NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

EMPLOYEES UNITED LABOR ASSOCIATION, Petitioner, v. DOUGLAS COUNTY, NEBRASKA, DOUGLAS COUNTY, NEBRASKA and ROGER GARCIA, JAMES CAVANAUGH, CHRIS RODGERS, P.J. MORGAN, MAUREEN BOYLE, MARY ANN BORGESON, MIKE FRIEND, WALTER E. PEFFER, DOUGLAS COUNTY ASSESSOR/REGISTER OF DEEDS, and THE COUNTY BOARD OF DOUGLAS COUNTY, NEBRASKA, In their official capacity, Respondents.	)	Case No. 1568 FINDINGS OF FACT AND ORDER

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Before Commissioners Blake, Carlson, and Hartman

NATURE OF THE CASE

This matter came before this Commission upon the Amended Petition filed on May 31, 2024, by Petitioner, Employees United Labor Association ("EULA"). The Amended Petition alleges that actions of the Respondents were in violation of Neb. Rev. Stat. §§ 48-824(1) and (2). A trial was held on November 19 and 20, 2024, to hear arguments and receive evidence. Post trial briefs were filed by both parties.

FINDINGS OF FACT

Petitioner, EULA, is a labor organization as that term is defined in Neb. Rev. Stat. § 48-801(7); and is the exclusive bargaining representative for non-management employees employed in the Douglas County Assessor/Register of Deeds ("Assessor/ROD"). Respondents include the County of Douglas, Nebraska; Walter E. Peffer, Douglas County Assessor/Register of Deeds; and the County Commissioners of the County Board of Douglas, Nebraska in their official capacities. Respondents are public employers within the meaning of Neb. Rev. Stat. § 48-801(12). Petitioner and Respondent entered into a collective bargaining agreement ("CBA") covering wages, hours, and conditions of employment for the relevant bargaining unit for the period of January 1, 2022 through December 31, 2025. (Ex. 7).

On May 21, 2024, Respondent Peffer issued a written memorandum to "All Staff covered by the EULA contract" (Ex. 5), which included statements that several employment benefits would be reviewed by Peffer and unilaterally revoked if the union insisted upon strict adherence to the CBA.

> 1. Morning and afternoon breaks would be discontinued.
> 2. All lunch hours would be 30 minutes and continue to be unpaid.
> 3. The ten (10) hour option would no longer exist and all work schedules would be eight (8) hour days, 40-hour workweek schedules.
> 4. Appraisers would no longer be permitted to take a vehicle home.
> 5. Adhere to a limit of six (6) days (or 48 hours) to care for an immediate family member, commonly referred to as Family Sick Leave.

(Ex. 5, pg. 2).

Also in this memorandum to all bargaining unit members, Peffer accuses their attorney of making representations that were "blatantly false and a lie" and preemptively accused said attorney of a "lack of good faith and open discussion". These threats were reinforced in verbal statements by Respondent Peffer during a mandatory employee meeting (Ex. 511; 11/20/24 Tr.66:9-11, 76:6-

10), wherein he stated, in effect, that the union's enforcement of contractual terms would result in the loss of these benefits. Each of these listed items is a mandatory subject of bargaining.

The Commission saw and heard the witnesses and observed the demeanor of the witnesses and their manner of testifying. Testimony from multiple witnesses, including Nicholas "Nick" Schwager, Christine Lytle, Gina Todero-Lewis, Geraldine Haffke, and Tina Bailey, established a clear pattern of management conduct that created a climate of intimidation and anti-union animus. This conduct included meetings with multiple supervisors, comments regarding union affiliation, and denial and/or discouragement of union representation. (11/19/24 Tr. 79:14-80:14, 82:8-22, 86:18-87:7, 91:5-14, 132:3-133:9, 205:2-207:3, 212:25-213:25). Mr. Schwager testified regarding the management team's patterns of intimidation and anti-union conduct, both as reported to him in his roles as Union Steward, then President, and also in his personal encounters with management as an employee of Respondent. (11/19/24 Tr. 130:8-13, 138:9-21, 139:8-23). Mr. Schwager testified that both union members and he, himself as Union President, felt they had a "target on their back" (11/19/24 Tr. 130:23-131:24).

