## **Contract Interpretations**

#### 2021-2023 NAPE/AFSCME – State of Nebraska Labor Contract

The following interpretations are provided by the DAS-Employee Relations Division to assist agencies and teammates in understanding the various labor contract provisions of the NAPE/AFSCME – State of Nebraska Labor Contract. These interpretations do not encompass every possible question or aspect of the listed or unlisted Labor Contract sections, nor do they list every possible reference. Rather, they represent frequently asked questions or important inquiries that have come into the Employee Relations Division over the years. Any clarifying questions or questions related to matters not specifically addressed in these interpretations should be addressed to the Employee Relations Division. Teammates are encouraged to view other guidance documents on the Employee Relations <u>website</u>, as well as the Labor Contracts themselves.

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## Article 1 – Preamble

This Article serves as the Preamble to the entire Labor Contract. Topics included here are the applicable dates for the contract, the zipper clause, and the relationship between the union and the State.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
1.5	Work Rules and Policies	If an agency is making adjustment to existing work rules or establishing new work rules, the union must be made aware at least 7 calendar days prior to the effective date. This is to allow the union the opportunity for comment, and to allow them to be prepared should questions come in from teammates. An agency is not required to wait until some form of "approval" is received from the union. Employee Relations shall submit these changes to the union and will advise agencies if concerns from the union or State Personnel.	

## Article 2 – Recognition and Union Security

This Article outlines how NAPE/AFSCME is the sole bargaining representative for the teammates covered by this Labor Contract and various related procedures. Topics included here are who is covered by the contract, union membership dues, bulletin boards, and union meetings with teammates.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
2.12	Bulletin Boards	<ul> <li>Stewards are authorized to post items on bulletin boards. In areas where no steward is designated, the union may certify specified teammates as Bulletin Board Representatives.</li> <li>The union may send notices via the state authorized e-mail system only as outlined in this section, and only via the Employee Relations Division.</li> </ul>	
2.17	Grievance Filing	Teammates may use email, copiers, fax machines and computers for the purpose of filing a grievance under Article 4. However, equipment use is limited to non-work time, must be brief in duration and frequency, and cannot interfere with their work or cause disruptions.	

## Article 3 – Management Rights

This Article outlines management rights, including the statement that it has the right to operate and direct teammates to the extent there is no conflict with legal requirements and that matters have not been modified by the contract.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
3	Email Monitoring	Management retains the right to monitor emails for business purposes.	Chapter 1.03

#### Article 4 – Grievance Procedure

This Article outlines the grievance procedure and the requirements therein. Topics included here are the grievance steps, grievance timeframes, grievance filing instructions, the Mini-Hearing process, voluntary and binding arbitration, the State Personnel Board, the discovery process, and subpoenas.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
4.7.2	Mini-Hearing	If a teammate travels to attend his/her mini- hearing, they should first be informed that they can participate via conference or video call with approval of the Employee Relations Administrator or Designee. Only in cases where the agency agrees will travel time be paid, and only for those hours cutting across the normal workday. Actual time in the mini- hearing is always considered work time.	
4.9	Witness	An agency is only required to pay reasonable expenses, including when the grievant or union calls a witness that the agency has not called. The agency should determine the most cost-effective mode of transportation and advise the witness.	Chapter 14.008.03(A)(vii)

## Article 5 – Layoffs and Resignations

This Article outlines matters related to reductions in force or furloughs. Topics included here are the layoff procedure and inherent criteria and timeframes, bumping options, the recall process, the reemployment program, and resignations.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
5.1	Layoff	Changing an occupied position from full- time to part-time is considered a reduction in force or layoff for that teammate.	Chapter 12.03
5.6	Bumping	A "specific job-related factor" would be a skill, knowledge or other aspect that could not be taught via training or other methods within a few months' time.	
5.18	Resignations	If a teammate submits a valid resignation with the proper notice and his/her last day of work is a State holiday, the teammate should be paid for the holiday.	Chapter 16.08

#### Article 6 – Union Representatives

This Article discusses union representatives, both those who work directly for the union organization as well as those who are state teammates performing union functions. Topics included here are union stewards and their duties, allowable activities of union employees/representatives, and new teammate union orientation.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
6.4	Steward Time	While a steward can use their 12 hours of steward time to represent a grievant, the hours must cut across their normal work time. A steward is not allowed to use a State vehicle to travel to a grievance meeting, nor can mileage reimbursement be requested. Supervisors should monitor the use of the 12 hours, including ensuring only one steward works on a grievance at a time, and that space is available in the building.	

