. Training Specialists also testified that if an inmate or group of inmates approached with a threat of violence, it would be the Training Specialists' responsibility to protect the trainees against such inmates, and that they have done so. Vol. II, 138:2-140:12; Vol. I, 340: 14-341:17. Protective Services custody staff, if present, would also respond to these incidents.

Prior to 2022, Training Specialists were allowed to volunteer for overtime covering custody “posts” usually staffed by Protective Services employees. In 2022, NDCS issued a directive ending this type of voluntary overtime for non-Protective Services employees. While the Training Specialists are no longer permitted to take these shifts, their training, knowledge, skills, and abilities are such that they were qualified to fill custody posts. Vol. III, 74:13-18, 75:3-11, 116:3-7, 122:18-24. Training Specialists testified that they desire to have their job position included in the Protective Services Bargaining Unit and that believe their duties are important to maintaining institutional security. Vol. 1, 158:7-14, 371:8-17.

The work of NDCS Training Specialists plays a vital role in ensuring the security of institutions. NDCS Training Specialists do not share a community of interest with “professional employees with general business responsibilities, including accountants, buyers, personnel specialists, data processing personnel, and similar classes.” More narrowly, they do not even share a community of interest with Training Specialists in other agencies. NDCS Training Specialists do not share a meaningful occupational or functional relationship with Training Specialists in other agencies or other employees in the APBU. Matt Rudeen, Training Specialist for Nebraska Public Employees Retirement Systems (“NPERS”), testified that his duties were to create, distribute, and present information regarding retirement plans to State employees. He worked out of the NPERS office at 1526 K Street; he had no responsibility to guard any person or the building itself. Likewise, the record reflects that NPERS training was limited to NPERS-related matters and not to teaching employees how to perform that agency’s work. Expert testimony further established that NDCS Training Specialists are not a job match with non-corrections Training Specialists working outside correctional facilities, and that prison-based Training Specialists are qualitatively different from a non-corrections Training Specialist such as Mr. Rudeen. This evidence supports

the conclusion that any commonality between NDCS Training Specialists and the Administrative Professional Bargaining Unit is largely nominal and title-based, and is materially weaker than the occupational, functional, and community-of-interest ties between NDCS Training Specialists and the Protective Services Bargaining Unit. NDCS Training Specialists share a community of interest with the FTO Sergeants they work alongside regularly, and with the Protective Services Bargaining Unit generally.

## **JURISDICTION**

The petition in this matter was filed pursuant to Commission Rule 12, which permits a party to file a petition for clarification or amendment of a certified or recognized bargaining unit and sets forth the requirements for such a petition. The Commission promulgated this rule pursuant to its authority under NEB. REV. STAT. § 48-838(2) to determine the appropriate unit for bargaining purposes. The Commission can amend bargaining units based on the implied authority to determine questions of representation under NEB. REV. STAT. § 48-838.

Respondents raised motions seeking dismissal at the outset of trial and again at the close of Petitioner's case-in-chief. At commencement of trial, the State moved to dismiss for lack of jurisdiction and standing, arguing that SECBA establishes horizontal bargaining units and that because NDCS Training Specialists are presently represented by Respondent NAPE, the FOP lacks standing to bring this case. NAPE joined that motion and further argued Petitioner had not complied with Rules 6, 9, and 10. At the close of Petitioner's case, NAPE renewed its dismissal arguments, contending Petitioner had failed to establish a prima facie case, lacked standing, and was attempting to "reclassify" a position rather than clarify a bargaining unit. The State joined that renewed motion.

