

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1040

Introduced by Fulton, 29.

Read first time January 21, 2010

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend section 48-818,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Nebraska Municipal Comparability Act; to encourage labor
4 organizations and municipal governments to use joint
5 arrays or surveys; to recognize good faith agreements
6 reached in negotiations; to provide deadlines for
7 collective bargaining; to harmonize provisions; to repeal
8 the original section; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known
2 and may be cited as the Nebraska Municipal Comparability Act.

3 Sec. 2. The Legislature finds and declares that
4 it is the public policy of the State of Nebraska and the
5 purpose of the Nebraska Municipal Comparability Act to promote
6 harmonious, peaceful, and cooperative relationships between
7 municipal government and its employees' labor organizations and to
8 protect the public by assuring effective and orderly operations
9 of municipal government. Such policy is best effectuated by: (1)
10 Recognizing the right of municipal employers, labor organizations,
11 and employees to utilize the protection of the Industrial Relations
12 Act; (2) providing statutory guidelines to the Commission of
13 Industrial Relations which recognize the unique nature of municipal
14 comparability cases; (3) encouraging labor organizations and
15 municipal governments to use joint arrays or surveys; (4) recognize
16 good faith agreements reached in negotiations; and (5) provide
17 deadlines for collective bargaining.

18 Sec. 3. For purposes of the Nebraska Municipal
19 Comparability Act:

20 (1) Array member means an employer included in a local
21 labor market array or a concentric circle array;

22 (2) Array selection means the process of selecting
23 employers in a local labor market array or in a concentric
24 circle array or both;

25 (3) Commission means the Commission of Industrial

1 Relations;

2 (4) Concentric circle array means a group of employers
3 located within an established radius of the municipality which is
4 the subject of the litigation. A concentric circle array shall be
5 formed by employers within the closest geographical circle to the
6 municipality which is the subject of the litigation and shall have
7 a minimum of three employers;

8 (5) Employer means either a public sector or a private
9 sector employer;

10 (6) Historic relationship means the percentage
11 relationship existing between job positions for employees of the
12 municipality which is the subject of the litigation for either
13 wages or benefits which can be calculated on a mean or median basis
14 for a minimum of three years;

15 (7) Industrial dispute has the same meaning as in section
16 48-801;

17 (8) Job match means the use for comparison purposes of
18 job positions of employees of an array member which have no more
19 than a twenty-percent degree of difference when compared to job
20 positions of employees of the municipality which is the subject of
21 the litigation. A job match analysis shall include both an analysis
22 of duties performed and time spent performing those duties;

23 (9) Local labor market array means a group of employers
24 having a place of business which is located within either
25 the corporate limits or the range of zoning authority of the

1 municipality which is the subject of the litigation;

2 (10) Metropolitan area means any area designated by the
3 United States Office of Management and Budget for which statistics
4 are maintained; and

5 (11) Prevalent means either:

6 (a) The midpoint between the arithmetic mean and
7 arithmetic median of a particular wage or benefit; or

8 (b) The mode of a particular wage or benefit of a
9 majority of the array members provide such wage or benefit to their
10 employees.

11 Sec. 4. The Nebraska Municipal Comparability Act
12 is cumulative to the Industrial Relations Act, except when
13 otherwise specifically provided or when inconsistent with the
14 Industrial Relations Act, in which case the Nebraska Municipal
15 Comparability Act shall prevail. Nebraska municipalities, their
16 employees, and labor organizations shall have all of the rights
17 and responsibilities afforded employers, employees, and labor
18 organizations pursuant to the Industrial Relations Act to the
19 extent that such act is not inconsistent with the Nebraska
20 Municipal Comparability Act.

21 Sec. 5. Not later than November 1 each year each labor
22 organization representing municipal employees shall request in
23 writing to their employer recognition for purposes of collective
24 bargaining of the following year's contract. Each employer shall
25 respond in writing to the labor organization's request for

1 recognition not later than December 1 immediately following such
2 request.

3 Sec. 6. Proposals shall be exchanged and negotiations
4 shall begin not later than February 1 immediately following the
5 response under section 5 of this act between the representative
6 of the employer and the labor organization. If necessary, at any
7 stage of the bargaining process either party may seek a bargaining
8 order pursuant to subsection (1) of section 48-816. Nothing in this
9 section prevents negotiations from beginning earlier than February
10 1.

11 Sec. 7. The negotiations established under sections 5
12 and 6 of this act shall continue until April 15, if necessary.
13 If agreement is not reached within thirty days after the date
14 negotiations begin, the parties may, but are not required to,
15 resort to voluntary nonbinding mediation or factfinding ordered by
16 the Commission of Industrial Relations pursuant to section 48-816.
17 Such mediation or factfinding may continue for a period up to April
18 15.

