

AMENDMENTS TO LB 397

Introduced by Lathrop

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 48-801, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           48-801 As used in the Industrial Relations Act, unless  
6 the context otherwise requires:

7           ~~(1) Person shall include an individual, partnership,~~  
8 ~~limited liability company, association, corporation, business~~  
9 ~~trust, or other organized group of persons;~~

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

14          ~~(3) Public utility shall include any individual,~~  
15 ~~partnership, limited liability company, association, corporation,~~  
16 ~~business trust, or other organized group of persons, any political~~  
17 ~~or governmental subdivision of the State of Nebraska, any public~~  
18 ~~corporation, or any public power district or public power and~~  
19 ~~irrigation district, which carries on an intrastate business in~~  
20 ~~this state and over which the government of the United States~~  
21 ~~has not assumed exclusive regulation and control, that furnishes~~  
22 ~~transportation for hire, telephone service, telegraph service,~~  
23 ~~electric light, heat and power service, gas for heating or~~

1 ~~illuminating, whether natural or artificial, or water service, or~~  
2 ~~any one or more thereof;~~

3 ~~(4) Employer shall mean the State of Nebraska or any~~  
4 ~~political or governmental subdivision of the State of Nebraska~~  
5 ~~except the Nebraska National Guard or state militia. Employer shall~~  
6 ~~also mean any municipal corporation, any public power district or~~  
7 ~~public power and irrigation district, or any public utility;~~

8 ~~(5) Employee shall include any person employed by any~~  
9 ~~employer;~~

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

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

22 ~~(8) Commission shall mean the Commission of Industrial~~  
23 ~~Relations;~~

24 ~~(9) Commissioner shall mean a member of the commission;~~  
25 ~~and~~

26 ~~(10) Supervisor shall mean any employee having authority,~~  
27 ~~in the interest of the employer, to hire, transfer, suspend, lay~~

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

7 (1) Certificated employee has the same meaning as in  
8 section 79-824;

9 (2) Commission means the Commission of Industrial  
10 Relations;

11 (3) Commissioner means a member of the commission;

12 (4) Governmental service means all services performed  
13 under employment by the State of Nebraska or any political or  
14 governmental subdivision thereof, including public corporations,  
15 municipalities, and public utilities;

16 (5) Industrial dispute includes any controversy between  
17 public employers and public employees concerning terms, tenure,  
18 or conditions of employment; the association or representation of  
19 persons in negotiating, fixing, maintaining, changing, or seeking  
20 to arrange terms or conditions of employment; or refusal to discuss  
21 terms or conditions of employment;

22 (6) Instructional employee means an employee of a  
23 community college who provides direct instruction to students;

24 (7) Labor organization means any organization of any  
25 kind or any agency or employee representation committee or plan,  
26 in which public employees participate and which exists for the  
27 purpose, in whole or in part, of dealing with public employers

1 concerning grievances, labor disputes, wages, rates of pay, hours  
2 of employment, or conditions of work;

3 (8) Metropolitan statistical area means a metropolitan  
4 statistical area as defined by the United States Office of  
5 Management and Budget;

6 (9) Municipality means any city or village in Nebraska;

7 (10) Noncertificated and noninstructional school employee  
8 means a school employee who is not a certificated or instructional  
9 employee;

10 (11) Public employee includes any person employed by a  
11 public employer;

12 (12) Public employer means the State of Nebraska or any  
13 political or governmental subdivision of the State of Nebraska  
14 except the Nebraska National Guard or state militia;

15 (13) Public utility includes any person or governmental  
16 entity, including any public corporation, public power district,  
17 or public power and irrigation district, which carries on an  
18 intrastate business in this state and over which the government  
19 of the United States has not assumed exclusive regulation and  
20 control, that furnishes transportation for hire, telephone service,  
21 telegraph service, electric light, heat, or power service, gas for  
22 heating or illuminating, whether natural or artificial, or water  
23 service, or any one or more thereof; and

24 (14) Supervisor means any public employee having  
25 authority, in the interest of the public employer, to hire,  
26 transfer, suspend, lay off, recall, promote, discharge, assign,  
27 reward, or discipline other public employees, or responsibility

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

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

7           48-801.01 Sections 48-801 to 48-838 and sections 11, 12,  
8 13, and 16 of this act shall be known and may be cited as the  
9 Industrial Relations Act.

10           Sec. 3. Section 48-802, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           48-802 To make operative the provisions of section 9,  
13 Article XV, of the Constitution of Nebraska, the public policy of  
14 the State of Nebraska is hereby declared to be as follows:

15           (1) The continuous, uninterrupted and proper functioning  
16 and operation of the governmental service including governmental  
17 service in a proprietary capacity and of public utilities engaged  
18 in the business of furnishing transportation for hire, telephone  
19 service, telegraph service, electric light, heat, or power service,  
20 gas for heating or illuminating, whether natural or artificial,  
21 or water service, or any one or more of them, to the people of  
22 Nebraska are hereby declared to be essential to their welfare,  
23 health, and safety. It is contrary to the public policy of  
24 the state to permit any substantial impairment or suspension  
25 of the operation of governmental service, including governmental  
26 service in a proprietary capacity or any such utility by reason  
27 of industrial disputes therein. It is the duty of the State

1 of Nebraska to exercise all available means and every power at  
2 its command to prevent the same so as to protect its citizens  
3 from any dangers, perils, calamities, or catastrophes which would  
4 result therefrom. It is therefor further declared that governmental  
5 service, including governmental service in a proprietary capacity,  
6 and the service of such public utilities are clothed with a vital  
7 public interest and to protect the same it is necessary that the  
8 relations between the public employers and public employees in such  
9 industries be regulated by the State of Nebraska to the extent and  
10 in the manner ~~hereinafter~~ provided in the Industrial Relations Act;

11 (2) No right shall exist in any natural or corporate  
12 person or group of persons to hinder, delay, limit, or suspend  
13 the continuity or efficiency of any governmental service or  
14 governmental service in a proprietary capacity of this state,  
15 either by strike, lockout, or other means; and

16 (3) No right shall exist in any natural or corporate  
17 person or group of persons to hinder, delay, limit, or suspend the  
18 continuity or efficiency of any public utility service, either by  
19 strike, lockout, or other means.

20 Sec. 4. Section 48-804, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 48-804 (1) The Commission of Industrial Relations shall  
23 be composed of five commissioners appointed by the Governor,  
24 with the advice and consent of the Legislature. The commissioners  
25 shall be representative of the public. Each commissioner shall be  
26 appointed and hold office for a term of six years and until a  
27 successor has qualified. In case of a vacancy, the Governor shall

1 appoint a successor to fill the vacancy for the unexpired term.

2 (2) Any commissioner may be removed by the Governor for  
3 the same causes as a judge of the district court may be removed.

