

*REPORT OF CASES APPEARING*  
*BEFORE THE*  
**Commission of Industrial  
Relations of the  
State of Nebraska**

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**COMMISSION OF INDUSTRIAL RELATIONS**

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COMMISSION OF INDUSTRIAL RELATIONS

**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

HYANNIS EDUCATION	)	Case No. 1046
ASSOCIATION, An Unincorporated	)	Appeal No. S-06-300
Association,	)	
	)	
Petitioner,	)	<b>ORDER ON MANDATE</b>
	)	
v.	)	
	)	
GRANT COUNTY SCHOOL	)	
DISTRICT NO. 38-0011, A/K/A,	)	
HYANNIS HIGH SCHOOL,	)	
a Political Subdivision of the	)	
State of Nebraska,	)	
	)	
Respondent.	)	

Filed August 31, 2007

**Before: Judges Lindahl, Orr, Blake, Burger and Cullan (En Banc)**

**LINDAHL, J:**

The Nebraska Supreme Court issued their findings and order on appeal on August 10, 2007. The Supreme Court reversed the Commission's order eliminating the deviation clause, and remanded this case to the Commission with instructions to include the clause in the parties 2002-2003 contract.

**IT IS THEREFORE ORDERED THAT:**

1. The parties shall include the deviation clause in the 2002-2003 contract.

All judges join in the entry of this order.

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ICE UNION LOCAL 101 V. CITY OF OMAHA AND  
CHIEF OF POLICE THOMAS WARREN

15 CIR 281 (2007)

Case No. 1099

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**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

OMAHA POLICE UNION	)	Case No. 1099
LOCAL 101, IUPA, AFL-CIO,	)	
	)	OPINION AND ORDER
Petitioner,	)	ON REMAND
	)	
v.	)	
	)	
CITY OF OMAHA, a Municipal	)	
Corporation, and CHIEF OF POLICE,	)	
THOMAS WARREN,	)	
	)	
Respondents.	)	

**Filed November 7, 2007**

**APPEARANCES:**

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**Before: Commissioners Blake, Orr, and Burger**

**BLAKE, C:**

**NATURE OF THE PROCEEDINGS:**

This matter comes on for consideration following the Nebraska Supreme Court's opinion rendered on August 3, 2007, which was affirmed in part, and in part reversed and remanded with directions for the Commission to apply the legal standard set forth in the Supreme Court's opinion to that claim on the existing record. The Commission's prior decision is reported at 15 CIR 226 (2006) and the Supreme Court's opinion is reported at 274 Neb.70, 736 N.W.2d 375 (2007). Per a joint

stipulation from both parties, the remand was submitted for decision by the Commission with the filing of briefs by both parties.

### **SCOPE OF THE REMAND:**

The Commission's prior Order reasoned that the article written in the union newsletter by Officer Housh related to a working condition and a mandatory subject of bargaining. We noted that employee speech is a protected activity if it relates to working conditions, and that the protection is lost only if the speech is deliberately or recklessly untrue. In doing so, we studied cases under the National Labor Relations Act (NLRA), concluding that "Housh's statements, while certainly constituting intemperate, abusive and insulting rhetorical hyperbole, fall short of deliberate or reckless untruth. The comments were made by Housh in a union publication in the context of a management/union disagreement, and they were therefore protected from interference, restraint or coercion by management."

On appeal, the Nebraska Supreme Court reversed this finding and remanded with direction to the Commission to consider Housh's statements under a different standard. The Court found that the "deliberate and reckless untruth" standard is inappropriate. The Nebraska Supreme Court found that 5 U.S.C. §7102 is a more equivalent standard. In interpreting this standard, the Nebraska Supreme Court cited several Federal Labor Relations Authority ("FLRA") cases, as helpful. Therefore, we will analyze both the cases presented by the Nebraska Supreme Court, applying the appropriate standard to the sole issue of whether Housh's statements are protected.

### **FEDERAL EMPLOYEE SPEECH STANDARD:**

In its decision, the Nebraska Supreme Court recognized that the labor conflict in this case involves parties serving a special purpose to the public. "As a police department, OPD (the Omaha Police Department) operates as a paramilitary organization charged with maintaining public safety and order. . . . [T]hese employers should be given 'more latitude in their decisions regarding discipline and personnel regulations than an ordinary government employer'", 274 Neb. 70, at 81.

In *Tindell v. Caudell*, 56 F.3d 966 (8th Cir. 1995), the court recognized that members of police departments may be subject to stringent rules and regulations that could not apply to other government agencies. See also *Crain v. Board of Police Commissioners*, 920 F.2d 1402 (8th Cir. 1990). The Nebraska Supreme Court cited *Tindell's* finding with approval.

OMAHA POLICE UNION LOCAL 101 V. CITY OF OMAHA AND  
CHIEF OF POLICE THOMAS WARREN

15 CIR 281 (2007)

Case No. 1099

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Our Supreme Court also cited with approval the decision in *Hughes v. Whitmer*, 714 F.2d 1407 (8th Cir. 1983), wherein the state patrol's paramilitary status was recognized, with the Court finding that "[m]ore so than the typical government employer, the Patrol has a significant government interest in regulating the speech activities of its officers in order to promote efficiency, foster loyalty and obedience to superior officers, maintain morale, and instill public confidence in the law enforcement institution." 714 F.2d at 1419.

The Nebraska Supreme Court concluded that the Commission should look to the Federal Service Labor - Management Relations Act (FLRA) for direction, which has similar language to the Nebraska Industrial Relations Act. In considering cases under the FLRA, our Court found that such employers have the right to discipline an employee who is engaged in otherwise protected activities for actions that exceed the boundaries of protected activities such as continued flagrant misconduct including remarks or actions that are of an outrageous and insubordinate nature which compromise the agency's ability to accomplish its mission, disrupt discipline or are disloyal.

The Supreme Court cited with approval the balancing of the employee's rights to engage in protected activity, which permits leeway for impulsive behavior, against the employer's right to maintain order and respect for its supervisory staff on the job site, including (but not necessarily limited to): (1) the place and subject matter of the discussion; (2) whether the employee's outburst was impulsive or designed; (3) whether the outburst was in any way provoked by the employer's conduct; and (4) the nature of the intemperate language and conduct." Our Supreme Court referred to the case of *Department of the Navy, Naval Facilities Eng. Command W. Div. San Bruno, CA*, 45 FLRA 138 (1992). In that case, a union steward made statements in a union letter to the membership responding to a proposed reduction in force. He used profanity in referring to the management. He went on to state that "intrigue, and graft is still with us", and suggested that in Russia not too long ago such antics "would result in ten well-aimed pieces of lead right between the ears". He referred to one of the management personnel as "Caecilian Frank" and suggested that he, the author, might get kneecapped for his remarks. In response, the Department of the Navy issued a letter of reprimand. In its opinion, the Federal Labor Relations Authority quoted the Supreme Court's decision in *Letter Carriers v. Austin*, 418 U.S. 264 (1974) and found that "federal law gives union members license to use intemperate, abusive, or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point." The U.S. Supreme Court concluded that there might be situations

where the use of this writing or other similar rhetoric in a labor dispute could be actionable, particularly if some of its words were taken out of context and used in such a way as to convey a false representation of fact. Using the word "scab", which is most often used as an insult or epithet, as was true in the context of *Letter Carriers*, is simply rhetoric which is equally entitled to the protection of the federal labor laws.

In applying the relevant factors given to us by the Nebraska Supreme Court, we note that the subject matter has been properly recognized as a mandatory subject of collective bargaining. While the newsletter in which it was stated is not distributed exclusively to union members, it is nonetheless primarily a union newsletter. It is written, published and distributed by the local police union to its members. The employee's outburst was designed, rather than impulsive, and we cannot say that it was provoked by the employer's actions or words. The nature of the conduct was, as we have previously found, intemperate, abusive and insulting. It would certainly have been better for Officer Housh or the newsletter editor to temper the remarks substantially.

However, in evaluating whether the remarks were flagrant misconduct, we considered whether the remarks were of an outrageous and insubordinate nature, compromised the agency's ability to accomplish its mission, disrupted discipline, or exhibited disloyalty. We find that the remarks while, quite close to reaching such level of flagrant misconduct, did not reach that level. They were in fact rhetorical hyperbole, which would not be reasonably believed by any reader as accusing of any crime or wrongdoing. They were intemperate, immature hyperbole, but they were nonetheless protected union speech in the context of the newsletter. There is no evidence of any loss of discipline, respect, or ability to accomplish the mission of the police department, and it is doubted that the remarks of Officer Housh would reflect poorly on anyone other than Officer Housh and the editor of the newsletter.

Having applied the standard set forth by the Supreme Court of Nebraska, we conclude that the remarks of Officer Housh were protected speech. The order of the Commission should be reissued on the condition that it is limited to those statements which do not violate the standard of flagrant misconduct. The Respondents should not interfere with statements made by employees of the union and the union publication. We reissue the order that the Respondents place a statement in the union newsletter indicating that they will recognize the union members' rights to protected activity. The order on the remand taxes each party for their own costs and it is so ordered.

**IT IS THEREFORE ORDERED THAT:**

1. The Respondents shall place a statement in the union newsletter indicating that they will recognize the union members' rights to protected activity.

2. Each party shall pay their own costs.

All commissioners join in the entry of this order.

**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

ALLIANCE EDUCATION	)	Case No. 1116
ASSOCIATION, an Unincorporated	)	
Association,	)	
	)	
Petitioner,	)	AMENDED FINDINGS
	)	AND ORDER
v.	)	
	)	
BOX BUTTE COUNTY SCHOOL	)	
DISTRICT NO. 07-0006, A/K/A	)	
ALLIANCE PUBLIC SCHOOLS,	)	
a Political Subdivision of the	)	
State of Nebraska,	)	
	)	
Respondent.	)	

Filed February 20, 2007

**APPEARANCES:**

For Petitioner:	Mark D. McGuire McGuire and Norby 605 South 14th Street Suite 100 Lincoln, NE 68508
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For Respondent:	Rex R. Schultze Perry, Guthery, Haase, & Gessford, P.C., L.L.O.
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**Before: Judges Orr, Blake and Lindahl**

**ORR, J:**

**NATURE OF THE PROCEEDINGS:**

Alliance Education Association (hereinafter, "Petitioner" or "Association") filed a wage petition on May 4, 2006, seeking resolution of an industrial dispute for the 2005-2006 contract year. The Association is a labor organization formed by teachers employed by Box Butte County School District No. 07-0006, a/k/a Alliance Public Schools (hereinafter, "Respondent" or "District") for the purpose of representation in matters of employment relations. The District is a political subdivision of the State of Nebraska and a Class III school district.

The Commission of Industrial Relations (hereinafter, "Commission") held a Trial on September 7, 2006. In order to give the Petitioner ample time to review the Respondent's calculations presented on September 7, 2006, the Trial was continued until October 31, 2006. The issues presented at Trial are contained with the Commission's Report of Pretrial filed on August 23, 2006. Exhibits 84 through 88, regarding Petitioner's Issues c. through i., were not admitted at Trial, thus Petitioner's Issues c. through i. will not be considered.

**JURISDICTION:**

The Commission has jurisdiction over the parties and subject matter of this action pursuant to NEB. REV. STAT. §48-818 (Reissue 1998) which provides in part:

...the Commission of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions...

**ARRAY:**

The Association proposes fifteen school districts for its array. The

District proposes that ten school districts be used in its array. The common array members are Lexington, Scottsbluff, Gering, McCook, Ogallala, Sidney, Cozad, Broken Bow, Chadron and Holdrege. The contested array members proposed by the Petitioner are York, South Central Unified School District No. 5 (SCNUD #5), Aurora, Hastings and Wayne.

In determining a proper array, the parties agree that the work, skills, and working conditions of Alliance Public Schools' teachers are sufficiently similar for comparison under NEB. REV. STAT. §48-818 (Reissue 1998) as to the following array members: Lexington, Scottsbluff, Gering, McCook, Ogallala, Sidney, Cozad, Broken Bow, Chadron, Holdrege, York, SCNUD#5, Aurora, Hastings, and Wayne.

The Commission has held that if potential array members share similar work, skills, and working conditions, the Commission will include all of the schools submitted in the array unless there is specific evidence that to do so would be otherwise inappropriate or would make the array unmanageable. *Geneva Educ. Ass'n v. Fillmore County School Dist. No. 0075*, 11 CIR 38 (1990); *Lynch Educ. Ass'n v. Boyd County School Dist. No. 0036*, 11 CIR 25 (1990). Even in such cases, the Commission does not disregard the size and geographic guidelines. See, *Id.* The Commission need not consider every conceivable comparable, but only "a sufficient number in a representative array so that it can determine whether the wages paid or the benefits conferred are comparable." *Nebraska Pub. Employees Local Union 251 v. County of York*, 13 CIR 157 (1998).

The five additional array members proposed by the Petitioner are not as geographically proximate to Alliance as the ten common array members. For example, Wayne is 301 miles from Alliance, which is 85 miles farther than the furthest common array district of Holdrege. The ten common array members agreed to by both sides are sufficient to arrive at a comparable wage rate in the instant case. The Commission, therefore, finds that a suitable array for comparison in this case consists of the common array members of Lexington, Scottsbluff, Gering, McCook, Ogallala, Sidney, Cozad, Broken Bow, Chadron and Holdrege.

## **OVERALL COMPENSATION:**

### **FICA and Retirement Contribution on Cash-in-lieu of Insurance**

The Respondent argues that the Commission should include "FICA" amounts and "retirement contribution" amounts on the cash-in-lieu of insurance money in the calculation of overall compensation because it is a cost provided as a benefit to the teachers of Alliance. The Petitioner

argues that the Commission should not modify its existing method of calculating overall compensation.

The Respondent asserts that the Commission should alter its current practice of determining overall compensation. Currently, the Commission starts with the midpoint of total compensation of the array schools, subtracts the actual benefits paid to the teachers in the subject school, then divides by the staff index at the subject school to determine the appropriate base salary. The Respondent's proposed calculation method follows the Commission's calculation method (for the most part) to determine the other benefit costs column and the schedule costs column. The Respondent's proposed calculation then adds in a 7.65% FICA tax and an 8.0% Nebraska Public Employees Retirement System contribution. In arriving at an amount in the 7.65% FICA column, the Respondent applies the percentage to the salary, plus the actual cash benefit, paid to each teacher. Those amounts are then added to determine a total compensation figure. The Respondent then uses the "total compensation" midpoint as a targeted amount to reach. In order to reach that target, the Respondent uses various base salaries, plugging a base salary into the formula to see how close they are to the targeted compensation. The Respondent must utilize this method, due to the change that occurs in the FICA and the Nebraska Public Employees Retirement System contribution amounts, depending upon the schedule costs that result from a base salary.

In *Beatrice Educ. Ass'n v. Gage County School Dist.*, 15 CIR 46 (2004), the Commission concluded that if an array school provides a cash option to their teachers and that cash option is sufficiently similar to the subject school's cash option, the Commission would place the subject school teachers as taking the cash option at the array school. Furthermore, the Commission determined that if an array school does not offer a cash option, or that cash option is not sufficiently similar to the subject school's cash option, the Commission would place the subject school's teachers as receiving the maximum insurance benefit for which they are qualified (dependent or individual coverage).

Presently, through a Section 125 Plan, Alliance offers single health/single dental insurance, family health/single dental insurance, family health/family dental insurance, or family dental insurance, with any remaining money (after a plan is selected) given as cash. If a teacher elects no health or dental insurance, the district offers just cash-in-lieu of insurance. Each election in Alliance costs the district \$11,121. On this \$11,121 Alliance school district elects to pay eight percent to the Nebraska Public Employees Retirement System. Also, Alliance is required to pay 7.65% FICA, on the \$11,121.

In the array selected by the Commission, three array districts (Holdrege, Gering and Scottsbluff) offer some form of cash-in-lieu of insurance. Holdrege does not offer a cash benefit, but they offer an annuity of either \$50 in conjunction with insurance, or \$100 in an annuity if the teacher elects not to take insurance, for a total yearly benefit of either \$600 or \$1,200 for the teacher. Gering offers \$8,250 per year per teacher for fringe benefits. Gering teachers may elect to take insurance in a Section 125 Cafeteria Plan or the teachers in Gering may elect to take the money as a cash settlement in-lieu of insurance payments. Scottsbluff is similar to Gering and Alliance, however Scottsbluff offers \$10,260 per teacher for fringe benefits.

In the instant case, the Respondent is requesting that the Commission use these two percentages as separate "benefit costs" to be included in its calculation of total compensation. By bringing the retirement contribution percentage and the FICA retirement percentage into the calculation, the Commission is being asked to introduce too many variables into a mathematical calculation that is known for its predictability. Utilizing past case law, the Commission arrives at an end result by using actual amounts for benefit costs and scheduled costs, rather than starting with the desired total compensation and working backwards, by trial and error, to determine a base salary. The Commission's current practice is more mathematically sound.

The Commission recognizes that FICA is clearly a cost to all employers, including the Alliance School District. The Commission also recognizes that the money paid towards the retirement contribution is a cost to the Alliance School District. The Respondent has voluntarily chosen to include the cost of the cash-in-lieu of insurance as part of its calculation of the Section 125 plan to be paid towards the retirement benefits for the employees.

When the Respondent includes the additional retirement contributions and the additional FICA contribution in the total compensation calculation, the Respondent is taking a benefit that it has bargained for with the Association, and spreading the cost of that benefit over the entire staff. Despite the fact that some teachers do not take the cash-in-lieu of insurance, all of the teachers, whether the teachers take the benefit or not, pay for the benefit in the Respondent's calculation method. Cash-in-lieu of insurance is a mandatory subject that must be bargained for between the parties. The evidence presented at trial suggests that offering cash-in-lieu of insurance is not a prevalent practice, since only three out of the ten array districts offer some form of cash-in-lieu of insurance. However, since both sides have agreed to retain the practice of offering

cash-in-lieu of insurance and the contract year is over, a prevalence determination is moot.

Exhibit 93 would indicate that Nebraska Public Employees Retirement System does not consider it appropriate to include cash-in-lieu of benefits as compensation for purposes of retirement. Therefore, considering all the evidence presented, the Commission will not include the eight percent retirement compensation nor will the Commission include the 7.65 percent of FICA in its calculation in determining total compensation.

### **BASE SALARY:**

Table 1 sets forth the relevant information for determining the appropriate base salary. The midpoint of the total compensation \$7,120,602 minus the cost of fringe benefits of \$1,601,894 equals \$5,518,708 which, when divided by the new total staff index factor of 220.4763, equals a base salary of \$25,031 for the 2005-2006 school year.

### **IT IS THEREFORE ORDERED THAT:**

Respondent shall pay the teachers a base salary of \$25,031 for the 2005-2006 school year.

All other terms and conditions of employment for the 2005-2006 school year shall be as previously established by the agreement of the parties and by the Findings and Order of the Commission.

Adjustments in compensation resulting from this order shall be paid in a single lump sum payable within thirty (30) days of this final order, if possible.

All judges join in the entry of this order.

**TABLE 1**

**OVERALL COMPENSATION ANALYSIS**

School	Contract Days	Staff Index	Base Salary	Benefit Costs	Schedule Costs	Total Costs
Lexington	185	214.3575	\$29,000	\$1,184,421	\$6,216,368	\$7,400,788
Scottsbluff	185	214.0362	\$27,785	\$1,452,301	\$5,946,996	\$7,399,297
Gering	185	233.4200	\$26,550	\$1,157,508	\$6,197,301	\$7,354,809
McCook	185	229.3323	\$26,475	\$1,260,813	\$6,071,573	\$7,332,385
Ogallala	185	227.0775	\$25,900	\$1,208,005	\$5,881,307	\$7,089,313
Sidney	185	222.0013	\$26,150	\$1,281,758	\$5,805,334	\$7,087,092
Cozad	185	225.5644	\$25,700	\$1,278,947	\$5,797,005	\$7,075,952
Broken Bow	185	228.7063	\$25,100	\$1,285,382	\$5,740,528	\$7,025,910
Chadron	185	220.7069	\$26,000	\$1,265,653	\$5,738,379	\$7,004,032
Holdrege	185	225.5450	\$24,250	\$1,290,969	\$5,469,466	\$6,760,435
<b>Alliance</b>	<b>185</b>	<b>220.4763</b>	<b>\$25,031</b>	<b>\$1,601,894</b>	<b>\$5,518,708</b>	<b>\$7,120,602</b>
			MEAN	\$7,153,001		
			MEDIAN	\$7,088,203		
			MIDPOINT	\$7,120,602		

Exhibit 4

COMMISSION OF INDUSTRIAL RELATIONS

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Case No. 1121

**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

OMAHA POLICE UNION LOCAL	)	Case No. 1121
101, IUPA, AFL-CIO,	)	
	)	
Petitioner,	)	FINDINGS AND
	)	ORDER
	)	
v.	)	
	)	
CITY OF OMAHA, a Municipal	)	
Corporation, and CHIEF OF POLICE,	)	
THOMAS WARREN, and MICHAEL	)	
FAHEY, mayor City of Omaha,	)	
	)	
Respondents.	)	

Filed February 27, 2007

**APPEARANCES:**

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**Before: Judges Blake, Burger and Lindahl**

**BLAKE, J:**

**NATURE OF THE PROCEEDINGS:**

Omaha Police Union Local 101, IUPA, AFL-CIO, (hereinafter, "Petitioner") filed a Petition pursuant to NEB. REV. STAT. §48-824(2)(a) (Reissue 2004), claiming that the City of Omaha and Chief of Police Thomas Warren (hereinafter, "Respondents"), committed a prohibited practice by discontinuing their practice of furnishing take-home vehicles to certain members of the bargaining unit and failing and refusing to

negotiate over the discontinuance of the take-home vehicles. Furthermore, the Petition also alleged the Respondents committed a prohibited practice by reallocating parking stalls previously available to bargaining unit members, and by failing and refusing to negotiate or agree to negotiate the reallocation of parking stalls at the police department's central headquarters. On July 27, 2006, Respondents filed an Answer denying that the changes made by the Respondents were a prohibited practice, stating that their actions were consistent with their rights under the collective bargaining agreement and the law.

The issues presented at trial were as follows:

- 1) Whether assignment of parking is a mandatory subject of bargaining.
- 2) Whether the assignment of take-home vehicles is a mandatory subject of bargaining.
- 3) Whether the right to bargain has been waived by the union by history of actions, or made a matter of management discretion by the collective bargaining agreement.

**FACTS:**

The Omaha Police Department employs approximately 797 sworn personnel and approximately 200 non-sworn or civilian personnel. The Omaha Police Department is organized into a Police Operations Division (which includes the Uniform Patrol Bureau as well as the Criminal Investigations Bureau), a Police Services Division (which includes Special Operations and the Administrative Information Bureau), and the Office of Professional Standards.

The Omaha Police Department has a central police headquarters but also has five satellite locations. The Uniform Patrol Bureau is located at four separate precincts spread throughout the four geographic quadrants of the city. The Omaha Police Department also maintains an undisclosed off-site facility where auxiliary functions operate such as narcotics, gang suppression, and a number of task forces.

**Parking Stalls**

Currently, at the police department central headquarters there are 159 parking spaces allocated by the police department administration. Most of these parking spaces are assigned to the specific individuals, includ-

ing, but not limited to the chief, deputy chiefs, and various lieutenants or crime lab personnel. Since 1984, at the very least, 26 of the 159 parking spaces have been available to bargaining unit members for their privately-owned vehicles on a first-come-first-served basis. In 1984, these stalls were the subject of a dispute in front of the Commission. In the 1984 case, the Union contended that the assignment of those parking stalls constituted a condition of employment and the police chief's decision should have been discussed with the Union. The Commission agreed and restored the 26 disputed parking stalls to the status quo that existed prior to the chief's new parking assignment order.

From 1984 to May of 2006, the police department administration maintained a minimum of 26 parking stalls at the police department central headquarters for bargaining unit members on a first-come-first-served basis. Thirteen of these minimum 26 parking stalls were then eliminated in May of 2006. Effective May 21, 2006, Police Chief Warren ordered that the bargaining unit members could no longer use parking spaces numbered 86 through 98, available at the police department central headquarters. The police department administration eliminated these 13 stalls without negotiating with the Union. The economic impact of these eliminated stalls could cost bargaining unit members either \$20 per week at a parking meter, or \$40 to \$50 per month at a parking lot near the police department central headquarters.

At trial, the Chief of Police admitted that the parking stalls are a mandatory subject of bargaining. The Chief countered this by saying that even though the stalls are a mandatory subject of bargaining, he felt he was justified in unilaterally removing the stalls according to a management rights clause. The Chief of Police also felt that there was no specific provision listed in the current collective bargaining agreement which gave the stalls to the bargaining unit members. The management rights clause that the Chief of Police relied upon is identical to the management rights clause which was in effect at the time of the previous Commission decision in 1984.

### **Take-Home Vehicles**

Since approximately 1995, the Omaha Police Department administration has provided approximately 60 take-home vehicles for various assignments occupied by bargaining unit members. These assignments have included, but were not limited to, the special victims unit, gang command, criminal investigative bureau, and the narcotics unit. On approximately May 21, 2006 in an e-mail from Deputy Chief Buske, these roughly 60 take-home vehicles were reduced to approximately 21

take-home vehicles. These vehicles were reduced mostly at the satellite locations in narcotics, narcotics command, gang command, and a fugitive sergeant, as well as several positions in the criminal investigative bureau command at the central station. These vehicles were restored to the bargaining unit members, temporarily, through the Commission's Status Quo Order dated July 28, 2006.

Several witnesses at trial testified of the economic impact caused by the loss of a take-home vehicle. One witness testified that having a take-home vehicle enabled him and his wife to share a car for several months. The witness also testified to the benefit of using city gas to travel to and from work.

Other witnesses testified to the officer safety benefits of being provided a take-home vehicle. Officers working in an undercover capacity could have the possibility of jeopardizing their own safety if criminals could follow them from their personal home to the off-site facility.

