

## LEGISLATIVE BILL 1228

Approved by the Governor April 8, 1972

Introduced by Harold D. Simpson, 46th District

AN ACT to amend section 48-813, Reissue Revised Statutes of Nebraska, 1943, section 48-801, Revised Statutes Supplement, 1969, and section 48-816, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1402, Eighty-second Legislature, Second Session, 1972, relating to the Court of Industrial Relations; to enact procedures governing employee election of collective bargaining agents; to provide for certification of exclusive collective bargaining agents; to revise definitions and the powers and duties of such court; to clarify service of summons upon the state and its departments; and to repeal the original sections.

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

Section 1. That section 48-801, Revised Statutes Supplement, 1969, be amended to read as follows:

48-801. As used in sections 48-801 to 48-823, unless the context otherwise requires:

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

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

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

(4) Employer shall mean the State of Nebraska or any political or governmental subdivision of the State of Nebraska, except the Nebraska National Guard or state militia, any municipal corporation, or any public power district or public power and irrigation district. It shall also include any public utility as defined in sections 48-801 to 48-823;

(5) Employee shall include any person employed by any employer as defined in sections 48-801 to 48-823;

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

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

(8) Court shall mean the Court of Industrial Relations.

Sec. 2. That section 48-813, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-813. Whenever the jurisdiction of the Court of Industrial Relations is invoked, notice of the pendency of the proceedings shall be given either by summons issued and served as summonses are issued and served in the district courts, or, in the discretion of the court, by publication in a legal newspaper of general circulation in the State of Nebraska two consecutive weeks. Such notice shall fix the time and place for hearing and in general terms set forth the matters to be heard and determined. Whenever such jurisdiction is invoked naming the State of Nebraska or any of its departments as a party defendant, summons shall issue upon the filing of such petition directed to the sheriff of Lancaster County, Nebraska, who shall serve the summons upon the state by serving the same upon the Governor and Attorney General; and in any action, the subject matter of which in whole or in part relates to or grew out of the conduct of any special department or institution of the state, summons shall also issue to the

sheriff of the county in which the principal office of such special department or institution is situated, and the sheriff of such county shall also serve the chief officer of such department or institution. Such notice may be waived by voluntary appearance. The court may in its discretion use such additional means of publication as the court may deem advisable.

Sec. 3. That section 48-816, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1402, Eighty-second Legislature, Second Session, 1972, be amended to read as follows:

48-816. After a petition has been filed under the provisions of section 48-811, the clerk shall immediately notify the members of the Court of Industrial Relations, which court shall promptly convene at its office to take such preliminary proceedings as may be necessary to insure a prompt hearing and speedy adjudication of the industrial dispute. The court shall have power and authority upon its own initiative to make such temporary findings and orders as may be necessary to preserve and protect the status of the parties, property and public interest involved, pending final determination of the issues. In the event of an industrial dispute between employer and employees of a privately-owned public utility or any public utility which is owned, managed, or operated by any political or governmental subdivision of the State of Nebraska, any public corporation, or any public power and irrigation district, where such employer and employees have failed or refused to bargain in good faith concerning the matters in dispute, the court may order such bargaining to be begun or resumed, as the case may be, and may make any such order or orders as may be appropriate to govern the situation pending such bargaining.

~~Before an industrial dispute with respect to representation is recognized as such, the parties may mutually agree to a secret ballot procedure to determine questions of representation for purposes of collective bargaining, for and on behalf of employees. The Court of Industrial Relations shall be immediately informed of the results, and the court shall inform the parties that the employees have designated a bargaining agent, and so shall certify the proper bargaining agent.~~

Public employers are hereby authorized to recognize employee organizations for the purpose of negotiating collectively in the determination of, and administration of grievances arising under, the terms and conditions of employment of their public employees as provided in this act, and to negotiate and enter into

written agreements with such employee organizations in determining such terms and conditions of employment.

All firemen and policemen employed in the fire department or police department of any municipal corporation in a position or classification subordinate to the chief of the department and his immediate assistant or assistants holding authority subordinate only to the chief, shall be presumed to have a community of interest and may be included in a single negotiating unit represented by an employee organization for the purposes of this act. Public employers shall be required to recognize an employee's negotiating unit composed of firemen and policemen holding positions or classifications subordinate to the chief of the fire department or police department and his immediate assistant or assistants holding authority subordinate only to the chief when such negotiating unit is designated or elected by employees in the unit.

Where an employee organization has been certified as an exclusive collective bargaining agent or recognized pursuant to the any other provisions of this act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in this act, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment, including wages and hours.

The court shall have the authority (1) to make studies and analyses of, and act as a clearing house of information relating to, conditions of employment of public employees throughout the state; (2) to request from any government, and such governments are authorized to provide, such assistance, services and data as will enable the board properly to carry out its functions and powers; (3) to conduct studies of problems involved in representation and negotiation, including, but not limited to, ~~(a) whether employee organizations are to be recognized as representatives of their members only or are to have exclusive representation rights for all employees in the negotiating unit, (b) the problems of unit determination, (c) those subjects which are open to negotiation in whole or in part, (d) those subjects which require administrative or legislative approval of modifications agreed upon by the parties, and (e) those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies;~~ (4) to make available to employee

organizations, governments, mediators, fact-finding boards and joint study committees established by governments and employee organizations statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations; and (5) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators or members of fact-finding boards.

Sec. 4. (1) The court shall determine questions of representation for purposes of collective bargaining for and on behalf of employees, and shall make rules and regulations for the conduct of elections to determine the exclusive collective bargaining agent for employees; Provided, that in no event shall a contract between an employer and an exclusive collective bargaining agent act as a bar for more than three years to any other party seeking to represent employees, nor shall any contract bar for more than three years a petition by employees seeking an election to revoke the authority of an agent to represent them. The court shall certify the exclusive collective bargaining agent for employees affected by sections 48-801 to 48-823 following an election by secret ballot, which election shall be conducted according to rules and regulations established by the court.

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

(3) The court shall not order an election until it has determined that at least thirty per cent of the employees in an appropriate unit have requested in writing that the court hold such an election. No election shall be ordered in one unit more than once a

year.

(4) The court shall only certify an exclusive collective bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment; Provided, that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he is a member of a labor organization, from bringing matters to the attention of his superior or other appropriate officials, and any employee may choose his own representative in any grievance or legal action, and such right of representation shall not preclude any employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective bargaining agreement which may be in effect.

Sec. 5. That original section 48-813, Reissue Revised Statutes of Nebraska, 1943, section 48-801, Revised Statutes Supplement, 1969, and section 48-816, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1402, Eighty-second Legislature, Second Session, 1972, are repealed.