4 (3) The commissioners shall, on July 1 of every  
5 odd-numbered year by a majority vote, select one of their number as  
6 presiding officer for the next two years, who shall preside at all  
7 hearings by the commission en banc, and shall assign the work of  
8 the commission to the several commissioners and perform such other  
9 supervisory duties as the needs of the commission may require. A  
10 majority of the commissioners shall constitute a quorum to transact  
11 business. The act or decision of any three of the commissioners  
12 shall in all cases be deemed the act or decision of the commission.  
13 Three commissioners shall preside over and decide all industrial  
14 disputes.

15 (4) The commission shall not be subject to the  
16 Administrative Procedure Act.

17 Sec. 5. Section 48-809, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 48-809 ~~The Commission of Industrial Relations is hereby~~  
20 ~~granted full power to~~ commission may adopt all reasonable and  
21 proper regulations to govern its proceedings, the filing of  
22 pleadings, the issuance and service of process, and the issuance of  
23 subpoenas for attendance of witnesses, ~~the power to~~ may administer  
24 oaths, and ~~to~~ may regulate the mode and manner of all its  
25 investigations, inspections, hearings, and trials. ~~In~~ Except as  
26 otherwise provided in the Industrial Relations Act or the State  
27 Employees Collective Bargaining Act, in the taking of evidence,

1 the rules of evidence, prevailing in the trial of civil cases  
2 in Nebraska, shall be observed by the ~~Commission of Industrial~~  
3 ~~Relations~~ commission.

4 Sec. 6. Section 48-811, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

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

17 If a change in the employment status or in wages or  
18 terms and conditions of employment is necessary, a motion by either  
19 party or by the parties jointly may be presented to the commission  
20 at that time and if the commission finds, based on a showing of  
21 evidence at a hearing thereon, that the requested change is both  
22 reasonable and necessary to serve an important public interest and  
23 that the employer has not considered a change in the employment  
24 status, wages, or terms and conditions of employment as a policy  
25 alternative on an equal basis with other policy alternatives  
26 to achieve budgetary savings, the commission may order that the  
27 requested change be allowed pending final resolution of the pending

1 industrial dispute.

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

4           48-813 (1) Whenever the jurisdiction of the ~~Commission of~~  
5 ~~Industrial Relations~~ commission is invoked, notice of the pendency  
6 of the proceedings shall be given in such manner as the commission  
7 shall provide for serving a copy of the petition and notice of  
8 filing upon the adverse party. ~~As~~ A public employer or labor  
9 organization may be served by sending a copy of the petition filed  
10 to institute the proceedings and a notice of filing, which shall  
11 show the filing date, in the manner provided for service of a  
12 summons in a civil action. Such employer or labor organization  
13 shall have twenty days after receipt of the petition and notice of  
14 filing in which to serve and file its response.

15           (2) The petitioner shall include its final offer, as  
16 voted by the petitioner, the governing body, or the bargaining  
17 unit or as considered pursuant to a ratification process, with its  
18 petition. The respondent shall include its final offer, as voted  
19 by the petitioner, the governing body, or the bargaining unit or  
20 as considered pursuant to a ratification process, with its answer.  
21 Within fourteen days after filing of the answer, the parties shall  
22 vote to accept or reject or consider pursuant to a ratification  
23 process the other's final offer. The vote concerning the governing  
24 body's final offer shall be published on its agenda and held where  
25 the public may attend. The commission shall not enter a final  
26 order on wages or conditions of employment unless both parties have  
27 rejected the others' final offer.

1           ~~(2)~~ (3) When a petition is filed to resolve an industrial  
2 dispute, a hearing shall mandatorily be held within sixty days from  
3 the date of filing thereof. A recommended decision and order in  
4 cases arising under section 48-818, an order in cases not arising  
5 under section 48-818, and findings if required, shall mandatorily  
6 be made and entered thereon within thirty days after such hearing.  
7 The time requirements specified in this section may be extended  
8 for good cause shown on the record or by agreement of the parties.  
9 Failure to meet such mandatory time requirements shall not deprive  
10 the commission of jurisdiction. However, if the commission fails  
11 to hold a hearing on the industrial dispute within sixty days of  
12 filing or has failed to make a recommended decision and order,  
13 and findings of fact if required, in cases arising under section  
14 48-818, or an order, and findings of fact if required, in cases  
15 not arising under section 48-818, and findings, within thirty days  
16 after the hearing and good cause is not shown on the record or  
17 the parties to the dispute have not jointly stipulated to the  
18 enlargement of the time limit, then either party may file an action  
19 for mandamus in the district court for Lancaster County to require  
20 the commission to hold the hearing or to render its order and  
21 findings if required. For purposes of this section, the hearing  
22 on an industrial dispute shall not be deemed completed until the  
23 record is prepared and counsel briefs have been submitted, if such  
24 are required by the commission.

25           ~~(3)~~ (4) Any party, including the State of Nebraska or any  
26 of its employer-representatives as defined in section 81-1371 or  
27 any political subdivision of the State of Nebraska, may waive such

1 notice and may enter a voluntary appearance in any matter in the  
2 ~~Commission of Industrial Relations.~~ commission. The giving of such  
3 notice in such manner shall subject the public employers, the labor  
4 organizations, and the persons therein to the jurisdiction of the  
5 ~~Commission of Industrial Relations.~~ commission.

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

8 48-816 (1) (a) After a petition has been filed under  
9 section 48-811, the clerk shall immediately notify the commission  
10 which shall promptly take such preliminary proceedings as may be  
11 necessary to ensure prompt hearing and speedy adjudication of the  
12 industrial dispute. The commission ~~shall have power and authority~~  
13 may, upon its own initiative or upon request of a party to the  
14 dispute, ~~to~~ make such temporary findings and orders as ~~may be~~  
15 necessary to preserve and protect the status of the parties,  
16 property, and public interest involved pending final determination  
17 of the issues. In the event of an industrial dispute between ~~an a~~  
18 public employer and ~~an a~~ public employee or a labor organization  
19 when such public employer and public employee or labor organization  
20 have failed or refused to bargain in good faith concerning the  
21 matters in dispute, the commission may order such bargaining to  
22 begin or resume, as the case may be, and may make any such order  
23 or orders as ~~may be~~ appropriate to govern the situation pending  
24 such bargaining. The commission shall require good faith bargaining  
25 concerning the terms and conditions of employment of its employees  
26 by any public employer. Upon the request of either party, the  
27 commission shall require the parties to an industrial dispute to

1 submit to mediation or factfinding. ~~Upon~~ Before July 1, 2012, upon  
2 the request of both parties, a special master may be appointed if  
3 the parties are within the provisions of section 48-811.02. On and  
4 after July 1, 2012, upon the request of either party, a resolution  
5 officer may be appointed if the parties are within the provisions  
6 of section 11 of this act. The commission shall appoint mediators,  
7 factfinders, or ~~special masters~~ before July 1, 2012, special  
8 masters and on and after such date resolution officers for such  
9 purpose. Such orders for bargaining, mediation, factfinding, or a  
10 ~~special master~~ before July 1, 2012, a special master proceeding  
11 and on and after such date a resolution officer proceeding may be  
12 issued at any time during the pendency of an action to resolve  
13 an industrial dispute. To bargain in good faith ~~shall mean~~ means  
14 the performance of the mutual obligation of the public employer  
15 and the labor organization to meet at reasonable times and confer  
16 in good faith with respect to wages, hours, and other terms and  
17 conditions of employment or any question arising thereunder and the  
18 execution of a written contract incorporating any agreement reached  
19 if requested by either party, but such obligation does not compel  
20 either party to agree to a proposal or require the making of a  
21 concession.