The Chief of Police stated that the reasoning behind the department's change in policy regarding take-home vehicles stemmed directly from an appeal of a disciplinary action. At trial, the Chief of Police also admitted that the take-home vehicles are a mandatory subject of bargaining. The Chief countered this by saying that even though the take-home vehicles are a mandatory subject of bargaining, he felt he was justified in unilaterally re-assigning the vehicles according to a management rights clause and the contract, because there was no specific provision regarding the use of the vehicles in the current collective bargaining agreement.

## **DISCUSSION:**

The threshold issue in this case is whether the Omaha Police Department's elimination of parking stalls at the central police headquarters and the reduction of take-home vehicles are mandatory subjects of collective bargaining.

There are three categories of collective bargaining subjects: mandatory, permissive, and prohibited. *International Union of Operating Engineers Local 571 v. City of Plattsmouth*, 14 CIR 89 (2002). *aff'd*. 265 Neb. 817 (2003). The Industrial Relations Act only requires parties to bargain over mandatory subjects. NEB. REV. STAT. §48-816(1). The Commission in *Service Employees International Union, Local No. 226 v. School District No. 66*, 3 CIR 514 (1978), used a relationship test in determining bargaining issues. "Whether an issue is one for bargaining

under the Court of Industrial Relations Act depends upon whether it is primarily related to wages, hours and conditions of employment of the employees, or whether it is primarily related to formulation or management of public policy." *Id.* at 515; See also *Coleridge Education Ass'n v. Cedar County School District No. 14-0541, a/k/a Coleridge Community Schools*, 13 CIR 376 (2001).

The language of the Nebraska Industrial Relations Act does not follow exactly the language of the National Labor Relations Act, 29 U.S.C. 158(d), which requires good faith negotiations regarding "other terms and conditions of employment." However, the Industrial Relations Act does refer specifically to "conditions of work" under NEB. REV. STAT. §48-801(6); "terms or conditions of employment" under NEB. REV. STAT. §48-801(7); "terms and conditions of employment" under NEB. REV. STAT. §48-816(2)(4)(6); "other terms or conditions of employment" under NEB. REV. STAT. §48-824(c); and "their terms and conditions of employment" under NEB. REV. STAT. §48-837. Since it is apparent that the Nebraska Legislature had the same purpose in mind as Congress had in determining what should be considered mandatory subjects for collective bargaining, the federal interpretations of terms and conditions of employment under the National Labor Relations Act can serve as a guide in determining what may constitute subjects for collective bargaining under the Nebraska law. *City of Grand Island v. American Federation of State, County and Municipal Employees*, 186 Neb. 711, 185 N.W. 2d 860 (1971).

There is no definition of "conditions of employment" in the Industrial Relations Act, but the NLRB has given a broad interpretation, including subjects which are much farther removed than assignment of parking spaces and take-home vehicles. "Conditions of employment" have been interpreted to be more inclusive than the term "working conditions." The Commission has determined that the following subjects are conditions of employment: dues to professional organizations; noon duty; dress code (*School District of Seward Education Ass'n v. School District of Seward*, 1 CIR No. 34, *affirmed* 188 Neb. 772, 199 N.W.2d 752 (1972); grievance procedures (*Central City Education Association v. School District of Central City*, 1 CIR No. 35 (1971); instructor time with a student (*Metropolitan Tech Community College Education Association v. Metropolitan Tech College Area*, 3 CIR 418 (1978), but *see reversal*, 203 Neb. 832, 281 N.W.2d 201 (1979); and subcontracting of janitor work (*Service Employee International Union Local Union No. 226 v. School District No. 66 of Douglas County*, 3 CIR 514 (1978).

Both the state and federal decisions illustrate that the phrase, “terms and conditions of employment,” has been given a broad and inclusive interpretation. See *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948); *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 8 LC 51A (1944); and *Local Union 571, International Union of Operating Engineers, AFL-CIO v. County of Douglas and Roger Morrissey*, 15 CIR 75 (2005). A condition of employment should normally have an effect and an economic impact on the employee’s job assignment. It does not include certain subjects normally considered prerogatives of management, such as business schedules, company policy, plant locations, or supervisors because management decisions lie at the core of management control. See *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964).

### **Parking Stalls**

In *Omaha Police Union Local 101 v. City of Omaha*, 7 CIR 179 (1984), which we note involved the same Petitioner and Respondent, with the addition in this case of naming the police chief and mayor, the question asked was whether eliminating the use of parking stalls is a term or condition of employment. The Commission simply answered, “we conclude that it is.” In *City of Omaha*, the Commission found that the police chief’s unilateral act frustrated the bargaining process and had the effect of disparaging and undermining the Union representative. With regard to the 26 disputed parking stalls in *City of Omaha*, the Commission concluded that the parties should return the parking assignment arrangement to the status that existed prior to the date of the police chief’s original parking assignment order.

When parking stalls are reserved for some members of a bargaining unit, it has the effect of preventing other members of that bargaining unit from using those stalls and also gives to certain members of the bargaining unit something that is not given to the others. It may be that some of the members will simply park farther away from their place of work. Those who are not granted an assigned stall must compete for other limited parking space. Eliminating the use of a parking stall changes the relationship between the employer and the employee, as it affects the employee’s job benefits, and has some impact upon the relationships among members of the bargaining unit and between the members and management. Eliminating the use of a parking stall does not involve a decision which can be said to lie at the core of management control. This analysis is why the Commission has previously determined the act of eliminating the use of parking stalls to be a condition of employment, and why we reaffirm that determination.

As a result of the Commission's decision in the prior Omaha police case, the Police administration restored the 26 disputed parking stalls to unassigned status. These stalls have remained open for use by bargaining unit and non-bargaining unit persons. There is no evidence that the parking stalls were ever the subject of any negotiations since 1985. The administration has maintained a minimum of 26 first-come-first-served parking stalls since the 1984 decision of the Commission, until Chief Warren's orders of May and June 2006, which eliminated 13 of those stalls. This was done by the administration, without consulting the union prior to taking the action. It was a unilateral act by the administration. The Respondents admitted this in their Answers to Requests for Admission at Request Nos. 3 and 4. See Exhibit 15.

As in the prior case involving these parties, the impact is not great. The elimination of parking stalls cannot affect more than 13 union members at any one time. The evidence establishes that eliminating the use of stalls could cost \$20 per week per metered parking space, or \$40 to \$50 per month in a parking lot. While this economic impact is not great, it is, nevertheless, an economic impact, as was previously determined by the Commission.

Deputy Chief Buske acknowledged that he was familiar with the Commission's 1984 *City of Omaha* decision, regarding assignment of parking spaces. This was stated in testimony by Union President Hanson, and was not denied in the testimony of Mr. Buske. This admission was made on May 26, 2006, during a meeting between Hanson and Buske regarding the issue. The meeting occurred approximately a week after issuance of an information order by Chief Warren eliminating the use of some of the parking spaces. This meeting was prior to the June 6 General Order implementing the new parking policy. Hanson again raised the issue with Chief Warren on July 14, 2006, but the evidence shows that Chief Warren took the position that the parking stalls were a privilege and not a matter for collective bargaining. At trial, we note that Chief Warren admitted that the reduction of parking stalls was indeed a mandatory subject of collective bargaining.

The Respondents urge that the result in this case should be different from the 1984 decision because of the current collective bargaining agreement. The Respondents argue that the collective bargaining agreement is a waiver by the Petitioner of its rights through the bargaining process. The 1983 collective bargaining agreement, which was the agreement in effect at the time of the prior case between these parties decided by this Commission, contained a management rights article with 22 subparts. Those same subparts were contained in the management

clause effective for the years 1984 through 1986, and have remained in effect, without change, in the management rights article in the current collective bargaining agreement between the parties. In short, there has been no change in that management rights clause since 1983, and there is no other evidence before the Commission which could indicate any interpretation or course of conduct by the parties which could constitute a waiver of the right to bargain regarding the assignment of parking.

The Respondents argue that negotiations shortly after the 1984 decision indicate that the Commission's decision was intended to correct the inequity where benefits were provided to one member of the bargaining unit and not to others, relying upon statements made by the City's bargaining agent during negotiations. While such statements are certainly not binding upon the Commission, Exhibit 19 in fact demonstrates only a self-serving position taken by one party during a bargaining session. The same exhibit indicates that the union held a different view, and the issue was then apparently dropped from all later bargaining sessions, as there is no further evidence of such bargaining.

The evidence shows that since 1984 the City has reassigned parking spaces, ranging upwards from a minimum of 26 spaces during the past 22 years. However, throughout all of these changes following the Commission's 1984 decision, the evidence shows that a total of 26 first-come-first-served parking spaces have remained constant. As in the prior case involving these parties, the impact of the Police Chief's unilateral decision is not great. Despite this, we find that this unilateral act frustrates the bargaining process. It was, therefore, a refusal to bargain in good faith and a violation of the Industrial Relations Act.

### **Take-Home Vehicles**

The Commission recently 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. See *Local Union 571 International Union of Operating Engineers v. the County of Douglas*, 15 CIR 75 (2005) (which was decided approximately six months prior to this case and involved the county in which Omaha is located.) Certainly, the ability to drive a city-owned vehicle to and from work is an economic benefit to those so permitted. The evidence in this case readily demonstrates that there is such benefit.

Providing take-home vehicles has been a longstanding practice in the Omaha Police Department, since at least 1991. In the instant case, the Respondents admit a refusal to negotiate the issue with the union both

before and after it made the change in 2006. The evidence establishes that the union president made at least two attempts to negotiate the issue, but these efforts were rejected by the chief and assistant chief. At trial, the Respondents attempted to establish that they had reduced the number of take-home vehicles previously. However, there was no evidence that such reduction or elimination took place other than on paper, and there was no indication that the Petitioner was ever notified of any written policy regarding any such reduction or elimination. When the Petitioner was informed of the Respondents' change of policy, the union president promptly attempted to negotiate the issue.

There is no evidence of any contractual negotiations between the Respondents and the Petitioner regarding take-home vehicles. There is no evidence of any provision in any bargaining agreement regarding take-home vehicles, and there is no evidence that it has ever been discussed in negotiations. The only evidence either party can cite in the bargaining agreement which could have impact on the decision in this case is in the management rights section, at Section 18, which again, has remained the same in all bargaining agreements submitted to the Commission. In fact, the evidence shows that this language was in the bargaining agreement as long ago as January 1982.

What this evidence establishes is that the police department administration had established a policy of allowing certain officers to take police vehicles home since 1991. There is no evidence that this was ever the result of negotiations or contract language. At all times during which this has been allowed, the Respondents have reserved the right of property, machinery, and equipment owned by the City.

The Respondents also cite subsections (2) and (10) of Article 2 of the bargaining agreement, noting that these provisions have also been in existence since at least 1982. However, these add nothing in this case to the arguments made with respect to Section 18 regarding the control and use of City property. In particular, Section 2 could be cited to justify practically any unilateral decision by the City on any subject.

The Commission will not be persuaded by vague, all inclusive statements in bargaining agreements that employers may do whatever they please, which if taken to their logical conclusion under the Respondents' arguments, would negate the entire agreement and the bargaining process established by the Industrial Relations Act. Broad statements to the effect that the public employer maintains the right to manage all operations of that entity and maintains the right to change or discontinue any regulations or procedures do not override the requirement of bargaining in good faith regarding subjects of mandatory bargaining.

Mandatory subjects of bargaining are not just topics for discussion during negotiations sessions. Unless clearly waived, mandatory subjects must be bargained for before, during, and after the expiration of collective bargaining agreements. In *Rockwell Int'l Corp.*, 260 NLRB 1346, 109 L.R.R.M. 1366 (1982), the National Labor Relations Board found that the duty to bargain continues during the existence of a bargaining agreement concerning any mandatory subject of bargaining, which has not been specifically covered in the contract and regarding which the union has not clearly and unmistakably waived its right to bargain. In *Rockwell*, the Respondent, a manufacturer of nuclear weapon components, maintained a cafeteria for its employees in part because of its remote location in the Rocky Flats near Golden, Colorado. The Respondent refused to bargain over food price increases in cafeteria items. In *Rockwell*, the Board overturned the administrative law judge's finding that a zipper clause in the collective bargaining agreement constituted an effective waiver of the Union's right to request bargaining about cafeteria and vending machine prices for the duration of the contract. Citing *Ford Motor Co. (Chicago Stamping Plant) v. N.L.R.B.*, 441 U.S. 488 (1979), the Board stated that the Respondent had violated Section 8(a)(5) of the National Labor Relations Act by refusing to bargain about unilateral increases in food prices made during the terms of a collective-bargaining agreement which did not specifically cover the subject of those prices. In sum, the Board found that the Respondent had a **continuous** duty to bargain over the matter of increases in the in-plant food prices. The Board concluded that the Respondent's refusal to bargain over the price increases violated 8(a)(5) and (1) of the Act.

In *Local Union 571 v. The County of Douglas*, this Commission, in part relying upon NLRB cases, recognized that the use of company vehicles for transportation to and from work involves working conditions, and is therefore a mandatory subject of bargaining. We noted that for a substantial period of time, Douglas County had furnished vehicles to the majority of employees in the assessor's office. Such vehicles provided a definite and significant economic impact on the benefited employees. The evidence did not establish that this benefit began as a result of bargaining, just as it does not establish in this case that the use of take-home vehicles by Omaha police officers was established through the bargaining process. However, once clearly established, it was ruled to indeed be a mandatory subject of bargaining, which could not be changed by the Respondents without any notice to the union or bargaining between the parties.

What the evidence does establish in this case is that the City has had various rules in place for at least 15 years regarding take-home vehicles, that the rules have been changed by the City from time to time, that the

police department may not have always followed its own rules, that those in the chain of command below the assistant chief of police may have made their own rules from time to time without the knowledge of the police department, and that nobody seems to be able to identify exactly how many take-home vehicles were authorized at any given time. The union president testified that he was not aware of prior changes in the City's policy, as the union had not been informed. Given the nature of the bargaining unit and the ability to observe fellow officers in the exchange of information, the attempt by the Petitioner to establish that it was not aware of changes in the take-home vehicle policy until the changes were made by Chief Warren in 2006 is not entirely credible.

Once the Commission determines that a matter is one for mandatory bargaining, it is for the party which did not bargain to establish a claim of waiver by evidence. While we are skeptical that the union was not aware of changes in assignment of take-home vehicles, the evidence is void of any attempt by the police administration to inform the union or any of its members of any of the policy or practice changes. This does not meet the burden of proof to establish knowledge on the part of the union, and thus does not meet the burden of proof regarding waiver. See *Fraternal Order of Police v. The City of Ralston*, 12 CIR 59 (1994) (the burden of proof is on Respondents regarding the union's waiver of the right to bargain over mandatory subjects. The burden must be established clearly and unmistakably that the union waived its right, including notice of a proposed change in the mandatory bargaining subject.) In respect to actual notice, the evidence does not establish that any of the office correspondence or policies had ever been provided to the union.

### **Remedial Authority**

The Petitioner requests that the Commission restore the status quo before the unilateral change, and order the Respondents to cease and desist from their recent actions regarding parking stalls and take-home vehicles. The Petitioner also requests payment of mileage with interest and an award of reasonable attorney fees. The Respondent submits that if the Commission determines that the Petitioner is entitled to relief, the Respondents believe the damages asserted in Exhibit 18 are the maximum damages that could be appropriately awarded. The Respondents urge the Commission that their actions were based upon their interpretation of the management rights clause in the collective bargaining agreement and that those actions do not rise to the level of repetitive, egregious, or willful actions.

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OF POLICE THOMAS WARREN, AND MICHAEL FAHEY, MAYOR

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The Commission has the authority to order an appropriate remedy, which will promote public policy, adequately provide relief to the injured party, and lead to the resolution of the industrial dispute. See *International Union of Operating Engineers, Local 571 v. City of Plattsmouth*, 14 CIR 89 (2002), *aff'd* 265 Neb. 817, 660 N.W.2d 480 (2003). While the Commission's authority is limited in nature, the Nebraska Supreme Court has also previously determined that the Commission has authority to enter orders preserving the status quo until a dispute is resolved. See *Transport Workers v. Transit Auth. of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984). In *City of Plattsmouth*, the Supreme Court upheld the Commission's order returning the parties to the status quo by ordering reinstatement and back-pay, following a finding of a prohibited practice under the Industrial Relations Act.

In the instant case, in order to preserve the status quo, the Respondents should be ordered to cease and desist from unilaterally changing the number of first-come-first-served parking stalls and from implementing Chief Warren's General Order of June 6, 2006, and information order of May 18, 2006. The Respondents should also be ordered to cease and desist from unilaterally changing the take-home vehicle policy of the Omaha Police Department and should not implement the Chief's General Order of June 6, 2006. Finally, the Respondents should cease and desist from implementing changes to these policies without submitting the matters to the Petitioner as part of the collective bargaining process.

For the period of May 11 to July 28, 2006, the evidence is uncontroverted that until the Commission's temporary order, various union employees were deprived of their take-home vehicles through the Respondents' unilateral actions. In order to fully return the parties to the status quo, the officers should be reimbursed for the value of the mileage required by use of their personal vehicles from May 11 to July 28, 2006. While there was some discussion at trial as to whether the list of the affected employees was complete, the evidence established that Exhibit 18 was the most complete and accurate list of potentially affected members concerning their status. The Respondents should reimburse the 37 affected employees by paying the mileage reimbursement owed to them individually, totaling \$20,394.29, plus interest at the legal rate for judgments of 7.094% now in effect. (For mileage reimbursement, see Table 1.)

### **Attorney Fees**

Not every prohibited practice will result in an award of attorney fees. To support an award of fees, under CIR Rule 42(b)(2a), it must be found that the party in violation has undertaken a pattern of repetitive, egre-

gious, or willful prohibitive practice. While this is a close question under the facts of this case, we find that the Respondents' actions do not meet that standard. While we are not persuaded that this case is simply a disagreement as to the meaning of an interpretation of decisions of the Commission, as urged by Respondents, the evidence does establish that parking and take-home vehicle policies have not been the subject of bargaining for many years, with changes being made which either would not have been a prohibited practice or which were not fully communicated to the Union. Under these facts, we are not convinced that the administration's actions were egregious or willful. Petitioner's request for attorney fees is denied.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:**

1. The Respondents shall cease and desist from unilaterally changing the number of first-come-first-served parking stalls and from implementing Chief Warren's General Order of June 6, 2006, and information order of May 18, 2006.

2. The Respondents shall be ordered to cease and desist from unilaterally changing the take-home vehicle policy of the Omaha Police Department and should not implement the Chief's General Order of June 6, 2006.

3. The Respondents shall cease and desist from implementing changes to these policies without submitting the matters to the Petitioner as part of the collective bargaining process and shall commence good faith negotiations over those policies within thirty (30) days.

4. The Respondents shall reimburse the 37 affected employees by paying the mileage reimbursement owed to them individually, totaling \$20,394.29, plus interest as set by §45-103, which is the Nebraska judgment rate of 7.094% now in effect. Adjustments resulting from this order shall be paid in a single lump sum payable within thirty (30) days.

All panel judges join in the entry of this order.

OMAHA POLICE UNION LOCAL 101 v. CITY OF OMAHA, CHIEF  
OF POLICE THOMAS WARREN, AND MICHAEL FAHEY, MAYOR

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**TABLE 1**  
**MILEAGE REIMBURSEMENT**  
**FROM MAY 11, 2006 TO JULY 28, 2006**

Name	Days worked May 11-July 28	Miles round trip	Miles x days worked	Miles x cost per mile*
Jerry Baggett	46	26.48	1218.08	\$542.05
Bobby Brumfield	52	16.26	845.52	\$376.26
Kevin Donlan	52**	41.44	2154.88	\$958.92
Rich Gonzalez	48	41.9	2011.20	\$894.98
Brian Heath	47**	41.9	1969.30	\$876.34
Colene Hinchey	43	45.92	1974.56	\$878.68
RJ Jenkins	47**	17.92	842.24	\$374.80
Bob Wondra	**			
Bobby Branch	46	24.80	1140.80	\$507.66
Dan Clark	49**	30.62	1500.38	\$667.67
Brenda Daley	52	69.04	3590.08	\$1597.59
Greg Gonzalez	50	19.96	998	\$444.11
Ted Green	51	30	1530	\$680.85
Dan Hayes	52	4	208	\$92.56
Jen Hansen	53**	30.62	1622.86	\$722.17
Pam Heidzig	39	25.88	1009.32	\$449.15
Jeff Hunter	41	22	902	\$401.39
Bob Laney	37	31.6	1169.20	\$520.29
Mark Lang	51	29.6	1509.60	\$671.77
Jim Morgan	48	33.24	1595.52	\$710.01
James Quaites	41	8.6	352.60	\$156.91
Pat Rowland	48	8.6	412.80	\$183.70
Dave Newell	49	62.52	3063.48	\$1363.25
Mark Griffey	48**	28.06	1346.88	\$599.36
Doug Henry	30**	39.22	1176.60	\$523.59
Dan Cisar	52	24.20	1258.40	\$559.99
Michele Bang	46**	39.54	1818.84	\$809.38
Bill Jadowski	41	5.94	243.54	\$108.38
John Sokolik	48	37	1776	\$790.32
Ray Shayna	46	9.68	445.28	\$198.15
Craig Molek	46**	24.8	1140.80	\$507.66
Jeff Kopietz	48	15.4	739.20	\$328.94
Russ Horine	55	25.28	1390.40	\$618.73
Bob Frock	49	15.34	751.66	\$334.49
Bruce Ferrell	49	16.98	832.02	\$370.25
Doug Chonis	41	19.98	819.18	\$364.54
Barry DeJong	43	9.12	392.16	\$174.51
Mary Schindler	**			
Mary E. Davis	49**	1.6	78.4	\$34.89
Total Mileage owed by Respondents				\$20,394.29

\*Figures in the miles x cost per mile column have been rounded to the nearest cent. Mileage is calculated at the relevant IRS rate (\$.445 cents per mile) during the time period in which the Petitioner was deprived of their take home vehicles.

\*\*See Exhibit 18.

COMMISSION OF INDUSTRIAL RELATIONS

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Case No. 1125

**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

SERVICE EMPLOYEES	)	Case No. 1125
INTERNATIONAL UNION, (A.F.L.-	)	
C.I.O.) LOCAL 226,	)	FINDINGS AND
	)	ORDER
Petitioner,	)	
	)	
v.	)	
	)	
SCHOOL DISTRICT NUMBER 1	)	
SARPY COUNTY, NEBRASKA, and	)	
DR. DOUG TOWNSEND, Assistant	)	
Superintendent,	)	
	)	
Respondents.	)	

Filed February 27, 2007

**APPEARANCES:**

For Petitioner:       Thomas F. Dowd  
                          Dowd Howard & Corrigan, L.L.C.  
                          1411 Harney Street  
                          Suite 100  
                          Omaha, NE 68102

For Respondents:     Michael F. Polk  
                          Adams & Sullivan, P.C.  
                          1246 Golden Gate Drive, #1  
                          Papillion, NE 68046

**Before: Judges Burger, Orr, and Cullan**

**BURGER, J:**

**NATURE OF THE PROCEEDINGS:**

Service Employees International Union (A.F.L.-C.I.O.) Local 226, (“Petitioner”) filed a Petition pursuant to NEB. REV. STAT. §48-824(1) (Reissue 2004), claiming that School District Number 1, Sarpy County, Nebraska, and Dr. Doug Townsend (“Respondents”), committed prohibited practices by refusing to bargain over a mandatory subject of bargaining, and demoting one of its members, Sharon K. Smith, from Ele-

mentary Satellite Manager to Elementary Manager at a wage reduction of \$.35 per hour because of her participation in the July 28, 2006 negotiating session. The Petitioner alleges the demotion interfered with, restrained, and coerced union members in the exercise of their rights guaranteed by the Industrial Relations Act.

The Respondents answered alleging that they had a legitimate business reason for restructuring the Elementary Satellite Manager position. Respondent also asserted *inter alia*, that waiver, laches, and unclean hands bar the Petitioner's claim.

**FACTS:**

The evidence is generally undisputed that Sharon K. Smith had been employed with the Bellevue School District for most of the past 21 years. From approximately 1998 until August of 2006, Sharon Smith was the satellite manager and cook for Two Springs Elementary School. As satellite manager, Sharon Smith cooked for the parochial schools of St. Matthew's and St. Mary's, as well as Two Springs. Beginning in May of 2006, Sharon Smith was notified by her immediate supervisor, Mary Hansen, that the school district would likely be taking on a third satellite school (Bellevue Christian Academy), and that she would likely be assigned the additional duties. Sharon Smith was reassured again on July 19, 2006, in another meeting with Mary Hansen, that she would likely be assigned Bellevue Christian Academy in the fall.

On July 28, 2006, the initial negotiating session for a new two-year collective bargaining agreement occurred between the union and the employer. The assistant union steward started by submitting the union's proposals. At some point during the negotiations, the assistant steward turned over the discussion to Sharon Smith so she could present the proposal regarding increasing the elementary satellite manager pay. The testimony as to what occurred at this meeting is disputed past this point.

The Petitioner's evidence of what occurred on July 28, 2006, summarized, was that after the presentation by Sharon Smith proposing a pay increase for the elementary satellite manager position, the Respondents' chief negotiator, Dr. Doug Townsend, became visibly upset, told Sharon Smith directly that she was here trying to better herself, and he would not have it, and refused to further discuss the satellite manager position at all, stating that the program would no longer be operated out of Two Springs School.

The Respondents' evidence, summarized, was that Dr. Townsend had been personally studying the reorganization of the elementary satellite food service operation for several months before the negotiations, and had concluded earlier in the summer to split the responsibility among three new schools. He denied refusing to discuss elementary satellite manager pay, rather, responding that he did not agree to the proposed increase. What he testified that he had declined to discuss was the reorganization plan, on the basis that it was a management prerogative.

On August 8, 2006, Sharon Smith was informally advised that all of the satellite manager duties for the next school year were being reassigned to others. Effective August 14, 2006 her pay was reduced by \$.35 per hour.