### Article 7 – Work Schedule

This Article outlines various matters related to work schedules and pay benefits specific to scheduling situations. Topics included here are work schedule definitions, work schedule adjustments, flex time, meal and rest periods, shift differentials, on-call and call-back pay, and travel reimbursements such as mileage and meals.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
7.7	Shift Differential	Shift differential should be used in the calculation of overtime.	
7.8	Call-Back Time	<ul> <li>When a teammate receives call-back time the agency may require that the teammate perform work for the full two hours, even if the initial task that triggered the call-back time does not take that long.</li> <li>Call-back time is not applied to a compensatory time bank.</li> </ul>	
7.10	Travel Time to a Different Worksite	This section was intended to pay travel time to teammates traveling from their city of residence to a worksite in another city. It was not intended for time traveling to an airport from a residence to attend a conference or conduct air travel.	Chapter 8.07
7.13	Governor Appointments	If a teammate is appointed by the Governor to serve on a committee, board or other body, time spent attending conferences or meetings of allied groups is not considered work time- only time spent traveling to and participating in actual meetings of the body count as work time.	Chapter 9.16

## Article 8 – Original Probationary Period

This Article discusses original probation, including when it applies, how job changes impact it, management options during the probationary period, and criteria for modification or extension.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
8.1	Original Probation	A teammate is not required to serve an original probation due to being reclassified. If a teammate comes from outside the Classified Personnel System (i.e. Constitutional Agency) they may be required to serve an original probation.	Chapter 5.01
8.2	Transfer	There is no prohibition on a teammate promoting/transferring to another position even if they have just been promoted/transferred.	Chapter 5.04
8.5	Original Probation	While a teammate can be separated at any time during original probation and does not have grievance rights, cause must exist as teammates still have rights under EEO laws, FLSA, FMLA, etc.	Chapter 5.03

### Article 9 – Transfers, Promotions, and Filling Vacant Positions

This Article outlines the filling of positions by new and current teammates. Topics included here are the posting and filling of vacant positions, including the criteria for doing so, promotional probation, the transfer of teammates, and moving allowance/expenses.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
9.1	New Positions	<ul> <li>If an agency creates new functions, it should create new positions and post them for applications.</li> <li>When factoring seniority between candidates, it does not matter if the applicants are from different agencies.</li> </ul>	Chapter 3
9.5	Seniority	Classification seniority for the purposes of this section is considered time worked since the time the teammate was most recently hired by the State.	

### Article 10 – Discipline or Investigatory Suspension

This Article outlines matters related to the disciplinary process. Topics included here are the grounds for taking disciplinary action, investigatory suspension or reassignment, investigatory meetings, and timeframes for taking disciplinary action.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
10.2	Job Abandonment	If a teammate abandons their position, the agency should proceed through the disciplinary process.	
10.3	Investigatory Suspension	<ul> <li>If an investigatory suspension goes beyond 10 workdays it will impact the teammate's benefits, which should be communicated to the teammate.</li> <li>An agency is only required to pay back the days of investigatory suspension (up to a maximum of 6 days per section b.) if the teammate is found not to have committed the violations alleged.</li> </ul>	Chapter 13.02
10.6	Representation	Teammates are allowed to be represented at investigatory meetings that could lead to discipline—this would include interviews or meetings part of an investigation as well as the pre-discipline meeting. Teammates are not allowed representation at regular supervisory meetings (i.e., one-on-one), even if they are being counseled and/or coached.	

