

LEGISLATIVE BILL 444

Approved by the Governor May 21, 1979

Introduced by Brennan, 9

AN ACT to amend sections 48-803, 48-812, 48-816, and 48-817, Reissue Revised Statutes of Nebraska, 1943, and sections 48-804 and 48-806, Revised Statutes Supplement, 1978, relating to the Court of Industrial Relations; to rename the court as the Commission of Industrial Relations; to increase the per diem; to clarify the provision for expenses; to provide when an appeal may not be taken; to provide for hearing officers; to provide when information may not be considered; to provide authority for the court to order good faith bargaining, mediation, or fact-finding; to provide duties; to provide for severability; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-803. In order to carry out the public policy of the State of Nebraska as set forth in section 48-802, there is hereby created an industrial commission to be known as the Court Commission of Industrial Relations.

Sec. 2. That section 48-804, Revised Statutes Supplement, 1978, be amended to read as follows:

48-804. (1) The Court Commission of Industrial Relations shall be composed of five judges who shall be appointed by the Governor, with the advice and consent of the Legislature. Such judges shall be representative of the public. Of the three judges first appointed, one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, the terms to begin simultaneously upon qualification of the persons to be appointed within thirty days after May 31, 1947. Upon the expiration of the term of the three judges first appointed, each succeeding judge shall be appointed and hold office for a term of six years and until his successor shall have qualified. Two judges shall be appointed for six-year terms within thirty days after December 25, 1969, with their successors to be appointed for a term of six years and until their successors have been appointed and qualified. In case of

a vacancy in the office of judge of the court Commission of Industrial Relations, the Governor shall appoint his or her successor to fill the vacancy for the unexpired term.

(2) Any judge of the Commission of Industrial Relations may be removed by the Governor for the same causes as a judge of the district court may be removed.

(2) (3) The judges shall on July 1 of every odd-numbered year by a majority vote select one of their number as presiding judge for the next two years, who shall preside at all hearings by the court Commission of Industrial Relations en banc, and shall assign the work of the court commission to the several judges and perform such other supervisory duties as the needs of the court commission may require. A majority of the judges of the court commission shall constitute a quorum to transact business. The act or decision of any three of the judges thereof shall in all cases be deemed the act or decision of the court commission.

(3) (4) The court Commission of Industrial Relations shall not be subject to the provisions of Chapter 84, article 9.

Sec. 3. That section 48-806, Revised Statutes Supplement, 1978, be amended to read as follows:

48-806. As soon as such compensation may be legally paid under the Constitution of the State of Nebraska, the compensation of judges of the court Commission of Industrial Relations shall be one hundred twenty fifty dollars per day for each day's time actually engaged in the performance of the duties of their office. Each judge shall also be paid his or her necessary traveling expenses incurred while away from his or her place of residence upon business of the court commission in accordance with sections 84-306.01 to 84-306.09, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 4. That section 48-812, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-812. Except as modified by the court Commission of Industrial Relations under the provisions of section 48-809 or other provisions of sections 48-801 to ~~48-823~~ 48-838, proceedings before the court commission shall conform to the code of civil procedure applicable to the district courts of the state and appeals from its final orders to the Supreme Court shall be taken in the

same manner and time as appeals from the district court to the Supreme Court except that an order determining a bargaining unit or units shall not be appealable to the Supreme Court until after the results of the election have been certified by the commission. Appeals shall be heard and disposed of in the Supreme Court in the manner provided by law. ~~for-disposition-of-equity-cases.~~

Sec. 5. That section 48-816, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-816. (1) After a petition has been filed under the provisions of section 48-811, the clerk shall immediately notify the members of the court Commission of Industrial Relations, which court shall promptly convene at its office to take such preliminary proceedings as may be necessary to insure a prompt hearing and speedy adjudication of the industrial dispute. The court commission shall have power and authority upon its own initiative or upon request of a party to the dispute to make such temporary findings and orders as may be necessary to preserve and protect the status of the parties, property and public interest involved, pending final determination of the issues. In the event of an industrial dispute between an employer and employees of a privately-owned public-utility-or-any-public-utility which is owned, managed, or operated by any political or governmental subdivision of the State of Nebraska, or any public corporation, or any public power and irrigation district, where an employee or a labor organization when such employer and employees employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the court commission may order such bargaining to be begun or resumed, as the case may be, and may make any such order or orders as may be appropriate to govern the situation pending such bargaining. The commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any employer, including school districts covered by the Nebraska Teachers' Professional Negotiations Act after all provisions of such act have been exhausted without resolution of the dispute involved. The commission may require the parties to an industrial dispute to submit to mediation or fact-finding, and may appoint mediators or fact-finders for this purpose. Such orders for bargaining, mediation, or fact-finding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith shall mean the performance of the mutual obligation of the employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms

and conditions of employment, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(2) Public employers are hereby authorized to recognize employee organizations for the purpose of negotiating collectively in the determination of, and administration of grievances arising under, the terms and conditions of employment of their public employees as provided in this act, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

(3) All firemen and policemen employed in the fire department or police department of any municipal corporation in a position or classification subordinate to the chief of the department and his immediate assistant or assistants holding authority subordinate only to the chief, shall be presumed to have a community of interest and may be included in a single negotiating unit represented by an employee organization for the purposes of this act. Public employers shall be required to recognize an employee's negotiating unit composed of firemen and policemen holding positions or classifications subordinate to the chief of the fire department or police department and his immediate assistant or assistants holding authority subordinate only to the chief when such negotiating unit is designated or elected by employees in the unit.

(4) Where When an employee organization has been certified as an exclusive collective bargaining agent or recognized pursuant to any other provisions of this act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in this act, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment, including wages and hours.

(5) Upon receipt by an employer of a request from a labor organization to bargain on behalf of employees, the duty to engage in good faith bargaining shall arise if the labor organization has been certified by the commission or recognized by the employer as the exclusive bargaining representative for the employees in that bargaining unit.

(6) The court commission shall have the authority (1) (a) to make studies and analyses of, and act as a clearinghouse of information relating to, conditions of employment of public employees throughout the state; (2) (b) to request from any government, and such governments are authorized to provide, such assistance, services and data as will enable ~~the board~~ it properly to carry out its functions and powers; (3) (c) to conduct studies of problems involved in representation and negotiation, including, but not limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies; (4) (d) to make available to employee organizations, governments, mediators, fact-finding boards and joint study committees established by governments and employee organizations statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations; and (5) (e) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators or members of fact-finding boards.

Sec. 6. The presiding judge may, when he or she deems it necessary to expedite the determination of cases filed with the commission, appoint a hearing officer to hear evidence and make recommended findings and orders in any case or to make recommended determinations after a representation election has been ordered and during the course of such election. Any person appointed as a hearing officer shall be an attorney admitted to practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts.

Sec. 7. That section 48-817, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-817. After the hearing and any investigation, the court commission shall make its findings and enter its order or orders in writing, which decision and order or orders shall be entered of record. Such order or orders shall be in effect from and after the date therein fixed by the court commission, but no such order or orders shall be retroactive. In the making of any findings or orders in connection with any such industrial dispute, the court commission shall give no consideration to any evidence or information which it may obtain

through an investigation or otherwise receive, except matters of which the district court might take judicial notice, unless such evidence or information is presented and made a part of the record in said a hearing and opportunity is given, after reasonable notice to all parties to the controversy of the initiation of any investigation and the specific contents of the evidence or information obtained or received, to rebut such evidence or information either by cross-examination or testimony.

Sec. 8. 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 sections 48-801 to 48-838, or which interferes with, restrains, or coerces employees in the exercise of the rights provided in sections 48-801 to 48-838, 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.

Sec. 9. After the effective date of this act, whenever the name Court of Industrial Relations appears in the statutes it shall be taken to mean the Commission of Industrial Relations and whenever the word court appears with reference to such body it shall be taken to mean commission. The Revisor of Statutes shall make the changes in the statutes necessary to reflect such name change.

Sec. 10. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 11. That original sections 48-803, 48-812, 48-816, and 48-817, Reissue Revised Statutes of Nebraska, 1943, and sections 48-804 and 48-806, Revised Statutes Supplement, 1978, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.