22 (b) In negotiations between a municipality, municipally  
23 owned utility, or county and a labor organization, staffing related  
24 to issues of safety shall be mandatory subjects of bargaining  
25 and staffing relating to scheduling work, such as daily staffing,  
26 staffing by rank, and overall staffing requirements, shall be  
27 permissive subjects of bargaining.

1           (2) Except as provided in the State Employees Collective  
2 Bargaining Act, public employers are hereby authorized to may  
3 recognize employee organizations for the purpose of negotiating  
4 collectively in the determination of and administration of  
5 grievances arising under the terms and conditions of employment of  
6 their public employees as provided in the Industrial Relations Act  
7 and to may negotiate and enter into written agreements with such  
8 employee organizations in determining such terms and conditions of  
9 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 public employee who is not a  
13 supervisor.

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

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

1 subsection (2) of this section.

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

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

18 (6) A party to an action filed with the commission  
19 may request the commission to send survey forms or data request  
20 forms. The requesting party shall prepare its own survey forms  
21 or data request forms and shall provide the commission the names  
22 and addresses of the entities to whom the documents shall be  
23 sent, not to exceed twenty addresses in any case. All costs  
24 resulting directly from the reproduction of such survey or data  
25 request forms and the cost of mailing such forms shall be taxed  
26 by the commission to the requesting party. The commission ~~shall~~  
27 ~~have the authority~~ may (a) ~~to~~ make studies and analyses of and

1 act as a clearinghouse of information relating to conditions  
2 of employment of public employees throughout the state, (b) ~~to~~  
3 request from any government, and such governments are authorized  
4 to provide, such assistance, services, and data as will enable it  
5 properly to carry out its functions and powers, (c) ~~to~~ conduct  
6 studies of problems involved in representation and negotiation,  
7 including, but not limited to, those subjects which are for  
8 determination solely by the appropriate legislative body, and  
9 make recommendations from time to time for legislation based  
10 upon the results of such studies, (d) ~~to~~ make available to  
11 public employee organizations, governments, mediators, factfinding  
12 boards and joint study committees established by governments, and  
13 public employee organizations statistical data relating to wages,  
14 benefits, and employment practices in public and private employment  
15 applicable to various localities and occupations to assist them  
16 to resolve complex issues in negotiations, and (e) ~~to~~ establish,  
17 after consulting representatives of public employee organizations  
18 and administrators of public services, panels of qualified persons  
19 broadly representative of the public to be available to serve as  
20 mediators, ~~special masters,~~ before July 1, 2012, special masters  
21 and on and after such date resolution officers, or members of  
22 factfinding boards.

23 (7) (a) Except for those cases arising under section  
24 48-818, the commission shall be ~~required to~~ make findings of facts  
25 in all cases in which one of the parties to the dispute requests  
26 findings. Such request shall be specific as to the issues on which  
27 the party wishes the commission to make findings of fact.

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

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

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

25           Sec. 9. Section 48-817, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27           48-817 After the hearing and any investigation, the

1 commission shall make all findings, findings of fact, recommended  
2 decisions and orders, and decisions and orders in writing, which  
3 findings, findings of fact, recommended decisions and orders,  
4 and decisions and orders shall be entered of record. Except as  
5 provided in the State Employees Collective Bargaining Act, the  
6 final decision and order or orders shall be in effect from and  
7 after the date therein fixed by the commission, but no such order  
8 or orders shall be retroactive except as provided otherwise in the  
9 Industrial Relations Act. ~~In~~ Except as provided otherwise in the  
10 Industrial Relations Act, in the making of any findings or orders  
11 in connection with any such industrial dispute, the commission  
12 shall give no consideration to any evidence or information which  
13 it may obtain through an investigation or otherwise receive,  
14 except matters of which the district court might take judicial  
15 notice, unless such evidence or information is presented and made  
16 a part of the record in a hearing and opportunity is given,  
17 after reasonable notice to all parties to the controversy of  
18 the initiation of any investigation and the specific contents of  
19 the evidence or information obtained or received, to rebut such  
20 evidence or information either by cross-examination or testimony.

21           Sec. 10. Section 48-818, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           48-818 (1) Except as provided in the State Employees  
24 Collective Bargaining Act, the findings and order or orders  
25 may establish or alter the scale of wages, hours of labor, or  
26 conditions of employment, or any one or more of the same. In making  
27 such findings and order or orders, the ~~Commission of Industrial~~

1 ~~Relations~~ commission shall establish rates of pay and conditions of  
2 employment which are comparable to the prevalent wage rates paid  
3 and conditions of employment maintained for the same or similar  
4 work of workers exhibiting like or similar skills under the same  
5 or similar working conditions. In establishing wage rates the  
6 commission shall take into consideration the overall compensation  
7 presently received by the employees, having regard not only to  
8 wages for time actually worked but also to wages for time not  
9 worked, including vacations, holidays, and other excused time, and  
10 all benefits received, including insurance and pensions, and the  
11 continuity and stability of employment enjoyed by the employees.  
12 Any order or orders entered may be modified on the commission's own  
13 motion or on application by any of the parties affected, but only  
14 upon a showing of a change in the conditions from those prevailing  
15 at the time the original order was entered.

16 (2) For purposes of industrial disputes involving public  
17 employers other than school districts, educational service units,  
18 and community colleges with their certificated and instructional  
19 employees and public employers subject to the State Employees  
20 Collective Bargaining Act:

21 (a) Job matches shall be sufficient for comparison if  
22 (i) evidence supports at least a seventy percent match based  
23 on a composite of the duties and time spent performing those  
24 duties and (ii) at least three job matches per classification are  
25 available for comparison. If three job matches are not available,  
26 the commission shall base its order on the historic relationship of  
27 wages paid to such position over the last three fiscal years, for

1 which data is available, as compared to wages paid to a position  
2 for which a minimum of three job matches are available;

3 (b) The commission shall adhere to the following criteria  
4 when establishing an array:

5 (i) Geographically proximate public employers and  
6 Nebraska public employers are preferable for comparison;

7 (ii) The preferred size of an array is seven to nine  
8 members. As few as five members may be chosen if all array  
9 members are Nebraska employers. The commission shall include  
10 members mutually agreed to by the parties in the array;

