

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

## **LEGISLATIVE BILL 564**

Introduced by Fulton, 29.

Read first time January 19, 2011

Committee: Business and Labor

### A BILL

1 FOR AN ACT relating to labor; to amend sections 48-801, 48-808,  
2 48-809, 48-810, 48-811, 48-812, 48-813, 48-816,  
3 48-816.01, 48-817, 48-819.01, 48-825, 81-1369, 81-1371,  
4 81-1373, 81-1382, 81-1383, 81-1385, and 81-1387, Reissue  
5 Revised Statutes of Nebraska; to change and eliminate  
6 provisions of the Industrial Relations Act and the State  
7 Employee Collective Bargaining Act; to harmonize  
8 provisions; to provide an operative date; to provide for  
9 severability; to repeal the original sections; and to  
10 outright repeal sections 48-811.02, 48-816.02, 48-818,  
11 48-819, 48-823, 48-842, and 81-1390, Reissue Revised  
12 Statutes of Nebraska.

13 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 also means~~ any municipal corporation, any public power  
3     district or public power and irrigation district, or any public  
4     utility;

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

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

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

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

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

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

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

6                 (11) Fact-finding means written findings of fact  
7 regarding the existence of an industrial dispute made by a qualified  
8 person or the commission according to protocol established by the  
9 commission;

10                 (12) Mediation means assistance by an impartial third  
11 party to reconcile an industrial dispute; and

12                 (13) Governing body means the board, council, or  
13 commission, whether elected or appointed, of an employer, including  
14 any political subdivision of this state, school district, and other  
15 special purpose district, which determines the policies for the  
16 operation of the political subdivision.

17                 Sec. 2. Section 48-808, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19                 48-808 The commission may also appoint a reporter to  
20 report and transcribe in duplicate all testimony given in hearings  
21 ~~and trials~~ before the commission and file such testimony with the  
22 commission. The commission shall certify and ~~transmit one copy to the~~  
23 ~~Clerk of the Supreme Court in all cases in which there is an appeal~~  
24 ~~under section 48-812. make public its fact-finding and recommended~~  
25 ~~decisions or orders in accordance with section 48-817.~~

1                   Sec. 3. Section 48-809, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                  48-809 The Commission of Industrial Relations is hereby  
4 granted full power to adopt all reasonable and proper regulations  
5 commission may adopt and promulgate rules and regulations to govern  
6 its proceedings, the filing of pleadings, the issuance and service of  
7 process, the issuance of subpoenas for attendance of witnesses, the  
8 power to administer oaths, and to regulate the mode and manner of all  
9 its investigations, inspections, and hearings. and trials. In the  
10 taking of evidence, the rules of evidence, prevailing in the trial of  
11 civil cases in Nebraska shall be observed by the Commission of  
12 Industrial Relations. commission. The commission may petition the  
13 district court in the county in which the commission's hearing is  
14 held to enforce subpoenas issued by the commission for the attendance  
15 of witnesses.

16                Sec. 4. Section 48-810, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18                  48-810 (1) At least one hundred and eighty days prior to  
19 the certified budget submission date of the employer, the employer  
20 and labor organization shall endeavor to agree upon a procedure for  
21 settling any industrial dispute. Such agreement shall provide for  
22 implementation of such procedures not later than one hundred twenty  
23 days prior to the certified budget submission date of the employer.  
24 Attempt at such agreement shall be necessary to establish a finding  
25 of a duty to bargain in good faith as provided in section 48-816.

1                   (2) Except as provided in the State Employees Collective  
2 Bargaining Act, in the absence of an agreement for settling  
3 industrial disputes negotiated pursuant to subsection (1) of this  
4 section, industrial disputes involving governmental service, service  
5 of a public utility, or other disputes as the Legislature may provide  
6 shall be settled by invoking the jurisdiction of the Commission of  
7 Industrial Relations. following procedure:

8                   (a) One hundred fifty days prior to the certified budget  
9 submission date of the employer, the dispute shall be submitted to a  
10 mediator mutually selected by the parties or appointed by the Federal  
11 Mediation and Conciliation Service;

12                  (b) If an industrial dispute exists one hundred twenty  
13 days prior to the certified budget submission date of the employer,  
14 any employer, employee, labor organization, or the Attorney General,  
15 on his or her own initiative or by order of the Governor, may  
16 petition the commission to provide fact-finding and recommended  
17 decisions or orders to resolve the industrial dispute in accordance  
18 with section 48-811;