19 Sec. 8. At any time prior to May 1, either party to the
20 negotiations under sections 5 to 7 of this act may file a petition
21 with the Commission of Industrial Relations pursuant to section
22 48-811 for a determination of terms and conditions of employment.
23 No such petition may be filed after May 1. Any existing collective
24 bargaining agreement will continue in full force and effect until
25 superseded by further agreement of the parties or by an order

1 of the commission. Only those matters or issues which have been
2 negotiated as set forth in sections 5 and 6 of this act which are
3 unresolved shall be submitted to the commission for determination.
4 During the pendency of the matter before the commission, the
5 parties may continue to negotiate and to resolve their negotiating
6 differences by mutual agreement.

7 Sec. 9. To facilitate the ability of the parties to
8 negotiate, the parties are encouraged to agree upon array members
9 and to collaborate in surveying wages and benefits. If a joint
10 array and survey is utilized for negotiations, it shall be
11 admissible in evidence by the commission in its determination
12 of terms and conditions of employment pursuant to section 48-818.

13 Sec. 10. (1) In industrial disputes involving municipal
14 employees, the Commission of Industrial Relations shall make an
15 array selection in accordance with the following requirements:

16 (a) The commission shall designate a local labor market
17 array or concentric circle array employers, or both;

18 (b) If a local labor market array is used, after evidence
19 has been presented with respect to same or similar work, the
20 commission shall presume that same or similar working conditions
21 exist for all employees of local employers unless evidence is
22 presented showing sufficient differences in working conditions to
23 exclude any employees of any local employer from the array;

24 (c) If a concentric circle array is used, the commission
25 shall ensure that all prospective array members in the concentric

1 circle are included in the array which meet the population
2 guidelines and metropolitan area guidelines established in the
3 Nebraska Municipality Comparability Act;

4 (d) For a city of the first or second class or village,
5 an array shall not include an array member located outside the
6 State of Nebraska;

7 (e) An array shall not include an array member located in
8 or immediately adjacent to a metropolitan statistical area if the
9 municipality which is the subject of the litigation is not part of
10 a metropolitan area; and

11 (f) An array shall not include an array member located
12 in an area with a population of more than double or less than
13 one-half the city population or the metropolitan area population of
14 the municipality which is the subject of the litigation.

15 (2) In industrial disputes involving municipal employees,
16 the commission shall compare same or similar work in accordance
17 with the following requirements:

18 (a) The commission shall utilize for comparison purposes
19 only job positions of employees of an array member which constitute
20 a job match; and

21 (b) The commission shall utilize an historic relationship
22 for a job position for which there are not at least three job
23 matches in either the local labor market array, the concentric
24 circle array, or both.

25 (3) In analyzing total compensation in industrial

1 disputes involving municipal employees, the commission shall make
2 findings and orders in accordance with the following requirements:

3 (a) The commission shall order the municipality which
4 is the subject of the litigation to provide wage and benefit
5 levels comparable to the prevalent wage and benefit levels provided
6 by the selected array members based upon an analysis of total
7 compensation;

8 (b) In considering total compensation, the commission
9 shall consider wages and benefits both above and below prevalent
10 levels;

11 (c) The commission shall order a reduction in wages and
12 benefits which are above prevalent levels or set off wages and
13 benefits which are above prevalent levels on a dollar-for-dollar
14 basis against any wages or benefits which are below prevalent
15 levels, or both; and

16 (d) The commission shall adjust the total compensation to
17 reflect published economic variable statistics which are shown to
18 have a bearing on wages. This published information may include the
19 most recent published information on the percentage of unionization
20 and degree of manufacturing. Such published information on a
21 statewide basis shall be acceptable if municipal figures are not
22 available.

23 (4) The date for comparison in all municipal cases
24 before the commission shall be the first day of the fiscal year
25 in question for the municipality which is the subject of the

1 litigation.

2 (5) Any order of the commission ordering increases or
3 decreases in wages or benefits for municipal employees shall be
4 retroactive to the first day of the fiscal year in dispute.

5 Sec. 11. Section 48-818, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 48-818 Except as provided in the State Employees
8 Collective Bargaining Act and the Nebraska Municipal Comparability
9 Act, the findings and order or orders may establish or alter
10 the scale of wages, hours of labor, or conditions of employment,
11 or any one or more of the same. In making such findings and
12 order or orders, the Commission of Industrial Relations shall
13 establish rates of pay and conditions of employment which are
14 comparable to the prevalent wage rates paid and conditions of
15 employment maintained for the same or similar work of workers
16 exhibiting like or similar skills under the same or similar working
17 conditions. In establishing wage rates the commission shall take
18 into consideration the overall compensation presently received by
19 the employees, having regard not only to wages for time actually
20 worked but also to wages for time not worked, including vacations,
21 holidays, and other excused time, and all benefits received,
22 including insurance and pensions, and the continuity and stability
23 of employment enjoyed by the employees. Any order or orders entered
24 may be modified on the commission's own motion or on application by
25 any of the parties affected, but only upon a showing of a change in

1 the conditions from those prevailing at the time the original order
2 was entered. In industrial disputes involving municipal employees,
3 the Nebraska Municipal Comparability Act shall apply.

4 Sec. 12. Original section 48-818, Reissue Revised
5 Statutes of Nebraska, is repealed.

6 Sec. 13. Since an emergency exists, this act takes effect
7 when passed and approved according to law.