	-	wage matters. Topics included here are bonuses promotion and demotion wage formulas, in-gr and nurse compensation. Interpretation Info	
11.8/11.9	Promotion or Demotion	<ul> <li>If there is a break in service between a teammate leaving one position and accepting another position in the State, then the teammate is considered a new hire and the promotion/demotion sections are not applicable.</li> <li>If a teammate is moving from a position covered by one contract to a position covered by a different contract, or from a Rules-covered position to a contract-covered and vice versa, the new position's covering document shall be utilized.</li> </ul>	Chapter 7.03
11.10	Rehire	The intent of this section is for rehiring teammates into the same agency that they were with formerly.	
11.11	In-grade Adjustment	Any in-grade or above hire adjustment must be approved by State Personnel. The forms and criteria for such adjustments are on the State Personnel website.	In-grade Forms Chapter 7.01.02 and 7.04

# Article 11 – Wages

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#### Article 12 – Overtime

This Article discusses overtime and related matters. Topics included here are the process for scheduling overtime, the rate of pay for overtime, the form of overtime compensation, compensatory time, and options for teammates exempt under the FLSA.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
12.6	Overtime Approval	Overtime is to be authorized in advance, however the FLSA requires payment of all hours worked even if those hours constitute overtime that was not authorized. Teammates should be advised that if they violate directives and do not get authorization for overtime it can be cause for disciplinary action.	Chapter 8.03
12.8	Compensatory Time	<ul> <li>Agencies may pay cash for incurred overtime expenses at any time, but it must be after the teammate has chosen cash or compensatory time.</li> <li>Agencies may require that teammates utilize compensatory time instead of vacation or sick leave, particularly when the teammate is approaching the cap on their compensatory bank.</li> <li>Compensatory time is paid out at the rate of pay the teammate is currently earning, not at the rate of pay at which it was earned.</li> </ul>	Chapter 8.06

## Article 13 – Insurance

This Article discusses health insurance and other related benefits. Topics included here are health insurance, life insurance, dental/vision insurance, long-term disability insurance, and accidental death & dismemberment insurance.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
13.1	Health Insurance	The deductibles, out-of-pocket maximums, and other information in this section is for one health insurance option. Teammates should check the most recent Open Enrollment Options Guide for a full accounting of Health Insurance and other benefits, available on the Wellness & Benefits Division webpage.	<u>Wellness &amp; Benefits</u>

#### Article 14 – Authorized Leave

This Article deals with all forms of authorized leave, including how it is earned, when it is used, and how it is paid. Topics included here are holidays, working on a holiday, vacation leave, sick leave, FMLA, the Maternity Leave Donation and Catastrophic Leave Donation Programs, injury leave, bereavement leave, military leave, and leaves of absence.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
14.1	Holidays	<ul> <li>A holiday is an 8-hour benefit regardless of the length of a teammate's normally scheduled workday.</li> <li>A teammate receives a holiday if they are in an approved, paid status at any part the day before and the day after a holiday. Unpaid FMLA is not an approved, paid status, although FMLA supplemented with paid leave would be acceptable. Approved leave of absence or leave without pay also counts, as state statute allows an exception for a supervisory excused absence.</li> <li>If a teammate is scheduled to work on a holiday and must take it off, they receive holiday pay but would not also receive other paid leave such as sick or vacation.</li> </ul>	Chapter 9.03 <u>Nebraska Rev. State</u> <u>Statute § 62-301</u> <u>Nebraska Rev. State</u> <u>Statute § 84-1001</u>
14.4	Work on a Holiday	<ul> <li>If a teammate is off on an observed holiday and then works on the actual holiday per the calendar, the work time on the actual holiday would be considered the same as any other workday unless they are in overtime status.</li> <li>If a teammate is working on a holiday, they are earning the holiday premium pay rates, and therefore are meeting or exceeding the pay rates required for overtime.</li> <li>Holiday hours count towards the calculation of overtime for NAPE teammates, and where time actually worked overlaps with those hours</li> </ul>	Chapter 9.03.02