Obviously, resolution of this case requires a determination of the disputed facts. We note several facts that impact our decision, in generally ascending importance. First, although the evidence shows a total lack of complaints by the elementary satellite schools served over the prior eight years, the addition of Bellevue Christian supposedly precipitated a total reanalysis of operations, and reorganization of services.

Second, although the Respondents prepared a detailed and sophisticated defense of the reorganization after the fact, no data, memos, notes, or any other memorialization of any analysis of these factors exist from the period before the negotiating session. This, despite the testimony that the final decision to reorganize the program had already been made before these negotiations.

Third, despite the testimony of Dr. Townsend that he spoke almost daily concerning operations with the food service director, she was apparently unaware of any plans to reorganize satellite food services prior to the July 28, 2006 meeting.

The director of personnel for the Bellevue School District, a member of the management negotiating team, was totally unaware of any plans to reorganize the elementary satellite food services prior to the meeting with the union. Even though, the meeting was for the specific purpose of negotiating terms and conditions of employment for these elementary food service employees.

Finally, during the caucus of management representatives, Dr. Townsend admittedly asked the personnel director how many elementary satellite managers the school district had. Dr. Townsend testified that he had been engaged in an analysis of the elementary satellite food service

program for months, had consulted with the superintendent concerning these matters, and that he had made the ultimate decision to reorganize the satellite services earlier in the summer. We find that testimony irreconcilable with the fact that he did not even know that only one elementary satellite manager position existed, and by implication that he did not know that it was operated solely out of Two Springs Elementary.

Having heard and observed the witnesses testify, we accept the Petitioner's version of the events that occurred on July 28, 2006, and expressly reject the Respondents' version of events as not credible. We specifically find that, on July 28, 2006, Dr. Townsend apparently became angry, and that he made the statement to Sharon Smith, which she testified about, regarding her trying to better herself. We find that he refused, as a representative of the school district, to discuss the pay for the elementary satellite manager position, and reject the contention that it was only the subject of the supposed reorganization plan he refused to discuss.

We reject, as not credible, the contention that a good faith reorganization had been studied for months, and decided in advance of the negotiations.

The most logical and credible conclusion, which is what we find, is that the idea of reorganizing elementary satellite food services first occurred to Dr. Townsend at the meeting of July 28, 2006 as a direct response to apparently becoming upset at the proposal of Sharon Smith to raise the pay for the elementary satellite manager position at the negotiations. We further find that the subsequent reorganization had the effect, and intent, of reducing the pay of Sharon Smith as a direct consequence of her advocating a pay increase for elementary satellite managers in the bargaining session, and not for the reasons put forth by the Respondents.

## **DISCUSSION:**

Having determined the disputed facts the first question is whether the district's refusal to discuss the alignment of the bargaining unit position of elementary satellite manager with the pay scale of a secondary manager is a management prerogative, or, a mandatory subject of bargaining. There are three categories of collective bargaining subjects: mandatory, permissive, and prohibited. *International Union of Operating Engineers Local 571 v. City of Plattsmouth*, 14 CIR 89 (2002). *Aff'd*. 265 Neb. 817 (2003). The Industrial Relations Act only requires parties to bargain over mandatory subjects. NEB. REV. STAT. §48-816(1). The Commission in *Service Employees International Union, Local No. 226 v. School District*

*No. 66*, 3 CIR 514 (1978), used a relationship test in determining bargaining issues. “Whether an issue is one for bargaining under the Court of Industrial Relations Act depends upon whether it is primarily related to wages, hours and conditions of employment of the employees, or whether it is primarily related to formulation or management of public policy.” *Id.* at 515. See also *Coleridge Education Ass’n v. Cedar County School District No. 14-0541, a/k/a Coleridge Community Schools*, 13 CIR 376 (2001).

The wage scale of the elementary satellite manager is clearly a mandatory subject of bargaining because the term “wages” are expressly listed under the Act. The Respondents are required under the Act to engage in collective bargaining regarding the elementary satellite manager wages and should not have refused to discuss the subject at the July 18, 2006 meeting.

We recognize that ordinarily, isolated misconduct does not necessarily give rise to a finding of a failure to bargain in good faith. The total conduct of a party in bargaining is considered. In this case, the evidence shows that the proposal of the Respondents resulting from the July 28, 2006 meeting was taken to the membership of the union, and rejected. The evidence further suggests a subsequent session of negotiations right before the trial. We decline to speculate either why the proposal was rejected, or what was discussed at the second session, months later. We find that the Respondents violated §48-824(1) by refusing to discuss the alignment of the bargaining unit position of elementary satellite manager with the pay scale of secondary manager.

#### **48-824(2)(a)**

This case is really about the Petitioner’s claim that the Respondents violated NEB. REV. STAT. §48-824(2)(a)(c) (Reissue 2004) by reducing Sharon Smith’s salary and position from that of elementary satellite manager to elementary manager, with a wage reduction of \$.35 per hour because of her engagement in union activities during negotiations.

Under NEB. REV. STAT. §48-824(2)(a), it is a prohibited practice for any employer or the employer’s negotiator to: (a) Interfere with, restrain, or coerce employees in the exercise of rights granted by the Industrial Relations Act. In determining whether the Respondents violated §48-824(2)(a), 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” *Nebraska Pub. Employees Local Union 251 v. Otoe County*, 13 CIR 79, 93 (1998). Actions which normally

could be validly done are prohibited when the result is that they interfere with, restrain or coerce employees in the exercise of their rights under the Industrial Relations Act. Business decisions which interfere with the rights of public employees as set forth in the Act, violate §48-824(2)(a) only when the business justification does not outweigh the rights of public employees.

We have found that the Respondents presented no credible evidence to support the claim that the district had been analyzing the restructuring of the program since May. We conclude the Respondents violated NEB. REV. STAT. §48-824(2)(a) and (c) (Reissue 2004) by reducing Sharon Smith's salary and position from that of an elementary satellite manager, with a wage reduction of \$.35 per hour solely because of her engagement in union activities during negotiations.

### **Waiver**

A waiver of a statutory right must be clear and unmistakable. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983). The Nebraska Supreme Court in *Shelter Ins. Companies v. Frohlich*, 243 Neb. 111, 498 N.W.2d 74 (1993), stated that a waiver is a voluntary and intentional relinquishment of a known right, privilege, or claim and may be inferred from a person's conduct. *Frohlich*, 498 N.W.2d at 83. The Court further concluded that in order to establish waiver of a legal right, there must be clear, unequivocal, and decisive action of a party showing such purpose, or acts amounting to estoppel on his part. *Frohlich*, 498 N.W.2d at 83; *Schoemaker v. Metropolitan Utilities Dist.*, 245 Neb. 967, 515 N.W.2d 675 (1994).

The Petitioner has a statutory right to file a prohibited practice case, and its tentative approval of a negotiated proposal does not waive that right. See NEB. REV. STAT. §48-810 (An industrial disputes. . . shall be settled by invoking the jurisdiction of the Commission of Industrial Relations.) There is no unequivocal relinquishment of this right in the Tentative Agreement. We find the Petitioner has not waived its right to file a prohibited practice case.

Assuming, without deciding, that Respondents' asserted equitable defenses of laches, and unclean hands have any applicability to these proceedings, we find a lack of evidence to support them.

### **Remedial Authority**

The Petitioner requests that Sharon Smith be reinstated to the posi-

tion of elementary satellite manager, with the increase in pay, and the restoration of those duties in order to maintain the status quo that existed prior to the alleged prohibited practices, and attorney's fees. The Commission's authority to issue a remedy after a finding of interference with bargaining is provided under §48-819, which states:

Whenever it is alleged that a party to an industrial dispute has engaged in an act which is in violation of any of the provisions of the Industrial Relations Act, or which interferes with, restrains, or coerces employees in the exercise of the rights provided in such act, the Commission shall have 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 the injured party or parties, to effectuate the public policy enunciated in Section 48-802, and to resolve the dispute.

Also, §48-823 states:

The Industrial Relations Act and all grants of power, authority, and jurisdiction made in such act to the Commission shall be liberally construed to effectuate the public policy enunciated in Section 48-802. All incidental powers necessary to carry into effect the Industrial Relations Act are hereby granted to and conferred upon the Commission.

The Commission has the authority to order an appropriate remedy, which will promote public policy, adequately provide relief to the injured party, and lead to the resolution of the industrial dispute. However, the Nebraska Supreme Court's rulings in *University Police Officers Union v. University of Neb.*, 203 Neb. 4, 277 N.W.2d 529 (1979) and *Jolly v. State*, 252 Neb. 289, 562 N.W.2d 61 (1997) point out certain limitations in the Commission's authority to issue prohibited practice remedies. In *University Police Officers*, the Court held that in an administrative agency, the power must be limited to the expressed legislative purpose and administered in accordance with standards described in the legislative act. 203 Neb. at 13. The Court further felt that the limitations of the power granted and the standards by which the granted powers are to be administered must be clearly and definitely stated and such powers may not rest on indefinite, obscure, or vague generalities or upon extrinsic evidence not readily available.

The Commission has the authority under the plain language of the statute to issue cease and desist orders following findings of prohibited

practices and has done so in the past. In *Ewing Educ. Ass'n v. Holt Co. School Dist. No. 29*, 12 CIR 242 (1996)(en banc), the Commission found that the school district committed a prohibited practice when it unilaterally changed a condition of employment contained in a collective bargaining agreement. After entering into a collective bargaining agreement, the school district unilaterally changed the bargaining unit's health insurance options. As a remedy, the Commission ordered the school district to cease and desist from charging insurance fees, to reimburse the fees withheld, and to post a notice to employees promising not to commit the same prohibited practices.

In *International Union of Operating Engineers v. City of Plattsmouth*, 14 CIR 89 (2002), the Commission ordered the reinstatement of an employee with back pay. The Commission had never previously ordered reinstatement or back pay as an appropriate remedy under NEB. REV. STAT. §§48-816, 48-819.01, and 48-823. The Commission found that a violation of 8(a)(5) was sufficiently similar to a violation of NEB. REV. STAT. §48-824(1). This decision was affirmed by the Nebraska Supreme Court in *International Union of Operating Engineers v. City of Plattsmouth*, 265 Neb. 817, 660 N.W.2d 480 (2003). In *City of Plattsmouth*, the Supreme Court stated that they had previously determined that the Commission has authority to enter orders preserving the status quo until a dispute is resolved. Citing *Transport Workers v. Transit Auth. of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984). Giving a liberal interpretation to the authority to effectuate the public policy of §48-802, the Supreme Court determined that it was appropriate for the Commission to order the parties to return to the status quo following a finding of a prohibited practice under the IRA. Therefore, the Supreme Court concluded that the Commission had authority to order that Winters be reinstated to the position he held prior to Plattsmouth's prohibited actions and that the Commission did not act in excess of its powers when it ordered such reinstatement with back pay.

In the instant case, the Commission has the authority to issue appropriate remedies that will effectuate the policies of the Act, adequately provide relief to the injured party, and lead to the resolution of the industrial dispute. An order requiring that the parties return to the status quo, and that the offending parties cease and desist from committing the prohibited practices found by the Commission is within this authority. Therefore, having found that the Respondent has engaged in prohibited labor practices, we find that it must be ordered to cease and desist from interfering with, restraining, coercing, or harassing Sharon Smith's rights granted under the Industrial Relations Act.

In order to return the parties to the status quo, the Commission will order the Respondents to restore Sharon Smith to the title of Elementary Satellite Manager, and determine that the Respondents should increase Sharon Smith's pay to that of an elementary satellite manager from August 14, 2006 through the period originally under negotiation, August 31, 2008. We are not ordering Respondents to change the process of providing satellite services, which was implemented at the beginning of the 2006-2007 school year. Such an order is unnecessary to provide relief to the injured party, and likely would needlessly interfere with the operations of Respondents. Sharon Smith will be paid at the elementary satellite manager scale she previously held.

We noted some confusion in the record concerning the amount of pay requested as a remedy. If the Petitioner was requesting the remedy of bringing the pay scale of the elementary satellite managers to the level of the secondary managers (who make \$.30 cents per hour more than the elementary satellite managers), the Commission has no evidence with which to determine whether or not this would have occurred. Therefore, in order to properly return the parties to the status quo, the Commission will order the Respondents to restore Sharon Smith to the pay scale of an elementary satellite manager. The remedy ordered restores Sharon Smith to the former pay scale she held prior to August 14, 2006.

The Petitioner has also requested an award of attorney fees as part of the remedy. We find that the conduct of the chief negotiator which violated the Act to have been impulsive, and disingenuous. Although it may be characterized as flagrant, it was not persistent and pervasive. We decline to include reimbursement of attorney fees as part of the remedy. See *County of Hall v. United Food and Commercial Workers Dist. Local 22*, 15 CIR 167, 197 (2006).

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED**  
that:

1. The Respondents shall cease and desist from interfering with, restraining, or coercing Sharon Smith from her exercise of the rights granted under the Industrial Relations Act.

2. The Respondents shall restore Sharon Smith to her title of Elementary Satellite Manager and increase her pay to that of an Elementary Satellite Manager through August 31, 2008 including any increases in pay subsequently granted to Elementary Satellite Managers in a new Collective Bargaining Agreement, or otherwise. The back pay due from August 14, 2006 shall be paid in a lump sum at the earliest possible pay

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date after the effective date of this Order, and each installment of back pay shall be paid with interest from its original due date until the date of payment at the current judgment interest rate of 7.094%.

All panel judges join in the entry of this order.

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**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

EMPLOYEES UNITED LABOR	)	Case No. 1129
ASSOCIATION,	)	Representation Doc.
	)	No. 408
Petitioner,	)	
	)	FINDINGS AND
v.	)	ORDER
	)	
OMAHA AIRPORT AUTHORITY,	)	
and INTERNATIONAL UNION OF	)	
OPERATING ENGINEERS,	)	
LOCAL 571,	)	
	)	
Respondents.	)	

Filed March 19, 2007

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**Before: Judges Lindahl, Blake, and Burger**

**LINDAHL, J:**

**NATURE OF THE PROCEEDINGS:**

Employee United Labor Association (hereinafter, "Petitioner"), filed a Petition seeking to represent a proposed bargaining unit of employees of the Omaha Airport Authority who are full-time employees and regular, part-time employees, who are not supervisors, seasonal, or temporary employees, employed in the following departments: Field Maintenance Department, Building Engineer's Department, Custodial Department and Communications Center. in four separate bargaining units. The Omaha Airport Authority filed an Answer alleging that the employees should not be in separate bargaining units because the units have not been separated for bargaining in the past, and that part-time employees should not be part of any unit found to be appropriate. The International Union of Operating Engineers, Local 571, the other named Respondent in the Petition, filed a disclaimer of interest, stating that they no longer desired to be recognized as the exclusive bargaining representative for employees of the Omaha Airport Authority. The parties agreed prior to trial that the four separate bargaining units should be combined into one bargaining unit consisting of all regular full-time employees in the Field Maintenance Department, Building Engineer's Department, Custodial Department, and Communications Center.

Therefore, the only issue left to be determined at trial was whether the regular part-time employees (specifically the part-time custodians, the part-time Communications Center employees, the part-time secretary in the Field Maintenance Department, and the tow-truck drivers) should be included as members of the bargaining unit.

On November 22, 2006, a Petition to Intervene was filed by the United Food and Commercial Workers Local 271. On January 19, 2007 the Commission ordered that the Intervener should be placed upon the election ballot subsequent to the Commission's Findings and Order regarding the composition of the bargaining unit.

**FACTS:**

The Omaha Airport Authority serves as the base of operations for commercial and general aviation and cargo areas for air transportation in the City of Omaha. The Omaha Airport Authority is governed by a five-member board of directors and managed by an executive director. In order to run its operations, the Omaha Airport Authority is split into multiple departments. These departments include Field Maintenance, IT Technology, Building Engineer, Communications Center, Fire/Rescue, Airport Police, Custodial, and Finance and Administration.

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The Petitioner is seeking to represent all full-time employees and regular, part-time employees who are not supervisors, seasonal or temporary employees, employed in the following four departments: Field Maintenance Department, Building Engineer's Department, Custodial Department and Communications Center.

The Respondent is only questioning the inclusion of the part-time employees in the bargaining unit. The part-time employees in question include three part-time custodians, two part-time Communications Center employees, seven part-time tow-truck drivers and one part-time administrative assistant in the Field Maintenance department. The part-time employees were not included as part of the recognized bargaining unit in the immediately preceding contract between the Omaha Airport Authority and the International Union of Operating Engineers, Local No. 571.

The evidence at trial indicates as follows:

a. The three part-time custodians perform identical work to the full-time custodians. Both the full-time and part-time custodians are responsible for the cleanliness and sanitation of the airport main terminal and its adjacent concourses. The full-time and part-time custodians clean the terminal and concourses by scrubbing floors, vacuuming, sweeping, and dusting. A part-time custodial employee who testified at trial was a full-time custodian and then went to part-time for medical reasons. One of the other current part-time custodial employees is also in line for a full-time custodial position when one becomes available through a vacancy. Both the full-time custodians and part-time custodians are supervised by the custodial manager, Girard Hunter.

b. The two part-time Communications Center operators perform identical work to the full-time Communications Center operators. Both full-time and part-time Communications Center operators use a radio dispatch and watch the security cameras located throughout the airport. The two part-time operators handle the same functions and responsibilities of the full-time Communications Center operators. The two part-time Communications Center operators have the same skills as those of the full-time Communications Center operators, utilizing the same equipment and even sitting in the same chairs as the full-time Communications Center operators. The only difference noted between the full-time and part-time Communications Center employees, is that the part-time employees do not receive benefits. The full-time Communications Center operators and part-time Communications Center operators are all supervised by the operations manager, Tim Schmitt.

c. The administrative assistant in the Field Maintenance Department serves at the desk reception area to allow entrance and exit to the secure area of the airport in the Field Maintenance Department. The administrative assistant receives delivery shipments, signs off on their entry to the facility, and then contacts the intended receivers. The administrative assistant maintains the computer purchase ordering system that tracks well over a thousand purchases per year through a computer system. The administrative assistant prepares, processes, and files purchase orders submitted by other staff members. The administrative assistant does not work with other administrative clerical employees but instead, works with employees in the Field Maintenance Department. The administrative assistant also takes the submitted schedules from tow-truck drivers and prepares a monthly schedule for the tow-truck operators, two weeks in advance, with approval from the Field Maintenance Manager. The Field Maintenance Manager testified that the administrative assistant position was essential to the operation of the Field Maintenance Department.

d. After September 11, 2001, new regulations were issued for all airports in the United States regarding traffic control. At some point after September 11, 2001, the Omaha Airport Authority engaged a group of part-time tow-truck drivers to monitor the front drive of the airport, so that if a car is left unattended at the curb, the car is subject to being towed away to a different lot. The part-time tow-truck drivers are scheduled from 6 o'clock in the morning until 10 o'clock at night, seven days a week. Five of the seven operators have CDL licenses and have been trained to operate the street plow on the front drive if a severe snowstorm were to occur. No other members of the bargaining unit perform tow-truck work and the tow-truck drivers have no documented interchange with other employees. The tow-truck drivers execute their daily job duties nearly autonomously. For the most part, the tow-truck drivers set their own hours, within the flexible confines of covering the required shifts. The tow-truck drivers use radio channels set aside for police officers, rather than the frequency used by other Field Maintenance employees.

## DISCUSSION:

In determining the appropriateness of an existing bargaining unit, NEB. REV. STAT. §48-838(2) provides that "the Commission shall consider established bargaining units and established policies of the employer." In analyzing composition of bargaining units, the Commission may also consider additional relevant factors. *Marcy Delpardang v. United Electrical, Radio, and Machine Workers of America*, 13 CIR 400 (2001). *AFSCME v. Counties of Douglas & Lancaster*, 201 Neb. 295, 267 N.W.2d 736 (1978); *American Ass'n of Univ. Professors v. Board of*

*Regents*, 198 Neb. 243, 259, 253 N.W.2d 1, 9-10 (1977). These additional factors include: mutuality of interest in wages, hours and working conditions, duties or skills of employees, extent of union organization among employees, the desires of the employees, a policy against fragmentation of units, the established policies of the employees, and the statutory mandate to insure proper function of operation of governmental service. These factors are not the only factors to be considered and equal weight need not be given to each factor. *Sheldon Station Employees Ass'n v. Nebraska Pub. Power Dist.*, 202 Neb. 391, 275 N.W.2d 340, 342 (1983). The factors appropriate to a bargaining unit consideration and the weight to be given each such factor must vary from case to case depending upon its particular applicability in each case.

### **Community of Interest:**

The threshold inquiry in bargaining unit determinations is whether a community of interest exists among the employees which is sufficiently strong to warrant their inclusion in a single unit. *AAUP*, 198 Neb. at 261-262; *McCook E.S.P. Ass'n v. Red Willow County School District No. 73-0017, a/k/a McCook Public Schools*, 13 CIR 342 (2000) ("*McCook*"). When determining community of interest, the Commission analyzes which factors should be considered and the weight each factor receives. *Sheldon Station*, 202 Neb. at 395. The public policy provisions under NEB. REV. STAT. §48-802 require the Commission to insure the continuous operational efficiency of governmental services. Fragmented units interfere with the continuous operational efficiency of governmental services, and should therefore, be avoided to the extent that it is possible. *International Brotherhood of Electrical Workers v. State of Nebraska: Nebraska Educational Television Commission, and the Board of Regents of the Univ. of Neb.*, 3 CIR 23 (1975).

### **Part-time Custodians:**

The Petitioner argues that the bargaining unit should include part-time custodians since the testimony established that the part-time custodians perform the same job duties as the full-time custodians. The Respondent maintains that the part-time custodians are on-call, casual employees, who should be excluded from the unit because they lack a community of interest with the full-time bargaining unit employees.

The immediately preceding contract did not include any part-time custodians in the bargaining unit. However, the part-time custodians have identical job duties and skills as the full-time custodians. The part-time custodians clean the same concourses and terminal as the full-time

employees, utilizing the same methods in performing their daily job functions. While the hours they work fluctuate slightly, the evidence proves they work regular part-time shifts and are not on-call employees. There is also strong evidence of interchange amongst part-time and full-time custodians. A part-time custodial employee testified at trial that she was a full-time custodian and then went to part-time for medical reasons. Furthermore, there is potential for interchange to occur in the future as one of the other current part-time custodial employees is in line for a full-time custodial position when one becomes available through a vacancy. Both the full-time custodians and part-time custodians are supervised by the custodial manager, Girard Hunter. The Commission finds compelling evidence of a community of interest between the full-time and part-time custodians. The Commission will include the part-time custodians within the proposed bargaining unit.

#### **Part-time Communications Center Employees:**

The Petitioner argues that the Commission should place the part-time Communications Center employees in the bargaining unit since the employees essentially do the same work as the full-time employees. The Respondent argues that the part-time Communications Center employees should be excluded from the bargaining unit because they do not qualify for benefits, are compensated at a lower rate than the bargaining unit employees and they are currently excluded from the current bargaining unit.

The immediately preceding contract did not include any part-time Communications Center employees and while the part-time employees do not qualify for benefits and are compensated at a lower rate, it is clear that the part-time employees perform an identical function as do the full-time employees. The job duties, skills, and working conditions are identical. The part-time Communications Center operators use the same equipment and even sit in the same chairs as the full-time Communications Center operators. The Commission finds convincing evidence that the part-time Communications Center operators should be included in the proposed bargaining unit. The Commission will include the part-time employees in the same bargaining unit as the full-time employees in the Communications Center.

#### **Part-time Administrative Assistant in the Field Maintenance Department:**

The Petitioner argues that the part-time administrative assistant should be part of the bargaining unit because the administrative assistant

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has daily contact with other employees in the Field Maintenance Department and works only with those employees and not with any other clerical workers at the Omaha Airport Authority. The Respondent argues that the part-time administrative assistant should be excluded from the bargaining unit because the administrative assistant is a part-time clerical employee who does not share a mutuality of interest with the other employees in the bargaining unit.

While no other employees in the Field Maintenance Department do the work of the part-time administrative assistant, there is a significant connection in the established policies of the employer between the administrative assistant and the other employees in the Field Maintenance Department. The administrative assistant has daily interaction with the twenty-two full-time Field Maintenance workers, entering all their purchase orders into the computer. Both the Field Maintenance workers and the administrative assistant are under the Field Maintenance Manager, Mike Fleharty. The Respondent attempted to distinguish the administrative assistant from the proposed bargaining unit because the administrative assistant was a part-time employee. However, the administrative assistant's regular part-time status does not affect the administrative assistant's community of interest with other members of the bargaining unit. While the administrative assistant does not share similar wages and hours, the administrative assistant works with the Field Maintenance workers in the central nerve center of the Department.

Furthermore, undue fragmentation would occur if the administrative assistant was left out of the proposed bargaining unit. The public policy provisions of the Commission of Industrial Relations Act in NEB. REV. STAT. §48-802 require that the Commission insure the continuous operational efficiency of governmental services. Fragmented units interfere with the continuous operational efficiency of governmental services, and should, therefore, be avoided to the extent that it is possible, consistent with the preservation of the rights of public sector employees to engage in collective bargaining. *Grand Island Educ. Ass'n v. Hall County School Dist. No. 40-0002, a/k/a, Grand Island Public Schools*, 14 CIR 141 (2003). The administrative assistant is the only part-time assistant in the Field Maintenance Department. The administrative assistant does not work with other administrative clerical employees, but instead works with employees in the Field Maintenance Department. Therefore, to remove the administrative assistant from the proposed bargaining unit would cause undue fragmentation. We conclude that because the administrative assistant shares a community of interest with the proposed bargaining unit, and that leaving the administrative assistant out of the bargaining unit would result in undue fragmentation, the administrative

assistant's part-time position should be included.

### **Tow-Truck Drivers:**

The Petitioner argues that the Commission should include the tow-truck drivers in the bargaining unit because the drivers report directly to the Field Maintenance manager and have daily contact with other employees in the Field Maintenance Department. The Respondent argues that the tow-truck operators should be excluded from the bargaining unit because they do not work along-side, nor do they have a community of interest in common with the other bargaining unit employees, and because the tow-truck drivers work on an irregular basis.

