

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 623**

Introduced by Lautenbaugh, 18.

Read first time January 19, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Industrial Relations Act; to amend  
2 sections 48-811, 48-816, and 48-818, Reissue Revised  
3 Statutes of Nebraska; to change provisions relating to  
4 the effect of filing a petition, commission powers, and  
5 determination of wages and conditions of employment; and  
6 to repeal the original sections.

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

1           Section 1. Section 48-811, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           48-811 Except as provided in the State Employees  
4 Collective Bargaining Act, any employer, employee, or labor  
5 organization, or the Attorney General of Nebraska on his or her own  
6 initiative or by order of the Governor, when any industrial dispute  
7 exists between parties as set forth in section 48-810, may file a  
8 petition with the Commission of Industrial Relations invoking its  
9 jurisdiction. No adverse action by threat or harassment shall be  
10 taken against any employee because of any petition filing by such  
11 employee.  ~~, and the employment status of such employee shall not be~~  
12 ~~altered in any way pending disposition of the petition by the~~  
13 ~~commission.~~

14           Sec. 2. Section 48-816, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           48-816 (1) After a petition has been filed under section  
17 48-811, the clerk shall immediately notify the commission which shall  
18 promptly take such preliminary proceedings as may be necessary to  
19 ensure prompt hearing and speedy adjudication of the industrial  
20 dispute. The commission shall have power and authority upon its own  
21 initiative or upon request of a party to the dispute to make such  
22 temporary findings and orders as may be necessary to preserve and  
23 protect the status of the parties, property, and public interest  
24 involved pending final determination of the issues. However, the  
25 commission shall have no authority to issue temporary findings and

1 orders regarding insurance and pensions affecting counties  
2 encompassing a city of the metropolitan class. In the event of an  
3 industrial dispute between an employer and an employee or a labor  
4 organization when such employer and employee or labor organization  
5 have failed or refused to bargain in good faith concerning the  
6 matters in dispute, the commission may order such bargaining to begin  
7 or resume, as the case may be, and may make any such order or orders  
8 as may be appropriate to govern the situation pending such  
9 bargaining. The commission shall have no authority to issue orders  
10 regarding insurance and pensions affecting counties encompassing a  
11 city of the metropolitan class. The commission shall require good  
12 faith bargaining concerning the terms and conditions of employment of  
13 its employees by any employer. The commission shall have no authority  
14 to require good faith bargaining regarding insurance and pensions  
15 affecting counties encompassing a city of the metropolitan class.  
16 Upon the request of either party, the commission shall require the  
17 parties to an industrial dispute to submit to mediation or  
18 factfinding. Upon the request of both parties, a special master may  
19 be appointed if the parties are within the provisions of section  
20 48-811.02. The commission shall appoint mediators, factfinders, or  
21 special masters for such purpose. Such orders for bargaining,  
22 mediation, factfinding, or a special master proceeding may be issued  
23 at any time during the pendency of an action to resolve an industrial  
24 dispute. To bargain in good faith shall mean the performance of the  
25 mutual obligation of the employer and the labor organization to meet

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

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

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

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

1 recognize an employees bargaining unit composed of firefighters and  
2 police officers holding positions or classifications subordinate to  
3 the chief of the fire department or police department and his or her  
4 immediate assistant or assistants holding authority subordinate only  
5 to the chief when such bargaining unit is designated or elected by  
6 employees in the unit.

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

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

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

19 (5) Upon receipt by an employer of a request from a labor  
20 organization to bargain on behalf of employees, the duty to engage in  
21 good faith bargaining shall arise if the labor organization has been  
22 certified by the commission or recognized by the employer as the  
23 exclusive bargaining representative for the employees in that  
24 bargaining unit.

25 (6) A party to an action filed with the commission may

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

1 public services, panels of qualified persons broadly representative  
2 of the public to be available to serve as mediators, special masters,  
3 or members of factfinding boards.

4 (7)(a) Except for those cases arising under section  
5 48-818, the commission shall be required to make findings of facts in  
6 all cases in which one of the parties to the dispute requests  
7 findings. Such request shall be specific as to the issues on which  
8 the party wishes the commission to make findings of fact.

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

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

17 (d) In cases arising under section 48-818, the commission  
18 shall issue a recommended decision and order, which decision and  
19 order shall become final within ten days of entry unless either party  
20 to the dispute files with the commission a request for a posttrial  
21 conference. If such a request is filed, the commission shall hold a  
22 posttrial conference within ten days of receipt of such request and  
23 shall issue an order within ten days after holding such posttrial  
24 conference, which order shall become the final order in the case. The  
25 purpose of such posttrial conference shall be to allow the commission

1 to hear from the parties on those portions of the recommended  
2 decision and order which is not based upon or which mischaracterizes  
3 evidence in the record and to allow the commission to correct any  
4 such errors after having heard the matter in a conference setting in  
5 which all parties are represented.

6 Sec. 3. Section 48-818, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 48-818 (1) Except as provided in the State Employees  
9 Collective Bargaining Act, the findings and order or orders may  
10 establish or alter the scale of wages, hours of labor, or conditions  
11 of employment, or any one or more of the same, except that the  
12 commission shall have no authority to issue any orders regarding  
13 insurance and pensions affecting counties encompassing a city of the  
14 metropolitan class.

15 (2)(a) In making such findings and order or orders, the  
16 Commission of Industrial Relations shall establish rates of pay and  
17 conditions of employment which are comparable to the prevalent wage  
18 rates paid and conditions of employment maintained for the same or  
19 similar work of workers exhibiting like or similar skills under the  
20 same or similar working conditions.

21 (b) When determining the array of comparable  
22 jurisdictions for counties encompassing a city of the metropolitan  
23 class, the commission shall first consider public and private sector  
24 employers within the metropolitan statistical area of the county that  
25 is a party to the dispute. The commission may only consider employers

1 outside of the metropolitan statistical area if there are not enough  
2 valid comparables within the metropolitan statistical area. In such  
3 case, the commission first shall look to comparable jurisdictions in  
4 the State of Nebraska and thereafter is limited to using  
5 jurisdictions within a five hundred mile radius that have a  
6 population no less than one-fourth the size and no greater than twice  
7 the size of the county encompassing a city of the metropolitan class  
8 that is a party to the industrial dispute.

9           (3) In establishing wage rates the commission shall take  
10 into consideration the overall compensation presently received by the  
11 employees, having regard not only to wages for time actually worked  
12 but also to wages for time not worked, including vacations, holidays,  
13 and other excused time, and all benefits received, but not including  
14 insurance and pensions for counties encompassing a city of the  
15 metropolitan class, and the continuity and stability of employment  
16 enjoyed by the employees. Any order or orders entered may be modified  
17 on the commission's own motion or on application by any of the  
18 parties affected, but only upon a showing of a change in the  
19 conditions from those prevailing at the time the original order was  
20 entered.

21           Sec. 4. Original sections 48-811, 48-816, and 48-818,  
22 Reissue Revised Statutes of Nebraska, are repealed.