Both Respondents' filings as to the pre-trial motions and their accompanying arguments misconstrue the Commission Rules and the case posture. As discussed above, the Commission has jurisdiction to determine questions of representation. FOP has standing to bring this action. FOP is the exclusive certified bargaining representative of one of the two statutory bargaining units directly at issue in this proceeding. The Petition alleges that NDCS Training Specialists belong in the Protective Services Bargaining Unit as "institutional security personnel" or a similar class under NEB. REV. STAT § 81-1373(1)(f). If that allegation is correct, the composition of the unit FOP is certified to represent is directly affected. The reference in Petitioner's pretrial briefing to bringing the action "on behalf of" the Training Specialists did not amend the pleadings and does not deprive FOP of standing.

This matter was properly brought under Commission Rule 12, not Rules 6, 9, or 10. Petitioner does not seek an election, a new certification, or the decertification of NAPE as the representative of the Administrative Professional Bargaining Unit. NAPE remains the certified representative of that bargaining unit, and FOP remains the certified representative of the Protective Services Bargaining Unit, regardless of the outcome of this clarification action. The question presented is narrower: whether the NDCS Training Specialist classification is presently placed in the correct statutory bargaining unit.

Rule 10 does not require dismissal. By its terms, Rule 10 governs showings of interest in representation and decertification elections. Because no election is sought here, no Rule 10 showing of interest was required. For the same reason, Rule 9 is not implicated. A decertification petition is the procedural vehicle for removing a labor organization as the exclusive representative of a bargaining unit. This Petition does not seek to remove NAPE as the representative of the

Administrative Professional Bargaining Unit. It seeks only a clarification of unit composition under Rule 12.

The Commission likewise rejects the argument that clarification is unavailable unless Petitioner first pursues decertification. The Commission has entertained clarification proceedings where the dispute concerns whether a particular classification belongs in one existing unit or another. *Lancaster County v. AFSCME Lodge #2468*, 17 CIR 262 (2012). That procedural posture is materially similar to the question presented here: a dispute over the proper placement of an existing classification within existing units, not a challenge to the continued representative status of either union.

Nor does the Petition seek an impermissible “reclassification” of the position. The Petition does not ask the Commission to alter the Training Specialist job title, class specification, pay grade, or assigned duties. Those are classification and compensation matters for the employer. The Petition asks only that the Commission determine the bargaining unit in which the NDCS Training Specialist classification properly belongs under SECBA and Rule 12. SECBA’s creation of horizontal bargaining units does not defeat jurisdiction; it makes the question of proper unit placement more important. The Commission therefore concludes it has jurisdiction to decide this clarification action and that the motions to dismiss are denied.

## **DISCUSSION**

The Petitioner requests that Training Specialists with the Nebraska Department of Corrections (“NDCS”) be moved from the Administrative Professional Bargaining Unit to the Protective Service Bargaining Unit. The party seeking modification of an existing collective bargaining unit has the burden to prove by preponderance of the evidence that it is entitled to the modification sought. *Kimball Educ. Ass’n v. Kimball Public Schools*, 14 CIR 242 (2003).

The central public policy in Nebraska public sector labor law as expressed in NEB. REV. STAT. § 48-802 is "the continuous, uninterrupted and proper functioning and operation" of governmental service. This public policy underpins the Commission's desire to maintain continuity and stability in bargaining units, absent reason for disruption or alteration of the status quo. The importance of this policy consideration is underscored by the requirement that the Commission "shall consider established bargaining units and established policies of the employer." In determining the appropriateness of an existing collective bargaining unit, the Commission must consider the evidence while giving due regard to this important and long established public policy." *Kimball Educ. Assoc. v. Kimball Cty. School Dist. No. 53-0001*, 14 CIR 242 (2003),