In *Marcy Delpardang v. United Electrical, Radio, and Machine Workers of America*, 13 CIR 400 (2000), the Commission amended a bargaining unit by removing sixteen secretaries from a bargaining unit that included custodians and maintenance workers. In *Delpardang*, the Respondent maintained that it was inappropriate to sever the secretaries because amendment of the bargaining unit would cause undue fragmentation. In *Delpardang*, the Commission recognized the important public policy of avoiding undue fragmentation of bargaining units. However, the Commission noted that Nebraska's policy against undue fragmentation did not override the basic requirement of community of interest in defining appropriate bargaining units. See *Sarpy County Pub. Employees Ass'n v. County of Sarpy*, 220 Neb. 431, 440, 370 N.W.2d 495, 501 (1985). In *Delpardang*, the Commission held that the amendment of the bargaining unit did not result in undue fragmentation because the secretaries inherently lacked a community of interest with the other bargaining unit members. Therefore, the Commission concluded that the secretaries should be amended out of the bargaining unit.

In the instant case, the Petitioner has the burden of proof to demonstrate that the tow-truck drivers share a community of interest with other members in the bargaining unit. See *Fraternal Order of Police, Lodge 41 v. County of Scotts Bluff*, 13 CIR 236 (1999). The Petitioner has not presented any direct evidence to prove the part-time tow-truck drivers share a community of interest with other proposed bargaining unit members. The established policies of the employer keep the tow-truck drivers separated from other bargaining unit members because the group of employees was only recently added due to the increased need for security around the airport since September 11, 2001. Except for a rare occasion when snow removal is necessary, the tow-truck drivers and other bargaining unit members do not share the same wages, hours, working conditions, job duties or skills. The tow-truck drivers have not been

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organized in the past and there is no testimony regarding their desire to be included in the proposed bargaining unit. There is no evidence that other members of the bargaining unit have performed tow-truck driver work, and very little evidence that tow-truck drivers perform any work of the other bargaining unit members, except for the infrequent need for snow removal. As in *Delpardang*, while not placing the tow-truck drivers in with the other bargaining unit members may cause fragmentation, such fragmentation is not undue fragmentation since there is no evidence that the tow-truck drivers share a community of interest with the other bargaining unit members. Therefore, the Commission will not include the tow-truck drivers as part of the bargaining unit.

**ELECTION:**

The Petitioner requests an election to be held pursuant to the Commission's decision and the Intervener also requests to be placed upon the election ballot. Within five business days of this Order, the employer shall furnish to the Commission a typed, alphabetized list of employees in the above described unit as of the filing date of the Petition, which was September 21, 2006, so that the Commission can conduct another test of the showing of interest. If the Petitioner does not achieve its showing of interest due to the enlargement of the unit beyond what was originally requested, the Commission shall allow 72 hours to furnish additional authorization cards from employees in the newly designated bargaining unit. An election shall be ordered in the below designated unit as soon as practical, including both the Petitioner and the Intervener as possible bargaining unit representatives.

**Designation of Unit**

The bargaining unit shall be designated as follows:

All employees of the Omaha Airport Authority, who are regular, full-time employees and all part-time employees who are not supervisors, seasonal or temporary employees, employed in the following departments: Field Maintenance Department (excluding part-time tow-truck drivers), Building Engineer's Department, Custodial Department and Communications Center.

**IT IS THEREFORE ORDERED:**

1. That the appropriate bargaining unit shall be:

COMMISSION OF INDUSTRIAL RELATIONS

All employees of the Omaha Airport Authority, who are regular, full-time employees and all part-time employees who are not supervisors, seasonal or temporary employees, employed in the following departments: Field Maintenance Department (excluding part-time tow-truck drivers), Building Engineer's Department, Custodial Department and Communications Center.

2. Within five business days of this Order, the employer shall furnish to the Commission a typed, alphabetized list of employees in the above described unit as of the filing date of the Petition, which was September 21, 2006, so that the Commission can conduct another test of the showing of interest. If the Petitioner does not achieve its showing of interest due to the enlargement of the unit beyond what was originally requested, the Commission shall allow 72 hours to furnish additional cards.

3. An election shall be ordered in the above designated unit as soon as practical, including both the Petitioner and the Intervener as possible bargaining unit representatives.

All panel judges join in the entry of this order.

**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

INTERNATIONAL ASSOCIATION )	Case No. 1130
OF FIREFIGHTERS, LOCAL UNION )	
NO. 647, )	OPINION AND
)	ORDER
Petitioner, )	
)	
v. )	
)	
CITY OF GRAND ISLAND, )	
NEBRASKA, A Municipal )	
Corporation, )	
)	
Respondent. )	

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CITY OF GRAND ISLAND, NEB.

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**Before: Judges Orr, Burger and Cullan**

**ORR, J:**

**NATURE OF THE PROCEEDINGS:**

This action was brought by International Association of Firefighters, Local Union No. 647 (hereinafter, "Petitioner" or "Union") pursuant to NEB. REV. STAT. §48-818. The Petitioner is the duly recognized collective bargaining representative for all uniformed employees of the City of Grand Island Fire Division, except for the Fire Chief, Operations Division Chief, Fire Prevention Division Chief, Fire Training Division Chief and EMS Division Chief of the City of Grand Island (hereinafter, "Respondent" or "City"). The Petitioner seeks the resolution of an industrial dispute over wages and other terms and conditions of employment for the October 1, 2006 through September 30, 2007 contract year.

**ARRAY:**

The parties have three array cities in common. These cities are: Fremont, Nebraska; North Platte, Nebraska; and Norfolk, Nebraska. The Petitioner also argues for the addition of Lawrence, Kansas; Rapid City, South Dakota; Council Bluffs, Iowa; and Salina, Kansas in the array. The Respondent argues that the out-of-state cities are not comparable and that the Commission should include Hastings, Nebraska in the array along with the three other Nebraska employers.

NEB. REV. STAT. §48-818 gives the Commission discretion in its determination of what is comparable to the prevailing wage rate. See *Lincoln Fire Fighters Ass'n v. City of Lincoln*, 198 Neb. 174, 252

N.W.2d 607 (1977). While the Industrial Relations Act does not define comparable nor specifically direct the Commission in the manner and process of its determination, the Commission has received some guidance from the Nebraska Supreme Court. In *Omaha Ass'n of Firefighters v. City of Omaha*, 194 Neb. 436, 440-41, 231 N.W.2d 710, 713-14 (1975), the Supreme Court found that "a prevalent [sic] wage rate to be determined by the Court of Industrial Relations must almost invariably be determined after consideration of a combination of factors.... Under section 48-818, R.R.S. 1943, in selecting cities in reasonably similar labor markets for the purpose of comparison in arriving at comparable and prevalent wage rates the question is whether, as a matter of fact, the cities selected for comparison are sufficiently similar and have enough like characteristics or qualities to make comparison appropriate."

The cities of Fremont, Nebraska, North Platte, Nebraska and Norfolk, Nebraska are agreed to by both parties and shall be included in the array. However, three employers is not a sufficient array. In numerous past cases, the Commission has expressed its preference for arrays containing more than four (4) or five (5) members whenever possible. *Grand Island Educ. Ass'n v. Hall County School Dist. No. 0002*, 11 CIR 237 (1992); *International Ass'n of Firefighters, Local No. 1575 v. City of Columbus*, 11 CIR 267 (1992); *Douglas County Health Dept. Employees Ass'n v. County of Douglas*, 9 CIR 219 (1987). The Commission has held that arrays consisting of six (6) to eight (8) members are appropriate. *O'Neill Educ. Ass'n v. Holt County School Dist. No. 7*, 11 CIR 11 (1990); *Red Cloud Educ. Ass'n v. School Dist. of Red Cloud*, 10 CIR 120 (1989); *Logan County Educ. Ass'n v. School Dist. of Stapleton*, 10 CIR 1 (1988); *Trenton Educ. Ass'n v. School Dist. of Trenton*, 9 CIR 201 (1987).

The Respondent proposes the inclusion of Hastings, Nebraska as an array member. The Petitioner argues that Hastings, Nebraska does not have similar working conditions as compared to Grand Island because Hastings does not perform the Advanced Life Support (hereinafter, "ALS") transport function. When looking at geographic proximity, there is a preference for staying within the State of Nebraska when choosing comparables if an appropriate array exists within the State. *Lincoln Co. Sheriff's Employees Ass'n v. Co. of Lincoln*, 216 Neb. 274, 343 N.W.2d 735 (1984). Therefore, the Commission will consider Hastings first, to determine whether Hastings meets the Commission's comparability test under NEB. REV. STAT. §48-818.

The evidence presented at trial demonstrated the significant impact ALS had on operations of the proposed array members. In ALS departments, Firefighter/Paramedics are trained to assess a patient's condition,

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administer drugs, defibrillate and provide advanced airway management prior to transportation to the hospital. On the other hand, Basic Life Support departments provide all basic measures of resuscitation including techniques of artificial ventilation and cardiac massage, but those departments do not provide extensive medical supervision or treatment, such as the use of drugs and invasive procedures.

The evidence presented by the Petitioner at trial established that providing advanced life support has a considerable impact on the operation of a department, as opposed to a department that provides only basic life support. Hastings is a licensed basic life support department and has no ALS functions. The coursework required of Hastings' Emergency Medical Technicians is significantly less than that of paramedics located at the other fire departments. The evidence also demonstrated that the training required for the entire department is more extensive for ALS departments. ALS departments also have considerably more equipment to maintain. ALS departments require greater supervision by the command staff and ALS departments have noticeably more interaction with the public and hospital staff as opposed to non-ALS departments. Furthermore, because ALS is such an important function for the firefighter/paramedic position, there is no comparison for the job classification at Hastings, Nebraska. Accordingly, since the Petitioner's bargaining unit in the instant case is comprised of only three classifications, the Commission finds the ALS function within a department is an important factor in determining comparable array members. Therefore, the Commission will not include Hastings, Nebraska in its array because it does not have similar working conditions.

The Commission has in the past commented on the strong policies in favor of using an array of comparable Nebraska array members, rather than using array members from outside the State of Nebraska. However, in the instant case, we will consider employers located outside the State of Nebraska, since an array with only three employers does not meet the Commission's preference for four or more comparables. See also *Metropolitan Technical Community College Educ. Ass'n v. Metropolitan Community College Area*, 14 CIR 127 (2003). Therefore, we must review the proposed out-of-state employers.

**Salina, Kansas**

The Petitioner first proposes Salina, Kansas as an array member. The Respondent argues that while the Commission should choose only Nebraska employers, if the Commission utilizes non-Nebraska employers, the Respondent does not object to the inclusion of Salina, Kansas.

Salina, Kansas is not in a Metropolitan Statistical Area and the evidence supports that Salina, Kansas is a comparable array point. Therefore, the Commission will include Salina, Kansas in its array.

### **Council Bluffs, Iowa**

The Petitioner also proposes the inclusion of Council Bluffs, Iowa. The Respondent argues that Council Bluffs, Iowa should not be included because it is in a Metropolitan Statistical Area with Omaha and a Combined Statistical Area with Fremont, Nebraska. The Respondent also argues that with the inclusion of Fremont, the Commission should exclude Council Bluffs because it "double dips" in the same Combined Statistical Area.

The Commission has, in the past, used the fact that proposed array cities were located in metropolitan statistical areas to eliminate such cities from the array. See *Lincoln Firefighters Ass'n Local 644 v. City of Lincoln*, 8 CIR 31, 44 (1985); *Grand Island Educ. Ass'n v. School Dist. of Grand Island*, 9 CIR 188, 192 (1987), and *Grand Island Educ. Ass'n v. Hall County School Dist.*, 11 CIR 237, 241 (1992).

There is no evidence in the record which compels us to find that Council Bluffs' inclusion in a Metropolitan Statistical Area has a direct effect on wages or work, skills and working conditions. In fact, the evidence indicates just the opposite. The testimony at trial indicated that approximately 50 employees from the Council Bluffs Fire Department over the past seven years have left for higher paying jobs with the City of Omaha Fire Department. Council Bluffs has implemented a loss of training penalty if an employee tries to quit before five years of employment, in an effort to stop the massive turnover rate. The City of Omaha is not included as an array member when Council Bluffs negotiates salaries. The general impact of a Metropolitan Statistical Area is not present in the instant case.

The Respondent also argues that the fact that Council Bluffs is in the same Combined Statistical Area as Fremont skews the array because the Commission would be using the same labor market twice. There is no evidence in the record which compels us to find that including two public employers from a Combined Statistical Area has a direct impact on wages or work, skills and working conditions. There is also no past case law which directs the Commission regarding the impact of Combined Statistical Areas. Therefore, without such evidence, Council Bluffs should be included in the array with Fremont, Nebraska; North Platte, Nebraska; Norfolk, Nebraska and Salina, Kansas.

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**Lawrence, Kansas and Rapid City, South Dakota**

The Petitioner also argues for the inclusion of Lawrence, Kansas and Rapid City, South Dakota in its array. The Respondent argues that both array cities are located within Metropolitan Statistical Areas and Grand Island is not located within a Metropolitan Statistical Area. Currently, Grand Island has a population of 44,564 and is only 5,436 people away from being considered a Metropolitan Statistical Area. Once Grand Island gains this added population, it will become the nexus of its own Metropolitan Statistical Area.

The Commission has used the fact that proposed array cities are located in Metropolitan Statistical Areas to eliminate such cities from a proposed array. However, while it is evidenced that Metropolitan Statistical Areas tend to impact the wages of the surrounding communities included within the Metropolitan Statistical Area, the evidence does not establish that the nexus city's wages impact itself. By definition any city containing 50,000 or more in population is considered a Metropolitan Statistical Area. Currently, Rapid City, South Dakota is the nexus of its Metropolitan Statistical Area with a population of 62,167. Whereas, Lawrence, Kansas with a population of 81,816 is a subdivision of the Kansas City Metro area, which is the nexus of a Metropolitan Statistical Area with a total population of 1,947,694.

In the instant case, Rapid City, South Dakota has comparable working conditions and clearly has job matches to Grand Island and is the nexus of its Metropolitan Statistical Area, much like Grand Island will be when it reaches the 50,000 population mark. Rapid City is within one half to twice the size of Grand Island and has similar skills, work, and working conditions. Therefore, the Commission will include Rapid City, South Dakota.

However, Lawrence, Kansas is unlike Grand Island in that it is not the nexus of its Metropolitan Statistical Area. Furthermore, the Petitioner did not present any evidence that Lawrence, Kansas was not impacted by its inclusion in the Kansas City, Kansas/Missouri Metropolitan Statistical Area. Therefore, without any evidence to the contrary, the Commission will not include Lawrence, Kansas.

The array for this case will include: Fremont, Nebraska; North Platte, Nebraska; Norfolk, Nebraska; Council Bluffs, Iowa; Rapid City, South Dakota; and Salina, Kansas.

**FRINGE BENEFITS:****Retirement**

The Commission does not have jurisdiction over the pension plan of the employees to order a change in the pension plan, even though the Commission does have jurisdiction to offset favorable and unfavorable comparisons of current to prevalent when reaching its decision establishing wage rates. *Douglas Cty. Health Dept. Emp. Ass'n v. Douglas Cty.*, 229 Neb. 301, 422 N.W.2d 28 (1998). Therefore, the Commission will not change the Retirement Benefit Formula and Early Retirement Provisions, Social Security Coverage, Retirement Plan Defined Benefit and Defined Contribution.

**Dental Insurance**

Currently, the dental insurance is an indivisible part of the health insurance plan. Since the City of Grand Island does not carry a separate policy for dental insurance, the current percentages paid by the employees or the employer are not divisible from the health insurance plan. Therefore, all dental insurance benefits will remain unchanged for the October 1, 2006 through September 30, 2007 contract year.

**Management Prerogatives**

There are certain fringes which we believe are management prerogatives and we will not address the following in this Order:

- 1) Workday in Hours.
- 2) Workweek in Hours.
- 3) Scheduling Procedure.

**Benefits Not Considered**

The Commission shall continue to determine comparability of health insurance and life insurance by comparing the percent of the premium to be paid by the employer and employee. See also *Lincoln Firefighters Ass'n Local 644 v. City of Lincoln*, 12 CIR 248, 265 (1997); *General Drivers & Helpers Union Local 554 v. County of Gage, et. al.*, 14 CIR 170 (2003).

The following benefits will not be considered according to the above rule:

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- 1) Health Insurance Dollar Amounts.
- 2) Life Insurance Dollar Amounts.

**Comparable Fringe Benefits**

The following fringe benefits shall remain unchanged because they are comparable:

- 1) Annual Sick Leave – Granted for family illness. See Table 4.
- 2) Educational Assistance Plan – Provided. See Table 5.
- 3) Educational Assistance Place Provisions – Tuition at 100% for A, B; 80% for C. See Table 5.
- 4) Educational Incentive Pay – Not Provided. See Table 5.
- 5) Other Special Compensation Pay – Not Provided. See Table 5.
- 6) Injured-on-Duty Pay – Provided. See Table 6.
- 7) Injured-on-Duty Pay – Compensated with Up to One Year With Full Pay. See Table 6.
- 8) Overtime Pay Policies – Number of Hours Considered for Overtime. See Table 7.
- 9) Overtime Pay Policies – Leave Hours Counted. See Table 7.
- 10) Overtime Pay Policies – Time and ½ Rate. See Table 7.
- 11) Overtime Pay Policies – No Compensation Time. See Table 7.
- 12) Percentage of Employer and Employee Contribution to the Retirement Plan – No Offset Required.
- 13) Call-in Pay Policies – Provided. See Table 8.
- 14) Call-In Pay Policies – 2 Hour Minimum at 1.5 times the Regular Rate. See Table 8.
- 15) Call-In Pay Policies Hours – Merge with Normal Shift. See Table 8.

- 16) Call-In Pay Policies – Called In During Off-Duty. See Table 8.
- 17) Life Insurance – Coverage Provided.
- 18) Life Insurance – 100 Percent Employer Paid.
- 19) Paid Holidays Hours – are Not Counted For Overtime Purposes. See Table 9.
- 20) Funeral Leave – Other Relatives. See Table 10.
- 21) Fire Bunker Gear and Uniform Allowance – Fire Bunker Gear Provided. See Table 11.
- 22) Fire Bunker Gear and Uniform Allowance – Uniform Allowance Provided. See Table 11.
- 23) Fire Bunker Gear and Uniform Allowance – Other Allowance. See Table 11.
- 24) Formal Pay Structure – Pay Range. See Table 12.
- 25) Formal Pay Structure – Combination Basis for Progression. See Table 12.
- 26) Paid Vacation Policies Conversion – Upon Resignation, Dismissal, Retirement, and Death. See Table 13.
- 27) Paid Vacation Policies Maximum Number of Hours Carried Over – 1 year accrual plus 48 hours. See Table 13.
- 28) Paid Vacation Policies – Accumulation Allowed. See Table 13.
- 29) Annual Sick Leave Conversions – Sick Leave Converted to Cash upon Resignation, Dismissal, Retirement, and Death. See Table 14.

### **Non-Comparable Benefits**

The Commission makes the following findings as to non-comparable fringe benefits:

- 1) Annual Sick Leave Allowance – 168 Hours Annually. See Table 4.
- 2) Annual Sick Leave Allowance – 1,576 Hours for Total Accumulation. See Table 4.

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3) Annual Hours Granted for Family Illness – 95 hours Allowed. See Table 4.

4) Family Illness provisions apply to Parent, Spouse, Child, Brother, Sister, and Grandparent. See Table 4.

5) Work Out of Class Pay Policies – Not Paid. See Table 15.

6) Disability Plan – Employer Coverage Not Provided. See Table 16.

7) Health Insurance – 93 Percent Paid for Individual Coverage by the Employer. See Table 17.

8) Health Insurance – 80 Percent Paid for Family Coverage by the Employer. See Table 17.

9) Health Insurance – 82 Percent Paid For Two-Party Coverage by the Employer. See Table 17.

10) Paid Holidays – 133 Hours Per Year. See Table 9.

11) Paid Holidays – Personal Holiday 15 Hours. See Table 9.

12) Paid Vacation Policies Leave Earnings Number of Hours Earned Annually After 1 Year – 112 Hours. See Table 18.

13) Paid Vacation Policies Leave Earnings Number of Hours Earned Annually After 5 Years – 141 Hours. See Table 18.

14) Paid Vacation Policies Leave Earnings Number of Hours Earned Annually After 6 Years – 166 Hours. See Table 18.

15) Paid Vacation Policies Leave Earnings Number of Hours Earned Annually After 10 Years – 181 Hours. See Table 18.

16) Paid Vacation Policies Leave Earnings Number of Hours Earned Annually After 15 Years – 208 Hours. See Table 18.

17) Paid Vacation Policies Leave Earnings Number of Hours Earned Annually After 20 Years – 233 Hours. See Table 18.

18) Paid Vacation Policies Leave Earnings Number of Hours Earned Annually After 25 Years – 233 Hours. See Table 18.

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19) Funeral Leave – Immediate Family Can Use Up to 48 Hours. See Table 10.

20) Funeral Leave – Definition of Immediate Family is Parent, Spouse, Child, Brother, Sister, Grandparent, Step, In-law, and Grandchild. See Table 10.

21) Longevity Pay – No Plan Provided. See Table 19.

22) Annual Sick Leave Conversions to Cash/Vacation – Not Allowed. See Table 14.

23) Fire Bunker Gear and Uniform Allowance – 484 Dollars Provided Annually. See Table 11.

24) Formal Pay Structure – Nine Steps. See Table 12.

25) Formal Pay Structure – 8 Years to move from Minimum to Maximum. See Table 12.

**IT IS THEREFORE ORDERED** that for the October 1, 2006 through September 30, 2007 contract year, the following shall be effective as of October 1, 2006:

1) Petitioner’s wages for the October 1, 2006 through September 30, 2007 contract year shall be as follows:

<b>JOB CLASSIFICATION</b>	<b>MIN</b>	<b>MAX</b>
Firefighter/EMT	\$10.96	\$15.38
Firefighter/Paramedic	\$12.54	\$17.24
Fire Captain	\$14.88	\$20.36

2) The fringe benefit and wage offset, as found herein, shall be calculated on an individual employee basis. The Respondent shall determine the net lump sum overpayment or underpayment for the contract year for each employee. Any net lump sum underpayment for any employee shall be paid by the Respondent to each such employee; however, any employee reimbursement shall not exceed the amount of compensation owed to the employee from the Respondent.

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3) The Respondent shall maintain the percentage of employer and employee contribution to the retirement plans with no offset required.

4) The Respondent shall continue to provide life insurance coverage.

5) The Respondent shall continue to pay 100 percent of the life insurance premium.

6) The Respondent shall maintain its program for annual sick leave allowances to be allowed for family illness.

7) The Respondent shall decrease its annual sick leave allowance from 288 hours annually accrued to 168 hours annually accrued.

8) The Respondent shall decrease its maximum total accumulation for sick leave allowance from 2,880 hours to 1,576 hours.

9) The Respondent shall increase its hours allowed for family illness from 72 hours per year to 95 hours per year.

10) The Respondent shall now allow the family illness provisions of annual sick leave allowance to also apply to brothers, sisters, and grandparents, but it shall not allow the family illness provision to apply to in-laws.

11) The Respondent shall continue to provide an Educational Assistance Plan.

12) The Respondent shall continue its practice of providing payment in its Educational Assistance Plan Provisions, whereby the Respondent continues to pay 100% of Tuition for grades of A and B and 80% of Tuition for grades of C.

13) The Respondent shall continue to not provide Educational Incentive Pay.

14) The Respondent shall continue to not provide other Special Compensation Pay.

15) The Respondent shall maintain its practice of providing Injured-on-Duty Pay.

16) The Respondent shall continue to compensate up to one year with full pay for Injured-on-Duty Pay.

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17) The Respondent shall continue paying overtime after an employee reaches 96 or 120 hours a pay period.

18) The Respondent shall maintain its practice of not counting hours earned for vacation, holiday and sick towards overtime.

19) The Respondent shall continue to pay the time and ½ rate for overtime.

20) The Respondent shall continue to not allow compensation time for overtime.

21) The Respondent shall maintain its call-in pay policies.

22) The Respondent shall continue its policy of providing 2 hours minimum at 1.5 times the regular rate for call-in pay.

23) The Respondent shall maintain its call-in pay policy during off-duty hours.

24) The Respondent shall continue to not apply the call-in pay policy when the call-in hours merge with the employee's normal shift.

25) The Respondent shall increase the number of hours it pays per year for paid holidays from 120 hours to 133 hours per year.

26) The Respondent shall continue to not count paid holiday hours for overtime purposes.

27) The Respondent shall increase the number of hours for personal holiday from 12 hours to 15 hours.

28) The Respondent shall implement a policy of allowing 48 hours of funeral leave for immediate family. Immediate family shall be defined as parent, spouse, child, brother, sister, grandparent, step, in-law and grandchild.

29) The Respondent shall continue to not allow employees to use funeral leave for other relatives.

30) The Respondent shall continue to provide fire bunker gear.

31) The Respondent shall continue to provide a uniform allowance.

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32) The Respondent shall continue its practice not allowing any additional money for annual maintenance.

33) The Respondent shall decrease the annual amount of uniform and fire bunker gear from \$600 to \$484 per year.

34) The Respondent shall maintain its formal pay structure pay range.

35) The Respondent shall continue to consider a combination basis for progression through the formal pay structure.

36) The Respondent shall increase the number of steps in its pay plan from eight steps to nine steps for an employee to move from minimum to maximum on the pay range.

37) The Respondent shall increase the number of years it takes to move from minimum to maximum on the formal pay plan from six years to eight years.

38) The Respondent shall maintain its practice of allowing employees to accumulate paid vacation time.

39) The Respondent shall continue to allow employees to accrue a maximum of 1 year plus 48 hours for paid vacation.

40) The Respondent shall continue its practice of allowing vacation to be converted into cash upon the occurrence of resignation, dismissal, retirement, or death.

41) The Respondent shall no longer allow conversions of annual sick leave to cash/vacation.

42) The Respondent shall maintain its current practice of not converting sick leave to cash upon resignation or dismissal and converting sick leave to cash for retirement or death.

