

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 397

Final Reading

Introduced by Lathrop, 12; Ashford, 20; McGill, 26; Utter, 33.

Read first time January 13, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 48-801, 48-801.01,
2 48-802, 48-804, 48-809, 48-811, 48-813, 48-816, 48-817,
3 48-818, 48-824, 48-838, 79-852, 79-2116, 81-1369,
4 81-1371, 81-1372, 81-1373, 81-1375, 81-1378, 81-1379,
5 81-1381, 81-1382, 81-1383, 81-1384, 81-1385, 81-1386, and
6 81-1387, Reissue Revised Statutes of Nebraska; to change
7 and eliminate provisions of the Industrial Relations Act
8 and the State Employees Collective Bargaining Act; to
9 provide and change collective-bargaining provisions; to
10 provide for applicability of provisions; to harmonize
11 provisions; to provide operative dates; to repeal the
12 original sections; and to outright repeal sections
13 48-811.02, 81-1374, 81-1380, 81-1389, and 81-1390,
14 Reissue Revised Statutes of Nebraska.

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

1 Section 1. Section 48-801, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-801 As used in the Industrial Relations Act, unless
4 the context otherwise requires:

5 ~~(1) Person shall include an individual, partnership,~~
6 ~~limited liability company, association, corporation, business trust,~~
7 ~~or other organized group of persons;~~

8 ~~(2) Governmental service shall mean all services~~
9 ~~performed under employment by the State of Nebraska, any political or~~
10 ~~governmental subdivision thereof, any municipal corporation, or any~~
11 ~~public power district or public power and irrigation district;~~

12 ~~(3) Public utility shall include any individual,~~
13 ~~partnership, limited liability company, association, corporation,~~
14 ~~business trust, or other organized group of persons, any political or~~
15 ~~governmental subdivision of the State of Nebraska, any public~~
16 ~~corporation, or any public power district or public power and~~
17 ~~irrigation district, which carries on an intrastate business in this~~
18 ~~state and over which the government of the United States has not~~
19 ~~assumed exclusive regulation and control, that furnishes~~
20 ~~transportation for hire, telephone service, telegraph service,~~
21 ~~electric light, heat and power service, gas for heating or~~
22 ~~illuminating, whether natural or artificial, or water service, or any~~
23 ~~one or more thereof;~~

24 ~~(4) Employer shall mean the State of Nebraska or any~~
25 ~~political or governmental subdivision of the State of Nebraska except~~

1 ~~the Nebraska National Guard or state militia. Employer shall also~~
2 ~~mean any municipal corporation, any public power district or public~~
3 ~~power and irrigation district, or any public utility;~~

4 ~~(5) Employee shall include any person employed by any~~
5 ~~employer;~~

6 ~~(6) Labor organization shall mean any organization of any~~
7 ~~kind or any agency or employee representation committee or plan, in~~
8 ~~which employees participate and which exists for the purpose, in~~
9 ~~whole or in part, of dealing with employers concerning grievances,~~
10 ~~labor disputes, wages, rates of pay, hours of employment, or~~
11 ~~conditions of work;~~

12 ~~(7) Industrial dispute shall include any controversy~~
13 ~~concerning terms, tenure, or conditions of employment, or concerning~~
14 ~~the association or representation of persons in negotiating, fixing,~~
15 ~~maintaining, changing, or seeking to arrange terms or conditions of~~
16 ~~employment, or refusal to discuss terms or conditions of employment;~~

17 ~~(8) Commission shall mean the Commission of Industrial~~
18 ~~Relations;~~

19 ~~(9) Commissioner shall mean a member of the commission;~~

20 and

21 ~~(10) Supervisor shall mean any employee having authority,~~
22 ~~in the interest of the employer, to hire, transfer, suspend, lay off,~~
23 ~~recall, promote, discharge, assign, reward, or discipline other~~
24 ~~employees, or responsibly to direct them or to adjust their~~
25 ~~grievances, or effectively to recommend such action, if in connection~~

1 ~~with the foregoing the exercise of such authority is not a merely~~
2 ~~routine or clerical nature, but requires the use of independent~~
3 ~~judgment.~~

4 (1) Certificated employee has the same meaning as in
5 section 79-824;

6 (2) Commission means the Commission of Industrial
7 Relations;

8 (3) Commissioner means a member of the commission;

9 (4) Governmental service means all services performed
10 under employment by the State of Nebraska or any political or
11 governmental subdivision thereof, including public corporations,
12 municipalities, and public utilities;

13 (5) Industrial dispute includes any controversy between
14 public employers and public employees concerning terms, tenure, or
15 conditions of employment; the association or representation of
16 persons in negotiating, fixing, maintaining, changing, or seeking to
17 arrange terms or conditions of employment; or refusal to discuss
18 terms or conditions of employment;

19 (6) Instructional employee means an employee of a
20 community college who provides direct instruction to students;

21 (7) Labor organization means any organization of any kind
22 or any agency or employee representation committee or plan, in which
23 public employees participate and which exists for the purpose, in
24 whole or in part, of dealing with public employers concerning
25 grievances, labor disputes, wages, rates of pay, hours of employment,

1 or conditions of work;

2 (8) Metropolitan statistical area means a metropolitan
3 statistical area as defined by the United States Office of Management
4 and Budget;

5 (9) Municipality means any city or village in Nebraska;

6 (10) Noncertificated and noninstructional school employee
7 means a school district, educational service unit, or community
8 college employee who is not a certificated or instructional employee;

9 (11) Public employee includes any person employed by a
10 public employer;

11 (12) Public employer means the State of Nebraska or any
12 political or governmental subdivision of the State of Nebraska except
13 the Nebraska National Guard or state militia;

14 (13) Public utility includes any person or governmental
15 entity, including any public corporation, public power district, or
16 public power and irrigation district, which carries on an intrastate
17 business in this state and over which the government of the United
18 States has not assumed exclusive regulation and control, that
19 furnishes transportation for hire, telephone service, telegraph
20 service, electric light, heat, or power service, gas for heating or
21 illuminating, whether natural or artificial, or water service, or any
22 one or more thereof; and

23 (14) Supervisor means any public employee having
24 authority, in the interest of the public employer, to hire, transfer,
25 suspend, lay off, recall, promote, discharge, assign, reward, or

1 discipline other public employees, or responsibility to direct them,
2 to adjust their grievances, or effectively to recommend such action,
3 if in connection with such action the exercise of such authority is
4 not of a merely routine or clerical nature but requires the use of
5 independent judgment.

6 Sec. 2. Section 48-801.01, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 48-801.01 Sections 48-801 to 48-838 and sections 11, 12,
9 13, and 16 of this act shall be known and may be cited as the
10 Industrial Relations Act.

11 Sec. 3. Section 48-802, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 48-802 To make operative the provisions of section 9,
14 Article XV, of the Constitution of Nebraska, the public policy of the
15 State of Nebraska is hereby declared to be as follows:

16 (1) The continuous, uninterrupted and proper functioning
17 and operation of the governmental service including governmental
18 service in a proprietary capacity and of public utilities engaged in
19 the business of furnishing transportation for hire, telephone
20 service, telegraph service, electric light, heat, or power service,
21 gas for heating or illuminating, whether natural or artificial, or
22 water service, or any one or more of them, to the people of Nebraska
23 are hereby declared to be essential to their welfare, health, and
24 safety. It is contrary to the public policy of the state to permit
25 any substantial impairment or suspension of the operation of

1 governmental service, including governmental service in a proprietary
2 capacity or any such utility by reason of industrial disputes
3 therein. It is the duty of the State of Nebraska to exercise all
4 available means and every power at its command to prevent the same so
5 as to protect its citizens from any dangers, perils, calamities, or
6 catastrophes which would result therefrom. It is therefor further
7 declared that governmental service, including governmental service in
8 a proprietary capacity, and the service of such public utilities are
9 clothed with a vital public interest and to protect the same it is
10 necessary that the relations between the public employers and public
11 employees in such industries be regulated by the State of Nebraska to
12 the extent and in the manner ~~hereinafter~~ provided in the Industrial
13 Relations Act;

14 (2) No right shall exist in any natural or corporate
15 person or group of persons to hinder, delay, limit, or suspend the
16 continuity or efficiency of any governmental service or governmental
17 service in a proprietary capacity of this state, either by strike,
18 lockout, or other means; and

19 (3) No right shall exist in any natural or corporate
20 person or group of persons to hinder, delay, limit, or suspend the
21 continuity or efficiency of any public utility service, either by
22 strike, lockout, or other means.

23 Sec. 4. Section 48-804, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-804 (1) The Commission of Industrial Relations shall

1 be composed of five commissioners appointed by the Governor, with the
2 advice and consent of the Legislature. The commissioners shall be
3 representative of the public. Each commissioner shall be appointed
4 and hold office for a term of six years and until a successor has
5 qualified. In case of a vacancy, the Governor shall appoint a
6 successor to fill the vacancy for the unexpired term.

7 (2) Any commissioner may be removed by the Governor for
8 the same causes as a judge of the district court may be removed.

9 (3) The commissioners shall, on July 1 of every odd-
10 numbered year by a majority vote, select one of their number as
11 presiding officer for the next two years, who shall preside at all
12 hearings by the commission en banc, and shall assign the work of the
13 commission to the several commissioners and perform such other
14 supervisory duties as the needs of the commission may require. A
15 majority of the commissioners shall constitute a quorum to transact
16 business. The act or decision of any three of the commissioners shall
17 in all cases be deemed the act or decision of the commission. Three
18 commissioners shall preside over and decide all industrial disputes
19 where the matter at issue is the comparability of wages, benefits,
20 and terms and conditions of employment.

21 (4) The commission shall not be subject to the
22 Administrative Procedure Act.

23 Sec. 5. Section 48-809, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 ~~48-809 The Commission of Industrial Relations is hereby~~

1 ~~granted full power to~~ commission may adopt all reasonable and proper
2 regulations to govern its proceedings, the filing of pleadings, the
3 issuance and service of process, and the issuance of subpoenas for
4 attendance of witnesses, ~~the power to~~ may administer oaths, and ~~to~~
5 may regulate the mode and manner of all its investigations,
6 inspections, hearings, and trials. ~~In~~ Except as otherwise provided in
7 the Industrial Relations Act or the State Employees Collective
8 Bargaining Act, in the taking of evidence, the rules of evidence,
9 prevailing in the trial of civil cases in Nebraska, shall be observed
10 by the ~~Commission of Industrial Relations.~~ commission.

