

LEGISLATIVE BILL 472

Approved by the Governor March 7, 2007

Introduced by Chambers, 11

FOR AN ACT relating to the Commission of Industrial Relations; to amend sections 48-801, 48-804, 48-804.01, 48-805, 48-806, 48-816.01, 48-838, and 49-617, Reissue Revised Statutes of Nebraska; to change statutory references to members of the commission; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

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

(4) Employer shall mean the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia. Employer shall also mean any municipal corporation, any public power district or public power and irrigation district, or any public utility;

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

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

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

(8) Commission shall mean the Commission of Industrial Relations; and

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

~~(10)~~ (10) Supervisor shall mean any employee having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

Sec. 2. Section 48-804, Reissue Revised Statutes of Nebraska, is amended to read:

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

be appointed for six-year terms within thirty days after December 25, 1969, with their successors to be appointed for a term of six years and until their successors have been appointed and qualified. In case of a vacancy, in the office of judge of the Commission of Industrial Relations, the Governor shall appoint his or her a successor to fill the vacancy for the unexpired term.

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

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

(4) The Commission of Industrial Relations commission shall not be subject to the provisions of the Administrative Procedure Act.

Sec. 3. Section 48-804.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-804.01 The presiding judge officer of the Commission of Industrial Relations commission shall, with the advice and consent of the Governor, appoint a clerk of such commission who shall hold office at the pleasure of the commission. The judge presiding officer shall in like manner appoint such other assistants and employees as he or she may deem necessary. The clerk shall, under the direction of the presiding judge, officer, keep a full and true record of the proceedings of the commission, and record all pleadings and other papers filed with the commission, and no other action shall be taken thereon until the same has been recorded. The clerk shall in like manner issue all necessary notices and writs, superintend the business of the commission, and perform such other duties as the commission may direct. All other assistants and employees of the commission shall perform such duties, pertaining to the affairs thereof, as the commission may direct. The clerk of the commission shall administratively determine, prior to a hearing on the question of representation, the validity of the employee authorizations for representation by an employee labor organization.

Sec. 4. Section 48-805, Reissue Revised Statutes of Nebraska, is amended to read:

48-805 The judges of the Commission of Industrial Relations commissioners shall not be appointed because they are representatives of either capital or labor, but they shall be appointed because of their experience and knowledge in legal, financial, labor, and industrial matters.

Sec. 5. Section 48-806, Reissue Revised Statutes of Nebraska, is amended to read:

48-806 As soon as such compensation may be legally paid under the Constitution of Nebraska, the compensation of judges of the Commission of Industrial Relations each commissioner shall be two hundred fifty dollars per day for each day's time actually engaged in the performance of the duties of their his or her office. Each judge commissioner shall also be paid his or her necessary traveling expenses incurred while away from his or her place of residence upon business of the commission in accordance with sections 81-1174 to 81-1177.

Sec. 6. Section 48-816.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-816.01 The presiding judge officer of the commission may, when he or she deems it necessary to expedite the determination of cases filed with the commission, appoint a hearing officer to hear evidence and make recommended findings and orders in any case or to make recommended determinations after a representation election has been ordered and during the course of such election. Any person appointed as a hearing officer shall be an attorney admitted to practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts.

Sec. 7. Section 48-838, Reissue Revised Statutes of Nebraska, is amended to read:

48-838 (1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for employees, except that in no event shall a contract between an employer and an exclusive collective-bargaining agent act as a bar for more than three years to any

other party seeking to represent employees, nor shall any contract bar for more than three years a petition by employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

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

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least thirty percent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

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

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

The certification of an exclusive collective-bargaining agent shall not preclude any employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

Sec. 8. Section 49-617, Reissue Revised Statutes of Nebraska, is amended to read:

49-617 The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; twelve copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Auditor of Public Accounts; two copies each to the Governor of the state, the

Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of Administrative Services, the Director of Aeronautics, the Director of Economic Development, the director of the Public Employees Retirement Board, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Property Tax Administrator, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each judge commissioner of the Commission of Industrial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the Tax Equalization and Review Commission, the secretary of the Game and Parks Commission, the Board of Pardons, the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, the Department of Health and Human Services Finance and Support, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institutions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

Sec. 9. Original sections 48-801, 48-804, 48-804.01, 48-805, 48-806, 48-816.01, 48-838, and 49-617, Reissue Revised Statutes of Nebraska, are repealed.