

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

STATE TROOPERS ASSOCIATION of )	Case No. 1396
NEBRASKA, INC, AND TODD )	
STECKELBERG, )	
)	
Petitioner, )	ORDER ON MOTION TO DISMISS
)	
v. )	
)	
THE NEBRASKA STATE PATROL, )	
)	
Respondent. )	

September 29, 2015

**Before Commissioners Carlson, Pillen, Blake**

**Carlson, C.**

**NATURE OF THE PROCEEDINGS:**

This matter comes before the Commission upon Respondent’s Motion to Dismiss Petition for Lack of Jurisdiction and for Attorney’s Fees filed on July 2, 2015. The original operative Prohibited Practices Petition was filed on June 26, 2015. On July 17, 2015, a hearing was held before Commissioner Joel E. Carlson. Petitioner was represented by its attorney, Joy Shiffermiller, and Respondent was represented by its attorney, David A. Lopez. On July 31, 2015, the Petitioner filed a Motion to Supplement and Amend with a proposed Amended and Supplemental Prohibited Practices Petition.

**STANDARD FOR DECISION:**

In considering both the Motion to Dismiss and the Motion to Supplement and Amend the Commission shall conform to the Code of Civil Procedure applicable to the district courts of the state pursuant to Neb. Rev. Stat. § 48-812.

The Commission has in the past considered a motion to dismiss. *See Oberg v. State of Nebraska*, 16 CIR 509 (2011); *Fraternal Order of Police Lodge 43 v. The City of Sidney*, 13 CIR 329 (2000). In entertaining motions to dismiss, the Commission determines whether the Petition states a factual basis for invoking the Commission's jurisdiction. Without an appropriate invocation of the Commission's jurisdiction, the Commission is left with no relief requested in the petition. Therefore, the Commission must determine if its jurisdiction has been properly invoked in the instant case.

CIR Rule 20(B) provides the standard for motions before the Commission. CIR Rule 20(B) states:

Written briefs in support of the motion shall be filed with each motion, containing concise statements of the reasons and citations to the authorities relied upon. All motions and briefs shall be served as provided in Rule 5A. In a like manner, each adverse party may file and serve within five (5) business days after service of the motion, a written brief in opposition to the motion. Briefs shall not be required, however, when all parties have assented to the motion, as declared in the motion itself, or when the motion is for an extension of time.

Neb. Ct. R. Pldg. § 6-1115(a) provides that leave to amend a pleading "shall be freely given when justice so requires." However, leave to amend may be denied in certain circumstances.

(D)enial of leave to amend pleadings is appropriate only in those limited circumstances in which undue delay, bad faith on the part of the moving party, futility of the amendment, or unfair prejudice to the nonmoving party can be demonstrated. ... And more specifically, it is an abuse of discretion for the district court to dismiss a suit on the basis of the original complaint without first considering and ruling on a pending motion to amend.

*Gonzalez v. Union Pac. R.R. Co.*, 282 Neb. 47, 63 (Neb. 2011)

Petitioner's Motion to Supplement and Amend, while not properly filed for consideration, must be ruled on in addition to Respondent's Motion to Dismiss Petition.

## **LEGAL ANALYSIS**

In its Motion, Respondent alleges that Petitioner has failed to invoke this Commission's jurisdiction. *See* Neb. Ct. R. Pldg. § 6-1112(b)(1) and (6). Specifically, Respondent argues that the Petition, on its face, involves a uniquely personal matter and fails to allege an industrial dispute under NEB. REV. STAT. § 48-810. Second, Respondent argues that the Petitioner alleges violations that amount to breach of contract claims over which the Commission lacks subject matter jurisdiction. Finally, Respondent argues that the Petition alleges violations that are, at least in part, time-barred pursuant to NEB. REV. STAT. § 48-825(1). Respondent additionally requests the Commission assess attorney fees and litigation costs against Petitioner.

The Petition is comprised of allegations by a state trooper that he was unfairly treated, managed, disciplined and passed over by his superiors at the Nebraska State Patrol. Further, the Petition appears to allege failures in the arbitration between the state trooper and the Nebraska State Patrol. The proposed Amended and Supplemental Petition retains the allegations in the original operative Petition and adds further allegations with regard to an internal affairs complaint and the arbitration hearing.

The Petition and the proposed Amended and Supplemental Petition do not contain factual allegations constituting an industrial dispute within the statutory jurisdiction of the Commission of Industrial Relations. After a careful review of the Industrial Relations Act, we find the Petitioner presents an individual dispute not related to collective or concerted activity under the Industrial Relations Act. The Commission of Industrial Relations does not have subject matter jurisdiction with respect to "uniquely personal" matters. *See Nebraska Dept. of Roads Employees Ass'n v. Department of Roads*, 189 Neb. 754, 205 N.W.2d 110 (1973). *See also, Schmieding v. City of Lincoln and Lincoln General Hospital*, 2 CIR 60 (1972). *Schmieding* very clearly held that uniquely personal matters are not within the legislative policy behind the Industrial

Relations Act. The Petitioner must allege an industrial dispute and has failed to do so under the Act. Therefore, the Commission finds that it does not have subject matter jurisdiction over this dispute. Therefore, the Commission need not address the breach of contract and timing issues also alleged by the Respondent in its Motion to Dismiss.

The Commission has reviewed the Motion to Supplement and Amend and the proposed Amended and Supplemental Prohibited Practices Petition. The Commission finds the filing of the Motion to Supplement and Amend was procedurally improper under CIR Rule 20(B). Additionally, even if properly filed, the additional allegations in the proposed Amended and Supplemental Prohibited Practices Petition would not bring the matter into the jurisdiction of the Commission.

**REMEDIAL AUTHORITY:**

The Respondent also requests costs and fees be awarded to the Respondent. The Commission finds that the parties are to pay their own costs and fees. The Respondent's request for an award of costs and fees is denied. Although the Petitioner's position is untenable when examined in the light of the Respondent's Motion to Dismiss, it is not clearly frivolous and it does not appear to have been brought in bad faith.

THE COMMISSION HEREBY FINDS that the Petition does not invoke the Commission's jurisdiction. The Petitioner's Motion to Supplement and Amend was not properly filed pursuant to Rule 20. The Petitioner's Motion to Supplement and Amend should be denied. The Respondent's Motion to Dismiss should be granted and the Petition dismissed.

**IT IS THEREFORE ORDERED:**

1. Petitioner's Motion to Supplement and Amend is hereby denied.

2. Respondent's Motion to Dismiss is hereby granted and the Petition is dismissed.
3. The defects contained within the Petition cannot be cured by further amendment.
4. This order on dismissal is a final and appealable order.

All panel Commissioners join in the entry of this Order.