11 Sec. 6. Section 48-811, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 48-811 (1) Except as provided in the State Employees
14 Collective Bargaining Act, any public employer, public employee, or
15 labor organization, or the Attorney General of Nebraska on his or her
16 own initiative or by order of the Governor, when any industrial
17 dispute exists between parties as set forth in section 48-810, may
18 file a petition with the ~~Commission of Industrial Relations~~
19 commission invoking its jurisdiction. No adverse action by threat or
20 harassment shall be taken against any public employee because of any
21 petition filing by such employee, and the employment status of such
22 employee shall not be altered in any way pending disposition of the
23 petition by the commission except as provided in subsection (2) of
24 this section.

25 (2) If a change in the employment status or in wages or

1 terms and conditions of employment is necessary, a motion by either
2 party or by the parties jointly may be presented to the commission at
3 that time and if the commission finds, based on a showing of evidence
4 at a hearing thereon, that the requested change is both reasonable
5 and necessary to serve an important public interest and that the
6 employer has not considered a change in the employment status, wages,
7 or terms and conditions of employment as a policy alternative on an
8 equal basis with other policy alternatives to achieve budgetary
9 savings, the commission may order that the requested change be
10 allowed pending final resolution of the pending industrial dispute.

11 (3) Subsection (2) of this section does not apply to
12 public employers subject to the State Employees Collective Bargaining
13 Act.

14 Sec. 7. Section 48-813, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 48-813 (1) Whenever the jurisdiction of the ~~Commission of~~
17 ~~Industrial Relations~~ commission is invoked, notice of the pendency of
18 the proceedings shall be given in such manner as the commission shall
19 provide for serving a copy of the petition and notice of filing upon
20 the adverse party. ~~An~~ A public employer or labor organization may be
21 served by sending a copy of the petition filed to institute the
22 proceedings and a notice of filing, which shall show the filing date,
23 in the manner provided for service of a summons in a civil action.
24 Such employer or labor organization shall have twenty days after
25 receipt of the petition and notice of filing in which to serve and

1 file its response.

2 (2) The petitioner shall include its final offer, as
3 voted by the petitioner, the governing body, or the bargaining unit
4 or as considered pursuant to a ratification process, with its
5 petition. The respondent shall include its final offer, as voted by
6 the respondent, the governing body, or the bargaining unit or as
7 considered pursuant to a ratification process, with its answer.
8 Within fourteen days after filing of the answer, the parties shall
9 vote to accept or reject or consider pursuant to a ratification
10 process the other's final offer and file a subsequent pleading
11 indicating the result. The vote concerning the governing body's final
12 offer shall be published on its agenda and held where the public may
13 attend. The commission shall not enter a final order on wages or
14 conditions of employment unless both parties have rejected the
15 others' final offer. This subsection does not apply to public
16 employers subject to the State Employees Collective Bargaining Act.

17 ~~(2)~~(3) When a petition is filed to resolve an industrial
18 dispute, a hearing shall mandatorily be held within sixty days from
19 the date of filing thereof. A recommended decision and order in cases
20 arising under section 48-818, an order in cases not arising under
21 section 48-818, and findings if required, shall mandatorily be made
22 and entered thereon within thirty days after such hearing. The time
23 requirements specified in this section may be extended for good cause
24 shown on the record or by agreement of the parties. Failure to meet
25 such mandatory time requirements shall not deprive the commission of

1 jurisdiction. However, if the commission fails to hold a hearing on
2 the industrial dispute within sixty days of filing or has failed to
3 make a recommended decision and order, and findings of fact if
4 required, in cases arising under section 48-818, or an order, and
5 findings of fact if required, in cases not arising under section
6 48-818, and findings, within thirty days after the hearing and good
7 cause is not shown on the record or the parties to the dispute have
8 not jointly stipulated to the enlargement of the time limit, then
9 either party may file an action for mandamus in the district court
10 for Lancaster County to require the commission to hold the hearing or
11 to render its order and findings if required. For purposes of this
12 section, the hearing on an industrial dispute shall not be deemed
13 completed until the record is prepared and counsel briefs have been
14 submitted, if such are required by the commission.

15 ~~(3)-(4)~~ Any party, including the State of Nebraska or any
16 of its employer-representatives as defined in section 81-1371 or any
17 political subdivision of the State of Nebraska, may waive such notice
18 and may enter a voluntary appearance in any matter in the ~~Commission~~
19 ~~of Industrial Relations.~~ commission. The giving of such notice in
20 such manner shall subject the public employers, the labor
21 organizations, and the persons therein to the jurisdiction of the
22 ~~Commission of Industrial Relations.~~ commission.

23 Sec. 8. Section 48-816, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-816 (1)(a) After a petition has been filed under

1 section 48-811, the clerk shall immediately notify the commission
2 which shall promptly take such preliminary proceedings as may be
3 necessary to ensure prompt hearing and speedy adjudication of the
4 industrial dispute. The commission ~~shall have power and authority~~
5 may, upon its own initiative or upon request of a party to the
6 dispute, ~~to~~ make such temporary findings and orders as ~~may be~~
7 necessary to preserve and protect the status of the parties,
8 property, and public interest involved pending final determination of
9 the issues. In the event of an industrial dispute between ~~an a public~~
10 employer and ~~an a public~~ employee or a labor organization when such
11 public employer and public employee or labor organization have failed
12 or refused to bargain in good faith concerning the matters in
13 dispute, the commission may order such bargaining to begin or resume,
14 as the case may be, and may make any such order or orders as ~~may be~~
15 appropriate to govern the situation pending such bargaining. The
16 commission shall require good faith bargaining concerning the terms
17 and conditions of employment of its employees by any public employer.
18 Upon the request of either party, the commission shall require the
19 parties to an industrial dispute to submit to mediation or
20 factfinding. ~~Upon~~ Before July 1, 2012, upon the request of both
21 parties, a special master may be appointed if the parties are within
22 the provisions of section 48-811.02. On and after July 1, 2012, upon
23 the request of either party, a resolution officer may be appointed if
24 the parties are within the provisions of section 11 of this act. The
25 commission shall appoint mediators, factfinders, or ~~special masters~~

1 before July 1, 2012, special masters and on and after such date
2 resolution officers for such purpose. Such orders for bargaining,
3 mediation, factfinding, or a ~~special master~~ before July 1, 2012, a
4 special master proceeding and on and after such date a resolution
5 officer proceeding may be issued at any time during the pendency of
6 an action to resolve an industrial dispute. To bargain in good faith
7 ~~shall mean~~ means the performance of the mutual obligation of the
8 public employer and the labor organization to meet at reasonable
9 times and confer in good faith with respect to wages, hours, and
10 other terms and conditions of employment or any question arising
11 thereunder and the execution of a written contract incorporating any
12 agreement reached if requested by either party, but such obligation
13 does not compel either party to agree to a proposal or require the
14 making of a concession.

15 (b) In negotiations between a municipality, municipally
16 owned utility, or county and a labor organization, staffing related
17 to issues of safety shall be mandatory subjects of bargaining and
18 staffing relating to scheduling work, such as daily staffing,
19 staffing by rank, and overall staffing requirements, shall be
20 permissive subjects of bargaining.

21 (2) Except as provided in the State Employees Collective
22 Bargaining Act, public employers ~~are hereby authorized to~~ may
23 recognize employee organizations for the purpose of negotiating
24 collectively in the determination of and administration of grievances
25 arising under the terms and conditions of employment of their public

1 employees as provided in the Industrial Relations Act and ~~to~~may
2 negotiate and enter into written agreements with such employee
3 organizations in determining such terms and conditions of employment.

4 (3)(a) Except as provided in subdivisions (b) and (c) of
5 this subsection, a supervisor shall not be included in a single
6 bargaining unit with any other public employee who is not a
7 supervisor.

8 (b) All firefighters and police officers employed in the
9 fire department or police department of any ~~municipal corporation~~
10 municipality in a position or classification subordinate to the chief
11 of the department and his or her immediate assistant or assistants
12 holding authority subordinate only to the chief shall be presumed to
13 have a community of interest and may be included in a single
14 bargaining unit represented by ~~an~~a public employee organization for
15 the purposes of the Industrial Relations Act. Public employers shall
16 be required to recognize ~~an~~a public employees bargaining unit
17 composed of firefighters and police officers holding positions or
18 classifications subordinate to the chief of the fire department or
19 police department and his or her immediate assistant or assistants
20 holding authority subordinate only to the chief when such bargaining
21 unit is designated or elected by public employees in the unit.

22 (c) All administrators employed by a Class V school
23 district shall be presumed to have a community of interest and may
24 join a single bargaining unit composed otherwise of teachers and
25 other certificated employees for purposes of the Industrial Relations

1 Act, except that the following administrators shall be exempt: The
2 superintendent, associate superintendent, assistant superintendent,
3 secretary and assistant secretary of the board of education,
4 executive director, administrators in charge of the offices of state
5 and federal relations and research, chief negotiator, and
6 administrators in the immediate office of the superintendent. A Class
7 V school district shall recognize ~~an~~ a public employees bargaining
8 unit composed of teachers and other certificated employees and
9 administrators, except the exempt administrators, when such
10 bargaining unit is formed by the public employees as provided in
11 section 48-838 and may recognize such a bargaining unit as provided
12 in subsection (2) of this section. In addition, all administrators
13 employed by a Class V school district, except the exempt
14 administrators, may form a separate bargaining unit represented
15 either by the same bargaining agent for all collective-bargaining
16 purposes as the teachers and other certificated employees or by
17 another collective-bargaining agent of such administrators' choice.
18 If a separate bargaining unit is formed by election as provided in
19 section 48-838, a Class V school district shall recognize the
20 bargaining unit and its agent for all purposes of collective
21 bargaining. Such separate bargaining unit may also be recognized by a
22 Class V school district as provided in subsection (2) of this
23 section.

24 (4) When ~~an~~ a public employee organization has been
25 certified as an exclusive collective-bargaining agent or recognized

1 pursuant to any other provisions of the Industrial Relations Act, the
2 appropriate public employer shall be and is hereby authorized to
3 negotiate collectively with such public employee organization in the
4 settlement of grievances arising under the terms and conditions of
5 employment of the public employees as provided in such act and to
6 negotiate and enter into written agreements with such public employee
7 organizations in determining such terms and conditions of employment,
8 including wages and hours.