11 (iii) If more than nine employers with job matches are  
12 available, the commission shall limit the array to nine members,  
13 based upon selecting array members with the highest number of job  
14 matches at the highest job match percentage;

15 (iv) Nothing in subdivision (2)(b) of this section shall  
16 prevent parties from stipulating to an array member that does not  
17 otherwise meet the criteria in such subdivision, and nothing in  
18 such subdivision shall prevent parties from stipulating to less  
19 than seven or more than nine array members;

20 (v) The commission shall not require a balanced number  
21 of larger or smaller employers or a balanced number of Nebraska or  
22 out-of-state employers;

23 (vi) If the array includes a public employer in  
24 a metropolitan statistical area other than the metropolitan  
25 statistical area in which the employer before the commission  
26 is located, only one public employer from such metropolitan  
27 statistical area may be included in the array;

1           (vii) Arrays for public utilities shall include both  
2 public and privately owned utilities. Public utilities that produce  
3 radioactive material and energy pursuant to section 70-627.02  
4 shall have at least four members in its array that produce  
5 radioactive material and energy when employees directly involved  
6 in this production are included in the bargaining unit. For public  
7 utilities that generate, transmit, and distribute power, the array  
8 shall include members that also perform these functions. For a  
9 public utility serving a city of the primary class the array shall  
10 only include public power districts in Nebraska that generate,  
11 transmit, and distribute power and any out-of-state utilities whose  
12 number of meters served is not more than double or less than  
13 one-half of the number of meters served by the public utility  
14 serving a city of the primary class unless evidence establishes  
15 that there are substantial differences which cause the work or  
16 conditions of employment to be dissimilar;

17           (viii) In constructing an array for a public utility,  
18 the commission shall use fifty-mile concentric circles until it  
19 reaches the optimum array pursuant to subdivision (2)(b)(ii) of  
20 this section; and

21           (ix) For a statewide public utility that provides service  
22 to a majority of the counties in Nebraska, any Nebraska public or  
23 private job match may be used without regard to the population or  
24 full-time equivalent employment requirements of this section, and  
25 any out-of-state job match may be used if the full-time equivalent  
26 employment of the out-of-state employer is no more than double and  
27 no less than one-half of the full time equivalent employment of the

1 bargaining unit of the statewide public utility in question;

2 (c) In determining same or similar working conditions,  
3 the commission shall adhere to the following:

4 (i) Public employers in Nebraska shall be presumed  
5 to provide same or similar working conditions unless evidence  
6 establishes that there are substantial differences which cause the  
7 work or conditions of employment to be dissimilar;

8 (ii) Public employers shall be presumed to provide the  
9 same or similar working conditions if (A) for public employers  
10 that are counties or municipalities, the population of such public  
11 employer is not more than double or less than one-half of the  
12 population of the public employer before the commission, unless  
13 evidence establishes that there are substantial differences which  
14 cause the work or conditions of employment to be dissimilar, (B)  
15 for public employers that are public utilities, the number of  
16 such public employer's employees is not more than double or less  
17 than one-half of the number of employees of the public employer  
18 before the commission, unless evidence establishes that there are  
19 substantial differences which cause the work or conditions of  
20 employment to be dissimilar, or (C) for public employers that are  
21 school districts, educational service units, or community colleges  
22 with noncertificated and noninstructional school employees, the  
23 student enrollment of such public employer is not more than  
24 double or less than one-half of the student enrollment of the  
25 public employer before the commission, unless evidence establishes  
26 that there are substantial differences which cause the work or  
27 conditions of employment to be dissimilar;

1           (iii) (A) Public employers located within a metropolitan  
2 statistical area who meet the population requirements of  
3 subdivision (2) (c) (ii) (A) of this section, if the public employer  
4 is a county or municipality, or the student enrollment requirements  
5 of subdivision (2) (c) (ii) (C) of this section, if the public  
6 employer is a school district or an educational service unit, shall  
7 be presumed to provide the same or similar working conditions  
8 if the metropolitan statistical area population in which they  
9 are located is not more than double or less than one-half the  
10 metropolitan statistical area population of the public employer  
11 before the commission, unless evidence establishes that there are  
12 substantial differences which cause the work or conditions of  
13 employment to be dissimilar.

14           (B) The presumption created by subdivision (2) (c) (iii) (A)  
15 of this section may be overcome in situations where evidence  
16 establishes that there are substantial similarities which cause  
17 the work or conditions of employment to be similar, allowing  
18 the commission to consider public employers located within a  
19 metropolitan statistical area even if the metropolitan statistical  
20 area population in which that employer or employers are located is  
21 more than double or less than one-half the metropolitan statistical  
22 area population of the public employer before the commission.  
23 The burden of establishing sufficient similarity is on the party  
24 seeking to include a public employer pursuant to this subdivision;  
25 and

26           (iv) Public employers other than public utilities which  
27 are not located within a metropolitan statistical area shall not be

1 compared to public employers located in a metropolitan statistical  
2 area. For purposes of this subdivision, metropolitan statistical  
3 area includes municipalities with populations of fifty thousand  
4 inhabitants or more;

5 (d) Prevalent shall be determined as follows: (i) For  
6 numeric values, prevalent shall be the midpoint between the  
7 arithmetic mean and the arithmetic median as long as a majority  
8 of the array members provide the benefit; and (ii) for nonnumeric  
9 comparisons, prevalent shall be the mode that the majority of the  
10 array members provide if the compared-to benefit is similar in  
11 nature. If there is no clear mode, the benefit or working condition  
12 shall remain unaltered by the commission;

13 (e) For any out-of-state employer, the parties may  
14 present economic variable evidence and the commission shall  
15 determine what, if any, adjustment is to be made if such evidence  
16 is presented. The commission shall not require that any such  
17 economic variable evidence be shown to directly impact the wages or  
18 benefits paid to employees by such out-of-state employer;

19 (f) In determining total or overall compensation, the  
20 commission shall value every economic item even if the year in  
21 question has expired. The commission shall require that all wage  
22 and benefit levels be leveled over the twelve-month period in  
23 dispute to account for increases or decreases which occur in the  
24 wage or benefit levels provided by any array member during such  
25 twelve-month period;

26 (g) In cases filed pursuant to this subsection (2) of  
27 this section, the commission shall not be bound by the usual

1 common law or statutory rules of evidence or by any technical  
2 or formal rules of procedure, other than those adopted by rule  
3 pursuant to section 48-809. The commission shall receive evidence  
4 relating to array selection, job match, and wages and benefits  
5 which have been assembled by telephone, electronic transmission,  
6 or mail delivery and any such evidence shall be accompanied by  
7 an affidavit from the employer or any other person with personal  
8 knowledge which affidavit shall demonstrate the affiant's personal  
9 knowledge and competency to testify on the matters thereon. The  
10 commission, with the consent of the parties to the dispute, and  
11 in the presence of the parties to the dispute, may contact an  
12 individual employed by an employer under consideration as an array  
13 member by telephone to inquire as to the nature or value of a  
14 working condition, wage, or benefit provided by that particular  
15 employer as long as the individual in question has personal  
16 knowledge about the information being sought. The commission may  
17 rely upon information gained in such inquiry for its decision.  
18 Opinion testimony shall be received by the commission based upon  
19 evidence provided in accordance with this subdivision. Testimony  
20 concerning job match shall be received if job match inquiries were  
21 conducted by telephone, electronic transmission, or mail delivery  
22 if the witness providing such testimony verifies the method of such  
23 job match inquiry and analysis;