The Nebraska Supreme Court has stated that decisions under the NLRB are helpful but not controlling. *See City of Grand Island v. AFSCME*, 186 Neb. 711 (1971); *University Police Officers Union v. University of Nebraska*, 203 Neb. 4 (1979); *Nebraska Public Employees Local Union 251 v. Otoe County*, 257 Neb. 50 (1999). The Court further clarified "[t]hat declaration must be carefully understood to mean that decisions under the NLRB are helpful where there are similar provisions under the Nebraska statutes. Decisions under the NLRB are of no help or benefit in attempting to determine actions absent similar provisions under the Nebraska statutes." *University Police Officers Union v. University of Nebraska*, 203 Neb. 4 (1979). In *Marcy Delperdang v. United Electrical Radio and Machine Workers of America*, 13 CIR 400 (2001), the Commission stated that NLRB standards did not apply with regard to unit clarification cases before the Commission, and that we should continue to use the "community of interest" standard which has developed in Commission case law. Further, the Commission distinguishes between legislatively created public employee bargaining units, as we have here under SECBA, and the bargaining units created in private business that fall under the jurisdiction of the NLRB. We follow a basic inquiry

in bargaining unit determination as to whether a community of interest exists among the employees which is sufficiently strong to warrant their inclusion in a single unit. *American Association of University Professors v. Board of Regents of the University of Nebraska*, 198 Neb. 243, 261 (1977).

In analyzing NEB. REV. STAT. § 48-838, the Nebraska Supreme Court determined the requirements in the statute are not exclusive, and that the Commission may consider additional relevant factors when determining the appropriateness of a proposed bargaining unit. *AFSCME v. Counties of Douglas and Lancaster*, 201 Neb. 295 (1978). To determine whether a community of interest exists, we have examined several relevant factors including mutuality of interest in wages, hours and working conditions; duties and skills of employees; extent of union organization; desires of the employees; fragmentation of units; established policies of the employer; and statutory mandates to assure proper functioning and operation of governmental service. *Sheldon Station Employees Association v. Nebraska Public Power District*, 202 Neb. 391 (1979); *International Brotherhood of Electrical Workers Local 1536 v. Lincoln Electrical System*, 215 Neb. 840, 842 (1983).

### **Mutuality of Interest in Wages, Hours, and Working Conditions**

NDCS Training Specialists share a core work environment and several working conditions with PSBU custody staff. Facility Training Specialists work directly in NDCS correctional facilities, and they also assist at the State Training Academy as needed. Facility Training Specialists are often stationed inside secure institutions, work in secured areas, and are subject to the same entry screening and institutional security protocols as custody staff. Their work hours are generally consistent with the workday schedule common to many PSBU positions, but their duties routinely require schedule variation based on institution needs and training demands. Training Specialists wear the same NDCS identifying uniforms as they work alongside the custody staff

and are issued the same or similar basic security equipment used in institutions, including OC spray and handcuffs.

The training delivered to custody staff includes instruction and qualification on institutional security equipment and techniques, including OC spray and handcuffing. These shared institutional expectations and security-related working conditions support a mutuality of interest with PSBU employees that is materially stronger than any mutuality with Administrative Professional employees performing general business functions in office environments.

The wage structure is also consistent with the Commission's conclusion regarding community of interest. The parties' collective bargaining agreements reflect that Corrections Corporals and Training Specialists are placed on materially different pay progressions, with Corrections Corporals reaching a higher maximum rate in substantially fewer steps. Petitioner's Post-trial brief states the best candidates for any NDCS training position come from the ranks of custody staff, and this would ordinarily be addressed by promotional structures in a contract, or pay that is built to make sure that people will not be economically harmed if they want to move from a Corporal position, for example, to a Training Specialist. Under the current pay plans, a Corrections Corporal at the top of the payline who would like to become a NDCS Training Specialist would likely be required to take a \$14.55 per hour pay cut to do so. While this is not controlling by itself, it further supports the conclusion that NDCS Training Specialists' bargaining interests are not naturally aligned with the APBU and are more closely related to the PSBU structure.