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

15 (6) A party to an action filed with the commission may
16 request the commission to send survey forms or data request forms.
17 The requesting party shall prepare its own survey forms or data
18 request forms and shall provide the commission the names and
19 addresses of the entities to whom the documents shall be sent, not to
20 exceed twenty addresses in any case. All costs resulting directly
21 from the reproduction of such survey or data request forms and the
22 cost of mailing such forms shall be taxed by the commission to the
23 requesting party. The commission ~~shall have the authority~~ may (a) ~~to~~
24 make studies and analyses of and act as a clearinghouse of
25 information relating to conditions of employment of public employees

1 throughout the state, (b) ~~to~~ request from any government, and such
2 governments are authorized to provide, such assistance, services, and
3 data as will enable it properly to carry out its functions and
4 powers, (c) ~~to~~ conduct studies of problems involved in representation
5 and negotiation, including, but not limited to, those subjects which
6 are for determination solely by the appropriate legislative body, and
7 make recommendations from time to time for legislation based upon the
8 results of such studies, (d) ~~to~~ make available to public employee
9 organizations, governments, mediators, factfinding boards and joint
10 study committees established by governments, and public employee
11 organizations statistical data relating to wages, benefits, and
12 employment practices in public and private employment applicable to
13 various localities and occupations to assist them to resolve complex
14 issues in negotiations, and (e) ~~to~~ establish, after consulting
15 representatives of public employee organizations and administrators
16 of public services, panels of qualified persons broadly
17 representative of the public to be available to serve as mediators,
18 ~~special masters, before July 1, 2012, special masters and on and~~
19 ~~after such date resolution officers,~~ or members of factfinding
20 boards.

21 (7)(a) Except for those cases arising under section
22 48-818, the commission shall ~~be required to~~ make findings of facts in
23 all cases in which one of the parties to the dispute requests
24 findings. Such request shall be specific as to the issues on which
25 the party wishes the commission to make findings of fact.

1 (b) In cases arising under section 48-818, findings of
2 fact shall not be required of the commission unless both parties to
3 the dispute stipulate to the request and to the specific issues on
4 which findings of fact are to be made.

5 (c) If findings of fact are requested under subdivision
6 (a) or (b) of this subsection, the commission may require the parties
7 making the request to submit proposed findings of fact to the
8 commission on the issues on which findings of facts are requested.

9 (d) In cases arising under section 48-818, the commission
10 shall issue a recommended decision and order, which decision and
11 order shall become final within ~~ten~~ twenty-five days of entry unless
12 either party to the dispute files with the commission a request for a
13 posttrial conference. If such a request is filed, the commission
14 shall hold a posttrial conference within ten days of receipt of such
15 request and shall issue an order within ten days after holding such
16 posttrial conference, which order shall become the final order in the
17 case. The purpose of such posttrial conference shall be to allow the
18 commission to hear from the parties on those portions of the
19 recommended decision and order which is not based upon or which
20 mischaracterizes evidence in the record and to allow the commission
21 to correct any such errors after having heard the matter in a
22 conference setting in which all parties are represented.

23 Sec. 9. Section 48-817, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-817 After the hearing and any investigation, the

1 commission shall make all findings, findings of fact, recommended
2 decisions and orders, and decisions and orders in writing, which
3 findings, findings of fact, recommended decisions and orders, and
4 decisions and orders shall be entered of record. Except as provided
5 in the State Employees Collective Bargaining Act, the final decision
6 and order or orders shall be in effect from and after the date
7 therein fixed by the commission, but no such order or orders shall be
8 retroactive except as provided otherwise in the Industrial Relations
9 Act. ~~In-Except as provided otherwise in the Industrial Relations Act,~~
10 in the making of any findings or orders in connection with any such
11 industrial dispute, the commission shall give no consideration to any
12 evidence or information which it may obtain through an investigation
13 or otherwise receive, except matters of which the district court
14 might take judicial notice, unless such evidence or information is
15 presented and made a part of the record in a hearing and opportunity
16 is given, after reasonable notice to all parties to the controversy
17 of the initiation of any investigation and the specific contents of
18 the evidence or information obtained or received, to rebut such
19 evidence or information either by cross-examination or testimony.

20 Sec. 10. Section 48-818, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 48-818 (1) Except as provided in the State Employees
23 Collective Bargaining Act, the findings and order or orders may
24 establish or alter the scale of wages, hours of labor, or conditions
25 of employment, or any one or more of the same. In making such

1 findings and order or orders, the ~~Commission of Industrial Relations~~
2 commission shall establish rates of pay and conditions of employment
3 which are comparable to the prevalent wage rates paid and conditions
4 of employment maintained for the same or similar work of workers
5 exhibiting like or similar skills under the same or similar working
6 conditions. In establishing wage rates the commission shall take into
7 consideration the overall compensation presently received by the
8 employees, having regard not only to wages for time actually worked
9 but also to wages for time not worked, including vacations, holidays,
10 and other excused time, and all benefits received, including
11 insurance and pensions, and the continuity and stability of
12 employment enjoyed by the employees. Any order or orders entered may
13 be modified on the commission's own motion or on application by any
14 of the parties affected, but only upon a showing of a change in the
15 conditions from those prevailing at the time the original order was
16 entered.

17 (2) For purposes of industrial disputes involving public
18 employers other than school districts, educational service units, and
19 community colleges with their certificated and instructional
20 employees and public employers subject to the State Employees
21 Collective Bargaining Act:

22 (a) Job matches shall be sufficient for comparison if (i)
23 evidence supports at least a seventy percent match based on a
24 composite of the duties and time spent performing those duties and
25 (ii) at least three job matches per classification are available for

1 comparison. If three job matches are not available, the commission
2 shall base its order on the historic relationship of wages paid to
3 such position over the last three fiscal years, for which data is
4 available, as compared to wages paid to a position for which a
5 minimum of three job matches are available;

6 (b) The commission shall adhere to the following criteria
7 when establishing an array:

8 (i) Geographically proximate public employers and
9 Nebraska public employers are preferable for comparison;

10 (ii) The preferred size of an array is seven to nine
11 members. As few as five members may be chosen if all array members
12 are Nebraska employers. The commission shall include members mutually
13 agreed to by the parties in the array;

14 (iii) If more than nine employers with job matches are
15 available, the commission shall limit the array to nine members,
16 based upon selecting array members with the highest number of job
17 matches at the highest job match percentage;

18 (iv) Nothing in this subdivision (2)(b) of this section
19 shall prevent parties from stipulating to an array member that does
20 not otherwise meet the criteria in such subdivision, and nothing in
21 such subdivision shall prevent parties from stipulating to less than
22 seven or more than nine array members;

23 (v) The commission shall not require a balanced number of
24 larger or smaller employers or a balanced number of Nebraska or out-
25 of-state employers;

1 (vi) If the array includes a public employer in a
2 metropolitan statistical area other than the metropolitan statistical
3 area in which the employer before the commission is located, only one
4 public employer from such metropolitan statistical area may be
5 included in the array;

6 (vii) Arrays for public utilities with annual revenue of
7 five hundred million dollars or more shall include both comparable
8 public and privately owned utilities. Arrays for public utilities
9 with annual revenue of less than five hundred million dollars may
10 include both comparable public and privately owned utilities. Public
11 utilities that produce radioactive material and energy pursuant to
12 section 70-627.02 shall have at least four members in its array that
13 produce radioactive material and energy when employees directly
14 involved in this production are included in the bargaining unit. For
15 public utilities that generate, transmit, and distribute power, the
16 array shall include members that also perform these functions. For a
17 public utility serving a city of the primary class, the array shall
18 only include public power districts in Nebraska that generate,
19 transmit, and distribute power and any out-of-state utilities whose
20 number of meters served is not more than double or less than one-half
21 of the number of meters served by the public utility serving a city
22 of the primary class unless evidence establishes that there are
23 substantial differences which cause the work or conditions of
24 employment to be dissimilar;

25 (viii) In constructing an array for a public utility, the

1 commission shall use fifty-mile concentric circles until it reaches
2 the optimum array pursuant to subdivision (2)(b)(ii) of this section;
3 and

4 (ix) For a statewide public utility that provides service
5 to a majority of the counties in Nebraska, any Nebraska public or
6 private job match may be used without regard to the population or
7 full-time equivalent employment requirements of this section, and any
8 out-of-state job match may be used if the full-time equivalent
9 employment of the out-of-state employer is no more than double and no
10 less than one-half of the full time equivalent employment of the
11 bargaining unit of the statewide public utility in question;

12 (c) In determining same or similar working conditions,
13 the commission shall adhere to the following:

14 (i) Public employers in Nebraska shall be presumed to
15 provide same or similar working conditions unless evidence
16 establishes that there are substantial differences which cause the
17 work or conditions of employment to be dissimilar;

18 (ii) Public employers shall be presumed to provide the
19 same or similar working conditions if (A) for public employers that
20 are counties or municipalities, the population of such public
21 employer is not more than double or less than one-half of the
22 population of the public employer before the commission, unless
23 evidence establishes that there are substantial differences which
24 cause the work or conditions of employment to be dissimilar, (B) for
25 public employers that are public utilities, the number of such public

1 employer's employees is not more than double or less than one-half of
2 the number of employees of the public employer before the commission,
3 unless evidence establishes that there are substantial differences
4 which cause the work or conditions of employment to be dissimilar, or
5 (C) for public employers that are school districts, educational
6 service units, or community colleges with noncertificated and
7 noninstructional school employees, the student enrollment of such
8 public employer is not more than double or less than one-half of the
9 student enrollment of the public employer before the commission,
10 unless evidence establishes that there are substantial differences
11 which cause the work or conditions of employment to be dissimilar;

12 (iii)(A) Public employers located within a metropolitan
13 statistical area who meet the population requirements of subdivision
14 (2)(c)(ii)(A) of this section, if the public employer is a county or
15 municipality, or the student enrollment requirements of subdivision
16 (2)(c)(ii)(C) of this section, if the public employer is a school
17 district or an educational service unit, shall be presumed to provide
18 the same or similar working conditions if the metropolitan
19 statistical area population in which they are located is not more
20 than double or less than one-half the metropolitan statistical area
21 population of the public employer before the commission, unless
22 evidence establishes that there are substantial differences which
23 cause the work or conditions of employment to be dissimilar.