19                  (c) At any time prior to forty-five days prior to the  
20 certified budget submission date of the employer, the commission  
21 shall submit its fact-finding and recommended decisions or orders to  
22 the affected employer and labor organization;

23                  (d) If an industrial dispute exists fifteen days after  
24 the commission's submission of its fact-finding and recommended  
25 decisions or orders to the affected employer and labor organization

1     or thirty days prior to the certified budget submission date of the  
2     employer, the commission shall make public in accordance with section  
3     48-817 and submit its fact-finding and recommended decisions or  
4     orders to the governing body of the employer for approval by the  
5     governing body; and

6                 (e) Within thirty days after the governing body's receipt  
7     of the commission's submission, the governing body shall accept or  
8     reject the commission's fact-finding and recommended decisions or  
9     orders. If the industrial dispute is not resolved at the time of the  
10    expiration of the parties' existing collective bargaining agreement,  
11    the terms and conditions of the existing agreement shall continue in  
12    force and effect until a new agreement is executed, except that the  
13    terms shall not include cost-of-living adjustments nor require  
14    payments of cost-of-living increases during the period prior to the  
15    execution of a new collective bargaining agreement.

16                 Sec. 5. Section 48-811, Reissue Revised Statutes of  
17    Nebraska, is amended to read:

18                 48-811 Except as provided in the State Employees  
19    Collective Bargaining Act, any employer, employee, or labor  
20    organization, or the Attorney General, ~~of Nebraska~~ on his or her own  
21    initiative or by order of the Governor, when any industrial dispute  
22    exists between parties ~~as set forth in that has not been resolved~~  
23    under section 48-810, may file a petition with the Commission of  
24    Industrial Relations invoking its jurisdiction. ~~commission requesting~~  
25    the commission to hold a hearing and provide fact-finding and

1     recommended decisions or orders. No adverse action by threat or  
2     harassment shall be taken against any employee because of any  
3     petition filing by such employee, and the employment status of such  
4     employee shall not be altered in any way pending disposition of the  
5     petition by the commission.

6                 Sec. 6. Section 48-812, Reissue Revised Statutes of  
7     Nebraska, is amended to read:

8                 48-812 Except as modified by the commission under section  
9     48-809 or the other provisions of the Industrial Relations Act,  
10    proceedings before the commission shall conform to the code of civil  
11    procedure applicable to the district courts of the state. ~~and appeals~~  
12    from its final orders shall be taken in the same manner and time as  
13    appeals from the district court, except that an order determining a  
14    bargaining unit or units shall not be appealable until after the  
15    results of the election have been certified by the commission.  
16    Appeals shall be heard and disposed of in the appellate court in the  
17    manner provided by law.

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

20                 48-813 (1) Whenever ~~the jurisdiction of the Commission of~~  
21    ~~Industrial Relations is invoked,~~ a petition is filed under section  
22    48-811, notice of the pendency of the proceedings shall be given in  
23    such manner as the commission shall provide for serving a copy of the  
24    petition and notice of filing upon the adverse party. An employer or  
25    labor organization may be served by sending a copy of the petition

1 filed to institute the proceedings and a notice of filing, which  
2 shall show the filing date, in the manner provided for service of a  
3 summons in a civil action. Such employer or labor organization shall  
4 have twenty days after receipt of the petition and notice of filing  
5 in which to serve and file its response.

6 (2) When a petition is filed ~~to resolve an industrial~~  
7 ~~dispute, under section 48-811, a hearing shall mandatorily be held~~  
8 ~~within sixty days from after the date of filing. Fact-finding and a~~  
9 ~~thereof. A recommended decision and or order in cases arising under~~  
10 ~~section 48-818, an order in cases not arising under section 48-818,~~  
11 ~~and findings if required, shall mandatorily be made and entered~~  
12 ~~thereon on the record within thirty fifteen days after such hearing.~~  
13 The time requirements specified in this section may be extended for  
14 good cause shown on the record or by agreement of the parties.  
15 Failure to meet such mandatory time requirements shall not deprive  
16 the commission of jurisdiction. However, if the commission fails to  
17 hold a hearing on the industrial dispute within sixty days of ~~after~~  
18 ~~the date of filing or has failed to make provide fact-finding and a~~  
19 ~~recommended decision and or order, and findings of fact if required,~~  
20 ~~in cases arising under section 48-818, or an order, and findings of~~  
21 ~~fact if required, in cases not arising under section 48-818, and~~  
22 ~~findings, within thirty fifteen days after the hearing and good cause~~  
23 ~~is not shown on the record or the parties to the dispute have not~~  
24 ~~jointly stipulated to the enlargement of the time limit, then either~~  
25 ~~party may file an action for mandamus in the district court for~~