The Commission finds Petitioner's witnesses' testimony of interactions with management to be more credible than that of Respondent's representatives where they differ. The Petitioner's witnesses were convincing in their testimony and descriptions of Respondents' efforts to intimidate and its successful results. It is notable that these witnesses are former employees of the Respondent. Claims that current employees feared testifying in this matter are reasonable in light of the environment created by Respondent. Respondents' witnesses were not convincing in their testimony. Rather, their manner and denials did much to drive home the true nature of their dislike for union activities.

DISCUSSION

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.

"It is for the trier of facts to resolve conflicts in the evidence and to determine the weight and credibility to be given to the testimony of the witnesses". *Joyner v. Steenson*, 227 Neb. 766, 769, (1988). When a party claims a statement was made, and the other party denies that it was made, we must weigh the evidence itself and also the demeanor of the witnesses. "The credibility of a witness is a question for the trier of fact, and it is within its province to credit the whole of the witness' testimony, or any part of it, which seemed to it to be convincing, and reject so much of it as in its judgment is not entitled to credit". *Fredericks Peebles & Morgan LLP v. Assam*, 300 Neb. 670, 686–87 (2018).

Prohibited Practice Allegations

The Amended Petition alleges violations the Industrial Relations Act ("IRA"), specifically violations of Neb. Rev. Stat. §§48-824(1), 48-824(2)(a), (b), (c), (d), and (f). Neb. Rev. Stat. § 48-824 provides in relevant part:

> (1) It is a prohibited practice for any public employer, public employee, public employee organization, or collective-bargaining agent to refuse to negotiate in good faith with respect to mandatory topics of bargaining.
>
> (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;
> >
> > (b) Dominate or interfere in the administration of any public employee organization;

(c) Encourage or discourage membership in any public employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment;

(d) Discharge or discriminate against a public employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under the Industrial Relations Act or because the public employee has formed, joined, or chosen to be represented by any public employee organization;

(f) Deny the rights accompanying certification or recognition granted by the Industrial Relations Act.

The Nebraska Supreme Court has declared that "decisions under the National Labor Relations Act ("NLRA") are helpful but not controlling" on this Commission. *City of Grand Island v. AFSCME*, 186 Neb. 711, 714 (1971). The Court has further stated that NLRA decisions are helpful where similar provisions exist in Nebraska statutes. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 12 (1979). As the provisions regarding prohibited practices in Neb. Rev. Stat. § 48-824 are substantially similar to relevant NLRA provisions regarding unfair labor practices, the Commission may look to federal decisions under the NLRA for guidance. *Fraternal Order of Police, Lodge 48 v. County of Saunders, et al.* 17 CIR 247 (2012). See also *Fraternal Order of Police, Lodge 41 v. County of Scotts Bluff, et al.*, 13 CIR 270 (2000).

Neb. Rev. Stat. § 48-816(1)(a) defines good faith bargaining as the "performance of the mutual obligation of the employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment". Mandatory subjects of bargaining are those subjects that relate to "wages, hours, and other terms and conditions of employment, or any question arising thereunder." Neb. Rev. Stat. § 48-816(1)(a). Additional mandatory subjects of bargaining are those which "vitally affect" the terms and conditions of employment. *Fraternal Order of Police, Lodge No. 8 v. Douglas County*, 16 CIR 401 (2010). Mandatory subjects of bargaining are not just topics for discussion during negotiations. Unless clearly waived, mandatory subjects must be bargained for before, during, and after the