24 (h) In determining the value of defined benefit and  
25 defined contribution retirement plans and health insurance plans or  
26 health benefit plans, the commission shall use an hourly rate value  
27 calculation as follows:

1           (i) Once the array has been chosen, each array member and  
2 the public employer of the subject bargaining unit shall provide a  
3 copy of its most recent defined benefit pension actuarial valuation  
4 report. Each array member and the public employer of the subject  
5 bargaining unit shall provide the most recent copy of its health  
6 insurance plans or health benefit plans, covering the preceding  
7 twelve-month period, with associated employer and employee costs,  
8 to the parties and the commission. Each array member shall also  
9 provide information concerning premium equivalent payments and  
10 contributions for health savings accounts. Each array member and  
11 the public employer of the subject bargaining unit shall indicate  
12 which plans are most used. The plans that are most used shall be  
13 used for comparison;

14           (ii) Once the actuarial valuation reports are received,  
15 the parties shall have thirty calendar days to determine whether  
16 to have the pensions actuarially valued at an hourly rate value  
17 other than equal. The hourly rate value for defined benefit plans  
18 shall be presumed to be equal to that of the array selected  
19 unless one or both of the parties presents evidence establishing  
20 that the actuarially derived annual normal cost of the pension  
21 benefit for each job classification in the subject bargaining  
22 unit is above or below the midpoint of the average normal cost.  
23 Consistent methods and assumptions are to be applied to determine  
24 the annual normal cost of any defined benefit pension plan of the  
25 subject bargaining unit and each array member. For this purpose,  
26 the entry age normal actuarial cost method is recommended. The  
27 actuarial assumptions that are selected for this purpose should

1 reflect expectations for a defined benefit pension plan maintained  
2 for the employees of the subject bargaining unit and acknowledge  
3 the eligibility and benefit provisions for each respective defined  
4 benefit pension plan. In this regard, different eligibility and  
5 benefit provisions may suggest different retirement or termination  
6 of employment assumptions. The methods and assumptions shall be  
7 attested to by an actuary holding a current membership with the  
8 American Academy of Actuaries. Any party who requests or presents  
9 evidence regarding actuarial valuation of a defined benefit plan  
10 shall be responsible for costs associated with such valuation and  
11 testimony. The actuarial valuation is presumed valid, unless a  
12 party presents competent actuarial evidence that the valuation is  
13 invalid;

14 (iii) The hourly rate value for defined contribution  
15 plans shall be established upon comparison of employer  
16 contributions;

17 (iv) The hourly rate value for health insurance plans  
18 or health benefit plans shall be established based upon the  
19 public employer's premium payments, premium equivalent payments,  
20 and public employer and public employee contributions to health  
21 savings accounts;

22 (v) The commission shall not compare defined benefit  
23 plans to defined contribution plans or defined contribution plans  
24 to defined benefit plans; and

25 (vi) The commission shall order increases or decreases  
26 in wage rates by job classification based upon the hourly rate  
27 value for health-related benefits, benefits provided for retirement

1 plans, and wages;

2 (i) For benefits other than defined benefit and defined  
3 contribution retirement plans and health insurance plans or health  
4 benefit plans, the commission shall issue an order based upon a  
5 determination of prevalency as determined under subdivision (2)(d)  
6 of this section; and

7 (j) The commission shall issue an order regarding  
8 increases or decreases in base wage rates or benefits as follows:

9 (i) The order shall be retroactive with respect to  
10 increases and decreases to the beginning of the bargaining year in  
11 dispute;

12 (ii) The commission shall determine whether the subject  
13 bargaining unit's hourly rate value falls within a ninety-eight  
14 percent to one hundred two percent range of the array's midpoint.  
15 If the hourly rate value falls within the ninety-eight percent to  
16 one hundred two percent range, the commission shall order no change  
17 in wage rates. If the hourly rate value is less than ninety-eight  
18 percent of the midpoint, the commission shall enter an order  
19 increasing wage rates to ninety-eight percent of the midpoint. If  
20 the hourly rate value is more than one hundred two percent of the  
21 midpoint, the commission shall enter an order decreasing wage rates  
22 to one hundred two percent of the midpoint. If the hourly rate  
23 value is more than one hundred seven percent of the midpoint, the  
24 commission shall enter an order reducing wage rates to one hundred  
25 two percent of the midpoint in three equal annual reductions.  
26 If the hourly rate value is less than ninety-three percent of  
27 the midpoint, the commission shall enter an order increasing wage

1 rates to ninety-eight percent of the midpoint in three equal  
2 annual increases. If the commission finds that the year in dispute  
3 occurred during a time of recession, the applicable range will be  
4 ninety-five percent to one hundred two percent. For purposes of  
5 this subdivision (2) (j) of this section, recession occurrence means  
6 the two quarters immediately preceding the effective date of the  
7 contract term in which net state sales and use tax, individual  
8 income tax, and corporate income tax receipts are less than the  
9 same quarters for the prior year. Each of these receipts shall  
10 be rate and base adjusted for state law changes. The Department  
11 of Revenue shall report and publish such receipts on a quarterly  
12 basis;

13 (iii) The parties shall have twenty-five calendar days to  
14 negotiate modifications to wages and benefits. If no agreement is  
15 reached, the commission's order shall be followed as issued; and

16 (iv) The commission shall provide an offset to the public  
17 employer when a lump-sum payment is due because benefits were paid  
18 in excess of the prevalent as determined under subdivision (2) (d)  
19 of this section or when benefits were paid below the prevalent as  
20 so determined but wages were above prevalent.

21 Sec. 11. (1) The Legislature finds that it is in the  
22 public's interest that collective bargaining involving school  
23 districts, educational service units, and community colleges  
24 and their certificated and instructional employees commence and  
25 conclude in a timely fashion consistent with school district  
26 budgeting and financing requirements. To that end, the timelines  
27 in this section shall apply when the public employer is a school

1 district, educational service unit, or community college.