1 Lancaster County to require the commission to hold the hearing or to  
2 render its fact-finding and recommended decision or order. and  
3 findings if required. For purposes of this section, the hearing on an  
4 industrial dispute shall not be deemed completed until the record is  
5 prepared and counsel briefs have been submitted, if such are required  
6 by the commission.

7 (3) Any party, including the State of Nebraska or any of  
8 its employer-representatives as defined in section 81-1371 or any  
9 political subdivision of the State of Nebraska, may waive such notice  
10 and may enter a voluntary appearance in any matter in the Commission  
11 ~~of Industrial Relations.~~ The giving of such notice in such manner  
12 shall subject the employers, the labor organizations, and the persons  
13 therein to the jurisdiction of the Commission of Industrial  
14 Relations. commission.

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

17 48-816 (1) After a petition has been filed under section  
18 48-811, the clerk shall immediately notify the commission which shall  
19 promptly take such preliminary proceedings as may be necessary to  
20 ensure a prompt hearing and speedy adjudication of the industrial  
21 dispute. The commission shall have power and authority upon its own  
22 initiative or upon request of a party to the dispute to make such  
23 temporary findings and orders as may be necessary to preserve and  
24 protect the status of the parties, property, and public interest  
25 involved pending final determination of the issues. In the event of

1   an industrial dispute between an employer and an employee or a labor  
2   organization when such employer and employee or labor organization  
3   have failed or refused to bargain in good faith concerning the  
4   matters in dispute, the commission may order such bargaining to begin  
5   or resume, as the case may be.~~, and may make any such order or~~  
~~6   orders as may be appropriate to govern the situation pending such~~  
~~7   bargaining.~~—The commission shall require good faith bargaining  
8   concerning the terms and conditions of employment of its employees by  
9   any employer. ~~Upon the request of either party, the commission shall~~  
10 ~~require the parties to an industrial dispute to submit to mediation~~  
11 ~~or factfinding. Upon the request of both parties, a special master~~  
12 ~~may be appointed if the parties are within the provisions of section~~  
13 ~~48-811.02. The commission shall appoint mediators, factfinders, or~~  
14 ~~special masters for such purpose. Such orders for bargaining,~~  
15 ~~mediation, factfinding, or a special master proceeding may be issued~~  
16 ~~at any time during the pendency of an action to resolve an industrial~~  
17 ~~dispute. To bargain in good faith shall mean means the performance of~~  
18 ~~the mutual obligation of the employer and the labor organization to~~  
19 ~~endeavor to agree on a procedure for settling industrial disputes in~~  
20 ~~accordance with section 48-410 and to meet at reasonable times and~~  
21 ~~confer in good faith with respect to wages, hours, and other terms~~  
22 ~~and conditions of employment or any question arising thereunder and~~  
23 ~~the execution of a written contract incorporating any agreement~~  
24 ~~reached if requested by either party, but such obligation does not~~  
25 ~~compel either party to agree to a proposal or require the making of a~~

1 concession.

2                   (2) Except as provided in the State Employees Collective  
3 Bargaining Act, public employers ~~are hereby authorized to~~ may  
4 recognize employee organizations for the purpose of negotiating  
5 collectively in the determination of and administration of grievances  
6 arising under the terms and conditions of employment of their public  
7 employees as provided in the Industrial Relations Act and to  
8 negotiate and enter into written agreements with such employee  
9 organizations in determining such terms and conditions of employment.

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

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

1 employees in the unit.

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

1 bargaining. Such separate bargaining unit may also be recognized by a  
2 Class V school district as provided in subsection (2) of this  
3 section.