expiration of a collective bargaining agreement. *Omaha Police Union Local 101 v. City of Omaha*, 15 CIR 292 (2007). Further, a topic can be established as a subject of bargaining if it has been a past practice between the parties. "An employer has a duty to not change past practices for employees who are represented by a union until it has bargained to impasse on that subject with the union." *NLRB v. Katz, 369 U.S. 736, 745-747 (1962).* To establish past practice, the practice must have occurred "with such regularity and frequency that employees could reasonably expect the 'practice' to continue or reoccur on a regular and consistent basis." *Fraternal Order of Police, Lodge 26 vs. Sheriff of Lincoln County,* 19 CIR 132 (2015) citing *Sunoco, Inc.*, 349 N.L.R.B. 240, 244 (2007); *Philadelphia Coca-Cola Bottling Co.*, 340 N.L.R.B. 349, 353 (2003), enfd. Mem. 112 Fed.Appx. 65 (D.C. Cir. 2004).

> "[T]o violate Section 8(a)(1), a statement must contain a threat of reprisal or force or promise of benefit." *Greater Omaha Packing Co. v. NLRB*, 790 F.3d 816, 822 (8th Cir. 2015). "Words of disparagement alone concerning a union or its officials are insufficient for finding a violation of Section 8(a)(1)." *Sears, Roebuck & Co.*, 305 N.L.R.B. 193, 193 (1991). However, an employer's ridicule of union supporters in front of other employees may violate Section 8(a)(1) where it is likely to discourage employees from exercising their Section 7 rights. See Dayton Hudson Corp., 316 N.L.R.B. 477, 483 (1995)."

MikLin Enters., Inc. v. Nat'l Lab. Rels. Bd., 861 F.3d 812, 827 (8th Cir. 2017).

The Commission has held that work schedule changes that are primarily related to an employee's hours of work are those which "vitally affect" the terms and conditions of employment, and must be bargained for. *Nebraska Association of Public Employees, Local 61 v. State of Nebraska Dept. of Correctional Services*, 19 CIR 13 (2014). The Commission has previously found the practice of furnishing take-home vehicles to be a mandatory subject of collective bargaining and ruled that any unilateral change in such practice constitutes a prohibited practice. *Omaha Police Union Local 101 v. City of Omaha, 15 CIR 292 (2007), Local Union 571 International Union of Operating Engineers v. the County of Douglas*, 15 CIR 75 (2005). Failure

to bargain for any changes to these items is a per se violation of the Act and a prohibited practice. *Public Association of Government Employees v. City of Lincoln, Nebraska*, 19 CIR 146 (2015).

Petitioner's claims are supported by a clear pattern of conduct, and credible testimony that Respondents engaged in prohibited practices under Neb. Rev. Stat. § 48-824. The Commission finds that the Respondent's actions and statements reasonably tend to coerce employees and discourage union association in violation of the IRA, regardless of whether they were carried out. It is the threat itself, not its execution, that constitutes a violation. The Commission finds that the Respondent's disparaging written statements regarding EULA's legal representative reasonably tends to interfere with the administration of the Union in violation of Neb. Rev. Stat. § 48-824(2)(b).

The threatened removal of benefits, which are mandatory subjects of bargaining, clearly aimed to discourage union affiliation in violation of Neb. Rev. Stat. § 48-824(2)(c) by connecting those benefits to whether the union pressed for contractual adherence. The statement attributed to Peffer during a staff meeting "you will lose these little benefits and perks if [we strictly follow the contract]" (Ex. 511) demonstrates discriminatory conditioning of workplace benefits on union behavior, directly violating the IRA § 48-824(2)(a),(b),(c),(d) and (f). The same threatened unilateral changes to mandatory subjects of bargaining without first bargaining with EULA constitute violation of Respondent's duty to bargain in good faith under Neb. Rev. Stat. § 48-824(1).

