

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 482

Introduced by Utter, 33; Carlson, 38; Hadley, 37.

Read first time January 18, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Industrial Relations Act; to amend
2 sections 48-801, 48-801.01, 48-809, 48-816, 48-818, and
3 48-838, Reissue Revised Statutes of Nebraska; to define
4 terms and provide provisions for industrial disputes
5 involving municipal corporations; and to repeal the
6 original sections.

7 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~~ includes an individual,
6 partnership, limited liability company, association, corporation,
7 business trust, or other organized group of persons;

8 (2) Governmental service ~~shall mean~~ means 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~~ includes 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~~ means the State of Nebraska or
25 any political or governmental subdivision of the State of Nebraska

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

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

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

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

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

20 (9) Commissioner ~~shall mean~~ means a member of the
21 commission; ~~and~~

22 (10) Municipal corporation means any city or village in
23 the State of Nebraska. Additional definitions for industrial disputes
24 involving municipal corporations are found in section 3 of this act;
25 and

1 ~~(10)~~(11) Supervisor ~~shall mean~~ means any employee having
2 authority, in the interest of the employer, to hire, transfer,
3 suspend, lay off, recall, promote, discharge, assign, reward, or
4 discipline other employees, or responsibly to direct them or to
5 adjust their grievances, or effectively to recommend such action, if
6 in connection with the foregoing the exercise of such authority is
7 not a merely routine or clerical nature, but requires the use of
8 independent judgment.

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

11 48-801.01 Sections 48-801 to 48-838 and section 3 of this
12 act shall be known and may be cited as the Industrial Relations Act.

13 Sec. 3. For purposes of industrial disputes involving
14 municipal corporations:

15 (1) Same or similar work of workers exhibiting like or
16 similar skills means that a composite of the duties and time spent
17 performing those duties shall match at a rate of at least eighty
18 percent and at least three such job matches must be available in an
19 array. In the event a minimum of three job matches are not available
20 for comparison for any compared to position, the commission shall
21 base its order on the historic relationship of wages paid to such
22 position over the last three fiscal years as compared to wages paid
23 to a position for which a minimum of three job matches are available;

24 (2)(a) For any wage or benefit with an economic value,
25 prevalent means the midpoint between the arithmetic mean and the

1 arithmetic median. In calculating the arithmetic mean and the
2 arithmetic median, all array members shall be included and it is
3 required that a majority of the employers provide such wage or
4 benefit; and

5 (b) For benefits which do not have a determinable
6 economic value, prevalent means the mode or most frequent practice if
7 a majority of the employers provide such benefit and the compared to
8 benefit is similar in nature;

9 (3) Wages and benefits means the leveled value of any
10 wage or economic benefit applying a weighted average standard in
11 order to take into account increases in any wage or economic benefit
12 which occurred during the twelve-month period in dispute; and

13 (b) For any outstate employer, all such economic values
14 shall be adjusted up or down based upon the relationship of the state
15 median family income of the state in which the employer is located to
16 the state median family income for Nebraska for the time period in
17 dispute; and

18 (4) Comparability analysis means an analysis of wages and
19 benefits of an array of seven to thirteen instate public or private
20 employers, except that an array may consist of as few as five instate
21 public or private employers. If a minimum of five instate public or
22 private employers are not available, the array may include outstate
23 employers.

24 Sec. 4. Section 48-809, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 48-809 (1) The Commission of Industrial Relations is
2 hereby granted full power to adopt all reasonable and proper
3 regulations to govern its proceedings, the filing of pleadings, the
4 issuance and service of process, the issuance of subpoenas for
5 attendance of witnesses, the power to administer oaths, and to
6 regulate the mode and manner of all its investigations, inspections,
7 hearings and trials. In the taking of evidence, the rules of
8 evidence, prevailing in the trial of civil cases in Nebraska shall be
9 observed by the Commission of Industrial Relations.

10 (2) In industrial disputes involving municipal
11 corporations, the commission shall receive evidence relating to array
12 selection, job match, and wages and benefits which has been assembled
13 by telephone, electronic transmission, or mail delivery and any such
14 evidence shall be accompanied by an affidavit of authenticity from
15 the employer providing such evidence. In industrial disputes
16 involving municipal corporations, opinion testimony shall be received
17 by the commission based upon evidence provided in accordance with
18 this subsection. In cases involving municipal corporations, testimony
19 concerning job match shall be received if job match inquiries were
20 conducted by telephone, electronic transmission, or mail delivery if
21 the witness providing such testimony verifies the method of such job
22 match inquiry and analysis.