		the time actually worked does not also count towards overtime, although it would count towards the teammate's FTE. Any hours worked beyond the holiday hours would then count towards the calculation of overtime. This prevents the same hour/s being counted twice for OT purposes- once as a holiday benefit and once actually worked.	
14.6 & 14.11	Vacation and Sick Leave	<ul> <li>If a teammate uses sick or vacation leave during a workweek and then goes on to work extra hours later in the week, the agency shall credit back that number of hours in paid leave to the teammate ("back out" the paid leave).</li> <li>State College service counts towards leave accrual rates and sick leave can be transferred, however it must be recalculated and set at what the teammate would have earned under the Classified Personnel System.</li> </ul>	Chapter 9.04, 9.07 and 9.08
14.7	Vacation Leave Carryover	<ul> <li>The carryover of vacation leave is not meant for all circumstances. The Governor determines criteria by which requests for carryover are evaluated, and requests must be approved by the union and the Administrator of Employee Relations.</li> <li>Vacation leave carryover is predicated on 8-hour workdays, and therefore the 35 days is 280 hours.</li> </ul>	Chapter 9.04.01 <u>Nebraska Rev. State</u> <u>Statute § 81-1328</u>
14.9	Catastrophic Illness Donations	<ul> <li>Agencies should only request the number of hours required per request, with the option to request more later as needed. Once hours have been donated, they become part of the recipient's permanent sick leave bank.</li> <li>The 30-day absence requirement is predicated on 8-hour workdays and is therefore 240 hours absent as a result of the illness or injury.</li> <li>The 1200-hour cap on this program is for the number of hours received</li> </ul>	Chapter 9.05

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		<ul> <li>after conversion, not the number of hours actually donated.</li> <li>Agencies can work with a teammate to prepare for participation in this program in advance to ensure leave is available once eligibility criteria are met.</li> </ul>	
14.11	Sick Leave	<ul> <li>If a teammate is out of sick leave the agency can work with the teammate to identify other leave options. Vacation leave is not immediately required.</li> <li>Under an approved FMLA, sick leave can be used for the purposes of "paternity leave."</li> </ul>	Chapter 9.07
14.14	Sick Leave Payout	<ul> <li>The payment of one quarter of a teammate's accumulated sick leave, not to exceed 480 hours, is a one-time occurrence. If a teammate has previously retired and returned to work for the State, they would not receive an additional payout when they retire/leave again.</li> <li>For contract covered teammates the sick leave payout will occur, assuming eligibility criteria are met, even if they are involuntarily terminated.</li> </ul>	Chapter 9.07.04 <u>Nebraska Rev. State</u> <u>Statute § 81-1325</u>
14.16	FMLA Eligibility	<ul> <li>For the purposes of determining time and hours worked for FMLA eligibility, time worked for UNL does not count as it is considered a different employer from the State.</li> <li>Per the U.S. DOL, if an agency becomes aware that a teammate is out for a qualifying FMLA reason the time absent MUST be counted as FMLA. The use of FMLA cannot be deferred, even at the teammate's request. The State is required to ensure that teammates are receiving all the benefits and protections afforded them by law.</li> </ul>	Chapter 9.17.01 Guidance Documents
14.16	General FMLA	Teammates are not required to use all paid leave prior to using FMLA, nor are they currently required in state policy to supplement FMLA with paid leave. However,	Chapter 9.17 Guidance Documents

		teepmates should be swere that FNU A is	
		teammates should be aware that FMLA is	
		unpaid leave, and that this may impact their	
		paycheck, leave accruals, and benefits.	
14.17	Bereavement	Bereavement leave is available to	Chapter 9.09
	Leave	teammates who have lost an unborn child.	
14.19	Military Leave	<ul> <li>The 440 hours of military leave is</li> </ul>	Chapter 9.11
		per calendar year.	
		<ul> <li>Agencies may also utilize flex</li> </ul>	
		schedules and other paid leave as	
		appropriate to assist teammates	
		serving in the military.	
14.20	Civil Leave	Civil leave is intended only for days when	Chapter 9.12
		the teammate is scheduled to work. It would	
		not be appropriate for a teammate's day off,	
		even if they are serving in some civil capacity	
		on that day (i.e., jury duty, voting, etc.).	
14.21	Leave of Absence	A leave of absence must be approved by the	Chapter 9.13
		Agency Head or Designee, and employment	
		conditions at the end of the leave should be	
		discussed at the time of the request. A leave	
		of absence is unpaid and will therefore	
		impact a teammate's paycheck, leave	
		accruals, and benefits.	
14.24	Advancement of	While sick and vacation leave may be	Chapter 9.08.01
	Leave	advanced up to 80 total hours, agencies	•
		should be careful in approving such	
		requests. This section is intended for	
		unusual situations and not for frequent use.	