The Commission finds that Respondent's management team engaged in repetitive and willful prohibited anti-union conduct. Specifically, the Commission finds that Respondent's written and verbal statements and actions constitute prohibited practices in violation of Neb. Rev. Stat. § 48-824(2)(a), (b), and (c), as such conduct interferes with, restrains, and coerces employees

in the exercise of rights granted by the Industrial Relations Act; dominates or interferes with the administration of a public employee organization; and discourages union membership by discrimination in conditions of employment.

REMEDIAL AUTHORITY AND ATTORNEY FEES

When the Commission finds that a party has violated the Industrial Relations Act, Neb. Rev. Stat. §§ 48–819.01 and 48–825(2) grant the commission authority to issue such orders as it may find necessary to provide adequate remedies to the parties to effectuate the public policy enunciated in Neb. Rev. Stat. § 48–802. *Int'l Union of Operating Engineers Loc. 571 v. City of Plattsmouth*, 265 Neb. 817 (2003); *Omaha Police Union Loc. 101, IUPA, AFL-CIO v. City of Omaha*, 274 Neb. 70, 88 (2007); *County of Hall v. United Food and Commercial Workers District Local 22*, 15 CIR 167 (2006); The Commission has the authority to issue cease and desist orders following findings of prohibited practices and has done so in the past. See *Local Union 571 International Union of Operating Engineers v. County of Douglas*, 15 CIR 75 (2005); *Ewing Education Ass'n v. Holt County School District No. 29*, 12 CIR 242 (1996) (en banc). In the present case, the Commission finds that an order requiring that the Respondent cease and desist from committing the prohibited practices found by the Commission is clearly within its authority.

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. *Fraternal Order of Police, Lodge No. 8 v. Douglas County, et. al.*, 16 CIR 401 (2010); *Omaha Police Union Loc. 101, IUPA, AFL-CIO v. City of Omaha,* 274 Neb. 70, 88, (2007).

The Commission finds that the evidence does establish the Respondent's prohibited conduct has been flagrant, aggravated, persistent and pervasive. The Respondent's denials of efforts to intimidate employees and to discourage Union activities is well countered by the evidence produced to demonstrate a pattern of such efforts. Furthermore, the Respondent's claim of an 'open door' policy was shown to be merely a claim, and that due to the intimidation by the Respondent the Petitioner's members were justified in fearing that the use of the open door would be a means for further intimidation and retaliation. The efforts of Mr. Peffer and Mr. Murtaugh to distance themselves from the letter of May 21, 2024 (Ex. 5) does not excuse that letter or hide the clear inappropriate effort to discourage appropriate union activity. Petitioner therefore is to be awarded reasonable attorney fees for the purpose of making the Petitioner whole, and not as a sanction against the Respondent.

Petitioner shall have ten days from the date of this Order to submit proper exhibits detailing the reasonable time spent by its attorney(s) in this matter, and reasonable costs and expenses incurred, together with proof in affidavit form to support the reasonableness of the fees and obligation of the Petitioner to pay the same. Respondent's counsel shall be served with a copy and may respond thereto within five (5) business days of Petitioner's filing. If such filing is received from Respondent, the matter will be heard by the Commission by telephone conference to be set by subsequent order. These filings will be received into evidence solely for the purpose of determining an appropriate remedy.

IT IS THEREFORE ORDERED that:

1. Respondents shall cease and desist from:

   a. Interfering with, restraining, or coercing employees in the exercise of rights guaranteed by the Industrial Relations Act;

   b. Threatening to reduce or eliminate employment benefits based on union activity or enforcement of the CBA;

   c. Engaging in unilateral changes to mandatory subjects of bargaining without first negotiating in good faith with the exclusive bargaining representative.

2. Respondents shall cease and desist from failing to recognize the right of employees to union representation during investigatory or disciplinary meetings and shall not discourage such representation.

3. Following receipt of this Commission's subsequent Order of Reimbursement, the Respondent is to reimburse Petitioner its reasonable attorney fees and costs as provided in that order.

All Panel Commissioners join in the entry of this Order.

Entered July 2, 2025.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

William G. Blake, Hearing Commissioner