2 (2) On or before September 1 of the year preceding  
3 the contract year in question, the certificated and instructional  
4 employees' collective bargaining agent shall request recognition  
5 as bargaining agent. The governing board shall respond to such  
6 request not later than the following October 1. A request for  
7 recognition need not be filed if the certificated and instructional  
8 employees' bargaining agent has been certified by the commission as  
9 the exclusive collective-bargaining agent. On or before November 1  
10 of the year preceding the contract year in question, negotiations  
11 shall begin. There shall be no fewer than four negotiations  
12 meetings between the certificated and instructional employees'  
13 collective-bargaining agent and the governing board's bargaining  
14 agent. Either party may seek a bargaining order pursuant to  
15 subsection (1) of section 48-816 at any stage in the negotiations.  
16 If an agreement is not reached on or before the following February  
17 8, the parties shall submit to mandatory mediation or factfinding  
18 as ordered by the commission pursuant to sections 48-811 and 48-816  
19 unless the parties mutually agree in writing to forgo mandatory  
20 mediation or factfinding.

21 (3) (a) The mediator or factfinder as ordered by the  
22 commission under subsection (2) of this section shall be a  
23 resolution officer. The commission shall provide the parties with  
24 the names of five individuals qualified to serve as the resolution  
25 officer. If the parties cannot agree on an individual, each party  
26 shall alternately strike names. The remaining individual shall  
27 serve as the resolution officer.

1           (b) The resolution officer may:

2           (i) Determine whether the issues are ready for  
3 adjudication;

4           (ii) Identify for resolution terms and conditions of  
5 employment that are in dispute and which were negotiated in good  
6 faith but upon which no agreement was reached;

7           (iii) Accept stipulations;

8           (iv) Schedule hearings;

9           (v) Prescribe rules of conduct for conferences;

10          (vi) Order additional mediation if necessary;

11          (vii) Take any other action which may aid in resolution  
12 of the industrial dispute; and

13          (viii) Consult with a party ex parte only with the  
14 concurrence of all parties.

15          (c) The resolution officer shall choose the most  
16 reasonable final offer on each issue in dispute. In making such  
17 choice, he or she shall consider factors relevant to collective  
18 bargaining between public employers and public employees, including  
19 comparable rates of pay and conditions of employment as described  
20 in subsection (1) of section 48-818. The resolution officer shall  
21 not apply strict rules of evidence. Persons who are not attorneys  
22 may present cases to the resolution officer.

23          (d) If either party to a resolution officer proceeding  
24 is dissatisfied with the resolution officer's decision, such party  
25 shall have the right to file an action with the commission seeking  
26 a determination of terms and conditions of employment pursuant to  
27 subsection (1) of section 48-818. Such action shall not constitute

1 an appeal of the resolution officer's decision, but rather shall be  
2 heard by the commission as an action brought pursuant to subsection  
3 (1) of section 48-818. The commission shall resolve, pursuant to  
4 the mandates of such section, all of the issues identified by  
5 either party and which were recognized by the resolution officer  
6 as an industrial dispute. If parties have not filed with the  
7 commission pursuant to subsection (6) of this section, the decision  
8 of the resolution officer shall be deemed final and binding.

9 (4) For purposes of this section, issue means broad  
10 subjects of negotiation which are presented to the resolution  
11 officer pursuant to this section. All aspects of wages are a single  
12 issue, all aspects of insurance are a single issue, and all other  
13 subjects of negotiations classified in broad categories are single  
14 issues.

15 (5) On or before March 25 of the contract year in  
16 question or within twenty-five days after the certification of the  
17 amounts to be distributed to each local system and each school  
18 district pursuant to the Tax Equity and Educational Opportunities  
19 Support Act as provided in section 79-1022, whichever occurs last  
20 in time, negotiations, mediation, and factfinding shall end.

21 (6) If an agreement for the contract year in question has  
22 not been achieved on or before the date for negotiation, mediation,  
23 or factfinding to end in subsection (5) of this section, either  
24 party may, within fourteen days after such date, file a petition  
25 with the commission pursuant to sections 48-811 and subsection  
26 (1) of 48-818 to resolve the industrial dispute for the contract  
27 year in question. The commission shall render a decision on such

1 industrial dispute on or before September 15 of the contract year  
2 in question.

3 (7) Any existing collective-bargaining agreement will  
4 continue in full force and effect until superseded by further  
5 agreement of the parties or by an order of the commission. The  
6 parties may continue to negotiate unresolved issues by mutual  
7 agreement while the matter is pending with the commission.

8 (8) All collective-bargaining agreements shall be written  
9 and executed by representatives of the governing board and  
10 representatives of the certificated and instructional employees'  
11 bargaining unit. The agreement shall contain at a minimum the  
12 following:

13 (a) A salary schedule or objective method of determining  
14 salaries;

15 (b) A description of benefits being provided or agreed  
16 upon including a specific level of coverage provided in any group  
17 insurance plan, a dollar amount, or percentage of premiums to be  
18 paid, and by whom; and

19 (c) A provision that the existing agreement will continue  
20 until replaced by a successor agreement or as amended by a final  
21 order of the commission.

22 Sec. 12. When determining total compensation pursuant to  
23 subsection (1) of section 48-818 for a school district, educational  
24 service unit, or community college with their certificated  
25 and instructional employees, the commission shall consider the  
26 employer's contribution to retirement plans and health insurance  
27 premiums, premium equivalent payments, or cash equivalent payments

1 and any other costs, including Federal Insurance Contributions Act  
2 contributions, associated with providing such benefits.

3           Sec. 13. When establishing wage rates pursuant to  
4 subsection (1) of section 48-818 for a school district, educational  
5 service unit, or community college with their certificated and  
6 instructional employees, the commission shall determine whether  
7 the subject bargaining unit's total compensation falls within  
8 a ninety-eight percent to one hundred two percent range of  
9 the array's midpoint. If the total compensation falls within  
10 the ninety-eight percent to one hundred two percent range, the  
11 commission shall order no change in wage rates. If the total  
12 compensation is less than ninety-eight percent of the midpoint,  
13 the commission shall enter an order increasing wage rates to  
14 ninety-eight percent of the midpoint. If the total compensation is  
15 more than one hundred two percent of the midpoint, the commission  
16 shall enter an order decreasing wage rates to one hundred two  
17 percent of the midpoint. If the total compensation is more  
18 than one hundred seven percent of the midpoint, the commission  
19 shall enter an order reducing wage rates to one hundred two  
20 percent of the midpoint in three equal annual reductions. If  
21 the total compensation is less than ninety-three percent of the  
22 midpoint, the commission shall enter an order increasing wage  
23 rates to ninety-eight percent of the midpoint in three equal  
24 annual increases. If the commission finds that the year in dispute  
25 occurred during a time of recession, the applicable range will  
26 be ninety-five percent to one hundred two percent. For purposes  
27 of this section, recession occurrence means the two quarters

1 immediately preceding the effective date of the contract term in  
2 which net state sales and use tax, individual income tax, and  
3 corporate income tax receipts are less than the same quarters for  
4 the prior year. Each of these receipts shall be rate and base  
5 adjusted for state law changes. The Department of Revenue shall  
6 report and publish such receipts on a quarterly basis.

7           Sec. 14. Section 48-824, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           48-824 (1) It is a prohibited practice for any public  
10 employer, public employee, public employee organization, or  
11 collective-bargaining agent to refuse to negotiate in good faith  
12 with respect to mandatory topics of bargaining.