4 (4) When an employee organization has been certified as  
5 an exclusive collective-bargaining agent or recognized pursuant to  
6 any other provisions of the Industrial Relations Act, the appropriate  
7 public employer ~~shall be and is hereby authorized to~~ may negotiate  
8 collectively with such employee organization in the settlement of  
9 grievances arising under the terms and conditions of employment of  
10 the public employees as provided in such act and to negotiate and  
11 enter into written agreements with such employee organizations in  
12 determining such terms and conditions of employment, including wages  
13 and hours.

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

20 (6) A party to an action filed with the commission may  
21 request the commission to send survey forms or data request forms.  
22 The requesting party shall prepare its own survey forms or data  
23 request forms and shall provide the commission the names and  
24 addresses of the entities to whom the documents shall be sent, not to  
25 exceed twenty addresses in any case. All costs resulting directly

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

24 (7)(a) ~~Except for those cases arising under section~~  
25 ~~48-818, the commission shall be required to make findings of facts in~~

1 all cases in which one of the parties to the dispute requests  
2 findings. Such request shall be specific as to the issues on which  
3 the party wishes the commission to make findings of fact.

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

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

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

1                   Sec. 9. Section 48-816.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   48-816.01 The presiding officer of the commission may,  
4 when he or she deems it necessary to expedite the determination of  
5 cases filed with the commission, appoint a hearing officer to hear  
6 evidence and ~~make recommended findings and provide fact-finding and~~  
7 recommended decisions or orders in any case or to make recommended  
8 determinations after a representation election has been ordered and  
9 during the course of such election. Any person appointed as a hearing  
10 officer shall be an attorney admitted to practice in Nebraska and  
11 shall be knowledgeable in the rules of civil procedure and evidence  
12 applicable to the district courts.

13                  Sec. 10. Section 48-817, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15                  48-817 After the hearing and any investigation, the  
16 commission shall make all ~~findings, findings of fact, fact-finding~~  
17 and recommended decisions and or orders, and decisions and orders in  
18 writing, which ~~findings, findings of fact, recommended decisions and~~  
19 ~~orders, and decisions and orders~~ shall be entered of record. ~~Except~~  
20 ~~as provided in the State Employees Collective Bargaining Act, the~~  
21 ~~final decision and order or orders shall be in effect from and after~~  
22 ~~the date therein fixed by the commission, but no such order or orders~~  
23 ~~shall be retroactive. The commission shall cause all fact-finding and~~  
24 ~~recommended decisions and orders entered of record to be made public~~  
25 within fifteen days after the conclusion of any hearing or

1     investigation. In the making of any findings fact-finding and  
2     recommended decisions or orders in connection with any such  
3     industrial dispute, the commission shall give no consideration to any  
4     evidence or information which it may obtain obtained through an  
5     investigation or otherwise receive, received, except matters of which  
6     the district court might take judicial notice, unless such evidence  
7     or information is presented and made a part of the record in a  
8     hearing and opportunity is given, after reasonable notice to all  
9     parties to the controversy of the initiation of any investigation and  
10    the specific contents of the evidence or information obtained or  
11    received, to rebut such evidence or information either by cross-  
12    examination or testimony.

13                 Sec. 11. Section 48-819.01, Reissue Revised Statutes of  
14    Nebraska, is amended to read:

15                 48-819.01 Whenever it is alleged that a party to an  
16    industrial dispute has engaged in an act which is in violation of any  
17    of the provisions of the Industrial Relations Act, or which  
18    interferes with, restrains, or coerces employees in the exercise of  
19    the rights provided in such act, the commission shall have the power  
20    and authority to make such findings and to enter such temporary or  
21    permanent orders may provide fact-finding and recommended decisions  
22    and orders as the commission may find finds necessary to provide  
23    adequate remedies to the injured party or parties, and to effectuate  
24    the public policy enunciated in section 48-802., and to resolve the  
25    dispute.

1                   Sec. 12. Section 48-825, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   48-825 (1) A proceeding against a party alleging a  
4 violation of section 48-824 is commenced by filing a complaint with  
5 the commission within one hundred eighty days after the alleged  
6 violation thereby causing a copy of the complaint to be served upon  
7 the accused party. The accused party has ten days within which to  
8 file a written answer to the complaint. If the commission determines  
9 that the complaint has no basis in fact, the commission may dismiss  
10 the complaint. If the complaint has a basis in fact, the commission  
11 shall set a time for hearing. The parties may be represented by  
12 counsel, summon witnesses, and request the commission to subpoena  
13 witnesses on the requester's behalf.

