

SUPREME COURT OF NEBRASKA

**Nebraska Protective Services Unit, Inc., doing business as Fraternal  
Order of Police Lodge #88 v. State of Nebraska and Nebraska  
Association of Public Employees, Local 61 of the American  
Federation of State, County and Municipal Employees  
(NAPE/AFSCME)**

299 Neb. 797 (2018) · No. No. S-17-916 · Decided April 26, 2018

SUMMARY

The Nebraska Supreme Court affirmed the Commission of Industrial Relations' dismissal of a decertification petition filed by Nebraska Protective Services Unit, Inc. The court held that the petition was untimely under Commission rule 9(II)(C)(1), which required a public employee bargaining unit to file during the period preceding the statutorily required bargaining period when that period occurred earlier than the agreement-termination period.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nebraska                                                                                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Funke, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Derr, District Judge; Urbom, District Judge                                                                                                                                                                                                                                                    |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                                                                            |
| DECIDED               | April 26, 2018                                                                                                                                                                                                                                                                                                                                                      |
| DOCKET                | No. S-17-916                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Appeal from the Commission of Industrial Relations after the CIR dismissed NPSU's petition seeking decertification of NAPE/AFSCME and certification of NPSU as the collective bargaining representative for the protective service bargaining unit. The appeal was initially filed in the Nebraska Court of Appeals and then removed to the Nebraska Supreme Court. |
| STANDARD OF REVIEW    | Under Neb. Rev. Stat. § 81-1387(4), an order or decision of the Commission of Industrial Relations may be modified, reversed, or set aside only on specified statutory grounds. Legal questions involving the meaning and interpretation of statutes and regulations are reviewed                                                                                   |

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|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | independently, while an agency's interpretation of its own regulations receives deference unless plainly erroneous or inconsistent.                                                                                                                       |
| <b>PRECEDENTIAL VALUE</b> | Published Nebraska Supreme Court opinion; precedential                                                                                                                                                                                                    |
| <b>PARTIES</b>            | Nebraska Protective Services Unit, Inc., doing business as Fraternal Order of Police Lodge #88 v. State of Nebraska, Nebraska Association of Public Employees, Local 61 of the American Federation of State, County and Municipal Employees (NAPE/AFSCME) |

## TOPICS

administrative law   judicial review of agency action   collective bargaining   labor law  
statutory interpretation

## PRACTICE AREAS

administrative law   labor law   collective bargaining   appellate procedure

## QUESTIONS PRESENTED

1. Whether NPSU timely filed its petition for decertification and certification under Rule 9(II)(C)(1) of the Rules of the Nebraska Commission of Industrial Relations.
2. Whether the CIR erred by refusing to order an election.
3. Whether the CIR erred by dismissing NPSU's petition.

## HOLDINGS

1. Rule 9(II)(C)(1) permits filing within one of the two stated periods, but the phrase 'whichever is earlier' limits a particular party to the period that occurs earlier under the circumstances applicable to that party.
2. Public employee bargaining units subject to the State Employees Collective Bargaining Act must file a decertification petition during the period preceding commencement of the statutorily required bargaining period in Neb. Rev. Stat. § 81-1379. NPSU's petition was time barred, so the CIR properly denied an election and dismissed the petition.

## KEY QUOTATIONS

*“Therefore, for each agreement, contract, or understanding subject to rule 9(II)(C)(1) and a statutory bargaining period, a particular party may file a petition only within the period that occurs earlier in its particular circumstances.” (804)*

*“In the case of public employee bargaining units, created pursuant to the State Employees Collective Bargaining Act, the only period available to file a petition is the period preceding the commencement of a statutorily required bargaining period.” (805)*

## FACTUAL BACKGROUND

NAPE/AFSCME had been the certified exclusive bargaining agent for the State's protective service bargaining unit since 1991. The State and NAPE/AFSCME negotiated and ratified a 2017-19 collective bargaining agreement after negotiations began in September 2016. NPSU formed in October 2016 and filed a decertification and certification petition with the CIR on March 3, 2017; although it obtained signatures from 43 percent of bargaining-unit employees, the CIR found the petition untimely under rule 9(II)(C)(1).

#### PROCEDURAL HISTORY

NPSU filed a petition with the Commission of Industrial Relations on March 3, 2017, requesting a combination election to decertify NAPE/AFSCME and certify NPSU. The CIR found that NPSU had made a sufficient showing of interest but dismissed the petition as untimely under CIR rule 9(II)(C)(1). NPSU appealed, and the matter was removed from the Nebraska Court of Appeals to the Nebraska Supreme Court, which affirmed the CIR.

#### DISPOSITION

affirmed

#### CASES CITED

- In re Estate of Vollmann, 296 Neb. 659, 896 N.W.2d 576 (2017)
- Melanie M. v. Winterer, 290 Neb. 764, 862 N.W.2d 76 (2015)
- Douglas County Health Center Security Union v. Douglas County, 284 Neb. 109, 817 N.W.2d 250 (2012)
- In re Petition of Golden Plains Services Transportation, 297 Neb. 105, 898 N.W.2d 670 (2017)
- Liddell-Toney v. Department of Health & Human Services, 281 Neb. 532, 797 N.W.2d 28 (2011)
- State v. Rask, 294 Neb. 612, 883 N.W.2d 688 (2016)