13           (2) It is a prohibited practice for any public employer  
14 or the public employer's negotiator to:

15           (a) Interfere with, restrain, or coerce employees in the  
16 exercise of rights granted by the Industrial Relations Act;

17           (b) Dominate or interfere in the administration of any  
18 public employee organization;

19           (c) Encourage or discourage membership in any public  
20 employee organization, committee, or association by discrimination  
21 in hiring, tenure, or other terms or conditions of employment;

22           (d) Discharge or discriminate against ~~an~~ a public  
23 employee because the employee has filed an affidavit, petition,  
24 or complaint or given any information or testimony under the  
25 Industrial Relations Act or because the public employee has  
26 formed, joined, or chosen to be represented by any public employee  
27 organization;

1           (e) Refuse to negotiate collectively with representatives  
2 of collective-bargaining agents as required by the Industrial  
3 Relations Act;

4           (f) Deny the rights accompanying certification or  
5 recognition granted by the Industrial Relations Act; and

6           (g) Refuse to participate in good faith in any impasse  
7 procedures for public employees as set forth in the Industrial  
8 Relations Act.

9           (3) It is a prohibited practice for any public employee,  
10 public employee organization, or bargaining unit or for any  
11 representative or collective-bargaining agent to:

12           (a) Interfere with, restrain, coerce, or harass any  
13 public employee with respect to any of the public employee's rights  
14 granted by the Industrial Relations Act;

15           (b) Interfere with, restrain, or coerce ~~an~~ a public  
16 employer with respect to rights granted by the Industrial Relations  
17 Act or with respect to selecting a representative for the purposes  
18 of negotiating collectively on the adjustment of grievances;

19           (c) Refuse to bargain collectively with ~~an~~ a public  
20 employer as required by the Industrial Relations Act; and

21           (d) Refuse to participate in good faith in any impasse  
22 procedures for public employees as set forth in the Industrial  
23 Relations Act.

24           (4) The expressing of any view, argument, or opinion, or  
25 the dissemination thereof, whether in written, printed, graphic, or  
26 visual form, is not evidence of any unfair labor practice under  
27 any of the provisions of the Industrial Relations Act if such

1 expression contains no threat of reprisal or force or promise of  
2 benefit.

3 Sec. 15. Section 48-838, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 48-838 (1) The commission shall determine questions  
6 of representation for purposes of collective bargaining for  
7 and on behalf of public employees and shall make rules and  
8 regulations for the conduct of elections to determine the exclusive  
9 collective-bargaining agent for public employees, except that  
10 in no event shall a contract between ~~an~~ a public employer and  
11 an exclusive collective-bargaining agent act as a bar for more  
12 than three years to any other party seeking to represent public  
13 employees, nor shall any contract bar for more than three years  
14 a petition by public employees seeking an election to revoke the  
15 authority of an agent to represent them. Except as provided in the  
16 State Employees Collective Bargaining Act, the commission shall  
17 certify the exclusive collective-bargaining agent for employees  
18 affected by the Industrial Relations Act following an election by  
19 secret ballot, which election shall be conducted according to rules  
20 and regulations established by the commission.

21 (2) The election shall be conducted by one member of  
22 the commission who shall be designated to act in such capacity  
23 by the presiding officer of the commission, or the commission  
24 may appoint the clerk of the district court of the county in  
25 which the principal office of the public employer is located to  
26 conduct the election in accordance with the rules and regulations  
27 established by the commission. Except as provided in the State

1 Employees Collective Bargaining Act, the commission shall also  
2 determine the appropriate unit for bargaining and for voting in the  
3 election, and in making such determination, the commission shall  
4 consider established bargaining units and established policies  
5 of the public employer. It shall be presumed, in the case  
6 of governmental subdivisions such as municipalities, counties,  
7 power districts, or utility districts with no previous history of  
8 collective bargaining, that units of public employees of less than  
9 departmental size shall not be appropriate.

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

21 (4) Except as provided in the State Employees Collective  
22 Bargaining Act, the commission shall only certify an exclusive  
23 collective-bargaining agent if a majority of the employees voting  
24 in the election vote for the agent. A certified exclusive  
25 collective-bargaining agent shall represent all employees in the  
26 appropriate unit with respect to wages, hours, and conditions of  
27 employment, except that such right of exclusive recognition shall

1 not preclude any employee, regardless of whether or not he or she  
2 is a member of a labor organization, from bringing matters to the  
3 attention of his or her superior or other appropriate officials.

4 Any employee may choose his or her own representative  
5 in any grievance or legal action regardless of whether or not an  
6 exclusive collective-bargaining agent has been certified. If an  
7 employee who is not a member of the labor organization chooses  
8 to have legal representation from the labor organization in any  
9 grievance or legal action, such employee shall reimburse the labor  
10 organization for his or her pro rata share of the actual legal fees  
11 and court costs incurred by the labor organization in representing  
12 the employee in such grievance or legal action.

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

21 Sec. 16. Changes made to the Industrial Relations Act  
22 by this legislative bill shall apply to petitions filed with the  
23 commission on or after October 1, 2011, except for petitions  
24 filed involving school districts, educational service units,  
25 and community colleges with their certificated and instructional  
26 employees for which such changes shall apply on or after July 1,  
27 2012.

1                   Sec. 17. Section 79-852, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   79-852 The collective-bargaining agreement of the school  
4 district or districts forming the unified system or reorganized  
5 school district with the largest number of teacher employees shall  
6 continue in full force and effect and govern all teachers in the  
7 unified system or reorganized school district until replaced by  
8 a successor agreement, and the teachers employed by the unified  
9 system or reorganized school district and previously employed by  
10 the school districts involved in the formation of the unified  
11 system or reorganized school district shall automatically be  
12 included in that bargaining unit but no certificated public  
13 school employee shall be compelled to join any organization  
14 or association. If only one collective-bargaining agreement is  
15 in effect in the school districts which are a part of the  
16 unification or reorganization, that collective-bargaining agreement  
17 shall continue in full force and effect until replaced by a  
18 successor agreement and the teachers employed by the other school  
19 districts involved in the unification or reorganization shall  
20 automatically be included in that bargaining unit. For purposes of  
21 the Industrial Relations Act, the unified system shall be deemed ~~an~~  
22 a public employer as defined in section 48-801.

23                   Sec. 18. Section 79-2116, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25                   79-2116 Terms and conditions of employment of school  
26 employees providing services for an elementary learning center  
27 shall be established by the negotiated agreement of the learning

1 community employing such school employees to provide services.  
2 For certificated employees as defined in ~~subdivision (1)~~ of  
3 section 79-824, the learning community shall be deemed to be  
4 ~~an~~ a public employer as defined in ~~subdivision (4)~~ of section  
5 48-801. Compensation paid to school employees for services provided  
6 to a learning community shall be subject to the School Employees  
7 Retirement Act unless such employee is employed by a Class V school  
8 district, in which case compensation paid such school employee  
9 shall be subject to the Class V School Employees Retirement Act.