### **Job Duties and Skills**

Training Specialists at NDCS are responsible for training frontline correctional employees and delivering core academy and facility-based instruction, including firearms certification and other operational training conducted at NDCS facilities. The record reflects that custody training

necessarily includes policy, defensive tactics, and the use of assigned tools to protect staff and maintain safety in the correctional environment. Training Specialists coordinate with PSBU Field Training Officer (FTO) Sergeants, including assisting with hands-on instruction such as restraint and handcuffing training. These corrections-specific duties and skills align Training Specialists with institutional security personnel rather than with administrative professional employees who perform general business responsibilities.

While some Training Specialists' tasks are off-site at their base of operations, these NDCS Training Specialists are simply not office-bound staff who educate from afar. These Training Specialists conduct much of their work at NDCS custodial facilities. Training Specialists are often former PBSU who laterally move into become trainers for the next generation of custody staff. So, Training Specialists share an employment history with PBSU that enables them to be preferred candidates to be employed as Training Specialists. Training Specialists are often indistinguishable from the PBSU Field Training Officer (FTO) Sergeants.

### **Established Policies of the Employer**

NDCS has necessarily structured Training Specialist work around institutional security requirements and has provided corrections-specific equipment where appropriate. These employer decisions and practices to integrate Training Specialists into institutional security reflect NDCS's operational approach to staffing and security functions within its institutions.

### **Extent of Union Organization**

Under SECBA, the relevant bargaining units are created by statute, and the question presented is the proper placement of the NDCS Training Specialist classification within those statutory units. FOP is the certified bargaining representative for PSBU employees and therefore has a cognizable interest in the composition of that unit. The statutory description of PSBU

includes institutional security personnel and similar classes, and the evidence shows the Training Specialists' work is integrally connected to the institutional security mission carried out by PSBU employees.

### **Desires of the Employees**

Training Specialists who testified expressed a preference to be placed in the PSBU (FOP), based on the nature of their duties and their integration with custody operations. The Commission considers those expressed preferences as one factor within the broader community-of-interest analysis.

### **Extent of Employee Interchange**

The record reflects meaningful interchange and functional overlap between Training Specialists and PSBU positions. Training Specialists work alongside PSBU FTO Sergeants to assist with hands-on academy instruction such as handcuffing training. The record also reflects that, prior to a 2022 email directive, Training Specialists were permitted to work voluntary overtime in custody posts staffed by PSBU employees, and that practice was later directed to stop. Although that overtime-post practice has been discontinued, Training Specialists have substituted and can continue to substitute, in certain circumstances, for PSBU employees.

### **Fragmentation of Bargaining Units**

This proceeding does not seek to create a new bargaining unit or to fragment the statutory structure of SECBA. Rather, it seeks to place NDCS Training Specialists—whose roles are described in the record as split between academy-based and facility-based Training Specialists working directly in NDCS institutions—into the statutorily appropriate existing unit. Under these facts, amending the unit placement as requested promotes SECBA's statutory framework by aligning unit placement with occupational and functional relationship and community of interest, while avoiding undue fragmentation.

## Conclusion

The Commission finds that the job classification of NDCS Training Specialist is occupationally and functionally related and shares a community of interest with the undisputed members of the PSBU. NEB. REV. STAT. § 81-1373(1). We find that the work of Training Specialists is that of “institutional security personnel...and similar classes.” We find that Petitioner has met its burden to prove that it is entitled to the modification sought. NDCS Training Specialists should be included in the Protective Services Bargaining Unit. NEB. REV. STAT. § 81-1373(1)(f).

## ORDER

1. The Commission amends/clarifies that the Protective Services Bargaining Unit shall include all Nebraska Department of Corrections employees with the position/classification title of **Training Specialist**.
2. The Commission amends/clarifies that the Administrative Professional Bargaining Unit shall not include Nebraska Department of Corrections employees with the position/classification title of **Training Specialist**.
3. The Commission orders that the parties are to pay their own costs and fees.

All Panel Commissioners join in the entry of this Order.

Entered April 14, 2026.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

/s/ Joel E. Carlson

Joel E. Carlson, Hearing Commissioner