23 Sec. 5. 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 upon its own initiative or upon request of a party to the dispute to
6 make such temporary findings and orders as may be necessary to
7 preserve and protect the status of the parties, property, and public
8 interest involved pending final determination of the issues. In the
9 event of an industrial dispute between an employer and an employee or
10 a labor organization when such employer and employee or labor
11 organization have failed or refused to bargain in good faith
12 concerning the matters in dispute, the commission may order such
13 bargaining to begin or resume, as the case may be, and may make any
14 such order or orders as may be appropriate to govern the situation
15 pending such bargaining. The commission shall require good faith
16 bargaining concerning the terms and conditions of employment of its
17 employees by any employer. Upon the request of either party, the
18 commission shall require the parties to an industrial dispute to
19 submit to mediation or factfinding. Upon the request of both parties,
20 a special master may be appointed if the parties are within the
21 provisions of section 48-811.02. The commission shall appoint
22 mediators, factfinders, or special masters for such purpose. Such
23 orders for bargaining, mediation, factfinding, or a special master
24 proceeding may be issued at any time during the pendency of an action
25 to resolve an industrial dispute. To bargain in good faith shall mean

1 the performance of the mutual obligation of the employer and the
2 labor organization to meet at reasonable times and confer in good
3 faith with respect to wages, hours, and other terms and conditions of
4 employment or any question arising thereunder and the execution of a
5 written contract incorporating any agreement reached if requested by
6 either party, but such obligation does not compel either party to
7 agree to a proposal or require the making of a concession.

8 (b) In negotiations between a municipal corporation and a
9 labor organization, health insurance benefits and retirement benefits
10 shall be permissive subjects of bargaining.

11 (2) Except as provided in the State Employees Collective
12 Bargaining Act, public employers are hereby authorized to recognize
13 employee organizations for the purpose of negotiating collectively in
14 the determination of and administration of grievances arising under
15 the terms and conditions of employment of their public employees as
16 provided in the Industrial Relations Act and to negotiate and enter
17 into written agreements with such employee organizations in
18 determining such terms and conditions of employment.

19 (3)(a) Except as provided in subdivisions (b) and (c) of
20 this subsection, a supervisor shall not be included in a single
21 bargaining unit with any other employee who is not a supervisor.

22 (b) All firefighters and police officers employed in the
23 fire department or police department of any municipal corporation in
24 a position or classification subordinate to the chief of the
25 department and his or her immediate assistant or assistants holding

1 authority subordinate only to the chief shall be presumed to have a
2 community of interest and may be included in a single bargaining unit
3 represented by an employee organization for the purposes of the
4 Industrial Relations Act. Public employers shall be required to
5 recognize an employees bargaining unit composed of firefighters and
6 police officers holding positions or classifications subordinate to
7 the chief of the fire department or police department and his or her
8 immediate assistant or assistants holding authority subordinate only
9 to the chief when such bargaining unit is designated or elected by
10 employees in the unit.

11 (c) All administrators employed by a Class V school
12 district shall be presumed to have a community of interest and may
13 join a single bargaining unit composed otherwise of teachers and
14 other certificated employees for purposes of the Industrial Relations
15 Act, except that the following administrators shall be exempt: The
16 superintendent, associate superintendent, assistant superintendent,
17 secretary and assistant secretary of the board of education,
18 executive director, administrators in charge of the offices of state
19 and federal relations and research, chief negotiator, and
20 administrators in the immediate office of the superintendent. A Class
21 V school district shall recognize an employees bargaining unit
22 composed of teachers and other certificated employees and
23 administrators, except the exempt administrators, when such
24 bargaining unit is formed by the employees as provided in section
25 48-838 and may recognize such a bargaining unit as provided in

1 subsection (2) of this section. In addition, all administrators
2 employed by a Class V school district, except the exempt
3 administrators, may form a separate bargaining unit represented
4 either by the same bargaining agent for all collective-bargaining
5 purposes as the teachers and other certificated employees or by
6 another collective-bargaining agent of such administrators' choice.
7 If a separate bargaining unit is formed by election as provided in
8 section 48-838, a Class V school district shall recognize the
9 bargaining unit and its agent for all purposes of collective
10 bargaining. Such separate bargaining unit may also be recognized by a
11 Class V school district as provided in subsection (2) of this
12 section.

13 (4) When an employee organization has been certified as
14 an exclusive collective-bargaining agent or recognized pursuant to
15 any other provisions of the Industrial Relations Act, the appropriate
16 public employer shall be and is hereby authorized to negotiate
17 collectively with such employee organization in the settlement of
18 grievances arising under the terms and conditions of employment of
19 the public employees as provided in such act and to negotiate and
20 enter into written agreements with such employee organizations in
21 determining such terms and conditions of employment, including wages
22 and hours.