24 (B) The presumption created by subdivision (2)(c)(iii)(A)
25 of this section may be overcome in situations where evidence

1 establishes that there are substantial similarities which cause the
2 work or conditions of employment to be similar, allowing the
3 commission to consider public employers located within a metropolitan
4 statistical area even if the metropolitan statistical area population
5 in which that employer or employers are located is more than double
6 or less than one-half the metropolitan statistical area population of
7 the public employer before the commission. The burden of establishing
8 sufficient similarity is on the party seeking to include a public
9 employer pursuant to this subdivision (2)(c)(iii)(B) of this section;
10 and

11 (iv) Public employers other than public utilities which
12 are not located within a metropolitan statistical area shall not be
13 compared to public employers located in a metropolitan statistical
14 area. For purposes of this subdivision, metropolitan statistical area
15 includes municipalities with populations of fifty thousand
16 inhabitants or more;

17 (d) Prevalent shall be determined as follows: (i) For
18 numeric values, prevalent shall be the midpoint between the
19 arithmetic mean and the arithmetic median. For fringe benefits,
20 prevalent shall be the midpoint between the arithmetic mean and the
21 arithmetic median as long as a majority of the array members provide
22 the benefit; and (ii) for nonnumeric comparisons, prevalent shall be
23 the mode that the majority of the array members provide if the
24 compared-to benefit is similar in nature. If there is no clear mode,
25 the benefit or working condition shall remain unaltered by the

1 commission;

2 (e) For any out-of-state employer, the parties may
3 present economic variable evidence and the commission shall determine
4 what, if any, adjustment is to be made if such evidence is presented.
5 The commission shall not require that any such economic variable
6 evidence be shown to directly impact the wages or benefits paid to
7 employees by such out-of-state employer;

8 (f) In determining total or overall compensation, the
9 commission shall value every economic item even if the year in
10 question has expired. The commission shall require that all wage and
11 benefit levels be leveled over the twelve-month period in dispute to
12 account for increases or decreases which occur in the wage or benefit
13 levels provided by any array member during such twelve-month period;

14 (g) In cases filed pursuant to this subsection (2) of
15 this section, the commission shall not be bound by the usual common
16 law or statutory rules of evidence or by any technical or formal
17 rules of procedure, other than those adopted by rule pursuant to
18 section 48-809. The commission shall receive evidence relating to
19 array selection, job match, and wages and benefits which have been
20 assembled by telephone, electronic transmission, or mail delivery,
21 and any such evidence shall be accompanied by an affidavit from the
22 employer or any other person with personal knowledge which affidavit
23 shall demonstrate the affiant's personal knowledge and competency to
24 testify on the matters thereon. The commission, with the consent of
25 the parties to the dispute, and in the presence of the parties to the

1 dispute, may contact an individual employed by an employer under
2 consideration as an array member by telephone to inquire as to the
3 nature or value of a working condition, wage, or benefit provided by
4 that particular employer as long as the individual in question has
5 personal knowledge about the information being sought. The commission
6 may rely upon information gained in such inquiry for its decision.
7 Opinion testimony shall be received by the commission based upon
8 evidence provided in accordance with this subdivision. Testimony
9 concerning job match shall be received if job match inquiries were
10 conducted by telephone, electronic transmission, or mail delivery if
11 the witness providing such testimony verifies the method of such job
12 match inquiry and analysis;

13 (h) In determining the value of defined benefit and
14 defined contribution retirement plans and health insurance plans or
15 health benefit plans, the commission shall use an hourly rate value
16 calculation as follows:

17 (i) Once the array has been chosen, each array member and
18 the public employer of the subject bargaining unit shall provide a
19 copy of its most recent defined benefit pension actuarial valuation
20 report. Each array member and the public employer of the subject
21 bargaining unit shall provide the most recent copy of its health
22 insurance plans or health benefit plans, covering the preceding
23 twelve-month period, with associated employer and employee costs, to
24 the parties and the commission. Each array member shall also provide
25 information concerning premium equivalent payments and contributions

1 for health savings accounts. Each array member and the public
2 employer of the subject bargaining unit shall indicate which plans
3 are most used. The plans that are most used shall be used for
4 comparison;

5 (ii) Once the actuarial valuation reports are received,
6 the parties shall have thirty calendar days to determine whether to
7 have the pensions actuarially valued at an hourly rate value other
8 than equal. The hourly rate value for defined benefit plans shall be
9 presumed to be equal to that of the array selected unless one or both
10 of the parties presents evidence establishing that the actuarially
11 derived annual normal cost of the pension benefit for each job
12 classification in the subject bargaining unit is above or below the
13 midpoint of the average normal cost. Consistent methods and
14 assumptions are to be applied to determine the annual normal cost of
15 any defined benefit pension plan of the subject bargaining unit and
16 each array member. For this purpose, the entry age normal actuarial
17 cost method is recommended. The actuarial assumptions that are
18 selected for this purpose should reflect expectations for a defined
19 benefit pension plan maintained for the employees of the subject
20 bargaining unit and acknowledge the eligibility and benefit
21 provisions for each respective defined benefit pension plan. In this
22 regard, different eligibility and benefit provisions may suggest
23 different retirement or termination of employment assumptions. The
24 methods and assumptions shall be attested to by an actuary holding a
25 current membership with the American Academy of Actuaries. Any party

1 who requests or presents evidence regarding actuarial valuation of a
2 defined benefit plan shall be responsible for costs associated with
3 such valuation and testimony. The actuarial valuation is presumed
4 valid, unless a party presents competent actuarial evidence that the
5 valuation is invalid;

6 (iii) The hourly rate value for defined contribution
7 plans shall be established upon comparison of employer contributions;

8 (iv) The hourly rate value for health insurance plans or
9 health benefit plans shall be established based upon the public
10 employer's premium payments, premium equivalent payments, and public
11 employer and public employee contributions to health savings
12 accounts;

13 (v) The commission shall not compare defined benefit
14 plans to defined contribution plans or defined contribution plans to
15 defined benefit plans; and

16 (vi) The commission shall order increases or decreases in
17 wage rates by job classification based upon the hourly rate value for
18 health-related benefits, benefits provided for retirement plans, and
19 wages;

20 (i) For benefits other than defined benefit and defined
21 contribution retirement plans and health insurance plans or health
22 benefit plans, the commission shall issue an order based upon a
23 determination of prevalency as determined under subdivision (2)(d) of
24 this section; and

25 (j) The commission shall issue an order regarding

1 increases or decreases in base wage rates or benefits as follows:

2 (i) The order shall be retroactive with respect to
3 increases and decreases to the beginning of the bargaining year in
4 dispute;

5 (ii) The commission shall determine whether the hourly
6 rate value of the bargaining unit's members or classification falls
7 within a ninety-eight percent to one hundred two percent range of the
8 array's midpoint. If the hourly rate value falls within the ninety-
9 eight percent to one hundred two percent range, the commission shall
10 order no change in wage rates. If the hourly rate value is less than
11 ninety-eight percent of the midpoint, the commission shall enter an
12 order increasing wage rates to ninety-eight percent of the midpoint.
13 If the hourly rate value is more than one hundred two percent of the
14 midpoint, the commission shall enter an order decreasing wage rates
15 to one hundred two percent of the midpoint. If the hourly rate value
16 is more than one hundred seven percent of the midpoint, the
17 commission shall enter an order reducing wage rates to one hundred
18 two percent of the midpoint in three equal annual reductions. If the
19 hourly rate value is less than ninety-three percent of the midpoint,
20 the commission shall enter an order increasing wage rates to ninety-
21 eight percent of the midpoint in three equal annual increases. If the
22 commission finds that the year in dispute occurred during a time of
23 recession, the applicable range will be ninety-five percent to one
24 hundred two percent. For purposes of this subdivision (2)(j) of this
25 section, recession occurrence means the two nearest quarters in time,

1 excluding the immediately preceding quarter, to the effective date of
2 the contract term in which the sum of the net state sales and use
3 tax, individual income tax, and corporate income tax receipts are
4 less than the same quarters for the prior year. Each of these
5 receipts shall be rate and base adjusted for state law changes. The
6 Department of Revenue shall report and publish such receipts on a
7 quarterly basis;

8 (iii) The parties shall have twenty-five calendar days to
9 negotiate modifications to wages and benefits. If no agreement is
10 reached, the commission's order shall be followed as issued; and

11 (iv) The commission shall provide an offset to the public
12 employer when a lump-sum payment is due because benefits were paid in
13 excess of the prevalent as determined under subdivision (2)(d) of
14 this section or when benefits were paid below the prevalent as so
15 determined but wages were above prevalent.

16 Sec. 11. (1) The Legislature finds that it is in the
17 public's interest that collective bargaining involving school
18 districts, educational service units, and community colleges and
19 their certificated and instructional employees commence and conclude
20 in a timely fashion consistent with school district budgeting and
21 financing requirements. To that end, the timelines in this section
22 shall apply when the public employer is a school district,
23 educational service unit, or community college.

24 (2) On or before September 1 of the year preceding the
25 contract year in question, the certificated and instructional

1 employees' collective-bargaining agent shall request recognition as
2 bargaining agent. The governing board shall respond to such request
3 not later than the following October 1. A request for recognition
4 need not be filed if the certificated and instructional employees'
5 bargaining agent has been certified by the commission as the
6 exclusive collective-bargaining agent. On or before November 1 of the
7 year preceding the contract year in question, negotiations shall
8 begin. There shall be no fewer than four negotiations meetings
9 between the certificated and instructional employees' collective-
10 bargaining agent and the governing board's bargaining agent. Either
11 party may seek a bargaining order pursuant to subsection (1) of
12 section 48-816 at any stage in the negotiations. If an agreement is
13 not reached on or before the following February 8, the parties shall
14 submit to mandatory mediation or factfinding as ordered by the
15 commission pursuant to sections 48-811 and 48-816 unless the parties
16 mutually agree in writing to forgo mandatory mediation or
17 factfinding.

18 (3)(a) The mediator or factfinder as ordered by the
19 commission under subsection (2) of this section shall be a resolution
20 officer. The commission shall provide the parties with the names of
21 five individuals qualified to serve as the resolution officer. If the
22 parties cannot agree on an individual, each party shall alternately
23 strike names. The remaining individual shall serve as the resolution
24 officer.

25 (b) The resolution officer may:

- 1 (i) Determine whether the issues are ready for
2 adjudication;
- 3 (ii) Identify for resolution terms and conditions of
4 employment that are in dispute and which were negotiated in good
5 faith but upon which no agreement was reached;
- 6 (iii) Accept stipulations;
- 7 (iv) Schedule hearings;
- 8 (v) Prescribe rules of conduct for conferences;
- 9 (vi) Order additional mediation if necessary;
- 10 (vii) Take any other action which may aid in resolution
11 of the industrial dispute; and
- 12 (viii) Consult with a party ex parte only with the
13 concurrence of all parties.
- 14 (c) The resolution officer shall choose the most
15 reasonable final offer on each issue in dispute. In making such
16 choice, he or she shall consider factors relevant to collective
17 bargaining between public employers and public employees, including
18 comparable rates of pay and conditions of employment as described in
19 subsection (1) of section 48-818. The resolution officer shall not
20 apply strict rules of evidence. Persons who are not attorneys may
21 present cases to the resolution officer.
- 22 (d) If either party to a resolution officer proceeding is
23 dissatisfied with the resolution officer's decision, such party shall
24 have the right to file an action with the commission seeking a
25 determination of terms and conditions of employment pursuant to

1 subsection (1) of section 48-818. Such action shall not constitute an
2 appeal of the resolution officer's decision, but rather shall be
3 heard by the commission as an action brought pursuant to subsection
4 (1) of section 48-818. The commission shall resolve, pursuant to the
5 mandates of such section, all of the issues identified by either
6 party and which were recognized by the resolution officer as an
7 industrial dispute. If parties have not filed with the commission
8 pursuant to subsection (6) of this section, the decision of the
9 resolution officer shall be deemed final and binding.