14                   (2) The commission shall file its ~~findings of fact~~ ~~fact-~~  
15 ~~finding~~ and conclusions of law. If the commission finds that the  
16 party accused has committed a prohibited practice, the commission,  
17 within thirty days after its decision, shall order an appropriate  
18 remedy. Any party may petition the district court for injunctive  
19 relief pursuant to the rules of civil procedure.

20                   (3) Any party aggrieved by any decision or order of the  
21 commission may, within thirty days after the date such decision or  
22 order is filed, appeal to the Court of Appeals.

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

- 1                   (a) If the commission acts without or in excess of its
- 2 powers;
- 3                   (b) If the order was procured by fraud or is contrary to
- 4 law;
- 5                   (c) If the facts found by the commission do not support
- 6 the order; and
- 7                   (d) If the order is not supported by a preponderance of
- 8 the competent evidence on the record considered as a whole.

9                   Sec. 13. Section 81-1369, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11                  81-1369 Sections 81-1369 to 81-1390 81-1389 shall be  
12 known and may be cited as the State Employees Collective Bargaining  
13 Act.

14                  Sec. 14. Section 81-1371, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16                  81-1371 For purposes of the State Employees Collective  
17 Bargaining Act, unless the context otherwise requires:

18                  (1) Chief Negotiator shall mean means the Chief  
19 Negotiator of the Division of Employee Relations of the Department of  
20 Administrative Services;

21                  (2) Commission shall mean means the Commission of  
22 Industrial Relations;

23                  (3) Division shall mean means the Division of Employee  
24 Relations of the Department of Administrative Services;

25                  (4) Employee or state employee shall mean means any

1 employee of the State of Nebraska;

2 (5) Employer or state employer ~~shall mean means~~ the State  
3 of Nebraska and ~~shall does~~ not include any political subdivision  
4 thereof;

5 (6) Employer-representative ~~shall mean means~~ (a) for  
6 negotiations involving employees of the University of Nebraska, the  
7 Board of Regents, (b) for negotiations involving employees of the  
8 Nebraska state colleges, the Board of Trustees of the Nebraska State  
9 Colleges, (c) for negotiations involving employees of other  
10 constitutional agencies, the governing officer or body for each such  
11 agency, and (d) for negotiations involving other state employees, the  
12 Governor;

13 (7) Grievance ~~shall mean means~~ a management action  
14 resulting in an injury, injustice, or wrong involving a  
15 misinterpretation or misapplication of applicable labor contracts if  
16 so agreed to by the appropriate parties;

17 (8) Issue ~~shall mean means~~ broad subjects of negotiation  
18 which are presented to the Special Master pursuant to section  
19 81-1382. All aspects of wages ~~shall be are~~ a single issue, all  
20 aspects of insurance ~~shall be are~~ a single issue, and all other  
21 subjects of negotiations classified in broad categories ~~shall be are~~  
22 single issues;

23 (9) Mandatory topic or topics of bargaining ~~shall mean~~  
24 ~~means~~ those subjects of negotiation on which employers must negotiate  
25 pursuant to the Industrial Relations Act, including terms and

1      conditions of employment which may otherwise be provided by law for  
2      state employees, except when specifically prohibited by law from  
3      being a subject of bargaining;

4                 (10) Meet-and-confer rights ~~shall mean means~~ the rights  
5      of employees to discuss wages, hours, and other terms and conditions  
6      of employment with the appropriate employer-representative but ~~shall~~  
7      ~~does not~~ require either party to enter into a written agreement.

8      Employees afforded meet-and-confer rights ~~shall not be are not~~  
9      entitled to utilize the impasse resolution procedures provided in the  
10     State Employees Collective Bargaining Act or to file a petition with  
11     the commission invoking its jurisdiction as provided in the  
12     Industrial Relations Act, ~~for the purpose of obtaining an order or~~  
13     ~~orders under section 48-818.~~ Meet-and-confer rights ~~shall do not~~  
14     apply to any bargaining unit other than a supervisory unit; and

15                 (11) Special Master ~~shall mean means~~ a factfinder chosen  
16     pursuant to section 81-1380.