23 (5) Upon receipt by an employer of a request from a labor
24 organization to bargain on behalf of employees, the duty to engage in
25 good faith bargaining shall arise if the labor organization has been

1 certified by the commission or recognized by the employer as the
2 exclusive bargaining representative for the employees in that
3 bargaining unit.

4 (6) A party to an action filed with the commission may
5 request the commission to send survey forms or data request forms.
6 The requesting party shall prepare its own survey forms or data
7 request forms and shall provide the commission the names and
8 addresses of the entities to whom the documents shall be sent, not to
9 exceed twenty addresses in any case. All costs resulting directly
10 from the reproduction of such survey or data request forms and the
11 cost of mailing such forms shall be taxed by the commission to the
12 requesting party. The commission shall have the authority (a) to make
13 studies and analyses of and act as a clearinghouse of information
14 relating to conditions of employment of public employees throughout
15 the state, (b) to request from any government, and such governments
16 are authorized to provide, such assistance, services, and data as
17 will enable it properly to carry out its functions and powers, (c) to
18 conduct studies of problems involved in representation and
19 negotiation, including, but not limited to, those subjects which are
20 for determination solely by the appropriate legislative body, and
21 make recommendations from time to time for legislation based upon the
22 results of such studies, (d) to make available to employee
23 organizations, governments, mediators, factfinding boards and joint
24 study committees established by governments, and employee
25 organizations statistical data relating to wages, benefits, and

1 employment practices in public and private employment applicable to
2 various localities and occupations to assist them to resolve complex
3 issues in negotiations, and (e) to establish, after consulting
4 representatives of employee organizations and administrators of
5 public services, panels of qualified persons broadly representative
6 of the public to be available to serve as mediators, special masters,
7 or members of factfinding boards.

8 (7)(a) Except for those cases arising under section
9 48-818, the commission shall be required to make findings of facts in
10 all cases in which one of the parties to the dispute requests
11 findings. Such request shall be specific as to the issues on which
12 the party wishes the commission to make findings of fact.

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

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

21 (d) In cases arising under section 48-818, the commission
22 shall issue a recommended decision and order, which decision and
23 order shall become final within ten days of entry unless either party
24 to the dispute files with the commission a request for a posttrial
25 conference. If such a request is filed, the commission shall hold a

1 posttrial conference within ten days of receipt of such request and
2 shall issue an order within ten days after holding such posttrial
3 conference, which order shall become the final order in the case. The
4 purpose of such posttrial conference shall be to allow the commission
5 to hear from the parties on those portions of the recommended
6 decision and order which is not based upon or which mischaracterizes
7 evidence in the record and to allow the commission to correct any
8 such errors after having heard the matter in a conference setting in
9 which all parties are represented.

10 (8) In negotiations between a municipal corporation and a
11 labor organization, each party shall present its comparability
12 analysis of the prevalent wages and benefits or any other economic
13 analysis completed in support of its economic proposal at the time
14 such party presents its economic proposal to the other party.

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

17 48-818 (1) Except as provided in the State Employees
18 Collective Bargaining Act, the findings and order or orders may
19 establish or alter the scale of wages, hours of labor, or conditions
20 of employment, or any one or more of the same. In making such
21 findings and order or orders, the ~~Commission of Industrial Relations~~
22 commission shall establish rates of pay and conditions of employment
23 which are comparable to the prevalent wage rates paid and conditions
24 of employment maintained for the same or similar work of workers
25 exhibiting like or similar skills under the same or similar working

1 conditions. In establishing wage rates the commission shall take into
2 consideration the overall compensation presently received by the
3 employees, having regard not only to wages for time actually worked
4 but also to wages for time not worked, including vacations, holidays,
5 and other excused time, and all benefits received, including
6 insurance and pensions, and the continuity and stability of
7 employment enjoyed by the employees. Any order or orders entered may
8 be modified on the commission's own motion or on application by any
9 of the parties affected, but only upon a showing of a change in the
10 conditions from those prevailing at the time the original order was
11 entered.