43) The Respondent shall discontinue its practice of paying 3% after five consecutive shifts for working-out-of-class pay.

44) The Respondent shall discontinue its practice of providing a disability plan in addition to worker's compensation.

45) The Respondent shall increase the percent it pays for individual health insurance coverage from 90 percent to 93 percent.

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46) The Respondent shall decrease the percent it pays for family health insurance from 87 percent to 80 percent.

47) The Respondent shall decrease the percent it pays for two-party health insurance from 87 percent to 82 percent.

48) The Respondent shall decrease the number of hours earned annually for paid vacation after the first year from 120 hours to 112 hours.

49) The Respondent shall increase the number of hours earned annually for paid vacation after the fifth year from 120 hours to 141 hours.

50) The Respondent shall increase the number of hours earned annually for paid vacation after the sixth year from 144 hours to 166 hours.

51) The Respondent shall decrease the number of hours earned annually for paid vacation after the tenth year from 192 hours to 181 hours.

52) The Respondent shall decrease the number of hours earned annually for paid vacation after the fifteenth year from 240 hours to 208 hours.

53) The Respondent shall decrease the number of hours earned annually for paid vacation after the twentieth year from 240 hours to 233 hours.

54) The Respondent shall decrease the number of hours earned annually for paid vacation after the twenty-fifth year from 240 hours to 233 hours.

55) The Respondent shall discontinue its practice of providing a longevity pay plan.

56) Any adjustments in compensation resulting from this Order shall be paid in a single lump sum with the payroll checks issued next following the expiration of the Final Order's time for appeal or sooner.

All other terms and conditions of employment are not affected by this Order.

All panel judges join in the entry of this order.

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**TABLE 1**  
**CITY OF GRAND ISLAND**  
**FIREFIGHTER/EMT**

<b>Cities</b>	<b>Title</b>	<b>Hourly Minimum</b>	<b>Hourly Maximum</b>	<b>Effective Date</b>
Council Bluffs, IA	Firefighter	\$13.05	\$17.13	Leveled
Fremont, NE	Firefighter/EMT	\$10.58	\$14.90	10-1-06
Norfolk, NE	Firefighter	\$10.54	\$14.64	10-1-06
North Platte, NE	Firefighter	\$10.83	\$15.09	10-1-06
Rapid City, SD	Firefighter Medic	\$11.86	\$18.95	Leveled
Salina, KS	Firefighter/EMT	\$10.31	\$13.84	Leveled
<b>Grand Island</b>		<b>\$10.71</b>	<b>\$15.07</b>	<b>10-1-06</b>
Mean		\$11.20	\$15.76	
Median		\$10.71	\$15.00	
Midpoint		\$10.96	\$15.38	

**TABLE 2**  
**CITY OF GRAND ISLAND**  
**FIREFIGHTER/PARAMEDIC**

<b>Cities</b>	<b>Title</b>	<b>Hourly Minimum</b>	<b>Hourly Maximum</b>	<b>Effective Date</b>
Council Bluffs, IA	Firefighter/Paramedic	\$13.50	\$17.73	Leveled
Fremont, NE	Firefighter/Paramedic	\$12.10	\$16.42	10-1-06
Norfolk, NE	Paramedic	\$11.85	\$15.95	10-1-06
North Platte, NE	Firefighter/EMT-P	\$12.45	\$17.36	10-1-06
Rapid City, SD	Firefighter/Paramedic	\$13.08	\$19.91	Leveled
Salina, KS	Firefighter/Paramedic	\$12.53	\$16.84	Leveled
<b>Grand Island</b>		<b>\$12.09</b>	<b>\$17.01</b>	<b>10-1-06</b>
Mean		\$12.58	\$17.37	
Median		\$12.49	\$17.10	
Midpoint		\$12.54	\$17.24	

**TABLE 3**  
**CITY OF GRAND ISLAND**  
**FIRE CAPTAIN**

<b>Cities</b>	<b>Title</b>	<b>Hourly Minimum</b>	<b>Hourly Maximum</b>	<b>Effective Date</b>
Council Bluffs, IA	Fire Captain	\$16.30	\$19.98	Leveled
Fremont, NE	Fire Captain	\$14.16	\$19.93	10-1-06
Norfolk, NE	Shift Commander	\$13.27	\$18.45	10-1-06
North Platte, NE	Fire Captain	\$15.30	\$21.06	10-1-06
Rapid City, SD	Fire Captain	\$18.06	\$27.48	Leveled
Salina, KS	Fire Lieutenant	\$13.10	\$17.61	Leveled
<b>Grand Island</b>		<b>\$13.94</b>	<b>\$19.62</b>	<b>10-1-06</b>
Mean		\$15.03	\$20.75	
Median		\$14.73	\$19.96	
Midpoint		\$14.88	\$20.36	

**TABLE 4**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Annual Sick Leave Allowance**

City	Hours Allowed Annually	Accum. Allowed	Family Illness Provision		
			Granted?	Hours/ Yr. Allowed	Defined
Council Bluffs, IA	144*	1,440	Yes	32	Parent, Spouse, Child, Brother, Sister, Grandparent, Step
Fremont, NE	216	1,800	Yes	240/year	Parent, Spouse, Child, In-law
Norfolk, NE	127.2	1,378	Yes	24	Parent, Spouse, Child
North Platte, NE	288	2,400	Yes	288	Parent, Spouse, Child, Brother, Sister, Grandparent, Step
Rapid City, SD	168**	No limit	Yes	60 hours	Parent, Spouse, Child, Step-child
Salina, KS	134.4	1456	Yes	NA	Parent, Spouse, Child, Brother, Sister, Grandparent, In-law
Mean	180	1695		129	
Median	156	1456		60	
Midpoint/Prevalent	168	1576	Yes	95	Parent, Spouse, Child, Brother, Sister, Grandparent
<b>Grand Island, NE</b>	<b>288</b>	<b>2880</b>	<b>Yes</b>	<b>72</b>	<b>Parent, Spouse, Child, In-law</b>

See Exhibit 8.

\*Employees eligible for twelve hours pay for each calendar quarter in which employee records perfect attendance.

\*\*Divided equally between sick leave and short-term disability plan.

**TABLE 5**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Special Compensation Practices**

City	Educational Assistance Plan		Educational Incentive Pay	Other Special Compensation
	Provided?	Plan Provisions		
Council Bluffs, IA	Yes	Tuition for EMS & Fire Tech.	Yes <sup>1</sup>	Yes, Severance <sup>2</sup>
Fremont, NE	Yes	100% up to \$2,000/year <sup>3</sup>	No	No
Norfolk, NE	Yes	\$600 tuition reimbursement	No	No
North Platte, NE	Yes	Tuition, books at 50% for A, B, C	Yes <sup>4</sup>	No
Rapid City, SD	No	N/A	No	No
Salina, KS	Yes	Tuition plus books/benefit to Dept.	No	No
Prevalent Practice	Yes	Multimodal*	No	No
<b>Grand Island, NE</b>	<b>Yes</b>	<b>Tuition at 100% for A, B; 80% for C<sup>5</sup></b>	<b>No</b>	<b>No</b>

See Exhibit 24.

<sup>1</sup> Hired before 6/30/99, City will pay \$1 per semester credit hour in excess of 12 semester credit hours to max of \$112/month.

<sup>2</sup> 5-10 years 112 hours, 10-15 years 168 hours, 15 plus years 224 hours. Not applicable if resigned or discharged.

<sup>3</sup> 100% up to \$4,000 after 7 years.

<sup>4</sup> Advance by two steps on pay scale for Associate's degree; \$15/monthly for Bachelor's degree.

<sup>5</sup> Less than 2 year - \$600; 2-5 year - \$1,000; 6 plus years - no limit.

\* No clear prevalent practice.

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**TABLE 6**

**CITY OF GRAND ISLAND  
2006-2007  
Injured on Duty Pay**

<b>City</b>	<b>Injured on Duty Pay</b>	
	<b>Provided?</b>	<b>How Compensated</b>
Council Bluffs, IA	Yes	100% no max
Fremont, NE	Yes	100% for one year
Norfolk, NE	Yes	Up to one year w/full pay
North Platte, NE	Yes	100% for one year
Rapid City, SD	Yes	Sick leave up to 100%
Salina, KS	Yes	WC + sick/vacation leave up to 100%
Prevalent Practice	Yes	Multi-model
<b>Grand Island, NE</b>	<b>Yes</b>	<b>Up to one year with full pay</b>

See Exhibit 23.

**TABLE 7**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Overtime Pay Policies**

City	OT Hours		Overtime – How Compensated	
	# of Hours for OT	Leave Hrs Counted?	Time And ½	Other
Council Bluffs, IA	24	Vacation, Holiday, Sick – Yes	1.5	No comp time
Fremont, NE	212/28 days	Vacation, Holiday, Sick – No	1.5	No comp time
Norfolk, NE	144/19 days	Vacation, Holiday, Sick – No	1.5	No comp time
North Platte, NE	212/28 days	Vacation, Holiday, Sick – No	1.5	48 hour maximum
Rapid City, SD	204/27 days	Vacation, Holiday, Sick – Yes	1.5	Comp time for Captains only
Salina, KS	159/21 days	Vacation, Sick – No Holiday – Yes	1.5	No comp time
Prevalent Practice	Bimodal	Vacation, Holiday, Sick – No	1.5	No comp time
<b>Grand Island, NE</b>	<b>96 or 120 Bi-weekly</b>	<b>Vacation, Holiday, Sick – No</b>	<b>1.5</b>	<b>No comp time</b>

See Exhibit 21.

**TABLE 8**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Call-In Pay Policies**

City	Call-In Provided	How are Employees Compensated When called into work	Does the policy apply when -	
			Hours merge with Normal Shift	Called in During off-duty
Council Bluffs, IA	Yes	Minimum of 2 and ½ hours at 1.5x	No	Yes
Fremont, NE	Yes	One and ½ hour minimum at 1.5x	No	Yes
Norfolk, NE	Yes	Minimum one hour credit to work period	Yes	Yes
North Platte, NE	Yes	Minimum of one hour at 1.5x	Yes	Yes
Rapid City, SD	Yes	Minimum of 2 hours at 1.5x	No	Yes
Salina, KS	No	Any hours at 1.5x	Yes	Yes
Prevalent Practice	Yes	2 hours minimum at 1.5x*	No	Yes
<b>Grand Island, NE</b>	<b>Yes</b>	<b>2 hours minimum at 1.5</b>	<b>No</b>	<b>Yes</b>

\*No clear prevalent practice.  
See Exhibit 20.

**TABLE 9**

**CITY OF GRAND ISLAND  
2006-2007  
Paid Holidays**

<b>City</b>	<b>Hours per Year</b>	<b>Are Hours counted for Overtime purposes?</b>	<b>Personal Holiday</b>
Council Bluffs, IA	132	Yes	0
Fremont, NE	168	No	1 (24 hours)
Norfolk, NE	95.4	No	1 (10.6 hours)
North Platte, NE	120	No	1 (12 hours)
Rapid City, SD	216	Yes	1 (24 hours)
Salina, KS	110	Yes	1 (12 hours)
Mean	140		17
Median	126		12
Midpoint/Prevalent	133	No	15
<b>Grand Island, NE</b>	<b>120</b>	<b>No</b>	<b>1 (12 hours)</b>

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See Exhibit 13.

**TABLE 10**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Funeral Leave**

City	Hours Allowed for		Definitions of	
	Immediate Family	Other Relatives	Immediate Family	Other Relatives
Council Bluffs, IA	48	None	Parent, Spouse, Child, Brother, Sister, Grandparent, Grandchild, Step, In-law	N/A
Fremont, NE	48	8	Parent, Spouse, Child, Brother, Sister, Grandparent, Grandchild, Step, In-law	Non-immediate family funeral leave
Norfolk, NE	24	None	Parent, Spouse, Child, same steps, in-laws	N/A
North Platte, NE	48 (72 if 300+ miles)	4	Parent, Spouse, Child, Brother, Sister, Grandparent, Grandchild, Step	In-laws
Rapid City, SD	36	None	Parent, Spouse, Child, Brother, Sister, Grandparent, Grandchild, Step, In-law	N/A
Salina, KS	None – use sick leave	None – use sick leave	None – use sick leave	N/A
Prevalent Practice	48	None	Parent, Spouse, Child, Brother, Sister, Grandparent, Step, In-law, Grandchild	N/A
Grand Island, NE	None, use sick leave	None, use sick leave	Parent, Spouse, Child, In-laws	N/A

See Exhibit 10.

**TABLE 11**

**CITY OF GRAND ISLAND  
2006-2007**

**Fire Bunker Gear and Uniform Allowance**

<b>City</b>	<b>Fire Bunker Gear Provided</b>	<b>Uniform Allowance</b>	<b>Annual Amount</b>	<b>Other Allowance</b>
Council Bluffs, IA	Yes	Provided	N/A	\$100 annual maintenance
Fremont, NE	Yes	Yes	\$600/year	None
Norfolk, NE	Yes	Yes	\$400/year	None
North Platte, NE	Yes	Yes	\$475/year	None
Rapid City, SD	Yes	Provided	N/A	None
Salina, KS	Yes	Provided	N/A	None
Mean			\$492	
Median			\$475	
Midpoint/Prevalent	Yes	Yes	\$484	None
<b>Grand Island, NE</b>	<b>Yes</b>	<b>Yes</b>	<b>\$600/year</b>	<b>None</b>

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See Exhibit 6.

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**TABLE 12**

**CITY OF GRAND ISLAND  
2006-2007  
Formal Pay Structure**

<b>City</b>	<b>Pay Range Yes or No</b>	<b>Number of Steps</b>	<b>Basis for Progression</b>	<b>Years to move from Min to Max</b>
Council Bluffs, IA	Yes	5 to 8	Longevity	6.0
Fremont, NE	Yes	8	Combination	6.0
Norfolk, NE	Yes	8	Combination	6.5
North Platte, NE	Yes	6	Combination	7.0
Rapid City, SD	Yes	18	Longevity	17
Salina, KS	Yes	11	Combination	7 to 10
Mean		10		9.0
Median		8		7.0
Prevalent Practice	Yes	9	Combination	8.0
<b>Grand Island, NE</b>	<b>Yes</b>	<b>8</b>	<b>Combination</b>	<b>6.0</b>

See Exhibit 5.

**TABLE 13**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Paid Vacation Policies**  
**Accumulation and Conversion**

City	Accumulation Allowed	Maximum Number of hours Carried over	Can Vacation be converted to cash upon			
			Resignation	Dismissal	Retirement	Death
Council Bluffs, IA	Yes	288 – 720 (2x yrly allowance) May sell up to 72 hours annually	Yes 100%	No	Yes 100%	Yes 100%
Fremont, NE	Yes	280 Hours May sell up to 48 hours annually	Yes 100%	Yes 100%	Yes 100%	Yes 100%
Norfolk, NE	Yes	318	Yes 100%	Yes 100%	Yes 100%	Yes 100%
North Platte, NE	Yes	72 Hours	Yes 100%	Yes 100%	Yes 100%	Yes 100%
Rapid City, SD	No		Yes 100%	Yes 100%	Yes 100%	Yes 100%
Salina, KS	Yes	No Max May sell up to 112 hours annually	Yes 100%	Yes 100%	Yes 100%	Yes 100%
Prevalent Practice	Yes	Multi-modal*	Yes 100%	Yes 100%	Yes 100%	Yes 100%
<b>Grand Island, NE</b>	<b>Yes</b>	<b>1 year's accrual + 48 hours</b>	<b>Yes 100%</b>	<b>Yes 100%</b>	<b>Yes 100%</b>	<b>Yes 100%</b>

\*No clear prevalent practice.

See Exhibit 12.

**TABLE 14**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Annual Sick Leave Conversions**

City	Conversion to Cash/Vacation		Can Sick Level be converted to cash upon			
	Allowed?	Basis of Conversion	Resignation	Dismissal	Retirement	Death
Council Bluffs, IA	No	N/A	No	No	No	No
Fremont, NE	No	N/A	40%*	No	40%	40%
Norfolk, NE	No	N/A	40%	40%	40%	40%
			After 20 yrs of service/Age 55+10 yrs service			
North Platte, NE	Yes	After 100 days of sick leave, 1 day of vacation pay for each 2 days of accumulated sick leave	50%	50%	50%	50%
			After 20 yrs of service, 50% of 2,400 hours for Resignation, dismissal, retirement, death			
Rapid City, SD	Yes	With 1440 hrs on 1/1, option to take 2 shifts as vacation	No	No	50%	50%
			Max of 50% of all accumulated hours for 1,440**			
Salina, KS	No	N/A	Yes	No	Yes	Yes
			Employees may convert at 25% up to 1456 hours			
Prevalent Practice	No	N/A	No clear prevalent practice because the years of service vary widely between array points			
Grand Island, NE	Yes	1/4 pay for excess over 2880	No	No	Yes	Yes
			After retirement/death, employees may convert all sick leave hours at 25%			

\*With 20 years of continuous service.

\*\*Provided that max benefit not exceed 25% of employee's last month's earnings, though from retirement from ages 52-62, this percentage increases up to 50%.

See Exhibit 9.

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TABLE 15

**CITY OF GRAND ISLAND  
2006-2007  
Work Out of Class Pay Policies**

City	Paid
Council Bluffs, IA	No
Fremont, NE	Yes
Norfolk, NE	No
North Platte, NE	No
Rapid City, SD	Yes
Salina, KS	No
Prevalent Practice	No
<b>Grand Island, NE</b>	<b>Yes</b>

See Exhibit 22.

TABLE 16

**CITY OF GRAND ISLAND  
2006-2007  
Disability Plan  
In Addition to Worker's Compensation**

City	Employer Coverage Provided
Council Bluffs, IA	No
Fremont, NE	Yes
Norfolk, NE	Yes
North Platte, NE	No
Rapid City, SD	No
Salina, KS	No
Prevalent Practice	No
<b>Grand Island, NE</b>	<b>Yes</b>

See Exhibit 17.

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**TABLE 17**

**CITY OF GRAND ISLAND  
2006-2007  
Health Care  
Premium Costs**

City	Plan Type	Percent Paid by Employer		
		Individual	Family	Two Party
Council Bluffs, IA	PPO	95%	93%	95%
Fremont, NE	PPO	93%	85%	85%
Norfolk, NE	PPO	100%	80%	80%
North Platte, NE	PPO	80%	80%	80%
Rapid City, SD	PPO	100%	66%	82%
Salina, KS	PPO	78%	78%	78%
Mean		91%	80%	83%
Median		94%	80%	81%
Prevalent Practice	PPO	93%	80%	82%
<b>Grand Island, NE</b>	<b>PPO</b>	<b>90%</b>	<b>87%</b>	<b>87%</b>

See Exhibit 14.

**TABLE 18**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Paid Vacation Policies**  
**Leave Earnings**

City	Number of hours earned annually after						
	1 Yr	5 Yrs	6 Yrs	10 Yrs	15 Yrs	20 Yrs	25 Yrs
Council Bluffs, IA	144	144	216	216	288	360	360
Fremont, NE	112	112	168	168	192	216	216
Norfolk, NE	105.96	105.96	105.96	159	159	211.92	211.92
North Platte, NE	72*	192	192	240	240	240	240
Rapid City, SD	120	168	168	168	216	216	216
Salina, KS	112	134	134	179	179	224	224
Mean	111	143	164	188	212	245	245
Median	112	139	168	174	204	220	220
Midpoint	112	141	166	181	208	233	233
<b>Grand Island, NE</b>	<b>120</b>	<b>120</b>	<b>144</b>	<b>192**</b>	<b>240</b>	<b>240</b>	<b>240</b>

\*Two Years, but less than five years, 120 hours.

\*\*216 hours 11-13 years.

See Exhibit 11.

**TABLE 19**  
**CITY OF GRAND ISLAND**  
**2006-2007**  
**Longevity Pay**

City	Have Plan?
Council Bluffs, IA	Yes
Fremont, NE	No
Norfolk, NE	No
North Platte, NE	No
Rapid City, SD	No
Salina, KS	Yes
Prevalent Practice	No
<b>Grand Island, NE</b>	<b>Yes</b>

See Exhibit 7.

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**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

OMAHA POLICE UNION LOCAL	)	Case No. 1137
101, IUPA AFL-CIO,	)	
	)	FINDINGS AND
Petitioner,	)	ORDER
	)	
v.	)	
	)	
CITY OF OMAHA, a municipal	)	
corporation, CHIEF OF POLICE,	)	
THOMAS WARREN, SR.	)	
	)	
Respondents.	)	

Filed August 29, 2007

**APPEARANCES:**

For Petitioner: Thomas F. Dowd  
Dowd Howard & Corrigan, L.L.C.  
1411 Harney Street  
Suite 100  
Omaha, NE 68102

For Respondents: Bernard J. in den Bosch  
Assistant City Attorney  
804 Omaha/Douglas Civic Center  
1819 Farnam Street  
Omaha, NE 68183

**Before: Judges Burger, Orr, and Blake**

**BURGER, J:**

**NATURE OF THE PROCEEDINGS:**

Omaha Police Union Local 101, IUPA AFL-CIO (hereinafter, "Union" or "Petitioner") filed a petition alleging that the City of Omaha and the Omaha Chief of Police (hereinafter, "Respondents") had refused to provide relevant information when requested by the Union, in order to process two grievances for members of the Unit under the Collective Bargaining Agreement. The Union asserted that these acts constituted a refusal to bargain in good faith in violation of NEB. REV. STAT. §48-824 (1).

The issues presented were:

1. Whether the Respondents engaged in bad faith bargaining in violation of NEB. REV. STAT. §48-824 (1) (Reissue 2004) by refusing to provide the Petitioner with documentation requested relevant to their investigation of grievances filed on behalf of two bargaining unit members.

2. If the Respondents engaged in bad faith bargaining by virtue of their refusal to provide the requested information necessary for Petitioner to properly investigate and evaluate the grievances, does such conduct in light of previous adjudicated prohibited practices constitute a pattern of repetitive, egregious, or willful prohibited conduct entitling the Petitioner to an award of reasonable attorney fees?

3. Whether the two grievances which are the basis of this action are of the nature and type that they may be grieved under the collective bargaining agreement between the Omaha Police Union Local 101, IUPA, AFL-CIO and the City of Omaha.

4. Whether the Respondents had any obligation to provide the Petitioner with any more information than they did at the times sought and in the manner sought by the Petitioner.

5. Whether the information requested by the Petitioner was necessary and relevant in order to make the initial decision to proceed with pursuing the type and nature of grievances brought here.

#### **FACTS:**

The Union is the duly recognized collective bargaining representative for the unit consisting of officers, sergeants, lieutenants, and captains employed by the police department of the City of Omaha. In January 2007, two members of that unit were the subjects of employment actions.

One officer was indefinitely suspended from service as a Field Training Officer, which paid a \$75.00 per week salary supplement. Approximately two weeks prior to his suspension, this officer wrote an article published in the Union newspaper, the Shield, which was described as critical of management, and which had received media attention. The second officer was given a job performance interview, relating to allegations of the use of excessive force in the apprehension of a suspect. The Union claims the written documentation from the job performance interview did not contain a thorough explanation as to why Officer Taylor

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was found to have committed safety violations. The Respondents claim the job performance interview was not a disciplinary action but simply oral counseling. Based upon these instances on behalf of both officers, the Union filed grievances (a disagreement regarding the interpretation of the provisions of the current agreement).

The Union requested from Chief Warren all documentation pertinent to the decisions of management in each instance. The Chief summarily denied the grievances without providing the information requested. The Union again requested the documents they claimed to be necessary to investigate and evaluate the grievances from Chief Warren, and he again declined. The Union appealed the denied grievances to the City's acting Labor Relations Director as provided in the collective bargaining agreement. They were summarily denied by the acting Labor Relations Director.

The Union filed the Petition in this case complaining that the City's failure to provide the requested information was a prohibited labor practice, and requested a temporary order preserving the employment status of the subject employees, and restraining the City from further processing the grievances until the final determination in the case. The City consented to such an order, and the Temporary Order was entered by the Commission.

## DISCUSSION:

NEB. REV. STAT. §48-824(1) declares that it is a prohibited labor practice for any employer ... to refuse to negotiate in good faith with respect to mandatory topics of bargaining. We are unaware of any Nebraska decision interpreting this statute as it applies to a duty of an employer to furnish information upon request in the context of investigating, or processing a grievance under an existing collective bargaining agreement. Decisions of the NLRB, and federal decisions interpreting the NLRA are helpful, but not binding precedent when the statutory provisions are similar. *Nebraska Public Employee Local Union 251 v. Otoe County*, 257 Neb. 50, 595 N.W.2d 237 (1999). See also *International Union of Operating Engineers, Local 571 v. City of Plattsmouth*, 265 Neb. 817, 660 N.W.2d 480 (2003). We conclude that the provisions of Section 48-824(1) are sufficiently similar to Section 8(A)(5) of the National Labor Relations Act and for that reason we can use federal decisions for guidance in interpreting the scope, and application of our statutes.

The decisions interpreting Section 8(A)(5) have made it clear that the employer has a duty to furnish relevant and necessary information upon

request to the Union, not only in the process of bargaining for a new agreement, but, within the administration of the collective bargaining agreement by the Union. See *Aluminum Ore Co. v. NLRB*, 131 F2d 485(7<sup>th</sup> Cir. 1942); *NLRB v. Acme Industrial*, 385 U.S. 432, 87 S. Ct. 565 (1967). The information must be requested in good faith, and the requested information must be relevant and necessary to the Union's obligation to police and administer the existing collective bargaining agreement. *J.I. Case Co. v. NLRB*, 253 F2d 149 (1958). Once relevance is determined, the employer's refusal to honor the request is a per se violation of the Act. *Curtis-Wright Corporation, Wright Aeronautical Division v. NLRB*, 347 F2d 61 (1965).