10 (4) For purposes of this section, issue means broad
11 subjects of negotiation which are presented to the resolution officer
12 pursuant to this section. All aspects of wages are a single issue,
13 all aspects of insurance are a single issue, and all other subjects
14 of negotiations classified in broad categories are single issues.

15 (5) On or before March 25 of the year preceding the
16 contract year in question or within twenty-five days after the
17 certification of the amounts to be distributed to each local system
18 and each school district pursuant to the Tax Equity and Educational
19 Opportunities Support Act as provided in section 79-1022 for the
20 contract year in question, whichever occurs last in time,
21 negotiations, mediation, and factfinding shall end.

22 (6) If an agreement for the contract year in question has
23 not been achieved on or before the date for negotiation, mediation,
24 or factfinding to end in subsection (5) of this section, either party
25 may, within fourteen days after such date, file a petition with the

1 commission pursuant to sections 48-811 and subsection (1) of 48-818
2 to resolve the industrial dispute for the contract year in question.
3 The commission shall render a decision on such industrial dispute on
4 or before September 15 of the contract year in question.

5 (7) Any existing collective-bargaining agreement will
6 continue in full force and effect until superseded by further
7 agreement of the parties or by an order of the commission. The
8 parties may continue to negotiate unresolved issues by mutual
9 agreement while the matter is pending with the commission.

10 (8) All collective-bargaining agreements shall be written
11 and executed by representatives of the governing board and
12 representatives of the certificated and instructional employees'
13 bargaining unit. The agreement shall contain at a minimum the
14 following:

15 (a) A salary schedule or objective method of determining
16 salaries;

17 (b) A description of benefits being provided or agreed
18 upon including a specific level of coverage provided in any group
19 insurance plan, a dollar amount, or percentage of premiums to be
20 paid, and by whom; and

21 (c) A provision that the existing agreement will continue
22 until replaced by a successor agreement or as amended by a final
23 order of the commission.

24 Sec. 12. When determining total compensation pursuant to
25 subsection (1) of section 48-818 for a school district, educational

1 service unit, or community college with their certificated and
2 instructional employees, the commission shall consider the employer's
3 contribution to retirement plans and health insurance premiums,
4 premium equivalent payments, or cash equivalent payments and any
5 other costs, including Federal Insurance Contributions Act
6 contributions, associated with providing such benefits.

7 Sec. 13. When establishing wage rates pursuant to
8 subsection (1) of section 48-818 for a school district, educational
9 service unit, or community college with their certificated and
10 instructional employees, the commission shall determine whether the
11 total compensation of the members of the bargaining unit or
12 classification falls within a ninety-eight percent to one hundred two
13 percent range of the array's midpoint. If the total compensation
14 falls within the ninety-eight percent to one hundred two percent
15 range, the commission shall order no change in wage rates. If the
16 total compensation is less than ninety-eight percent of the midpoint,
17 the commission shall enter an order increasing wage rates to ninety-
18 eight percent of the midpoint. If the total compensation is more than
19 one hundred two percent of the midpoint, the commission shall enter
20 an order decreasing wage rates to one hundred two percent of the
21 midpoint. If the total compensation is more than one hundred seven
22 percent of the midpoint, the commission shall enter an order reducing
23 wage rates to one hundred two percent of the midpoint in three equal
24 annual reductions. If the total compensation is less than ninety-
25 three percent of the midpoint, the commission shall enter an order

1 increasing wage rates to ninety-eight percent of the midpoint in
2 three equal annual increases. If the commission finds that the year
3 in dispute occurred during a time of recession, the applicable range
4 will be ninety-five percent to one hundred two percent. For purposes
5 of this section, recession occurrence means the two nearest quarters
6 in time, excluding the immediately preceding quarter, to the
7 effective date of the contract term in which the sum of the net state
8 sales and use tax, individual income tax, and corporate income tax
9 receipts are less than the same quarters for the prior year. Each of
10 these receipts shall be rate and base adjusted for state law changes.
11 The Department of Revenue shall report and publish such receipts on a
12 quarterly basis.

13 Sec. 14. Section 48-824, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 48-824 (1) It is a prohibited practice for any public
16 employer, public employee, public employee organization, or
17 collective-bargaining agent to refuse to negotiate in good faith with
18 respect to mandatory topics of bargaining.

19 (2) It is a prohibited practice for any public employer
20 or the public employer's negotiator to:

21 (a) Interfere with, restrain, or coerce employees in the
22 exercise of rights granted by the Industrial Relations Act;

23 (b) Dominate or interfere in the administration of any
24 public employee organization;

25 (c) Encourage or discourage membership in any public

1 employee organization, committee, or association by discrimination in
2 hiring, tenure, or other terms or conditions of employment;

3 (d) Discharge or discriminate against ~~an~~a public
4 employee because the employee has filed an affidavit, petition, or
5 complaint or given any information or testimony under the Industrial
6 Relations Act or because the public employee has formed, joined, or
7 chosen to be represented by any public employee organization;

8 (e) Refuse to negotiate collectively with representatives
9 of collective-bargaining agents as required by the Industrial
10 Relations Act;

11 (f) Deny the rights accompanying certification or
12 recognition granted by the Industrial Relations Act; and

13 (g) Refuse to participate in good faith in any impasse
14 procedures for public employees as set forth in the Industrial
15 Relations Act.

16 (3) It is a prohibited practice for any public employee,
17 public employee organization, or bargaining unit or for any
18 representative or collective-bargaining agent to:

19 (a) Interfere with, restrain, coerce, or harass any
20 public employee with respect to any of the public employee's rights
21 granted by the Industrial Relations Act;

22 (b) Interfere with, restrain, or coerce ~~an~~a public
23 employer with respect to rights granted by the Industrial Relations
24 Act or with respect to selecting a representative for the purposes of
25 negotiating collectively on the adjustment of grievances;

1 (c) Refuse to bargain collectively with ~~an~~a public
2 employer as required by the Industrial Relations Act; and

3 (d) Refuse to participate in good faith in any impasse
4 procedures for public employees as set forth in the Industrial
5 Relations Act.

6 (4) The expressing of any view, argument, or opinion, or
7 the dissemination thereof, whether in written, printed, graphic, or
8 visual form, is not evidence of any unfair labor practice under any
9 of the provisions of the Industrial Relations Act if such expression
10 contains no threat of reprisal or force or promise of benefit.

11 Sec. 15. Section 48-838, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 48-838 (1) The commission shall determine questions of
14 representation for purposes of collective bargaining for and on
15 behalf of public employees and shall make rules and regulations for
16 the conduct of elections to determine the exclusive collective-
17 bargaining agent for public employees, except that in no event shall
18 a contract between ~~an~~a public employer and an exclusive collective-
19 bargaining agent act as a bar for more than three years to any other
20 party seeking to represent public employees, nor shall any contract
21 bar for more than three years a petition by public employees seeking
22 an election to revoke the authority of an agent to represent them.
23 Except as provided in the State Employees Collective Bargaining Act,
24 the commission shall certify the exclusive collective-bargaining
25 agent for employees affected by the Industrial Relations Act

1 following an election by secret ballot, which election shall be
2 conducted according to rules and regulations established by the
3 commission.

4 (2) The election shall be conducted by one member of the
5 commission who shall be designated to act in such capacity by the
6 presiding officer of the commission, or the commission may appoint
7 the clerk of the district court of the county in which the principal
8 office of the public employer is located to conduct the election in
9 accordance with the rules and regulations established by the
10 commission. Except as provided in the State Employees Collective
11 Bargaining Act, the commission shall also determine the appropriate
12 unit for bargaining and for voting in the election, and in making
13 such determination, the commission shall consider established
14 bargaining units and established policies of the public employer. It
15 shall be presumed, in the case of governmental subdivisions such as
16 municipalities, counties, power districts, or utility districts with
17 no previous history of collective bargaining, that units of public
18 employees of less than departmental size shall not be appropriate.

19 (3) Except as provided in the State Employees Collective
20 Bargaining Act, the commission shall not order an election until it
21 has determined that at least thirty percent of the employees in an
22 appropriate unit have requested in writing that the commission hold
23 such an election. Such request in writing by an employee may be in
24 any form in which an employee specifically either requests an
25 election or authorizes the employee organization to represent him or

1 her in bargaining, or otherwise evidences a desire that an election
2 be conducted. Such request of an employee shall not become a matter
3 of public record. No election shall be ordered in one unit more than
4 once a year.

5 (4) Except as provided in the State Employees Collective
6 Bargaining Act, the commission shall only certify an exclusive
7 collective-bargaining agent if a majority of the employees voting in
8 the election vote for the agent. A certified exclusive collective-
9 bargaining agent shall represent all employees in the appropriate
10 unit with respect to wages, hours, and conditions of employment,
11 except that such right of exclusive recognition shall not preclude
12 any employee, regardless of whether or not he or she is a member of a
13 labor organization, from bringing matters to the attention of his or
14 her superior or other appropriate officials.

15 Any employee may choose his or her own representative in
16 any grievance or legal action regardless of whether or not an
17 exclusive collective-bargaining agent has been certified. If an
18 employee who is not a member of the labor organization chooses to
19 have legal representation from the labor organization in any
20 grievance or legal action, such employee shall reimburse the labor
21 organization for his or her pro rata share of the actual legal fees
22 and court costs incurred by the labor organization in representing
23 the employee in such grievance or legal action.

24 The certification of an exclusive collective-bargaining
25 agent shall not preclude any public employer from consulting with

1 lawful religious, social, fraternal, or other similar associations on
2 general matters affecting public employees so long as such contracts
3 do not assume the character of formal negotiations in regard to
4 wages, hours, and conditions of employment. Such consultations shall
5 not alter any collective-bargaining agreement which may be in effect.

6 Sec. 16. Changes made to the Industrial Relations Act by
7 this legislative bill shall apply to petitions filed with the
8 commission on or after October 1, 2011, except for petitions filed
9 involving school districts, educational service units, and community
10 colleges with their certificated and instructional employees for
11 which such changes shall apply on or after July 1, 2012.

12 Sec. 17. Section 79-852, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 79-852 The collective-bargaining agreement of the school
15 district or districts forming the unified system or reorganized
16 school district with the largest number of teacher employees shall
17 continue in full force and effect and govern all teachers in the
18 unified system or reorganized school district until replaced by a
19 successor agreement, and the teachers employed by the unified system
20 or reorganized school district and previously employed by the school
21 districts involved in the formation of the unified system or
22 reorganized school district shall automatically be included in that
23 bargaining unit but no certificated public school employee shall be
24 compelled to join any organization or association. If only one
25 collective-bargaining agreement is in effect in the school districts

1 which are a part of the unification or reorganization, that
2 collective-bargaining agreement shall continue in full force and
3 effect until replaced by a successor agreement and the teachers
4 employed by the other school districts involved in the unification or
5 reorganization shall automatically be included in that bargaining
6 unit. For purposes of the Industrial Relations Act, the unified
7 system shall be deemed ~~an~~ a public employer as defined in section
8 48-801.