12 (2) In industrial disputes involving municipal
13 corporations:

14 (a) Whenever there is another public or private employer
15 in the same market hiring employees to perform the same or similar
16 work of workers exhibiting like or similar skills, the wages and
17 benefits of those employees shall be considered by the commission
18 unless evidence establishes that there are substantial differences
19 which cause the work or working conditions to be dissimilar;

20 (b) If the same or similar work of workers exhibiting
21 like or similar skills requirements are met, all instate public and
22 private employers shall be presumed to maintain same or similar
23 working conditions unless evidence establishes that there are
24 substantial differences which cause the working conditions to be
25 dissimilar;

1 (c) Same or similar working conditions shall be presumed
2 to be present for any instate public or instate private employer. For
3 outstate employers the evidence must support at least a ninety
4 percent match for same or similar working conditions taking into
5 account such factors as the work environment, equipment, and material
6 used to provide the service and work environment factors having a
7 direct impact on the process of providing the service;

8 (d) Municipal corporations with a municipal population of
9 not more than double nor less than half of the municipal population
10 of the compared-to municipal corporation shall be presumed to provide
11 same or similar working conditions unless evidence establishes that
12 there are substantial differences which cause the working conditions
13 to be dissimilar;

14 (e) Municipal corporations located within a metropolitan
15 statistical area shall be presumed to provide dissimilar working
16 conditions if the compared-to municipal corporation is not located
17 within a metropolitan statistical area unless evidence establishes
18 that the working conditions are similar;

19 (f) Municipal corporations with a population of no more
20 than double and no less than half of the municipal corporation being
21 compared to shall be presumed to have dissimilar working conditions
22 if such municipal corporation is located within a metropolitan
23 statistical area which is more than double or less than half the size
24 of the metropolitan statistical area in which the compared-to
25 municipal corporation is located unless evidence establishes that

1 working conditions are the same or similar;

2 (g) Private outstate employers shall be presumed to
3 provide same or similar working conditions if the total full-time
4 equivalent employment of the private employer is not more than double
5 nor less than one-half the full-time equivalent employment of the
6 bargaining unit involved in the litigation with the municipality in
7 question unless evidence establishes that there are substantial
8 differences which cause the working conditions to be dissimilar;

9 (h) The commission shall not require a balanced number of
10 larger or smaller employers or a balanced number of instate and
11 outstate employers, and the commission may select an array of all
12 instate public or instate private employers or an array with a
13 majority of instate public or private employers; and

14 (i) The commission shall not issue an order on health
15 insurance benefits or retirement benefits unless both parties to the
16 dispute agree that the commission may do so. If both parties agree
17 that the commission may issue an order on retirement benefits, the
18 commission shall not compare defined benefit retirement plans to
19 defined contribution retirement benefit plans.

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

22 48-838 (1) The commission shall determine questions of
23 representation for purposes of collective bargaining for and on
24 behalf of employees and shall make rules and regulations for the
25 conduct of elections to determine the exclusive collective-bargaining

1 agent for employees, except that in no event shall a contract between
2 an employer and an exclusive collective-bargaining agent act as a bar
3 for more than three years to any other party seeking to represent
4 employees, nor shall any contract bar for more than three years a
5 petition by employees seeking an election to revoke the authority of
6 an agent to represent them. Except as provided in the State Employees
7 Collective Bargaining Act, the commission shall certify the exclusive
8 collective-bargaining agent for employees affected by the Industrial
9 Relations Act following an election by secret ballot, which election
10 shall be conducted according to rules and regulations established by
11 the commission.

12 (2) The election shall be conducted by one member of the
13 commission who shall be designated to act in such capacity by the
14 presiding officer of the commission, or the commission may appoint
15 the clerk of the district court of the county in which the principal
16 office of the employer is located to conduct the election in
17 accordance with the rules and regulations established by the
18 commission. Except as provided in the State Employees Collective
19 Bargaining Act, the commission shall also determine the appropriate
20 unit for bargaining and for voting in the election, and in making
21 such determination, the commission shall consider established
22 bargaining units and established policies of the employer. It shall
23 be presumed, in the case of governmental subdivisions such as
24 ~~municipalities, municipal corporations,~~ counties, power districts, or
25 utility districts with no previous history of collective bargaining,

1 that units of employees of less than departmental size shall not be
2 appropriate.

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

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

24 Any employee may choose his or her own representative in
25 any grievance or legal action regardless of whether or not an

1 exclusive collective-bargaining agent has been certified. If an
2 employee who is not a member of the labor organization chooses to
3 have legal representation from the labor organization in any
4 grievance or legal action, such employee shall reimburse the labor
5 organization for his or her pro rata share of the actual legal fees
6 and court costs incurred by the labor organization in representing
7 the employee in such grievance or legal action.

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

15 Sec. 8. Original sections 48-801, 48-801.01, 48-809,
16 48-816, 48-818, and 48-838, Reissue Revised Statutes of Nebraska, are
17 repealed.