In determining whether the employer is obligated to supply particular information in connection with the labor Union's performance of its duties, the Board need only find that the information is relevant, and that it will be of use to the Union in carrying out its statutory duties; relevance in that context is determined under a "discovery-type" standard, not a trial-type standard. *NLRB v. Pfizer, Inc.* 763 F2d 887 (1985). An employer's suggestion that it had fulfilled its bargaining obligation to the Union because the information was available from other sources provides no basis for relief. To refuse to furnish relevant information violates the Act, regardless of the employer's good or bad faith, because it conflicts with the statutory policy to facilitate effective collective bargaining. *Proctor and Gamble, Mfg. Co. v. NLRB*, 603 F2d 1310 (1979).

With these principles in mind, we turn to an examination of the employer's two separate refusals to provide the requested information. In doing so, we note that we are not charged with determining the legitimacy, or likelihood of success of the Union's grievances. Those are determined pursuant to the provisions of the collective bargaining agreement, and are outside our jurisdiction. Neither are we attempting to enforce the collective bargaining agreement, which authority is outside our jurisdiction. We do, however, need to interpret the collective bargaining agreement to the limited extent necessary to determine the Union's rights to the requested information.

### **Officer Taylor Grievance**

With respect to the officer who was required to undergo a job performance interview, we note that the grievance in question challenges the sufficiency of the documentation. The challenge is directed to whether the documentation is complete. In *NLRB v. Pfizer, Inc.*, 763 F2d 887 (1985), the U.S. Court of Appeals found that unions should be given, from the employer, a broad range of potentially useful information. The

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broad range of information enables the union to complete the Act's requirement that a union must fulfill its statutory obligations as a representative of bargaining unit employees. See also *Mary Thompson Hosp.*, 943 F.2d at 745 (internal quotation marks omitted); see also *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 435-37 (1967); *Gen'l Elec. Co. v. NLRB*, 916 F.2d 1163, 1168 (7th Cir. 1990). The Board is therefore required to balance a union's need for relevant, but assertedly confidential information against an employer's legitimate and substantial need for confidentiality. That notwithstanding, an employer cannot prevent production of this information simply by asserting that it is "confidential." *Pfizer*, 763 F.2d at 891.

A job performance interview is an oral interview between two parties which is then reduced to a written document. The grievance addressed whether the job performance interview record was complete in documenting supposed violations of policy. While a job performance interview is not a disciplinary action and the interview is not appealable under the collective bargaining agreement, the information requested by the Petitioner existed, and would have assisted the Union in evaluating the merits of filing a grievance. We find that the information requested was relevant and necessary for the Union to carry out its obligation to investigate and evaluate the validity of the potential grievance. As such, we find the City's failure to respond was a violation of NEB. REV. STAT. §48-824(1).

### **Officer Frodyma Grievance**

The other grievance involved the indefinite suspension of an officer from serving as a Field Training Officer, resulting in a loss of \$75.00 per week of supplemental pay. The evidence reflected that, two weeks prior to suspension, he had authored an article in the *Shield*, the Union's newspaper. The article itself was not offered into evidence, but was described as critical of management. Concurrent with the request for information, the Union president and the Chief of Police had two conversations concerning the subject. The Union provided testimony that the Chief told the president that the Field Training Officer suspension was the result of an ongoing disciplinary investigation of a November 2006 incident, and another unspecified incident. The Chief of Police testified he was more specific about the nature of the second incident.

Article 14 of the Collective Bargaining Agreement, in summary, prohibits interference with the right of employees to join or assist labor organizations. We find the information requested was relevant and necessary for the Union to investigate and evaluate the grievance. A thresh-

old question clearly had to be dealt with by the Union. Was the employment action truly taken for the reasons suggested by the Chief of Police, or, was it action taken in contradiction of the express provisions of Article 14?

The circumstances existing at this point in time were as follows: the close proximity between the article authored by the officer, the very recent litigation before the Commission in Case No. 1099, the findings of the Commission in that case concerning Chief Warren's conduct, and the vague reference by the Chief to another investigation. Those circumstances make it clear that the request for the documentation relating to the decision of the Chief to take this employment action was relevant, necessary, and requested in good faith for the purpose of carrying out the Union's obligation to administer the collective bargaining agreement.

The request for information noted the article entitled "Gun Crime We're Working On It" as a concern that the employment action had occurred for an impermissible reason, but, it simply requested "all pertinent documentation ... with regard to the decision to remove" ... the officer as a Field Training Officer. It had no such limitation tied to the article. It sought the documentation necessary to evaluate the validity of the grievance.

The intent of the Chief is somewhat unclear but seems to suggest that he either misread the request, or, perhaps refused to read beyond the expression of concern that he had acted in retaliation for the article. The evidence is clear that the Chief refused to provide the information requested, because he unilaterally determined no right of the Union existed to obtain such information.

The requested information did exist, and was not provided. The fact that the officer was provided the disciplinary reprimand for the November 2006 incident after the request for information is not disputed. The Union previously had been advised that another pending investigation was also the basis of the suspension. They had a reasonable need for the information requested to determine whether this employment action was retaliation in violation of Article 14. We find that the refusal of the Respondents to provide this information was a breach of the duty of the employer to negotiate in good faith with the Union in violation of NEB. REV. STAT. §48-824(1).

#### **REMEDY:**

The Petitioner urges reimbursement of attorney fees as a component of

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the remedy. The rules of the Commission provide for such a remedy when the conduct of the party found to have committed a prohibited practice reflects a pattern of repetitive, egregious, or willful prohibited conduct.

In examining this question, we note the relatively minor nature of the prohibited conduct in this case, and the consent by counsel for the Respondents to a temporary order mitigating damage to the impacted members of Petitioner pending resolution of this case. We also note that this decision appears to be the first interpretation of the application of the statute to this set of circumstances.

We further note the recent decisions of the Nebraska Supreme Court in *Omaha Police Union Local 101 IUPA, AFL-CIO v. City of Omaha*, 274 Neb. 70 (2007). This decision remanded a previous finding of a prohibited practice by Chief Warren to the Commission for application of a new legal standard to the facts in that case. Until such time as the facts in Case No. 1099 are reviewed under the new standard, it is presently not a finding of a prohibited practice. Under the unusual facts existing at this time, we decline to find that this conduct was either egregious, or repetitive.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

1. The Respondents shall comply with the request for information by the Petitioner regarding Officer Taylor's grievance. Evidence at trial suggested that the exhibits at trial constituted the only documents meeting the substance of the requests. If this remains the case, a representative of the Respondents shall certify this fact to Petitioner in writing within ten (10) days of this Order.

2. The Respondents shall comply with the request for information regarding Officer Frodyma's grievance within ten (10) days of this Order. Evidence at trial suggested that the exhibits at trial constituted the only documents meeting the substance of the requests. If this remains the case, a representative of the Respondents shall certify this fact to Petitioner in writing within ten (10) days of this Order.

3. The Respondents shall cease from refusing to furnish relevant and necessary information requested by the Union for the purpose of investigating potential grievances.

All panel judges join in the entry of this order.

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COMMISSION OF INDUSTRIAL RELATIONS

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Case No. 1138

**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

WINSIDE EDUCATION	)	Case No. 1138
ASSOCIATION, an Unincorporated	)	
Association,	)	AMENDED OPINION
	)	AND ORDER
Petitioner,	)	
	)	
v.	)	
	)	
WAYNE COUNTY SCHOOL	)	
DISTRICT NO. 90-0595, a/k/a	)	
WINSIDE PUBLIC SCHOOLS,	)	
a Political Subdivision of the	)	
State of Nebraska,	)	
	)	
Respondent.	)	

Filed July 23, 2007

**APPEARANCES:**

For Petitioner:           Mark D. McGuire  
                                  McGuire and Norby  
                                  605 South 14th Street  
                                  Suite 100  
                                  Lincoln, NE 68508

For Respondent:         John F. Recknor  
                                  Recknor, Williams, & Wertz  
                                  2525 "N" Street  
                                  P.O. Box 30246  
                                  Lincoln, NE 68503-0246

**Before: Judges Lindahl, Blake and Cullan**

**LINDAHL, J:**

**NATURE OF THE PROCEEDINGS:**

Winside Education Association (hereinafter, "Petitioner" or "Association") filed a wage petition on February 13, 2007, seeking resolution of an industrial dispute for the 2006-2007 contract year. The Association is a labor organization formed by teachers employed by Wayne County

School District No. 90-0595, a/k/a Winside Public Schools (hereinafter, "Respondent" or "District") for the purpose of representation in matters of employment relations. The District is a political subdivision of the State of Nebraska and a Class III school district.

The Commission of Industrial Relations (hereinafter, "Commission") held a Trial on May 30, 2007. The issues presented at Trial are contained within the Commission's Report of Pretrial filed on May 1, 2007. Evidence regarding Respondent's issues of sick leave and cumulative sick leave was not admitted at trial and will not be considered.

### **JURISDICTION:**

The Commission has jurisdiction over the parties and subject matter of this action pursuant to NEB. REV. STAT. §48-818 (Reissue 1998) which provides in part:

...the Commission of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions...

### **ARRAY:**

The Association proposes thirteen school districts for its array. The District proposes that eleven school districts be used in its array. The common array members are Wisner-Pilger, Emerson-Hubbard, Allen, Osmond, and Wausa. The contested array members proposed by the Petitioner are Laurel-Concord, Pender, Randolph, Stanton, Battle Creek, Wakefield, Clarkson, and Hartington. The contested array members proposed by the Respondent are Neligh-Oakdale, Northeast Lyons-Decatur, Ponca, Bancroft-Rosalie, Leigh, and Wynot.

In determining a proper array, the parties agree that the work, skills, and working conditions of Winside Public Schools' teachers are sufficiently similar for comparison under NEB. REV. STAT. §48-818 (Reissue 1998) to all of the common and contested array members.

The Commission has held that if potential array members share similar work, skills, and working conditions, the Commission will include all of the schools submitted in the array unless there is specific evidence that to do so would be otherwise inappropriate or would make the array

unmanageable. *Geneva Educ. Ass'n v. Filmore County School Dist. No. 0075*, 11 CIR 38 (1990); *Lynch Educ. Ass'n v. Boyd County School Dist. No. 0036*, 11 CIR 25 (1990). Even in such cases, the Commission does not disregard the size and geographic guidelines. See, *Id.* The Commission need not consider every conceivable comparable, but only "a sufficient number in a representative array so that it can determine whether the wages paid or the benefits conferred are comparable." *Nebraska Pub. Employees Local Union 251 v. County of York*, 13 CIR 157 (1998).

In the instant case, Petitioner followed the Commission's previously delineated method which utilizes size and geographic guidelines. The Petitioner arrived at its array by going out 31 miles and including all schools which were half to twice the size of Winside. This method produced a result of thirteen schools.

The Respondent followed a different methodology. In arriving at its array, the Respondent's Superintendent, Donavon Leighton, utilized a concentric circle fifty miles around Winside, which produced a result of 34 schools. He then listed the 34 schools in dollar order from highest to lowest. Then, starting with the highest dollar school and working his way down the list, Mr. Leighton placed each of the schools in three separate array piles, consecutively. After he had placed all of the schools in each of the three arrays, he then removed the pile containing twelve schools due to the fact that the array contained both the highest and lowest dollar schools. Mr. Leighton admitted that he then chose the lowest dollar array pile between the two remaining array piles.

Petitioner's array contains a sufficient number of schools, utilizing the Commission's long-standing criteria and guidelines. The Commission will include all of the Petitioner's array schools in its array. The Respondent's additional six array schools will not be included because the Respondent's methodology is not based upon the standard objective criteria established by the Commission. The Respondent removed some array members based upon "cost" to the district. Therefore, the Commission's array will consist of Wisner-Pilger, Emerson-Hubbard, Allen, Osmond, Wausa, Laurel-Concord, Pender, Randolph, Stanton, Battle Creek, Wakefield, Clarkson, and Hartington.

#### **PROPER PLACEMENT ON SALARY SCHEDULES:**

The Respondent argues that the two teachers who currently have extended contracts at Winside should be placed in the compensation analysis study with enhanced FTEs (Full-time Equivalency). In doing this, the Respondent takes the FTE time the employees staff index fac-

tor to arrive at a different staff index factor that is higher than the staff index factor proposed by the Petitioner. The Petitioner argues that the two teachers extended contracts should not be used to enhance each of their FTEs.

The Commission in *Wheatland Educ. Ass'n v. School Dist. No 112*, 5 CIR 64 (1980), stated that the rationale of the Commission's decision in *Fremont Educ. Ass'n v. School Dist. of Fremont*, 3 CIR 492 (1978) should be controlling. In *Fremont*, the Commission found that in figuring total teacher compensation (because it is based upon the assumption of fungibility of certified teachers), extra duty pay cannot be included in total compensation in determining base salaries. The Commission in *Wheatland* concluded that extended contract pay was extraneous to the Commission's calculation as extra duty pay. Therefore, the Commission would not include extra duty pay or extended contract pay in total compensation when adjusting base salary.

Furthermore, in the instant case, it is clear that including extended contract pay in the total compensation is not a prevalent practice. Only Hartington includes extended contract pay and the remaining districts include extra duties on a per diem basis. Accordingly, because of the Commission's longstanding practice of not including extended contract pay as part of total teacher compensation and since the facts do not support a prevalency of schools in the array including extended contracts as part of total teacher compensation, the Commission will not include extended contracts in this case as part of total teacher compensation. Therefore, the total staff index factors shall be as shown on Table 1.

#### **HEALTH INSURANCE:**

Petitioner requests that the Commission order the Respondent to pay for the full insurance premium, starting retroactively on September 1, 2006. It is prevalent for the Respondent to pay for the full insurance premium for EHA \$300 deductible health and accident insurance for teachers electing dependant and individual coverage. Therefore, the Commission will order the Respondent to pay the full insurance premium for EHA \$300 deductible health insurance and repay the teachers electing dependant coverage the sum of \$87.24 per month and individual coverage the sum of \$30.83 per month, for all months in which the Respondent did not pay the full insurance premium.

#### **BASE SALARY:**

Table 1 sets forth the relevant information for determining the appro-

appropriate base salary. The midpoint of the total compensation \$1,265,799 minus the cost of fringe benefits of \$241,604 equals \$1,024,196 which, when divided by the new total staff index factor of 38.9200, equals a base salary of \$26,315 for the 2006-2007 school year.

**IT IS THEREFORE ORDERED THAT:**

Respondent shall pay the teachers a base salary of \$26,315 for the 2006-2007 school year.

The Respondent shall pay the full insurance premium for EHA \$300 deductible health and accident insurance for teachers electing dependant coverage in the sum of \$12,417 and for teachers electing individual coverage in the sum of \$4,532. In paying the full insurance premium, the Respondent shall reimburse the teachers electing dependant coverage the sum of \$87.24 per month and individual coverage the sum of \$30.83 per month, retroactively to September 1, 2006 and up to the date such back payment is made.

All other terms and conditions of employment for the 2006-2007 school year shall be as previously established by the agreement of the parties and by the Opinion and Order of the Commission.

Adjustments in compensation resulting from this order shall be paid in a single lump sum payable within thirty (30) days of this final order, if possible.

All judges join in the entry of this order.

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**TABLE 1**

**OVERALL COMPENSATION ANALYSIS**

School	Contract Days	Staff Index	Base Salary	Benefit Costs	Schedule Costs	Total Costs
Laurel-Concord	185	39.1800	\$25,600	\$332,760	\$1,003,008	\$1,335,768
Pender	185	40.2500	\$26,000	\$275,130	\$1,046,500	\$1,321,630
Wisner-Pilger	185	41.0900	\$25,700	\$263,487	\$1,056,013	\$1,319,500
Randolph	185	38.8000	\$26,300	\$265,200	\$1,020,440	\$1,285,640
Stanton	186	39.0000	\$26,700	\$242,154	\$1,035,702	\$1,277,855
Emerson-Hubbard	185	39.4800	\$25,750	\$260,443	\$1,016,610	\$1,277,053
Battle Creek	185	40.3550	\$25,400	\$243,037	\$1,025,017	\$1,268,054
Wakefield	185	37.9600	\$26,150	\$256,940	\$992,654	\$1,249,594
Clarkson	184	38.9600	\$24,750	\$277,449	\$969,501	\$1,246,950
Hartington	185	38.9600	\$24,950	\$249,600	\$972,052	\$1,221,652
Allen	185	38.3200	\$26,000	\$224,721	\$996,320	\$1,221,041
Osmond	185	37.8800	\$25,800	\$239,666	\$977,304	\$1,216,970
Wausa	185	38.2000	\$24,700	\$240,837	\$943,540	\$1,184,377
<b>Winside</b>	<b>185</b>	<b>38.9200</b>	<b>\$26,315</b>	<b>\$241,604</b>	<b>\$1,024,196</b>	<b>\$1,265,799</b>
		Mean		\$1,263,545		
		Median		\$1,268,054		
		Midpoint		\$1,265,799		

See Exhibit 2.

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Case No. 1141

**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

LOUISVILLE EDUCATION	)	Case No. 1141
ASSOCIATION, An Unincorporated	)	
Association,	)	
	)	FINDINGS AND
Petitioner,	)	ORDER
	)	
v.	)	
	)	
CASS COUNTY SCHOOL DISTRICT	)	
NO. 13-0032, a/k/a LOUISVILLE	)	
PUBLIC SCHOOLS, a Political	)	
Subdivision of the State of Nebraska,	)	
	)	
Respondent.	)	

Filed October 24, 2007

**APPEARANCES:**

For Petitioner: Mark D. McGuire  
McGuire and Norby  
605 South 14th Street  
Suite 100  
Lincoln, NE 68508

For Respondent: Karen A. Haase  
Harding & Shultz  
800 Lincoln Square  
121 South 13th Street  
P. O. Box 82028  
Lincoln, NE 68501

**Before: Commissioners Orr, Lindahl and Blake**

**ORR, C:**

**NATURE OF THE PROCEEDINGS:**

Louisville Education Association (hereinafter, "Petitioner" or "Association") filed a wage petition on March 14, 2007, seeking resolution of an industrial dispute for the 2006-2007 contract year. The Association is a labor organization formed by teachers employed by Cass County

School District No. 13-0032, a/k/a Louisville Public Schools (hereinafter, "Respondent" or "District") for the purpose of representation in matters of employment relations. The District is a political subdivision of the State of Nebraska and a Class III school district.

### **JURISDICTION:**

The Commission has jurisdiction over the parties and subject matter of this action pursuant to NEB. REV. STAT. §48-818 (Reissue 1998) which provides in part:

...the Commission of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions...

### **ARRAY:**

The Association proposes ten school districts for its array. The District proposes that sixteen school districts be used in its array. The common array members are Wahoo, Bennington, Douglas County West, Syracuse-Dunbar-Avoca, Conestoga (Murray), Ashland-Greenwood, Weeping Water, Elmwood-Murdock, Yutan, and Palmyra. The contested array members proposed by the Respondent are Arlington, Raymond Central, Fort Calhoun, Malcolm, Freeman, and Tecumseh.

In determining a proper array, the parties agree that the work, skills, and working conditions of Louisville Public Schools' teachers are sufficiently similar for comparison under NEB. REV. STAT. §48-818 (Reissue 1998) to all common array members with the exception of Conestoga, where Respondent maintains that the work and working conditions are not sufficiently similar to permit a comparison, nor does the Petitioner agree that any of the additional array member school districts of Arlington, Raymond Central, Fort Calhoun, Malcolm, Freeman, and Tecumseh are comparable.

The Commission has held that if potential array members share similar work, skills, and working conditions, the Commission will include all of the schools submitted in the array unless there is specific evidence that to do so would be otherwise inappropriate or would make the array unmanageable. *Geneva Educ. Ass'n v. Fillmore County School Dist. No 0075*, 11 CIR 38 (1990); *Lynch Educ. Ass'n v. Boyd County School Dist.*

*No. 0036*, 11 CIR 25 (1990). Even in such cases, the Commission does not disregard the size and geographic guidelines. See, *Id.* The Commission need not consider every conceivable comparable, but only “a sufficient number in a representative array so that it can determine whether the wages paid or the benefits conferred are comparable.” *Nebraska Pub. Employees Local Union 251 v. County of York*, 13 CIR 157 (1998).

Both the Petitioner and the Respondent agreed to the ten common array schools. All ten are in very close proximity and within the size comparison to Louisville. All ten schools will be included in the array. Ten array schools are sufficient to arrive at a comparable wage rate and the Commission need not include the other six array schools proposed by the Respondent. Therefore, the Commission’s array will consist of the common array members of: Wahoo, Bennington, Douglas County West, Syracuse-Dunbar-Avoca, Conestoga (Murray), Ashland-Greenwood, Weeping Water, Elmwood-Murdock, Yutan, and Palmyra.

#### **CONTRACT DAY ADJUSTMENT:**

While both the Petitioner and the Respondent would like Conestoga to be included in the array, the Petitioner argues that Conestoga should be included in the array with 159 contract days. The Respondent argues that Conestoga should be included with 185 contract days.

In *West Holt Faculty Ass’n v. School Dist. No. 25*, 5 CIR 301 (1981), the Commission concluded that adjusting contract days rather than adjusting compensation would be a better approach. *West Holt* quoted NEB. REV. STAT. §48-818, which provides in part:

.... In establishing wage rates the Commission shall take into consideration the overall compensation received by employees, having regard not only to wages for time actually worked but also for time not worked ...

Under the unique facts of *West Holt*, the Association argued that the 182 contract days at West Holt had been unilaterally established by the District Board to accommodate farm families in the district. The Association concluded that therefore no salary adjustment should be made for a lesser number of contract days than prevalent among schools in the array. In analyzing the case, the Commission stated that the evidence showed that the number of contract days were unilaterally established by the Board to accommodate farm families, but noted the evidence proved that teachers’ salary expectations were related to the number of contract days. Therefore, in *West Holt*, the Commission found that an adjustment

in basic salary was necessary by adjusting total salary schedule amounts for each of the schools in the array to 182 contract days.

In the instant case, a significant amount of evidence regarding Conestoga's contract and schedule were presented at trial. Although the contract states that the number of contract days will not exceed 185 days, the parties, in their memorandum of understanding and testimony presented at trial, clearly agreed to implement a 4-day work week, contracting with the teachers to work 159 days. The testimony at trial indicated that the teachers at Conestoga were scheduled to work 159 days, but actually worked less than the 159 days. Based upon this specific evidence, the Commission determines that Conestoga should be adjusted in the computation of base salary using 159 days, rather than 185 days.

### **SUFFICIENTLY SIMILAR CASH OPTIONS:**

Cash-in-lieu of insurance has been an important issue in teacher wage cases since *Educational Service Unit No. 13 Educ. Ass'n v. Educational Service Unit No. 13*, 14 CIR 1 (2002) and 14 CIR 34 (2002) ("*ESU 13*"). When array schools offer different amounts of cash-in-lieu of insurance the Commission has set forth a standard as seen in *South Sioux City Education Ass'n v. Dakota County School Dist. No. 22-011*, 15 CIR 37 (2004), which the school district must offer a cash benefit that is "sufficiently similar" to the option offered at the subject school.

The parties to this case disagree on which cash options are sufficiently similar to the option offered at Louisville. Nine of the ten array schools offer varying amounts of cash-in-lieu of insurance. The Petitioner argues that the Commission should, for the array schools which offer cash-in-lieu of insurance that is at least equal to or greater than 70% of the subject school's cash option amount, place the Louisville teachers on those schools' schedules as receiving the cash-in-lieu amount. For those schools which offer less than 70% of the cash offered at Louisville, Petitioner argues that those teachers should be placed as receiving the health insurance benefit available to them (i.e. dependent insurance). Therefore, the Petitioner argues that only five of the nine schools that offer cash-in-lieu of insurance are sufficiently similar. Whereas, the Respondent argues that the Commission should determine that cash-in-lieu of insurance that is at least equal to or greater than 20% of the subject school's cash option amount is sufficiently similar. The Respondent therefore argues that all of the nine array schools provide sufficiently similar cash options.

In *ESU 13*, the Commission looked at comparing an election at the subject school district to take the health insurance benefit as either fam-

ily coverage, individual coverage plus cash, or all cash. The total benefit cost remained the same. Each employee could choose to take this benefit in cash, payment of various insurance premiums, or a mixture. In *ESU 13*, numerous depositions were offered to prove the reason a particular teacher in the unit made his or her choice, and what they might choose at a proposed array institution. We discouraged this practice, as it was apparent that this evidence was likely to be extremely costly, speculative and lacking in sufficient foundation.

In *ESU 13*, the question, as to those teachers who had taken a cash option, was how to compute their benefit at an array school which did not offer a cash option. The Commission was asked to calculate the cost of health insurance benefits by using the same elections the employees in question had actually made, and further, where there was no comparable election in the array school, to calculate the benefit received as zero. In concluding in *ESU 13* that each employee would make an economically rational choice to accept the maximum fringe benefits available to the teacher, the Commission based its conclusion on an inference from the evidence presented.

Next, in *South Sioux City Educ. Ass'n*, the Commission determined that the inference of economically rational choice of the greatest benefit should not be followed in placing those teachers who selected a cash option at the subject school when the cash option is sufficiently similar to the option offered at the subject school. In this case, the Commission found that the cash options offered at Blair, Elkhorn, and Hastings were sufficiently similar to the cash option at South Sioux City, while the cash option at Ralston was not sufficiently similar.

Finally, in *Beatrice Educ. Ass'n v. Gage County School Dist. No. 34-0015*, 15 CIR 46 (2004), the array schools of Norris, Waverly, Seward, Nebraska City, York, Gretna, South Central Nebraska Unified School District No. 5, and Aurora offered no cash option. The Commission placed the Beatrice teachers on those eight schools' salary schedules as taking the maximum benefit available to them. In *Beatrice Educ. Ass'n*, the Commission concluded that if an array school provides a cash option to their teachers and that cash option was sufficiently similar to the subject school's cash option, the Commission placed the subject school teachers as taking the cash option at the array school. If an array school did not offer a cash option, or that cash option was not sufficiently similar to the subject school's cash option, the Commission placed the subject school's teachers as receiving the maximum insurance benefit for which they are qualified (dependent or individual coverage).