17                 Sec. 15. Section 81-1373, Reissue Revised Statutes of  
18     Nebraska, is amended to read:

19                 81-1373 (1) For the purpose of implementing the state  
20     employees' right to organize for the purpose of collective  
21     bargaining, there are hereby created twelve bargaining units for all  
22     state agencies except the University of Nebraska, the Nebraska state  
23     colleges, and other constitutional offices. The units shall consist  
24     of state employees whose job classifications are occupationally and  
25     functionally related and who share a community of interest. The

1 bargaining units shall be:

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

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

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

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

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

23                 (f) Protective Service, which unit is composed of  
24 institutional security personnel, including correctional officers,  
25 building security guards, and similar classes;

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

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

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

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

23                             (k) Teachers, which unit is composed of employees  
24 required to be licensed or certified as a teacher; and

25                             (l) Supervisory, which unit is composed of employees who

1 are supervisors as defined in section 48-801.

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

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

14               (3) It is the intent of the Legislature that professional  
15 and managerial employee classifications and office and service  
16 employee classifications be grouped in broad occupational units for  
17 the University of Nebraska and the Nebraska state colleges  
18 established on a university-wide or college-system-wide basis,  
19 including all campuses within the system. Any unit entirely composed  
20 of supervisory employees of the University of Nebraska or the  
21 Nebraska state colleges shall be afforded only meet-and-confer  
22 rights. ~~Except as provided in subsection (4) of this section, the~~ The  
23 bargaining units for academic, faculty, and teaching employees of the  
24 University of Nebraska and the Nebraska state colleges shall continue  
25 as they exist on April 9, 1987, the operative date of this act, and

1 any adjustments thereto or new units therefor shall continue to be  
2 determined pursuant to the Industrial Relations Act.

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

16                 (5) (4) Other constitutional offices shall continue to  
17 subscribe to the procedures for unit determination in the Industrial  
18 Relations Act, except that the commission is further directed to  
19 determine the bargaining units in such manner as to (a) reduce the  
20 effect of overfragmentation of bargaining units on the efficiency of  
21 administration and operations of the constitutional office and (b) be  
22 consistent with the administrative structure of the constitutional  
23 office. Any unit entirely composed of supervisory employees of a  
24 constitutional office shall be afforded only meet-and-confer rights.

25                 Sec. 16. Section 81-1382, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2               81-1382 (1) No later than January 10, the parties in  
3 labor contract negotiations shall reduce to writing and sign all  
4 agreed-upon issues and exchange final offers on each unresolved  
5 issue. Final offers may not be amended or modified without the  
6 concurrence of the other party.

7               (2) No later than January 15, the parties in labor  
8 contract negotiations shall submit all unresolved issues that  
9 resulted in impasse to the Special Master. The Special Master shall  
10 conduct a prehearing conference. He or she shall have the authority  
11 to:

12               (a) Determine whether the issues are ready for  
13 adjudication;

14               (b) Accept stipulations;

15               (c) Schedule hearings;

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

17               (e) Order additional mediation if necessary; and

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

20               The Special Master may consult with the parties ex parte  
21 only with the concurrence of both parties.

22               (3) The Special Master shall choose the most reasonable  
23 final offer of either party on each issue in dispute. ~~In making such~~  
24 ~~choice, he or she shall consider factors relevant to collective~~  
25 ~~bargaining between public employers and public employees, including~~

1 comparable rates of pay and conditions of employment as described in  
2 section 48-818. The Special Master shall not apply strict rules of  
3 evidence. Persons who are not attorneys may present cases to the  
4 Special Master. The Special Master shall issue his or her ruling on  
5 or before February 15.

6 Sec. 17. Section 81-1383, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 81-1383 (1) The Special Master's ruling shall be binding,  
9 except that the Chief Negotiator or any other employer-representative  
10 or the certified collective-bargaining agent may appeal an adverse  
11 ruling on an issue to the commission Court of Appeals on or before  
12 March 15. No party shall file an appeal after March 15. No party  
13 shall present an issue to the commission Court of Appeals that was  
14 not subject to negotiations and ruled upon by the Special Master.  
15 There shall be no change in the unresolved issues while the appeal is  
16 pending.

17 (2) The commission shall show significant deference to  
18 the Special Master's ruling and shall only set the ruling aside upon  
19 a finding that the ruling is significantly disparate from prevalent  
20 rates of pay or conditions of employment as determined by the  
21 commission pursuant to section 48-818. The commission shall not find  
22 the Special Master's ruling to be significantly disparate from  
23 prevalent rates of pay or conditions of employment in any instance  
24 when the prevalent rates of pay or conditions of employment, as  
25 determined by the commission pursuant to section 48-818, fall between

1 the final offers of the parties.