9 Sec. 18. Section 79-2116, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 79-2116 Terms and conditions of employment of school
12 employees providing services for an elementary learning center shall
13 be established by the negotiated agreement of the learning community
14 employing such school employees to provide services. For certificated
15 employees as defined in ~~subdivision (1) of~~ section 79-824, the
16 learning community shall be deemed to be ~~an~~ a public employer as
17 defined in ~~subdivision (4) of~~ section 48-801. Compensation paid to
18 school employees for services provided to a learning community shall
19 be subject to the School Employees Retirement Act unless such
20 employee is employed by a Class V school district, in which case
21 compensation paid such school employee shall be subject to the Class
22 V School Employees Retirement Act.

23 Sec. 19. Section 81-1369, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-1369 Sections 81-1369 to ~~81-1390~~ 81-1388 shall be

1 known and may be cited as the State Employees Collective Bargaining
2 Act.

3 Sec. 20. Section 81-1371, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 81-1371 For purposes of the State Employees Collective
6 Bargaining Act, unless the context otherwise requires:

7 (1) Chief Negotiator shall mean the Chief Negotiator of
8 the Division of Employee Relations of the Department of
9 Administrative Services;

10 (2) Commission shall mean the Commission of Industrial
11 Relations;

12 (3) Division shall mean the Division of Employee
13 Relations of the Department of Administrative Services;

14 (4) Employee or state employee shall mean any employee of
15 the State of Nebraska;

16 (5) Employer or state employer shall mean the State of
17 Nebraska and shall not include any political subdivision thereof;

18 (6) Employer-representative shall mean (a) for
19 negotiations involving employees of the University of Nebraska, the
20 Board of Regents, (b) for negotiations involving employees of the
21 Nebraska state colleges, the Board of Trustees of the Nebraska State
22 Colleges, (c) for negotiations involving employees of other
23 constitutional agencies, the governing officer or body for each such
24 agency, and (d) for negotiations involving other state employees, the
25 Governor;

1 (7) Grievance shall mean a management action resulting in
2 an injury, injustice, or wrong involving a misinterpretation or
3 misapplication of applicable labor contracts if so agreed to by the
4 appropriate parties;

5 (8) Issue shall mean broad subjects of negotiation which
6 are presented to the ~~Special Master~~ commission pursuant to section
7 81-1382. All aspects of wages shall be a single issue, all aspects of
8 insurance shall be a single issue, and all other subjects of
9 negotiations classified in broad categories shall be single issues;

10 (9) Mandatory topic or topics of bargaining shall mean
11 those subjects of negotiation on which employers must negotiate
12 pursuant to the Industrial Relations Act, including terms and
13 conditions of employment which may otherwise be provided by law for
14 state employees, except when specifically prohibited by law from
15 being a subject of bargaining; and

16 (10) Meet-and-confer rights shall mean the rights of
17 employees to discuss wages, hours, and other terms and conditions of
18 employment with the appropriate employer-representative but shall not
19 require either party to enter into a written agreement. Employees
20 afforded meet-and-confer rights shall not be entitled to utilize the
21 impasse resolution procedures provided in the State Employees
22 Collective Bargaining Act or to file a petition with the commission
23 invoking its jurisdiction as provided in the Industrial Relations Act
24 for the purpose of obtaining an order or orders under section 48-818.
25 Meet-and-confer rights shall not apply to any bargaining unit other

1 than a supervisory unit. ~~;~~ and

2 ~~(11) Special Master shall mean a factfinder chosen~~
3 ~~pursuant to section 81-1380.~~

4 Sec. 21. Section 81-1372, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 81-1372 The State Employees Collective Bargaining Act
7 shall be deemed ~~cumulative-controlling for state employees and state~~
8 employers covered by such act and is supplementary to the Industrial
9 Relations Act except when otherwise specifically provided or when
10 inconsistent with the Industrial Relations Act, in which case the
11 State Employees Collective Bargaining Act shall prevail.

12 The State of Nebraska, its employees, employee
13 organizations, and exclusive collective-bargaining agents shall have
14 all the rights and responsibilities afforded employers, employees,
15 employee organizations, and exclusive collective-bargaining agents
16 pursuant to the Industrial Relations Act to the extent that such act
17 is not inconsistent with the State Employees Collective Bargaining
18 Act.

19 Sec. 22. Section 81-1373, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 81-1373 (1) For the purpose of implementing the state
22 employees' right to organize for the purpose of collective
23 bargaining, there are hereby created twelve bargaining units for all
24 state agencies except the University of Nebraska, the Nebraska state
25 colleges, and other constitutional offices. The units shall consist

1 of state employees whose job classifications are occupationally and
2 functionally related and who share a community of interest. The
3 bargaining units shall be:

4 (a) Maintenance, Trades, and Technical, which unit is
5 composed of generally recognized blue collar and technical classes,
6 including highway maintenance workers, carpenters, plumbers,
7 electricians, print shop workers, auto mechanics, engineering aides
8 and associates, and similar classes;

9 (b) Administrative Support, which unit is composed of
10 clerical and administrative nonprofessional classes, including
11 typists, secretaries, accounting clerks, computer operators, office
12 service personnel, and similar classes;

13 (c) Health and Human Care Nonprofessional, which unit is
14 composed of institutional care classes, including nursing aides,
15 psychiatric aides, therapy aides, and similar classes;

16 (d) Social Services and Counseling, which unit is
17 composed of generally professional-level workers providing services
18 and benefits to eligible persons. Classes shall include job service
19 personnel, income maintenance personnel, social workers, counselors,
20 and similar classes;

21 (e) Administrative Professional, which unit is composed
22 of professional employees with general business responsibilities,
23 including accountants, buyers, personnel specialists, data processing
24 personnel, and similar classes;

25 (f) Protective Service, which unit is composed of

1 institutional security personnel, including correctional officers,
2 building security guards, and similar classes;

3 (g) Law Enforcement, which unit is composed of employees
4 holding powers of arrest, including Nebraska State Patrol officers
5 and sergeants, conservation officers, fire marshal personnel, and
6 similar classes. Sergeants, investigators, and patrol officers
7 employed by the Nebraska State Patrol as authorized in section
8 81-2004 shall be presumed to have a community of interest with each
9 other and shall be included in this bargaining unit notwithstanding
10 any other provision of law which may allow for the contrary;

11 (h) Health and Human Care Professional, which unit is
12 composed of community health, nutrition, and health service
13 professional employees, including nurses, doctors, psychologists,
14 pharmacists, dietitians, licensed therapists, and similar classes;

15 (i) Examining, Inspection, and Licensing, which unit is
16 composed of employees empowered to review certain public and business
17 activities, including driver-licensing personnel, revenue agents,
18 bank and insurance examiners who remain in the State Personnel System
19 under sections 8-105 and 44-119, various public health and protection
20 inspectors, and similar classes;

21 (j) Engineering, Science, and Resources, which unit is
22 composed of specialized professional scientific occupations,
23 including civil and other engineers, architects, chemists, geologists
24 and surveyors, and similar classes;

25 (k) Teachers, which unit is composed of employees

1 required to be licensed or certified as a teacher; and

2 (1) Supervisory, which unit is composed of employees who
3 are supervisors as defined in section 48-801.

4 All employees who are excluded from bargaining units
5 pursuant to the Industrial Relations Act, all employees of the
6 personnel division of the Department of Administrative Services, and
7 all employees of the Division of Employee Relations of the Department
8 of Administrative Services shall be excluded from any bargaining unit
9 of state employees.

10 (2) Any employee organization, including one which
11 represents other state employees, may be certified or recognized as
12 provided in the Industrial Relations Act as the exclusive collective-
13 bargaining agent for a supervisory unit, except that such unit shall
14 not have full collective-bargaining rights but shall be afforded only
15 meet-and-confer rights.

16 (3) It is the intent of the Legislature that professional
17 and managerial employee classifications and office and service
18 employee classifications be grouped in broad occupational units for
19 the University of Nebraska and the Nebraska state colleges
20 established on a university-wide or college-system-wide basis,
21 including all campuses within the system. Any unit entirely composed
22 of supervisory employees of the University of Nebraska or the
23 Nebraska state colleges shall be afforded only meet-and-confer
24 rights. ~~Except as provided in subsection (4) of this section, the~~
25 bargaining units for academic, faculty, and teaching employees of the

1 University of Nebraska and the Nebraska state colleges shall continue
2 as they ~~exist~~ existed on April 9, 1987, plus the addition of Kearney
3 State College, and any adjustments thereto or new units therefor
4 shall continue to be determined pursuant to the Industrial Relations
5 Act.

6 ~~(4) Except as provided in subdivision (2)(c) of section~~
7 ~~85-1,119, when the institution now known as Kearney State College is~~
8 ~~transferred to the control and management of the Board of Regents of~~
9 ~~the University of Nebraska, any academic, faculty, and teaching~~
10 ~~employees of Kearney State College who are included in a bargaining~~
11 ~~unit and represented by a certified or recognized collective-~~
12 ~~bargaining agent as of June 30, 1991, shall, on and after July 1,~~
13 ~~1991, compose a separate bargaining unit of University of Nebraska~~
14 ~~employees, and such agent shall be entitled to certification by the~~
15 ~~commission for the new bargaining unit without the necessity of a~~
16 ~~representation election. Any adjustments to the unit or the~~
17 ~~representation thereof shall be determined pursuant to the Industrial~~
18 ~~Relations Act.~~

19 ~~(5)-(4)~~ Other constitutional offices shall continue to
20 subscribe to the procedures for unit determination in the Industrial
21 Relations Act, except that the commission is further directed to
22 determine the bargaining units in such manner as to (a) reduce the
23 effect of overfragmentation of bargaining units on the efficiency of
24 administration and operations of the constitutional office and (b) be
25 consistent with the administrative structure of the constitutional

1 office. Any unit entirely composed of supervisory employees of a
2 constitutional office shall be afforded only meet-and-confer rights.