In the instant case, Louisville offers \$4,209 in cash. The array schools offer varying cash amounts. See Table 1. In both *South Sioux City Educ. Ass'n* and *Beatrice Educ. Ass'n*, the Commission applied the standard that a school had a "sufficiently similar" cash option if that cash option was 50% or greater than the subject school's cash option. Here, we conclude that if an array school provides a cash option to their teachers, and that cash option is sufficiently similar to the subject school's cash option (equal to 50% or greater), we will place the subject school teachers as taking the cash option at the array school. For example, thirteen teachers at Louisville took the cash option. So, if the array member's option is 50% or greater than Louisville's cash option (\$4,209 or 50% \$2,104.50 or greater), (i.e. Bennington, Palmyra, Wahoo, Weeping Water and Yutan), then the thirteen teachers are placed as receiving the array school's actual cash option. Therefore, the Commission will place teachers at Bennington, Palmyra, Wahoo, Weeping Water and Yutan as receiving the subject school's cash option. See Tables 2 and 3.

If an array school does not offer a cash option, we will place the subject school's teachers as receiving the maximum insurance benefit for which they are qualified (dependent or single coverage). For example, Conestoga does not offer a cash-in-lieu of insurance amount, so the thirteen teachers are placed as receiving the full benefit of Conestoga's dependent insurance. Therefore, the teachers are placed as receiving \$11,825.28 at Conestoga.

If the array school offers the same benefit for all the options (single, dependent, or cash), then the Commission will place the teacher as receiving the cash option. For example, DC West and Syracuse offer \$6,000 for single insurance, dependent insurance, and cash, so the Louisville teachers are placed as all receiving \$6,000. Therefore, on the worksheets for DC West and Syracuse all teachers are placed as receiving \$6,000.

However, there is still the issue of placement when the array school offers a cash option but that option is not sufficiently similar. If there were schools in which the cash option offered was less than 50%, the Commission's *South Sioux City Educ. Ass'n* methodology gave those teachers the full benefit of dependent or single coverage, whichever they were eligible for. For example, in the instant case dependent coverage in Ashland-Greenwood would be \$11,825 and in Elmwood-Murdock \$12,404, and the thirteen Louisville teachers would be placed as taking full dependent coverage. This method does not take into consideration the fact that even though the cash option is not sufficiently similar, a small percentage of teachers may still take the cash option. It could be

argued that this current methodology slightly inflates the total compensation figures. The facts of this particular case force us to consider the fairness of economically rational choices. To promote a final determination of predictability, logic and fairness, developed over several cases, we determine in the instant case that placing teachers as receiving the full dependent benefit unfairly inflates the total compensation figures. Given the facts of this case, as well as the evolving nature of health insurance and health insurance premiums, the Commission needs to further define the process by which it should fairly place teachers in non-similar cash option array schools. This developed methodology would place teachers as receiving the cash option of \$4,209 (Louisville's cash amount) at the non-similar cash option array schools, rather than the full dependent insurance amount offered at that school. Therefore, if the cash offered at the array school is less than 50%, the subject school teacher would be placed on the array school's salary schedule as receiving the cash offered at the subject school. See Tables 4 and 5.

#### **CONTRACT DELETIONS:**

The Respondent requests deletion of various contractual provisions. See the parties Joint Pretrial Report and Disclosure D (3) through (11). The Petitioner argues that all seven requests for deletion are moot. This Commission has continually refused to rule on certain fringe benefits when the contract year has passed. See *South Sioux City*, 15 CIR 23 and 15 CIR 37 (2004). Any dispute over benefits other than total compensation, base salary, and employer contributions towards fringe benefits are moot for the 2006-2007 contract year.

#### **BASE SALARY:**

Table 6 sets forth the relevant information for determining the appropriate base salary. The midpoint of the total compensation \$2,166,985 minus the cost of fringe benefits of \$344,829 equals \$1,822,156 which, when divided by the new total staff index factor of 66.1650, equals a base salary of \$27,540 for the 2006-2007 school year.

#### **IT IS THEREFORE ORDERED THAT:**

1. The Respondent shall pay the teachers a base salary of \$27,540 for the 2006-2007 school year.
2. All other terms and conditions of employment for the 2006-2007 school year shall be as previously established by the agreement of the parties and by the Findings and Order of the Commission.

3. Adjustments in compensation resulting from this order shall be paid in a single lump sum payable within thirty (30) days of this final order, if possible.

All commissioners join in the entry of this order.

**TABLE 1**  
**CASH OPTION ANALYSIS**

<b>Amount</b>	<b>Percent of Cash</b>	
<b>School</b>	<b>Cash Amount Offered</b>	<b>Compared to Offered Amount at Index School</b>
Conestoga	0	0
Yutan	\$2,787	66%
Palmyra	\$2,500	59%
Bennington	\$4,433	105%
Wahoo	\$4,532	108%
Ashland-Greenwood	\$2,000	48%
DC West	\$6,000	143%
Elmwood-Murdock	\$2,000	48%
Weeping Water	\$4,250	101%
Syracuse-Dunbar-Avoca	\$6,000	143%
<b>Louisville</b>	<b>\$4,209</b>	

\*Exhibit 4

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**TABLE 2\***

**STAFF SUMMARY WORKSHEET – PALMYRA**

<b>Name</b>	<b>Staff Index</b>	<b>Salary</b>	<b>Benefit</b>	<b>Benefit Costs</b>	<b>Total Costs</b>
Allen	1.5800	\$43,450	Dep + SD	\$12,417	\$55,867
Andel	1.1600	\$31,900	Ind + SD	\$4,392	\$36,292
Behrns	1.5800	\$43,450	Dep + SD	\$12,417	\$55,867
Bell	1.7400	\$47,850	Dep + SD	\$12,417	\$60,267
Coshow	1.5800	\$43,450	Dep + SD	\$12,417	\$55,867
Cover	1.1600	\$31,900	Dep + SD	\$12,417	\$44,317
Dietzel	1.5800	\$43,450	No H/A-Cash	\$2,500	\$45,950
Dwerlkotte	1.3600	\$37,400	No H/A-Cash	\$2,500	\$39,900
Ekhoff	1.1600	\$31,900	Dep + SD	\$12,417	\$44,317
Exner	1.4400	\$39,600	No H/A-Cash	\$2,500	\$42,100
Geise	1.5200	\$41,800	Dep + SD	\$12,417	\$54,217
Guenther	1.1600	\$31,900	No H/A-Cash	\$2,500	\$34,400
Hegge	1.5600	\$42,900	Dep + SD	\$12,417	\$55,317
Hall	1.1600	\$31,900	Dep + SD	\$12,417	\$44,317
Hammer	1.0000	\$27,500	Ind + SD	\$4,392	\$31,892
Heard	1.6200	\$44,550	Dep + SD	\$12,417	\$56,967
Hohman	1.2000	\$33,000	Ind + SD	\$4,392	\$37,392
Holl	1.3600	\$37,400	No H/A-Cash	\$2,500	\$39,900
Houfek	1.5000	\$41,250	No H/A-Cash	\$2,500	\$43,750
Jeanssen	1.0000	\$27,500	Ind + SD	\$4,392	\$31,892
Johnson, T.	1.3600	\$37,400	No H/A-Cash	\$2,500	\$39,900
Johnson, W.	1.4000	\$38,500	Dep + SD	\$12,417	\$50,917
Jones	1.5600	\$42,900	Dep + SD	\$12,417	\$55,317
Quiner	1.1200	\$30,800	Ind + SD	\$4,392	\$35,192
Kalkowski	1.5800	\$43,450	Dep + SD	\$12,417	\$55,867
Krause	1.0400	\$28,600	Ind + SD	\$4,392	\$32,992
Kremke	1.5600	\$42,900	Dep + SD	\$12,417	\$55,317
McKeown	1.2000	\$33,000	No H/A-Cash	\$2,500	\$35,500
Nielson	1.2800	\$35,200	Ind + SD	\$4,392	\$39,592
Nye	1.4400	\$39,600	Dep + SD	\$12,417	\$52,017
Petersen	1.5800	\$43,450	Dep + SD	\$12,417	\$55,867
Reeves	1.4800	\$40,700	No H/A-Cash	\$2,500	\$43,200
Roach	1.5800	\$43,450	No H/A-Cash	\$2,500	\$45,950
Ronhovde	1.5600	\$42,900	Dep + SD	\$12,417	\$55,317
Routley	1.5600	\$42,900	Ind + SD	\$4,392	\$47,292

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**TABLE 2\* (Cont'd)**

**STAFF SUMMARY WORKSHEET – PALMYRA**

<b>Name</b>	<b>Staff Index</b>	<b>Salary</b>	<b>Benefit</b>	<b>Benefit Costs</b>	<b>Total Costs</b>
Ryan	1.5600	\$42,900	No H/A-Cash	\$2,500	\$45,400
Schaffer	1.5600	\$42,900	Dep + SD	\$12,417	\$55,317
Schroeder	1.5800	\$43,450	Dep + SD	\$12,417	\$55,867
Seery	1.5200	\$41,800	Ind + SD	\$4,392	\$46,192
Shuler	1.5800	\$43,450	No H/A-Cash	\$2,500	\$45,950
Smith	1.2800	\$35,200	No H/A-Cash	\$2,500	\$37,700
Stewart	1.5600	\$42,900	Dep + SD	\$12,417	\$55,317
Stock	1.5800	\$43,450	Dep + SD	\$12,417	\$55,867
Tipton	1.2000	\$33,000	Dep + SD	\$12,417	\$45,417
White	1.5800	\$43,450	Dep + SD	\$12,417	\$55,867
<b>TOTALS</b>	<b>63.72</b>	<b>\$1,752,300</b>		<b>\$357,619</b>	<b>\$2,109,919</b>

\*Petitioners Exhibit 26 with the 13 teachers taking cash-in-lieu of insurance reduced to Palmyra's cash-in-lieu of insurance amount from the school's dependent coverage amount.

**TABLE 3\***

**STAFF SUMMARY WORKSHEET – YUTAN**

<b>Name</b>	<b>Staff Index</b>	<b>Salary</b>	<b>Benefit</b>	<b>Benefit Costs</b>	<b>Total Costs</b>
Allen	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Andel	1.2000	\$32,328	Ind + SD	\$4,532	\$36,860
Behrns	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Bell	1.8000	\$48,492	Dep + SD	\$12,417	\$60,909
Coshow	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Cover	1.1600	\$31,250	Dep + SD	\$12,417	\$43,668
Dietzel	1.6800	\$45,259	No H/A-Cash	\$2,787	\$48,046
Dwerlkotte	1.3600	\$36,638	No H/A-Cash	\$2,787	\$39,426
Ekhoff	1.2000	\$32,328	Dep + SD	\$12,417	\$44,745
Exner	1.4400	\$38,794	No H/A-Cash	\$2,787	\$41,581
Geise	1.5200	\$40,949	Dep + SD	\$12,417	\$53,366
Guenther	1.1600	\$31,250	No H/A-Cash	\$2,787	\$34,038
Hegge	1.8000	\$48,492	Dep + SD	\$12,417	\$60,909
Hall	1.2000	\$32,328	Dep + SD	\$12,417	\$44,745

COMMISSION OF INDUSTRIAL RELATIONS

**TABLE 3\* (Cont'd)**

**STAFF SUMMARY WORKSHEET – YUTAN**

<b>Name</b>	<b>Staff Index</b>	<b>Salary</b>	<b>Benefit</b>	<b>Benefit Costs</b>	<b>Total Costs</b>
Hammer	1.0000	\$26,940	Ind + SD	\$4,532	\$31,472
Heard	1.7200	\$46,337	Dep + SD	\$12,417	\$58,754
Hohman	1.2000	\$32,328	Ind + SD	\$4,532	\$36,860
Holl	1.4400	\$38,794	No H/A-Cash	\$2,787	\$41,581
Houfek	1.5200	\$40,949	No H/A-Cash	\$2,787	\$43,736
Jeanssen	1.0000	\$26,940	Ind + SD	\$4,532	\$31,472
Johnson, T.	1.3600	\$36,638	No H/A-Cash	\$2,787	\$39,426
Johnson, W.	1.4800	\$39,871	Dep + SD	\$12,417	\$52,288
Jones	1.5600	\$42,026	Dep + SD	\$12,417	\$54,444
Quiner	1.1200	\$30,173	Ind + SD	\$4,532	\$34,704
Kalkowski	1.6800	\$45,259	Dep + SD	\$12,417	\$54,676
Krause	1.0400	\$28,018	Ind + SD	\$4,532	\$32,549
Kremke	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
McKeown	1.2000	\$32,328	No H/A-Cash	\$2,787	\$35,115
Nielson	1.2800	\$34,483	Ind + SD	\$4,532	\$39,015
Nye	1.6400	\$44,182	Dep + SD	\$12,417	\$56,599
Petersen	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Reeves	1.6800	\$45,259	No H/A-Cash	\$2,787	\$48,046
Roach	1.6800	\$45,259	No H/A-Cash	\$2,787	\$48,046
Ronhovde	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Routley	1.5600	\$42,026	Ind + SD	\$4,532	\$46,558
Ryan	1.5600	\$42,026	No H/A-Cash	\$2,787	\$44,814
Schaffer	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Schroeder	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Seery	1.8000	\$48,492	Ind + SD	\$4,532	\$53,024
Shuler	1.6400	\$44,182	No H/A-Cash	\$2,787	\$46,969
Smith	1.3600	\$36,638	No H/A-Cash	\$2,787	\$39,426
Stewart	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Stock	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
Tipton	1.2000	\$32,328	Dep + SD	\$12,417	\$44,745
White	1.6800	\$45,259	Dep + SD	\$12,417	\$57,676
<b>TOTALS</b>	<b>66.72</b>	<b>\$1,797,437</b>		<b>\$362,610</b>	<b>\$2,160,048</b>

\*Petitioners Exhibit 40 with the 13 teachers taking cash-in-lieu of insurance reduced to Yutan's cash-in-lieu of insurance amount from the school's dependent coverage amount.

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**TABLE 4****STAFF SUMMARY WORKSHEET –  
ASHLAND-GREENWOOD**

<b>Name</b>	<b>Staff Index</b>	<b>Salary</b>	<b>Benefit</b>	<b>Benefit Costs</b>	<b>Total Costs</b>
Allen	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Andel	1.2000	\$31,650	Ind + SD	\$4,322	\$35,972
Behrns	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Bell	1.9600	\$51,695	Dep + SD	\$11,825	\$63,520
Coshow	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Cover	1.1600	\$30,595	Dep + SD	\$11,825	\$42,420
Dietzel	1.7200	\$45,365	No H/A-Cash	\$4,209	\$49,574
Dwerlkotte	1.4400	\$37,980	No H/A-Cash	\$4,209	\$42,189
Ekhoff	1.2400	\$32,705	Dep + SD	\$11,825	\$44,530
Exner	1.5100	\$39,826	No H/A-Cash	\$4,209	\$44,035
Geise	1.5600	\$41,145	Dep + SD	\$11,825	\$52,970
Guenther	1.1800	\$31,123	No H/A-Cash	\$4,209	\$35,332
Hegge	1.8700	\$49,321	Dep + SD	\$11,825	\$61,147
Hall	1.2400	\$32,705	Dep + SD	\$11,825	\$44,530
Hammer	1.0800	\$28,485	Ind + SD	\$4,322	\$32,807
Heard	1.7700	\$46,684	Dep + SD	\$11,825	\$58,509
Hohman	1.2100	\$31,914	Ind + SD	\$4,322	\$36,235
Holl	1.5000	\$39,563	No H/A-Cash	\$4,209	\$43,772
Houfek	1.5900	\$41,936	No H/A-Cash	\$4,209	\$46,145
Jeanssen	1.0800	\$28,485	Ind + SD	\$4,322	\$32,807
Johnson, T.	1.3800	\$36,398	No H/A-Cash	\$4,209	\$40,607
Johnson, W.	1.5100	\$39,826	Dep + SD	\$11,825	\$51,652
Jones	1.6000	\$42,200	Dep + SD	\$11,825	\$54,025
Quiner	1.1200	\$29,540	Ind + SD	\$4,322	\$33,862
Kalkowski	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Krause	1.0800	\$28,486	Ind + SD	\$4,322	\$32,807
Kremke	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
McKeown	1.2100	\$31,914	No H/A-Cash	\$4,209	\$36,123
Nielson	1.3200	\$34,815	Ind + SD	\$4,322	\$39,137
Nye	1.6800	\$44,310	Dep + SD	\$11,825	\$56,135
Petersen	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Reeves	1.6800	\$44,310	No H/A-Cash	\$4,209	\$48,519
Roach	1.7200	\$45,365	No H/A-Cash	\$4,209	\$49,574
Ronhovde	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190

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**TABLE 4 (Cont'd)**

**STAFF SUMMARY WORKSHEET –  
ASHLAND-GREENWOOD**

<b>Name</b>	<b>Staff Index</b>	<b>Salary</b>	<b>Benefit</b>	<b>Benefit Costs</b>	<b>Total Costs</b>
Routley	1.6800	\$44,310	Ind + SD	\$4,322	\$48,632
Ryan	1.6000	\$42,200	No H/A-Cash	\$4,209	\$46,409
Schaffer	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Schroeder	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Seery	1.8700	\$49,321	Ind + SD	\$4,322	\$53,643
Shuler	1.6800	\$44,310	No H/A-Cash	\$4,209	\$48,519
Smith	1.3800	\$36,398	No H/A-Cash	\$4,209	\$40,607
Stewart	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Stock	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
Tipton	1.2100	\$31,914	Dep + SD	\$11,825	\$43,739
White	1.7200	\$45,365	Dep + SD	\$11,825	\$57,190
<b>TOTALS</b>	<b>68.7</b>	<b>\$1,811,171</b>		<b>\$365,590</b>	<b>\$2,176,773</b>

Exhibit 7

**TABLE 5**

**STAFF SUMMARY WORKSHEET –  
ELMWOOD-MURDOCK**

<b>Name</b>	<b>Staff Index</b>	<b>Salary</b>	<b>Benefit</b>	<b>Benefit Costs</b>	<b>Total Costs</b>
Allen	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Andel	1.2400	\$33,356	Ind + SD	\$4,518	\$37,874
Behrns	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Bell	1.8000	\$48,420	Dep + SD	\$12,404	\$60,824
Coshow	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Cover	1.1600	\$31,204	Dep + SD	\$12,404	\$43,608
Dietzel	1.5600	\$41,964	No H/A-Cash	\$4,209	\$46,173
Dwerlkotte	1.4000	\$37,660	No H/A-Cash	\$4,209	\$41,869
Ekhoff	1.2400	\$33,356	Dep + SD	\$12,404	\$45,760
Exner	1.4800	\$39,812	No H/A-Cash	\$4,209	\$44,021
Geise	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Guenther	1.1600	\$31,204	No H/A-Cash	\$4,209	\$35,413
Hegge	1.7600	\$47,344	Dep + SD	\$12,404	\$59,748

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**TABLE 5 (Cont'd)**

**STAFF SUMMARY WORKSHEET –  
ELMWOOD-MURDOCK**

<b>Name</b> 1.2400	<b>Staff Index</b> \$33,356	<b>Salary</b> Dep + SD	<b>Benefit</b> \$12,404	<b>Benefit Costs</b> \$45,760	<b>Total Costs</b> Hall
Hammer	1.0000	\$26,900	Ind + SD	\$4,518	\$31,418
Heard	1.6400	\$44,116	Dep + SD	\$12,404	\$56,520
Hohman	1.2000	\$32,280	Ind + SD	\$4,518	\$36,798
Holl	1.4000	\$37,660	No H/A-Cash	\$4,209	\$41,869
Houfek	1.4800	\$39,812	No H/A-Cash	\$4,209	\$44,021
Jeanssen	1.0000	\$26,900	Ind + SD	\$4,518	\$31,418
Johnson, T.	1.4000	\$37,660	No H/A-Cash	\$4,209	\$41,869
Johnson, W.	1.4800	\$39,812	Dep + SD	\$12,404	\$52,216
Jones	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Quiner	1.1200	\$30,128	Ind + SD	\$4,518	\$34,646
Kalkowski	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Krause	1.0400	\$27,976	Ind + SD	\$4,518	\$32,494
Kremke	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
McKeown	1.2400	\$33,356	No H/A-Cash	\$4,209	\$37,565
Nielson	1.2800	\$34,432	Ind + SD	\$4,518	\$38,950
Nye	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Petersen	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Reeves	1.5600	\$41,964	No H/A-Cash	\$4,209	\$46,173
Roach	1.5600	\$41,964	No H/A-Cash	\$4,209	\$46,173
Ronhovde	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Routley	1.5600	\$41,964	Ind + SD	\$4,518	\$46,482
Ryan	1.5600	\$41,964	No H/A-Cash	\$4,209	\$46,173
Schaffer	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Schroeder	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Seery	1.6400	\$44,116	Ind + SD	\$4,518	\$48,634
Shuler	1.5600	\$41,964	No H/A-Cash	\$4,209	\$46,173
Smith	1.3600	\$36,584	No H/A-Cash	\$4,209	\$40,793
Stewart	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Stock	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
Tipton	1.2000	\$32,280	Dep + SD	\$12,404	\$44,684
White	1.5600	\$41,964	Dep + SD	\$12,404	\$54,368
<b>TOTALS</b>	<b>64.7</b>	<b>\$1,740,968</b>		<b>\$380,671</b>	<b>\$2,121,639</b>

COMMISSION OF INDUSTRIAL RELATIONS

Exhibit 22

**TABLE 6**  
**OVERALL COMPENSATION ANALYSIS**

<b>School</b>	<b>Contract Days</b>	<b>Staff Index</b>	<b>Base Salary</b>	<b>Benefit Costs</b>	<b>Schedule Costs</b>	<b>Total Costs</b>
Conestoga	159	66.6200	\$26.100	\$470,471	\$2,023,111	\$2,493,582
Bennington	186	67.8287	\$26.750	\$403,101	\$1,804,663	\$2,207,764
Wahoo	186	69.1130	\$26.120	\$386,398	\$1,795,525	\$2,181,923
Ashland-Greenwood	185	68.6700	\$26.375	\$367,210	\$1,811,171	\$2,178,381
Yutan	185	66.7200	\$26.940	\$372,136	\$1,797,437	\$2,169,573
DC West	187	67.8000	\$27.650	\$278,939	\$1,854,620	\$2,133,559
Elmwood-Murdock	185	64.7200	\$26,900	\$389,393	\$1,740,968	\$2,130,361
Palmyra	185	63.7200	\$27,500	\$366,673	\$1,752,300	\$2,118,973
Weeping Water	184	66.2000	\$25,750	\$393,220	\$1,713,914	\$2,107,134
Syracuse-Dunbar-Avoca	185	70.0000	\$26,050	\$279,295	\$1,823,500	\$2,102,795
<b>Louisville</b>	<b>185</b>	<b>66.1650</b>	<b>\$27,540</b>	<b>\$344,829</b>	<b>\$1,822,156</b>	<b>\$2,166,985</b>
			MEAN	\$2,182,404		
			MEDIAN	\$2,151,566		
			MIDPOINT	\$2,166,985		

Exhibit 2

**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

THE STATE OF NEBRASKA,	)	Case No. 1142
	)	
Petitioner,	)	APPEAL OPINION
	)	AND ORDER
v.	)	
	)	
NEBRASKA ASSOCIATION	)	
OF PUBLIC EMPLOYEES/AFSCME	)	
LOCAL 61,	)	
	)	
Respondent.	)	

Filed August 14, 2007

**APPEARANCES:**

For Petitioner:           A. Stevenson Bogue and Jennifer R. Deitloff  
                                  McGrath North Mullin and Kratz, PC LLO  
                                  Suite 3700 First National Tower  
                                  1601 Dodge Street  
                                  Omaha, NE 68102

For Respondent:         Dalton W. Tietjen  
                                  1023 Lincoln Mall  
                                  Suite 202  
                                  Lincoln, NE 68508

**Before: Judges Orr, Blake, Burger (not participating), Lindahl and Cullan (En Banc)**

**ORR, J:**

**NATURE OF THE PROCEEDINGS:**

This matter comes before the Commission upon an appeal from the Special Master’s ruling dated February 14, 2007. This appeal was filed on March 15, 2007, by the State of Nebraska (hereinafter, “Petitioner” or “State”). On April 9, 2007 the Nebraska Association of Public Employees, AFSCME Local No. 61, (hereinafter, “Respondent” or “Union”), filed an answer. The Respondent is the bargaining agent for the eight separate state employee bargaining units under this action. The Union also filed an appeal on behalf of the Protective Services Bargain-

ing Unit, but such appeal to the Commission was withdrawn prior to the beginning of the trial.

The Petitioner and Respondent jointly stipulated as to the sole issue presented at trial. The parties requested the Commission to enter an order on the following issue: Whether the decision of the Special Master with respect to wages in each bargaining unit, except Protective Services, is significantly disparate from prevalent rates of pay as determined by the Commission pursuant to NEB. REV. STAT. §48-818.

In the current case, the Commission must determine whether to sustain or overrule the Special Master's ruling. In doing so, the Commission must review the State Employees Collective Bargaining Act.

### **JURISDICTION:**

The Commission finds that it has limited jurisdiction to decide the above issue. This jurisdiction is distinguishable from the Commission's general jurisdiction under NEB. REV. STAT. §48-818. Under the State Employees Collective Bargaining Act, the Special Master's powers are made clear in §81-1382 (2) and (3) as follows:

(2) No later than January 15, the parties in labor contract negotiations shall submit all unresolved issues that resulted in impasse to the Special Master. The Special Master shall conduct a prehearing conference. He or she shall have the authority to:

- (a) Determine whether the issues are ready for adjudication;
- (b) Accept stipulations;
- (c) Schedule hearings;
- (d) Prescribe rules of conduct for the hearings;
- (e) Order additional mediation if necessary; and
- (f) Take any other actions which may aid in the disposal of the action. The Special Master may consult with the parties *ex parte* only with the concurrence of both parties.

(3) The Special Master shall choose the most reasonable

final offer on each issue in dispute. In making such choice, he or she shall consider factors relevant to collective bargaining between public employers and public employees, including comparable rates of pay and conditions of employment as described in section 48-818. The Special Master shall not apply strict rules of evidence. Persons who are not attorneys may present cases to the Special Master. The Special Master shall issue his or her ruling on or before February 15.