## Article 15 – Anti-Discrimination

This Article discusses how State teammates have a right to a workplace free from harassment and bullying, and how the provisions of the Labor Contract shall be applied to all without discrimination.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.

# Article 16 – Savings Clause

This Article discusses the process through which the parties would address matters if a legislative or judicial body were to make a provision unlawful or unenforceable.						
Section Number	Number Personnel		References – Personnel Rules, Statute, etc.			

	Article 17 – Pay During Temporary Transfer This Article outlines how and when a teammate would be paid at an enhanced rate for performing duties for a classification higher than their own, also known as "working out of class."			
Section Number	Торіс	Interpretation Info	References – Personnel Rules,	
Number			Statute, etc.	
17.1	Criteria for Temporary Transfer	A teammate is considered "working out of class" and eligible under this section if they have been assigned the full, or close to the full, spectrum of duties and responsibilities of the higher classification. Performing a single duty here or there due to an absence is not considered "working out of class."	Chapter 7.05	

## Article 18 – Health and Safety

This Article discusses matters related to health and safety at the workplace. Topics included here are management and teammate responsibilities in ensuring a safe environment, as well as uniforms and safety equipment and how safety issues are to be addressed.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.

## Article 19 – Classification and Classification Appeals

This Article outlines matters related to classification of teammates. Topics included here are how positions are to be classified or reclassified, as well as the process for requesting a reclassification or appealing one's classification.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
19.1	Classification	A reclassification request is to be based on the duties and responsibilities being performed and is not meant to be used as a means of procuring a higher rate of pay.	Chapter 6

# Article 20 – Employee Training and Educational Activities

This Artic	This Article discusses training and education for teammates. Topics included here are the provision of training and tuition assistance.			
Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.	
20.3	Tuition Assistance	This section is not intended for teammates on extended leaves of absence unless otherwise approved by the Agency Head or Designee.		

# Article 21 – Labor/Management Committee This Article discusses Labor-Management Committees, including how they are constructed, and how

issues should be addressed.			
Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
21.2	LMC Members	While the union shall decide which teammates participate in Labor- Management Committee meetings, the agency is only required to pay three teammates.	

Article 22 – Personnel File This Article outlines matters related to personnel files, including who can access them and how teammates may obtain copies of materials in them.						
Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.			
22.7	Record Retention	Records of disciplinary action are not automatically removed form a teammate's personnel file after two years. A teammate must specifically make the request for this to take place.	Chapter 11.04			

Article 23 – No Strike – No Lockout							
This Article establishes that no State teammate may strike, and no State teammate can be "locked out."							
out.							
Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.				

#### Article 24 – Term of Contract

 This Article outlines the timeframe to which the Labor Contract applies, as well as the dates and timeframes for the negotiation of a successor labor contract agreement.

 Section
 Topic
 Interpretation Info
 References – Personnel Rules, Statute, etc.

 Number
 Interpretation Info
 Statute, etc.

## Article 25 – Miscellaneous

This Article contains several miscellaneous provisions that are not otherwise located in the Labor Contract. Topics included here are flex spending accounts, pay range assignments, and parking.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.

### Article 26 – Performance Management

This Article outlines matters related to performance management, specifically performance reviews. Topics included here are how to establish performance standards/expectations, when performance evaluations shall be completed, the process for both setting and evaluating those standards/expectations, and the appeal of a second consecutive unsatisfactory annual performance rating.

Section Number	Торіс	Interpretation Info	References – Personnel Rules, Statute, etc.
26.5	Performance Evaluation Appeal	A teammate may only grieve the most recent performance evaluation, and only if the evaluation is the second consecutive annual evaluation to be unsatisfactory. A teammate cannot also grieve the first of the two performance evaluations.	Chapter 10

## Article 27 – Employee Drug and Alcohol Testing

 This Article outlines the procedure for drug and alcohol testing, including the purpose, when it may be applied, teammate rights and privacy, methods of testing, chain of custody, and other items.

 Section
 Topic
 Interpretation Info
 References – Personnel Rules, Statute, etc.

 Number
 Interpretation Info
 Section
 References – Personnel Rules, Statute, etc.