3 Sec. 23. Section 81-1375, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 81-1375 Certified collective-bargaining agents
6 representing bargaining units other than those prescribed in section
7 81-1373 shall not utilize the impasse procedures provided for in
8 sections ~~81-1380~~ 81-1381 to 81-1385 nor file a petition with the
9 commission invoking its jurisdiction as provided in the Industrial
10 Relations Act. ~~but may, for two years from April 9, 1987, continue to~~
11 ~~meet and confer with employer representatives regarding those~~
12 ~~employees in such units as long as no other employee organization has~~
13 ~~been certified as the exclusive collective bargaining agent for such~~
14 ~~employees pursuant to section 81-1374 and may represent individual~~
15 ~~employees on grievance matters. Parties engaged in the meet and~~
16 ~~confer process shall not be entitled to file any case with the~~
17 ~~commission to establish any rate of pay or condition of employment,~~
18 ~~except that if those parties which meet and confer during this two-~~
19 ~~year period do not reach an agreement by June 30 preceding the~~
20 ~~beginning of the fiscal year, the existing agreement or contract~~
21 ~~shall be continued until such time as an agreement or contract for~~
22 ~~the remainder of the fiscal year has been reached.~~

23 Sec. 24. Section 81-1378, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-1378 (1) The dates indicated in sections 81-1379 to

1 81-1384 shall refer to those dates immediately preceding the
2 beginning of the contract period for which negotiations are being
3 conducted.

4 (2) When any date provided in sections 81-1379 to 81-1384
5 falls on a Saturday, a Sunday, or any day declared by statutory
6 enactment or proclamations of the Governor to be a holiday, the next
7 following day which is not a Saturday, a Sunday, or a day declared by
8 the enactment or proclamation to be a holiday shall be deemed to be
9 the day indicated by such date.

10 (3) The dates indicated in sections 81-1382 and 81-1383
11 are jurisdictional. Failure of either party to act in a timely manner
12 shall result in a jurisdictional bar for either the commission or
13 Supreme Court.

14 Sec. 25. Section 81-1379, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-1379 The Chief Negotiator and any other employer-
17 representative and the exclusive collective-bargaining agent shall
18 commence negotiations on or prior to the second Wednesday in
19 September of the year preceding the beginning of the contract period,
20 except that the first negotiations commenced by any bargaining unit
21 may commence after such September date in order to accommodate any
22 unresolved representation proceedings. All negotiations shall be
23 completed on or before March 15 of the following year.

24 All negotiated agreements shall be in writing and signed
25 by the parties. The authority to enter into the agreed-upon contract

1 shall be vested in the following:

2 (1) For the University of Nebraska, the Board of Regents;

3 (2) For the Nebraska state colleges, the Board of
4 Trustees of the Nebraska State Colleges;

5 (3) For other constitutional offices, the head of such
6 office;

7 (4) For all other agencies, the Governor; and

8 (5) For the bargaining unit, a majority of those voting
9 on ratification after notice of the contract terms is given and a
10 secret ballot vote has been taken.

11 Nothing in the State Employees Collective Bargaining Act
12 shall be construed to prohibit supplementary bargaining on behalf of
13 employees in part of a bargaining unit concerning matters uniquely
14 affecting such employees or cooperation and coordination of
15 bargaining between two or more bargaining units. Supplementary
16 bargaining in regard to employees for whom the Governor is the
17 employer-representative shall be the responsibility of the Chief
18 Negotiator and may be assigned to his or her designated
19 representative.

20 Any agreements entered into pursuant to this section may
21 be adjusted after March 15 only to reflect any order issued by the
22 commission, ~~the Court of Appeals~~, or the Supreme Court.

23 Sec. 26. Section 81-1381, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-1381 If the parties in labor contract negotiations do

1 not reach a voluntary agreement by January 1, the dispute shall be
2 submitted to a mediator mutually selected by the parties or appointed
3 by the Federal Mediation and Conciliation Service. Mediation may
4 continue indefinitely at the request of either party or when
5 appropriate in the judgment of the mediator, ~~or Special Master.~~ If
6 necessary, mediation may continue after the exchange of final offers.

7 Sec. 27. Section 81-1382, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 81-1382 (1) No later than January 10, the parties in
10 labor contract negotiations shall reduce to writing and sign all
11 agreed-upon issues and exchange final offers on each unresolved
12 issue. Final offers may not be amended or modified without the
13 concurrence of the other party.

14 (2) No later than January 15, the parties in labor
15 contract negotiations shall submit all unresolved issues that
16 resulted in impasse to the ~~Special Master.~~ commission. No party shall
17 submit an issue to the commission that was not subject to
18 negotiations. The ~~Special Master~~ commission shall conduct a
19 prehearing conference. ~~He or she~~ and shall have the authority to:

20 (a) Determine whether the issues are ready for
21 adjudication;

22 (b) Accept stipulations;

23 (c) Schedule hearings;

24 (d) Prescribe rules of conduct for the hearings;

25 (e) Order additional mediation if necessary; and

1 (f) Take any other actions which may aid in the disposal
2 of the action.

3 The ~~Special Master~~ commission may consult with the
4 parties ex parte only with the concurrence of both parties.

5 ~~(3) The Special Master shall choose the most reasonable~~
6 ~~final offer on each issue in dispute. In making such choice, he or~~
7 ~~she shall consider factors relevant to collective bargaining between~~
8 ~~public employers and public employees, including comparable rates of~~
9 ~~pay and conditions of employment as described in section 48-818. The~~
10 ~~Special Master shall not apply strict rules of evidence. Persons who~~
11 ~~are not attorneys may present cases to the Special Master. The~~
12 ~~Special Master shall issue his or her ruling on or before February~~
13 ~~15.~~

14 Sec. 28. Section 81-1383, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-1383 ~~(1) The Special Master's ruling shall be binding,~~
17 ~~except that the Chief Negotiator or any other employer representative~~
18 ~~or the certified collective bargaining agent may appeal an adverse~~
19 ~~ruling on an issue to the commission on or before March 15. No party~~
20 ~~shall file an appeal after March 15. No party shall present an issue~~
21 ~~to the commission that was not subject to negotiations and ruled upon~~
22 ~~by the Special Master. There shall be no change in the unresolved~~
23 ~~issues while the appeal is pending.~~

24 ~~(2) The commission shall show significant deference to~~
25 ~~the Special Master's ruling and shall only set the ruling aside upon~~

1 ~~a finding that the ruling is significantly disparate from prevalent~~
2 ~~rates of pay or conditions of employment as determined by the~~
3 ~~commission pursuant to section 48-818. The commission shall not find~~
4 ~~the Special Master's ruling to be significantly disparate from~~
5 ~~prevalent rates of pay or conditions of employment in any instance~~
6 ~~when the prevalent rates of pay or conditions of employment, as~~
7 ~~determined by the commission pursuant to section 48-818, fall between~~
8 ~~the final offers of the parties.~~

9 ~~(3) If the commission does not defer to the Special~~
10 ~~Master's ruling, it shall enter an order implementing the final offer~~
11 ~~on each issue appealed which would result in rates of pay and~~
12 ~~conditions of employment most comparable with the prevalent rates of~~
13 ~~pay and conditions of employment determined by it pursuant to section~~
14 ~~48-818. Under no circumstances shall the commission enter an order on~~
15 ~~an issue which does not implement one of the final offers of the~~
16 ~~parties. Nothing in this section shall prohibit the commission from~~
17 ~~deferring to the Special Master's ruling if it finds that the ruling~~
18 ~~would not result in significant disparity with the prevalent rates of~~
19 ~~pay and conditions of employment as it has determined pursuant to~~
20 ~~section 48-818.~~

21 (1) No later than March 1, the commission shall enter an
22 order on each unresolved issue.

23 (2)(a) The commission's order shall establish rates of
24 pay and conditions of employment which are comparable to the
25 prevalent wage rates paid and conditions of employment maintained by

1 peer employers for the same or similar work of workers exhibiting
2 like or similar skills under the same or similar working conditions.

3 (b)(i) In establishing wage rates, the commission shall
4 take into consideration the overall compensation received by the
5 employees at the time of the negotiations, having regard to:

6 (A) Wages for time actually worked;

7 (B) Wages for time not worked, including vacations,
8 holidays, and other excused time, and all benefits received,
9 including insurance and pensions; and

10 (C) The continuity and stability of employment enjoyed by
11 the employees.

12 (ii) The commission shall determine whether the total
13 compensation of the members of the bargaining unit or classification
14 falls within a ninety-eight percent to one hundred two percent range
15 of the array's midpoint. If the total compensation falls within the
16 ninety-eight percent to one hundred two percent range, the commission
17 shall order no change in wage rates. If the total compensation is
18 less than ninety-eight percent of the midpoint, the commission shall
19 enter an order increasing wage rates to ninety-eight percent of the
20 midpoint. If the total compensation is more than one hundred two
21 percent of the midpoint, the commission shall enter an order
22 decreasing wage rates to one hundred two percent of the midpoint. If
23 the total compensation is more than one hundred seven percent of the
24 midpoint, the commission shall enter an order reducing wage rates to
25 one hundred two percent of the midpoint in three equal annual

1 reductions. If the total compensation is less than ninety-three
2 percent of the midpoint, the commission shall enter an order
3 increasing wage rates to ninety-eight percent of the midpoint in
4 three equal annual increases. If the commission finds that the year
5 in dispute occurred during a time of recession, the applicable range
6 will be ninety-five percent to one hundred two percent. For purposes
7 of this section, recession occurrence means the two nearest quarters
8 in time, excluding the immediately preceding quarter, to the
9 effective date of the contract term in which the sum of the net state
10 sales and use tax, individual income tax, and corporate income tax
11 receipts are less than the same quarters for the prior year. Each of
12 these receipts shall be rate and base adjusted for state law changes.
13 The Department of Revenue shall report and publish such receipts on a
14 quarterly basis.

15 (c) For purposes of determining peer employer
16 comparability, the following factors shall be used by the commission:

17 (i) Geographic proximity of the employer;

18 (ii) Size of the employer, which shall not be more than
19 twice or less than one-half, unless evidence establishes that there
20 are substantial differences which cause the work or conditions of
21 employment to be dissimilar;

22 (iii) The employer's budget for operations and personnel;

23 and

24 (iv) Nothing in this subdivision (2)(c) of this section
25 shall prevent parties from stipulating to an array member that does

1 not otherwise meet the criteria in such subdivision, and nothing in
2 such subdivision shall prevent parties from stipulating to less than
3 seven or more than nine array members.

4 (d) To determine comparability for employees of the Board
5 of Regents of the University of Nebraska or employees of the Board of
6 Trustees of the Nebraska State Colleges, the commission shall utilize
7 peer institutions with similar enrollments and similar educational
8 missions which may exclude land grant institutions or institutions
9 that have a medical center or hospital. Additionally, the commission
10 shall refer to peer institutions with similar program offerings
11 including the level of degrees offered.

12 (e) Any order or orders entered may be modified on the
13 commission's own motion or on application by any of the parties
14 affected, but only upon a showing of a new and material change in the
15 conditions from those prevailing at the time the original order was
16 entered.