The Special Master is directed to choose the "most reasonable" final offer and not the "most comparable." On the other hand, the Commission's authority to review is very narrow. The Commission's only authority is set forth in §81-1383(2) and (3) as follows:

(2) **The commission shall show significant deference to the Special Master's ruling** and shall only set the ruling aside upon a finding that the ruling is significantly disparate from prevalent rates of pay or conditions of employment as determined by the commission pursuant to section 48-818. The commission shall not find the Special Master's ruling to be significantly disparate from prevalent rates of pay or conditions of employment in any instance when the prevalent rates of pay or conditions of employment, as determined by the commission pursuant to section 48-818, fall between the final offers of the parties. (Emphasis added).

(3) If the commission does not defer to the Special Master's ruling, it shall enter an order implementing the final offer on each issue appealed which would result in rates of pay and conditions of employment most comparable with the prevalent rates of pay and conditions of employment determined by it pursuant to section 48-818. **Under no circumstances shall the commission enter an order on an issue which does not implement one of the final offers of the parties.** Nothing in this section shall prohibit the commission from deferring to the Special Master's ruling if it finds that the ruling would not result in significant disparity with the prevalent rates of pay and conditions of employment as it has determined pursuant to section 48-818. (Emphasis added).

Simply put, the State Employees Collective Bargaining Act extremely limits the action the Commission can take after determining comparabil-

ity. This statute incorporates both a reasonableness standard and a comparability standard. The Bargaining Act states that the Commission shall show significant deference to the Special Master's ruling unless the Commission determines that the ruling is significantly disparate.

### **STANDARD OF REVIEW:**

The Legislature purposely chose to establish a completely new method of resolving industrial disputes for state employees. The Bargaining Act gave the Special Master a broad spectrum of authority and gave the Commission limited review authority.

### **SPECIAL MASTER'S RULING:**

#### **Facts**

This action involves eight bargaining units: the Administrative Support Unit; the Administrative Professional Unit; Maintenance, Trades and Technical Unit; Health and Human Care Non-Professional Unit; Health and Human Care Professional Unit; Social Services and Counseling Unit; Engineering, Science and Resources Unit; and Examining, Inspection and Licensing Unit. In front of the Special Master, the parties agreed to rely upon the same group of six comparable employers for their final offers. These six comparable state government employers consist of the states of Colorado, Iowa, Kansas, Missouri, Oklahoma and South Dakota. The parties did not have any disagreement about the job matches. The bargaining period in question is from July 1, 2007 through June 30, 2009. The parties were unable to reach agreement on the sole issue of wages and pay plan administration, but were able to agree to all language and benefit issues. On February 3, 2007 a hearing was held by the Special Master, Mr. Peter Feuille. The Special Master issued his ruling on February 14, 2007. The ruling adopted the final offer of the Union for the eight bargaining units involved in this appeal, and adopted the State's final offer for the Protective Services Bargaining Unit. The State appealed the Special Master's ruling on March 15, 2007.

#### **Union's Total Offer**

For the 2007-2008 year, the Union's offer was: (1) Effective July 1, 2007, each classification pay range will be increased as indicated by Appeal Exhibit 2, Exhibit 4<sup>1</sup> except that no increase in the maximum or minimum of a range shall exceed 7.5 percent from the 2006-2007

<sup>1</sup> Appeal Exhibit 2 contains the majority of exhibits presented as they were numbered at the Special Master hearing.

ranges. (2) Effective July 1, 2007 all employees in classifications where the ranges are increased pursuant to (1) above shall receive an in-range wage increase. See the formula set forth in *Nebraska Public Employees Local Union 251 v. County of York*, 13 CIR 157, 159, Table 17 fn.(a) (1998). (3) During the 2007-2008 fiscal year, on employee anniversary dates each employee shall receive a 2.5 percent increase in their base salary. (4) For the 2008-2009 year, the Union's proposal sets forth the same three elements, effective July 1, 2008, with an increase in salary range minimum and maximum, capped at 7.5 percent; an increase in-range for employees in classifications where ranges are increased according to the *County of York*; and finally a 2.5% increase in each employee's base salary, except that no such increase shall cause an employee's salary to exceed the maximum of that Union's Appeal Exhibit 2, Exhibit 4 salary range. For both contract years, the Union's offer states that all minimum and maximum wage ranges for each classification shall be established per the classification assignments in Appeal Exhibit 2, Exhibit 4, and all minimum and maximum wage ranges that exceed the levels indicated by the negotiated State Salary Survey will remain at the 2006-2007 levels. In other words, the Union's proposal calls for freezing the pay ranges for the classifications that are at or above comparability as measured by the survey. These pay ranges will not be reduced, but neither will those ranges be increased.

### **State's Total Offer**

The State's offer proposes the following: (1) On July 1, 2007 each employee will receive a 2.5 percent increase in their base salary. See Appeal Exhibit 2, Exhibit 5. (2) On July 1, 2008 each employee will receive a 2.5 percent increase in their base salary. (3) On July 1, 2007 each salary range minimum and maximum will be increased by 2.5 percent. (4) On July 1, 2008 each salary rate in each Appendix B pay plan will be increased by 2.5 percent.

### **Special Master's Analysis**

The Special Master wrote a very well-crafted opinion, basing his decision upon the testimony presented and the exhibits received at trial. The Special Master found that the last best offer of the Union was the most reasonable. However, in addition to finding the Union's offer as the most reasonable, the Special Master actually found the Union's offer was the more comparable of the two offers, stating that the Union's last offer achieved comparability substantially better than the State's last best offer. In his findings, the Special Master acknowledged that he was charged with choosing the most reasonable offer under the State

Employees Collective Bargaining Act, yet ultimately he found that because Nebraska is a comparability state, comparability was the most important selection criterion in choosing between the two final offers. Basing his decision on comparability, the Special Master stated that, "Given the importance that Nebraska policymakers have attached to comparability, the most reasonable final offer in this proceeding will be the one that more closely or fully achieves comparability." The Special Master concluded that the Union's method of calculating comparability was far more reasonable than the State's method.

The Special Master held that the Union's proposal did a much better job of moving employees toward comparability than did the State's offer. The Special Master found that the flat 2.5 percent increase from the State did nothing, in effect, to bring the underpaid employees to comparability and that the State provided little evidence to the contrary. While the State's offer provided equal pay treatment for each employee, it did not provide equitable pay treatment for bargaining unit members in moving those employees toward comparability. In sum, the Special Master concluded that, "Given the importance of comparability in Section 81-1382(3) of the Bargaining Act and in Section 48-818 of the Industrial Relations Act, the State's offer of equal treatment for each employee is significantly outweighed by the Union's offer of equitable treatment for employees on the comparability criterion."

### **Commission's Analysis of Special Master's Ruling**

The Commission can only overrule the Special Master's decision if the decision does not accept the most comparable offer. See *State Law Enforcement Bargaining Council v. State of Nebraska*, 12 CIR 32 (1993). The Special Master's ruling fits well within the intent and spirit of NEB. REV. STAT. §48-818, as his decision is clearly based on comparability. The Special Master concluded that only one of the two final offers attempted to achieve at least some level of comparability for the below-market employees. At the appeal hearing in front of the Commission, the State presented no evidence that the Special Master was incorrect in his decision. Without any additional evidence to prove the Special Master was incorrect in his analysis that the Union's offer was not the more comparable, the Commission cannot overrule his decision. Since the Special Master clearly decided this case on both a reasonableness standard and a comparability standard, we must affirm his ruling.

### **CONCLUSION:**

Therefore, the Commission ORDERS that:

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1) The Respondent shall implement the Special Master's ruling in its entirety (with the exception of the Protective Services Unit, which is not an appeal in front of the Commission).

All judges assigned to the panel in this case join in the entry of this Appeal Opinion and Order.

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**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

DODGE EDUCATION	)	Case No. 1144
ASSOCIATION, An Unincorporated	)	
Association,	)	
	)	OPINION AND
Petitioner,	)	ORDER
	)	
v.	)	
	)	
DODGE COUNTY SCHOOL	)	
DISTRICT NO. 27-0046, a/k/a	)	
DODGE PUBLIC SCHOOLS, a	)	
Political Subdivision of the	)	
State of Nebraska,	)	
	)	
Respondent.	)	

Filed November 7, 2007

**APPEARANCES:**

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**Before: Commissioners Blake, Orr, and Lindahl****BLAKE, C:****NATURE OF THE PROCEEDINGS:**

Dodge Education Association (hereinafter, "Petitioner" or "Association") filed a wage petition on March 23, 2007, seeking resolution of an industrial dispute for the 2006-2007 contract year. The Association is a labor organization formed by teachers employed by Dodge County School District-No. 27-0046, a/k/a Dodge Public Schools (hereinafter, "Respondent" or "District") for the purpose of representation in matters of employment relations. The District is a political subdivision of the State of Nebraska and a Class III school district.

**JURISDICTION:**

The Commission has jurisdiction over the parties and subject matter of this action pursuant to NEB. REV. STAT. §48-818 (Reissue 1998) which provides in part:

...the Commission of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions...

**ARRAY:**

The Association proposes fifteen school districts for its array. The District proposes that fourteen school districts be used in its array. The common array members are Osmond, Elkhorn Valley (Tilden), St. Edward, Osceola, Allen, Newman Grove, Mead, Humphrey, Cedar Bluffs, Leigh, Clarkson, Howells, Prague, and Coleridge. The contested array member proposed by the Petitioner is Rising City.

In determining a proper array, the parties agree that the work, skills, and working conditions of Dodge Public Schools' teachers are sufficiently similar for comparison under NEB. REV. STAT. §48-818 (Reissue 1998) to all array members. The Commission has held that if potential array members share similar work, skills, and working conditions, the Commission will include all of the schools submitted in the array unless there is specific evidence that to do so would be otherwise inappropriate

# DODGE EDUC. ASS'N V. DODGE PUBLIC SCHOOL

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or would make the array unmanageable. *Geneva Educ. Ass'n v. Fillmore County School Dist. No 0075*, 11 CIR 38 (1990); *Lynch Educ. Ass'n v. Boyd County School Dist. No. 0036*, 11 CIR 25 (1990). Even in such cases, the Commission does not disregard the size and geographic guidelines. See, *Id.* The Commission need not consider every conceivable comparable, but only “a sufficient number in a representative array so that it can determine whether the wages paid or the benefits conferred are comparable.” *Nebraska Pub. Employees Local Union 251 v. County of York*, 13 CIR 157 (1998).

Both the Petitioner and the Respondent agreed to the fourteen common array schools. All fourteen are in very close proximity and within the size comparison to Dodge. All fourteen schools will be included in the array. While the common fourteen array schools are certainly sufficient, the Respondent has only cited a “truncated” school year as the reason to exclude Rising City. All indicia generally used by the Commission point toward including Rising City in the array. For example, Rising City is only 42 miles from Dodge and six other array schools have been agreed upon to be included that are farther away geographically. Rising City is also nearly identical in population to Dodge. The mathematical calculations can adequately make the adjustments. Therefore, the Commission’s array will consist of the fifteen array members of: Osmond, Elkhorn Valley (Tilden), St. Edward, Osceola, Allen, Newman Grove, Mead, Humphrey, Cedar Bluffs, Leigh, Clarkson, Howells, Prague, Coleridge, and Rising City.

## **FRINGE BENEFITS:**

### **Health Insurance**

The Petitioner argues that for the 2006-2007 school year health insurance should continue to be distributed as it was under the 2005-2006 negotiated agreement. Whereas, the Respondent asserts that all certificated employees should receive identical fringe benefits according to the Fourteenth Amendment of the United States Constitution, the Nebraska State Constitution, NEB. REV. STAT. §48-1104, and NEB. REV. STAT. §48-1107. The Respondent argues that married employees receive a greater financial benefit than single employees.

Under the current 2005-2006 negotiated agreement, the Dodge County School District provides full payment of either dependent or individual health insurance, depending on the employee’s eligibility. The facts presented at trial also show that contrary to the argument of Respondent, married employees do not receive more than single

employees. The employer does spend more dollars for benefits for married employees than for single employees. Even though the single employee is not able to take full advantage of the available benefit, that in no way injures the single employee nor does it enrich the married employee. For example, this situation can easily be compared to a situation where an extremely healthy and careful employee does not take full advantage of the health insurance plan itself as compared to an unhealthy, accident prone employee who utilizes the value of the health insurance more often. All employees at Dodge equally receive the benefit of health insurance.

Furthermore, the Respondent's argument would affect the overall distribution of dollars used for employee wages and benefits. If total benefit dollars were to be distributed on a per capita basis, then accordingly the new total dollars affects the base salary by increasing or reducing the amount of total compensation, through requiring that married and unmarried employees receive the same number of dollars for fringe benefits.

The arguments at trial were couched generally in terms of married and single employees, which is not entirely correct. It is clear from the evidence presented that the distinction lies between those with legal dependents and those without. While the Respondent offers the Commission several rather intriguing arguments, the Respondent does not cite any Nebraska Commission or general Nebraska case law in support of its Constitutional argument, nor does the Respondent cite any case law from other jurisdictions to support the Constitutional argument.

Typically, the Commission would determine the amount of benefits provided by conducting a prevalency analysis. The Respondent does not request such an analysis and even if the Commission were to perform such analysis, the evidence presented by the Petitioner clearly shows the method currently in place is the prevalent practice. The Respondent's argument challenges a longstanding, widespread practice. However, we do not have the appropriate statutory authority to change the present practice.

While the Respondent argues that we are only being asked to apply the Constitutional and statutory laws, and not to enter declaratory relief, the Commission is an administrative agency, not a court of general jurisdiction. See *Central Neb. Educ. Ass'n v. Central Tech. Community College Area*, 6 CIR 237 (1982); *State Code Agencies v. Department of Public Welfare*, 7 CIR 217 (1984). *Aff'd*. 219 Neb. 555, 364 N.W.2d 44 (1985). This is not the correct forum in which to seek an initial decision. The Commission could not purport to rearrange the distribution health care benefit without first declaring the current widespread method

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unlawful. The Commission has no such authority. While we have briefly outlined the arguments above, we do so only for sake of discussion of the issue. Our discussion above is merely for the purpose of adequately setting forth the facts, recognizing our lack of jurisdiction. Therefore, because of the above expressed reasons, health insurance for the 2006-2007 school year shall continue in the same manner as has been paid.

**BASE SALARY:**

Table 1 sets forth the relevant information for determining the appropriate base salary. The midpoint of the total compensation \$816,929 minus the cost of fringe benefits of \$168,205 equals \$648,724 which, when divided by the new total staff index factor of 25.4913, equals a base salary of \$25,449 for the 2006-2007 school year.

**IT IS THEREFORE ORDERED THAT:**

1. The Respondent shall pay the teachers a base salary of \$25,449 for the 2006-2007 school year.
2. Health insurance for the 2006-2007 school year shall continue in the same manner as has been paid.
3. All other terms and conditions of employment for the 2006-2007 school year shall be as previously established by the agreement of the parties and by the Opinion and Order of the Commission.
4. Adjustments in compensation resulting from this order shall be paid in a single lump sum payable within thirty (30) days of this final order, if possible.

All commissioners join in the entry of this order.

**TABLE 1**  
**OVERALL COMPENSATION ANALYSIS**

School	Contract Days	Staff Index	Base Salary	Benefit Costs	Schedule Costs	Total Costs
Rising City	173	26.8663	\$24,750	\$160,391	\$711,064	\$871,455
Cedar Bluffs	185	25.0450	\$26,850	\$179,807	\$672,458	\$852,265
Allen	185	25.4300	\$26,000	\$163,017	\$661,180	\$824,197
Osceola	185	25.7581	\$25,700	\$162,129	\$661,983	\$824,112
Elkhorn Valley	185	24.7075	\$26,500	\$168,622	\$654,749	\$823,371
Howells	185	25.5450	\$27,200	\$126,675	\$694,824	\$821,499
Clarkson	184	25.6450	\$24,750	\$181,353	\$638,163	\$819,516
Osmond	185	25.3575	\$25,800	\$162,153	\$654,224	\$816,376
Mead	185	25.8050	\$25,300	\$162,341	\$652,867	\$815,208
Coleridge	185	25.5500	\$25,125	\$170,226	\$641,944	\$812,170
Humphrey	185	25.9500	\$24,775	\$161,463	\$642,911	\$804,374
Newman Grove	185	25.9500	\$24,800	\$155,223	\$643,560	\$798,783
St. Edward	183	25.2931	\$24,750	\$163,001	\$632,846	\$795,847
Leigh	185	25.3050	\$25,000	\$160,031	\$632,625	\$792,656
Prague	185	25.0050	\$24,750	\$171,518	\$618,874	\$790,391
<b>Dodge</b>	<b>185</b>	<b>25.4913</b>	<b>\$25,449</b>	<b>\$168,205</b>	<b>\$648,724</b>	<b>\$816,929</b>
			MEAN	\$817,481		
			MEDIAN	\$816,376		
			MIDPOINT	\$816,929		

Exhibit 2c

CITY OF GRAND ISLAND, NEB. V. INT'L ASS'N OF  
FIREFIGHTERS LOCAL 647

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**NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS**

THE CITY OF GRAND ISLAND,	)	Case No. 1161
NEBRASKA,	)	
	)	
Petitioner,	)	ORDER ON REQUEST
	)	FOR TEMPORARY
v.	)	RELIEF
	)	
INTERNATIONAL ASSOCIATION	)	
OF FIREFIGHTERS LOCAL UNION	)	
NO. 647,	)	
	)	
Respondent.	)	

Filed October 15, 2007

**APPEARANCES:**

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**Before: Judges Orr, Burger and Lindahl**

**ORR, C:**

This matter comes before the Commission upon the Petitioner's Request for Temporary Relief in its Amended Petition filed on October 3, 2007. A telephonic hearing was held on October 9, 2007 before the Honorable Jeffrey L. Orr for the purpose of allowing the parties to present their arguments regarding the Petitioner's request that the Commis-

sion order the Respondent to withdraw the Notice of Claim filed with the Grand Island City Clerk and also to withdraw the Complaint filed in the District Court for Hall County as well as an immediate cease and desist order requiring the same.

The Petitioner argues that it was a prohibited practice under NEB. REV. STAT. §§48-819 and 48-825 for the Respondent to file a declaratory judgment on several of the issues raised in Case No. 1130. The Respondent argues the Commission should dismiss the prohibited practice claim.

This is not the first time this argument has been brought to the Commission. In *City of Grand Island Nebraska v. Ronald Teichmeier, Int'l Ass'n of Firefighters Local No. 647, and Randy Throop*, 12 CIR 321 (1997), the Petitioner argued that all of the Respondents had committed a prohibited practice within the meaning of NEB. REV. STAT. §48-824(3)(b) and (c) (Supp. 1995) by:

Filing a declaratory judgment action in the District Court of Hall County, Nebraska seeking to repudiate the permanent residency requirements of the contract between the Petitioner and Respondent Local 647; and Requesting injunctive relief in the District Court of Hall County, Nebraska to enjoin the enforcement of the permanent residency requirements of the contract between the Petitioner and Respondent Local 647.

The Commission analyzed the Petitioner's case stating that any attempt by the Commission, directly or indirectly, to force the dismissal of the District Court action was beyond the power of the Commission. While the Commission noted that it was flattered by the Petitioner's suggestion that the Commission has the power to require a termination of proceeding in the District Court, the Commission declined to embark on implementing such thoughts, stating that such invitations must come from constitutional amendments. The Commission laid forth its jurisdictional beginnings as the Commission, originated from Article XV, Section 9, of the Constitution of the State of Nebraska and from statutes adopted by the Nebraska Legislature implementing the Constitutional provisions. The Commission succinctly commented that nowhere in the Constitution is the Commission given any power or authority to directly or indirectly order dismissal of any action pending in any court of the State of Nebraska. The Commission then stated that the Constitution clearly does not include the Commission in the judicial branch of state government and specifically prohibits any exercise of power belonging to the

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judiciary. The Commission found that for the Commission to attempt, directly or indirectly, to require dismissal of an action pending in the judicial branch of state government it would be in violation of the Constitution's separation of powers provisions. Accordingly, the Commission determined that Teichmeier's right to seek relief in the District Court of Hall County, Nebraska, cannot be limited or controlled by this Commission. The Commission stated that any attempt to accomplish such a result indirectly was also beyond the constitutional powers of the Commission. The Commission concluded that in light of its lack of jurisdiction, there was no need to reach the other issues presented by the pleadings or evidence. Therefore, the Commission denied the Petitioner's request and dismissed the Petitioner's Petition.

Furthermore, in *Transport Workers v. Transit Authority of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984), the Nebraska Supreme Court found that district courts are the proper forum to enforce temporary orders of the Commission. In *Transport Workers*, the parties negotiated for a new contract while under an existing contract that was to end on June 30, 1983. On June 30th the parties declared impasse and the Transport Workers Union filed a wage petition and a request for a temporary order requiring the employer to maintain the employment status of the employees. On July 1, 1983 the employer implemented unilateral changes as to uniform and tool allowances. On July 13th the Commission issued a temporary order stating that "the employment status of employees shall not be altered in any way pending disposition of the Petition herein by the Commission." After the Commission's order was entered the employer then made an additional change to the existing terms and conditions of employment. The employees then sought a district court order enforcing the Commission's temporary order. The district court denied the employees' request and the employees appealed to the Supreme Court.

In *Transport Workers*, the Supreme Court reversed and remanded finding that the district court should have entered orders carrying out the orders entered by the CIR. The Supreme Court succinctly stated what it determined the issue to be in the first sentence of the *Transport Workers* opinion, "we are asked to determine what if any authority the Commission of Industrial Relations (CIR) has to enter temporary orders concerning wages, hours, and terms and conditions of employment while the CIR is attempting to resolve a labor dispute *pending* before it. (emphasis supplied)" 216 Neb. at 455.

The instant case is similar to *City of Grand Island Nebraska v. Ronald Teichmeier, Int'l Ass'n of Firefighters Local No. 647, and Randy Throop,*

12 CIR 321 (1997). Neither the Commission's statutes nor the Constitution of Nebraska have been amended since 1997 regarding its jurisdiction as it relates to this case. The Commission still clearly does not have the jurisdictional authority to directly or indirectly provide such relief to the Petitioner. Furthermore, it is clear according to *Transport Workers* that filing a declaratory judgment with the District Court of Hall County is an appropriate forum, as the Commission does not have Case 1130 currently pending before it. Therefore, the Commission finds that in light of its lack of jurisdiction, there was no need to reach the other issues presented by the pleadings or evidence.

The Respondent also requests attorney fees in its answer. The Commission finds that the evidence does not rise to the level of awarding such fees. Therefore, the Commission denies the Respondent's request for attorney fees.

IT IS, THEREFORE, ORDERED that the Petitioner's request for relief should be, and hereby is, denied and that the Petitioner's Petition should be, and hereby is, dismissed. The Commission also denies Respondent's request for attorney fees.

All commissioners assigned to the panel in this case join in the entry of this Order.

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## **CASES CURRENTLY ON APPEAL**

Case No. 1099

Omaha Police Union Local 101, IUPA, AFL-CIO v. City of Omaha, a Municipal Corporation, and Chief of Police, Thomas Warren, 15 CIR 281 (2007). Appealed November 28, 2007.

Case No. 1144

Dodge Education Association, an Unincorporated Association v. Dodge County School District No. 27-0046, a/k/a Dodge Public Schools, a Political Subdivision of the State of Nebraska, 15 CIR 372 (2007). Appealed December 4, 2007.

## **APPELLATE DECISIONS DISMISSED SINCE 15 CIR 117**

Case No. 1061

Regina Davis, Dawn Russell-Cummings, Danielle Matthews, Tina Meyers, Delores Simpson, Chantella Wallace, Jack Nelson, and Johnnie Mann v. Fraternal Order of Police Lodge No. 8 of Douglas County, Nebraska, 15 CIR 1 (2004), Affirmed, 15 Neb. App. 470, 731 N.W.2d 901 (2007).

Case No. 1084

Rep. Doc. No. 388

State Law Enforcement Bargaining Council v. State of Nebraska, 15 CIR 84 (2005). Reversed by Court of Appeals, May 22, 2007.

Case No. 1046

Hyannis Education Association, an Unincorporated Association v. Grant County School District No. 38-0011, a/k/a Hyannis High School, a Political Subdivision of the State of Nebraska, 15 CIR 117, 15 CIR 136 (2006), Reversed and Remanded with Directions, 274 Neb. 103, 736 N.W.2d 726 (2007).

Case No. 1099

Omaha Police Union Local 101, IUPA, AFL-CIO v. City of Omaha, a Municipal Corporation, and Chief of Police, Thomas Warren, 15 CIR 226 (2006), Affirmed in part, in part Reversed and Remanded with Directions, 274 Neb. 70, 736 N.W.2d 375 (2007).

Case No. 1130

International Association of Firefighters, Local Union No. 647 v. City of Grand Island, Nebraska, a Municipal Corporation, page 324.

Case No. 1137

Omaha Police Union Local 101, IUPA, AFL-CIO v. City of Omaha, a Municipal Corporation, Chief of Police, Thomas Warren, Sr., page 355.

Case No. 1138

Winside Education Association, an Unincorporated Association v. Wayne County School District No. 90-0595, a/k/a Winside Public Schools, a Political Subdivision of the State of Nebraska, page 362.

Case No. 1141

Louisville Education Association, an Unincorporated Association v. Cass County School District No. 13-0032, a/k/a Louisville Public Schools, a Political Subdivision of the State of Nebraska, page 368.

Case No. 1142

The State of Nebraska v. Nebraska Association of Public Employees/AFSCME Local 61, page 383.

Case No. 1144

Dodge Education Association, an Unincorporated Association v. Dodge County School District No. 27-0046, a/k/a Dodge Public Schools, a Political Subdivision of the State of Nebraska, page 389.

Case No. 1161

The City of Grand Island, Nebraska v. International Association of Firefighters Local Union No. 647, page 395.