**Michael Chipman v Nebraska Department of Correctional Services**(FOP) The Appellant filed a grievance in regard to Section  9.1 of the Labor Contract.  The Appellant believed the Respondent failed to comply with posting requirements for a Corporal vacancy on third shift; an external candidate was hired from a pool applicants without the vacancy being posted.  The Appellant timely filed a grievance.  Shortly after the grievance was filed, NDCS posted a Corporal Bid Notice for the third shift Corrections Corporal shift vacancy at CCC-Omaha.  No employees at CCC-Omaha with the rank of Corporal entered a shift bid.  After the shift bid closed, NDCS did not post notice of a third shift Corrections Corporal vacancy by Internal, State Internal, or External Posting.  The parties agreed to designate Jim R. Titus as Arbitrator; a hearing was held in accordance with the 2017-2019 State of Nebraska and NAPE/AFSCME Labor Contract.

The Arbitrator found that Article 3 of the Contract provides that the Employer possesses the right to establish classifications and to determine and implement policies for the selection and promotion of employees.  Generally, Section 9.1 governs the promotion and filing of vacant positions, however it provides that exclusions to vacancy postings relating to specific agencies may be made in writing by mutual agreement.  The Labor Contract contains Appendix M’s provision for the same subject matter as Section 9.1: promotions and bidding for open jobs.  Therefore, the Arbitrator concluded that Appendix M contains a modification of Section 9.1.  Appendix M.12.2 provides for all open post/job assignments to be posted within 10 calendar days, and be open for 7 calendar days.  This was not done initially, but was then corrected to re-open the vacancy for bidding within the classification.  The Arbitrator further concluded that neither M.12.2 or 9.1 specifically state that a posting with no bids must then be opened to a broader group; therefore the Article 3 provision applies to allow the Employer, in this case NDCS, to establish classification and selection policies which would apply after compliance with M.12.2.  The Arbitrator found that the Respondent complied with M.12.2 and having done so, was then able to follow NDCS policies, which were also complied with.  The grievance was denied.