17 (3) In cases filed under the State Employees Collective
18 Bargaining Act, the commission shall not be bound by the usual common
19 law or statutory rules of evidence or by any technical or formal
20 rules of procedure, other than those adopted pursuant to section
21 48-809. The commission shall receive evidence relating to array
22 selection, job match, and wages and benefits which have been
23 assembled by telephone, electronic transmission, or mail delivery and
24 any such evidence shall be accompanied by an affidavit from the
25 employer or any other person with personal knowledge which affidavit

1 shall demonstrate the affiant's personal knowledge and competency to
2 testify on the matters therein. The commission, with the consent of
3 the parties to the dispute and in the presence of the parties to the
4 dispute, may contact an individual employed by an employer under
5 consideration as an array member by telephone to inquire as to the
6 nature or value of a working condition, wage, or benefit provided by
7 that particular employer as long as the individual in question has
8 personal knowledge about the information being sought. The commission
9 may rely upon information gained in such inquiry for its decision.
10 Opinion testimony shall be received by the commission based upon
11 evidence provided in accordance with this subsection. Testimony
12 concerning job match shall be received if job match inquiries were
13 conducted by telephone, electronic transmission, or mail delivery if
14 the witness providing such testimony verifies the method of such job
15 match inquiry and analysis.

16 (4) The commission shall file its findings of fact and
17 conclusions of law with its order.

18 (5) Either party may, within thirty days after the date
19 such order is filed, appeal to the Supreme Court. The standard of
20 review for any appeal to the Supreme Court shall be as provided in
21 subsection (4) of section 48-825.

22 ~~(4)-(6)~~ The commission, ~~the Court of Appeals,~~ or the
23 Supreme Court shall not enter an order for any period which is not
24 the same as or included within the budget period for which the
25 contract is being negotiated.

1 ~~(5)~~(7) All items agreed upon during the course of
2 negotiations and not ~~subject to appeal~~ submitted as an unresolved
3 issue to the commission shall, when ratified by the parties, take
4 effect concurrent with the biennial budget period and shall
5 constitute the parties' contract. Upon final resolution of appeals of
6 all unresolved ~~items~~, issues, the parties shall reduce the orders of
7 the commission, ~~the Court of Appeals~~, or the Supreme Court to writing
8 and incorporate them into the contract without ratification.

9 ~~(6) The commission shall complete its deliberations and~~
10 ~~issue appropriate orders by July 1 or as soon thereafter as is~~
11 ~~practicable.~~

12 ~~(7) The commission shall adopt expedited procedures to~~
13 ~~assure timely completion of any appeal filed pursuant to the State~~
14 ~~Employees Collective Bargaining Act.~~

15 Sec. 29. Section 81-1384, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 81-1384 ~~(1)~~—On March 16, the Chief Negotiator, any
18 appointed negotiator for the Board of Regents, any appointed
19 negotiator for the Board of Trustees of the Nebraska State Colleges,
20 and any appointed negotiator for other constitutional offices shall
21 report to the Legislature and the Governor on the status of
22 negotiations. The Governor may amend his or her budget
23 recommendations accordingly.

24 ~~(2) If the Chief Negotiator advises the Legislature that~~
25 ~~the state has appealed a Special Master's ruling, the Legislature may~~

1 ~~by a resolution approved by a three-fifths vote of its members by the~~
2 ~~conclusion of its regular session direct the Chief Negotiator to~~
3 ~~withdraw the pending appeal and accept the terms of the Special~~
4 ~~Master's ruling. This subsection shall not apply to any negotiators~~
5 ~~appointed by the Board of Regents, Board of Trustees of the Nebraska~~
6 ~~State Colleges, or other constitutional offices.~~

7 Sec. 30. Section 81-1385, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 81-1385 ~~(1) If the exclusive collective bargaining agent~~
10 ~~appeals an adverse ruling from the Special Master on any or all~~
11 ~~issues, there shall be no change in the term or condition of~~
12 ~~employment in effect in that issue or issues during the pendency of~~
13 ~~the appeal. Orders adjusting the term or condition of employment in~~
14 ~~an issue or issues shall be effective beginning with final resolution~~
15 ~~of the appeal or January 1 of the first fiscal year of the contract~~
16 ~~period, whichever is earlier.~~

17 ~~(2) If the employer appeals an adverse ruling from the~~
18 ~~Special Master on any or all issues, there shall be no change in the~~
19 ~~term or condition of employment in effect in that issue or issues~~
20 ~~during the pendency of the appeal. Upon final resolution, the~~
21 ~~commission, Court of Appeals, or Supreme Court shall order increases~~
22 ~~or other changes in a term or condition of employment to be~~
23 ~~concurrent with the biennial budget. Interest shall be paid by the~~
24 ~~state on all withheld wages or insurance premium payments.~~

25 When an unresolved issue proceeds to the commission,

1 there shall be no change in the term or condition of employment in
2 effect in that issue or issues until the commission has ruled and any
3 subsequent appeal to the Supreme Court has been concluded. Orders
4 adjusting the term or condition of employment in an issue or issues
5 shall be effective beginning with final resolution of the appeal.
6 Upon final resolution, the commission or Supreme Court shall order
7 increases or other changes in a term or condition of employment to be
8 concurrent with the biennial budget. Interest shall be paid, at the
9 rate established by section 45-103 which is in effect at the time of
10 the final order, by the state on all withheld wages or insurance
11 premium payments.

12 Sec. 31. Section 81-1386, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 81-1386 (1) It shall be a prohibited practice for any
15 employer, employee, employee organization, or exclusive collective-
16 bargaining agent to refuse to negotiate in good faith with respect to
17 mandatory topics of bargaining.

18 (2) It shall be a prohibited practice for any employer or
19 the employer's negotiator to:

20 (a) Interfere with, restrain, or coerce state employees
21 in the exercise of rights granted by the State Employees Collective
22 Bargaining Act or the Industrial Relations Act;

23 (b) Dominate or interfere in the administration of any
24 employee organization;

25 (c) Encourage or discourage membership in any employee

1 organization, committee, or association by discrimination in hiring,
2 tenure, or other terms or conditions of employment;

3 (d) Discharge or discriminate against a state employee
4 because the employee has filed an affidavit, petition, or complaint
5 or given any information or testimony under the Industrial Relations
6 Act or the State Employees Collective Bargaining Act or because the
7 employee has formed, joined, or chosen to be represented by any
8 employee organization;

9 (e) Refuse to negotiate collectively with representatives
10 of exclusive collective-bargaining agents as required in the
11 Industrial Relations Act and the State Employees Collective
12 Bargaining Act;

13 (f) Deny the rights accompanying certification or
14 exclusive recognition granted in the Industrial Relations Act or the
15 State Employees Collective Bargaining Act; and

16 (g) Refuse to participate in good faith in any impasse
17 procedures for state employees as set forth in sections ~~81-1380~~
18 81-1381 to 81-1385.

19 (3) It shall be a prohibited practice for any employees,
20 employee organization, or bargaining unit or for any of their
21 representatives or exclusive collective-bargaining agents to:

22 (a) Interfere with, restrain, coerce, or harass any state
23 employee with respect to any of the employee's rights under the
24 Industrial Relations Act or the State Employees Collective Bargaining
25 Act;

1 (b) Interfere, restrain, or coerce an employer with
2 respect to rights granted in the Industrial Relations Act or the
3 State Employees Collective Bargaining Act or with respect to
4 selecting a representative for the purposes of negotiating
5 collectively on the adjustment of grievances;

6 (c) Refuse to bargain collectively with an employer as
7 required in the Industrial Relations Act or the State Employees
8 Collective Bargaining Act; and

9 (d) Refuse to participate in good faith in any impasse
10 procedures for state employees set forth in sections ~~81-1380-81-1381~~
11 to 81-1385.

12 (4) The expressing of any views, argument, or opinion, or
13 the dissemination thereof, whether in written, printed, graphic, or
14 visual form, shall not constitute or be evidence of any unfair labor
15 practice under any of the provisions of the Industrial Relations Act
16 or the State Employees Collective Bargaining Act if such expression
17 contains no threat of reprisal or force or promise of benefit.

18 Sec. 32. Section 81-1387, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 81-1387 (1) Proceedings against a party alleging a
21 violation of section 81-1386 shall be commenced by filing a complaint
22 with the commission within one hundred eighty days of the alleged
23 violation thereby causing a copy of the complaint to be served upon
24 the accused party. The accused party shall have ten days within which
25 to file a written answer to the complaint. If the commission

1 determines that the complaint has no basis in fact, the commission
2 may dismiss the complaint. If the complaint has a basis in fact, the
3 commission shall set a time for hearing. The parties shall be
4 permitted to be represented by counsel, summon witnesses, and request
5 the commission to subpoena witnesses on the requester's behalf.

6 (2) The commission shall file its findings of fact and
7 conclusions of law. If the commission finds that the party accused
8 has committed a prohibited practice, the commission, within thirty
9 days of its decision, shall order an appropriate remedy. Any party
10 may petition the district court for injunctive relief pursuant to
11 rules of civil procedure.

12 (3) Any party aggrieved by any decision or order of the
13 commission may, within thirty days from the date such decision or
14 order is filed, appeal therefrom to the ~~Court of Appeals~~. Supreme
15 Court.

16 (4) Any order or decision of the commission may be
17 modified, reversed, or set aside by the appellate court on one or
18 more of the following grounds and on no other:

19 (a) If the commission acts without or in excess of its
20 powers;

21 (b) If the order was procured by fraud or is contrary to
22 law;

23 (c) If the facts found by the commission do not support
24 the order; and

25 (d) If the order is not supported by a preponderance of

1 the competent evidence on the record considered as a whole.

2 Sec. 33. Sections 11, 12, 13, and 35 of this act become
3 operative on July 1, 2012. Section 33 of this act becomes operative
4 on its effective date. The other sections of this act become
5 operative on October 1, 2011.

6 Sec. 34. Original sections 48-801, 48-801.01, 48-802,
7 48-804, 48-809, 48-811, 48-813, 48-816, 48-817, 48-818, 48-824,
8 48-838, 79-852, 79-2116, 81-1369, 81-1371, 81-1372, 81-1373, 81-1375,
9 81-1378, 81-1379, 81-1381, 81-1382, 81-1383, 81-1384, 81-1385,
10 81-1386, and 81-1387, Reissue Revised Statutes of Nebraska, are
11 repealed.

12 Sec. 35. The following section is outright repealed:
13 Section 48-811.02, Reissue Revised Statutes of Nebraska.

14 Sec. 36. The following sections are outright repealed:
15 Sections 81-1374, 81-1380, 81-1389, and 81-1390, Reissue Revised
16 Statutes of Nebraska.