2 (3) If the commission does not defer to the Special  
3 Master's ruling, it shall enter an order implementing the final offer  
4 on each issue appealed which would result in rates of pay and  
5 conditions of employment most comparable with the prevalent rates of  
6 pay and conditions of employment determined by it pursuant to section  
7 48-818. Under no circumstances shall the commission enter an order on  
8 an issue which does not implement one of the final offers of the  
9 parties. Nothing in this section shall prohibit the commission from  
10 deferring to the Special Master's ruling if it finds that the ruling  
11 would not result in significant disparity with the prevalent rates of  
12 pay and conditions of employment as it has determined pursuant to  
13 section 48-818.

14 (4) The commission, the (2) The Court of Appeals, or the  
15 Supreme Court shall not enter an order for any period which is not  
16 the same as or included within the budget period for which the  
17 contract is being negotiated.

18 (5)—(3) All items agreed upon during the course of  
19 negotiations and not subject to appeal shall, when ratified by the  
20 parties, take effect concurrent with the biennial budget period and  
21 shall constitute the parties' contract. Upon final resolution of  
22 appeals of all unresolved items, the parties shall reduce the orders  
23 of the commission, the Court of Appeals, or the Supreme Court to  
24 writing and incorporate them into the contract without ratification.

25 (6) The commission shall complete its deliberations and

1 issue appropriate orders by July 1 or as soon thereafter as is  
2 practicable.

3 (7) The commission shall adopt expedited procedures to  
4 assure timely completion of any appeal filed pursuant to the State  
5 Employees Collective Bargaining Act.

6 Sec. 18. Section 81-1385, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 81-1385 (1) If the exclusive collective-bargaining agent  
9 appeals an adverse ruling from the Special Master on any or all  
10 issues, there shall be no change in the term or condition of  
11 employment in effect in that issue or issues during the pendency of  
12 the appeal. Orders adjusting the term or condition of employment in  
13 an issue or issues shall be effective beginning with final resolution  
14 of the appeal or January 1 of the first fiscal year of the contract  
15 period, whichever is earlier.

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

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

1                   81-1387 (1) Proceedings against a party alleging a  
2 violation of section 81-1386 shall be commenced by filing a complaint  
3 with the commission within one hundred eighty days of the alleged  
4 violation thereby causing a copy of the complaint to be served upon  
5 the accused party. The accused party shall have ten days within which  
6 to file a written answer to the complaint. If the commission  
7 determines that the complaint has no basis in fact, the commission  
8 may dismiss the complaint. If the complaint has a basis in fact, the  
9 commission shall set a time for hearing. The parties shall be  
10 permitted to be represented by counsel, summon witnesses, and request  
11 the commission to subpoena witnesses on the requester's behalf.

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

18                   (3) Any party aggrieved by any decision or order of the  
19 commission may, within thirty days from the date such decision or  
20 order is filed, appeal therefrom to the Court of Appeals.

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

24                   (a) ~~If the commission acts without or in excess of its~~  
25 ~~powers;~~

1                   (b) If the order was procured by fraud or is contrary to  
2 law;  
3                   (c) If the facts found by the commission do not support  
4 the order; and  
5                   (d) If the order is not supported by a preponderance of  
6 the competent evidence on the record considered as a whole.

7                 Sec. 20. This act becomes operative on January 1, 2012.

8                 Sec. 21. If any section in this act or any part of any  
9 section is declared invalid or unconstitutional, the declaration  
10 shall not affect the validity or constitutionality of the remaining  
11 portions.

12                 Sec. 22. Original sections 48-801, 48-808, 48-809,  
13 48-810, 48-811, 48-812, 48-813, 48-816, 48-816.01, 48-817, 48-819.01,  
14 48-825, 81-1369, 81-1371, 81-1373, 81-1382, 81-1383, 81-1385, and  
15 81-1387, Reissue Revised Statutes of Nebraska, are repealed.

16                 Sec. 23. The following sections are outright repealed:  
17 Sections 48-811.02, 48-816.02, 48-818, 48-819, 48-823, 48-842, and  
18 81-1390, Reissue Revised Statutes of Nebraska.