10           Sec. 19. Section 81-1369, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           81-1369 Sections 81-1369 to ~~81-1390~~ 81-1388 shall be  
13 known and may be cited as the State Employees Collective Bargaining  
14 Act.

15           Sec. 20. Section 81-1371, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

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

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

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

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

26           (4) Employee or state employee shall mean any employee of  
27 the State of Nebraska;

1           (5) Employer or state employer shall mean the State of  
2 Nebraska and shall not include any political subdivision thereof;

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

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

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

20           (9) Mandatory topic or topics of bargaining shall mean  
21 those subjects of negotiation on which employers must negotiate  
22 pursuant to the Industrial Relations Act, including terms and  
23 conditions of employment which may otherwise be provided by law for  
24 state employees, except when specifically prohibited by law from  
25 being a subject of bargaining; and

26           (10) Meet-and-confer rights shall mean the rights of  
27 employees to discuss wages, hours, and other terms and conditions

1 of employment with the appropriate employer-representative but  
2 shall not require either party to enter into a written agreement.  
3 Employees afforded meet-and-confer rights shall not be entitled to  
4 utilize the impasse resolution procedures provided in the State  
5 Employees Collective Bargaining Act or to file a petition with the  
6 commission invoking its jurisdiction as provided in the Industrial  
7 Relations Act for the purpose of obtaining an order or orders  
8 under section 48-818. Meet-and-confer rights shall not apply to any  
9 bargaining unit other than a supervisory unit, ~~and~~

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

12 Sec. 21. Section 81-1372, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 81-1372 The State Employees Collective Bargaining Act  
15 shall be deemed ~~eumulative~~ controlling for state employees and  
16 state employers covered by such act and is supplementary to  
17 the Industrial Relations Act except when otherwise specifically  
18 provided or when inconsistent with the Industrial Relations Act,  
19 in which case the State Employees Collective Bargaining Act shall  
20 prevail.

21 The State of Nebraska, its employees, employee  
22 organizations, and exclusive collective-bargaining agents  
23 shall have all the rights and responsibilities afforded  
24 employers, employees, employee organizations, and exclusive  
25 collective-bargaining agents pursuant to the Industrial Relations  
26 Act to the extent that such act is not inconsistent with the State  
27 Employees Collective Bargaining Act.

1           Sec. 22. Section 81-1373, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           81-1373 (1) For the purpose of implementing the state  
4 employees' right to organize for the purpose of collective  
5 bargaining, there are hereby created twelve bargaining units  
6 for all state agencies except the University of Nebraska, the  
7 Nebraska state colleges, and other constitutional offices. The  
8 units shall consist of state employees whose job classifications  
9 are occupationally and functionally related and who share a  
10 community of interest. The bargaining units shall be:

11           (a) Maintenance, Trades, and Technical, which unit is  
12 composed of generally recognized blue collar and technical classes,  
13 including highway maintenance workers, carpenters, plumbers,  
14 electricians, print shop workers, auto mechanics, engineering aides  
15 and associates, and similar classes;

16           (b) Administrative Support, which unit is composed of  
17 clerical and administrative nonprofessional classes, including  
18 typists, secretaries, accounting clerks, computer operators, office  
19 service personnel, and similar classes;

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

23           (d) Social Services and Counseling, which unit is  
24 composed of generally professional-level workers providing services  
25 and benefits to eligible persons. Classes shall include job  
26 service personnel, income maintenance personnel, social workers,  
27 counselors, and similar classes;

1           (e) Administrative Professional, which unit is composed  
2 of professional employees with general business responsibilities,  
3 including accountants, buyers, personnel specialists, data  
4 processing personnel, and similar classes;

5           (f) Protective Service, which unit is composed of  
6 institutional security personnel, including correctional officers,  
7 building security guards, and similar classes;

8           (g) Law Enforcement, which unit is composed of employees  
9 holding powers of arrest, including Nebraska State Patrol officers  
10 and sergeants, conservation officers, fire marshal personnel, and  
11 similar classes. Sergeants, investigators, and patrol officers  
12 employed by the Nebraska State Patrol as authorized in section  
13 81-2004 shall be presumed to have a community of interest with each  
14 other and shall be included in this bargaining unit notwithstanding  
15 any other provision of law which may allow for the contrary;

16           (h) Health and Human Care Professional, which unit  
17 is composed of community health, nutrition, and health service  
18 professional employees, including nurses, doctors, psychologists,  
19 pharmacists, dietitians, licensed therapists, and similar classes;

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

26           (j) Engineering, Science, and Resources, which unit  
27 is composed of specialized professional scientific occupations,

1 including civil and other engineers, architects, chemists,  
2 geologists and surveyors, and similar classes;

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

5 (l) Supervisory, which unit is composed of employees who  
6 are supervisors as defined in section 48-801.

7 All employees who are excluded from bargaining units  
8 pursuant to the Industrial Relations Act, all employees of the  
9 personnel division of the Department of Administrative Services,  
10 and all employees of the Division of Employee Relations of the  
11 Department of Administrative Services shall be excluded from any  
12 bargaining unit of state employees.

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

19 (3) It is the intent of the Legislature that professional  
20 and managerial employee classifications and office and service  
21 employee classifications be grouped in broad occupational units  
22 for the University of Nebraska and the Nebraska state colleges  
23 established on a university-wide or college-system-wide basis,  
24 including all campuses within the system. Any unit entirely  
25 composed of supervisory employees of the University of Nebraska or  
26 the Nebraska state colleges shall be afforded only meet-and-confer  
27 rights. ~~Except as provided in subsection (4) of this section, the~~

1 The bargaining units for academic, faculty, and teaching employees  
2 of the University of Nebraska and the Nebraska state colleges shall  
3 continue as they ~~exist~~ existed on April 9, 1987, plus the addition  
4 of Kearney State College, and any adjustments thereto or new units  
5 therefor shall continue to be determined pursuant to the Industrial  
6 Relations Act.

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

20           ~~(5)~~ (4) Other constitutional offices shall continue  
21 to subscribe to the procedures for unit determination in the  
22 Industrial Relations Act, except that the commission is further  
23 directed to determine the bargaining units in such manner as to (a)  
24 reduce the effect of overfragmentation of bargaining units on the  
25 efficiency of administration and operations of the constitutional  
26 office and (b) be consistent with the administrative structure  
27 of the constitutional office. Any unit entirely composed of

1 supervisory employees of a constitutional office shall be afforded  
2 only meet-and-confer rights.

3 Sec. 23. Section 81-1375, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 81-1375 Certified collective-bargaining agents  
6 representing bargaining units other than those prescribed in  
7 section 81-1373 shall not utilize the impasse procedures provided  
8 for in sections ~~81-1380~~ 81-1381 to 81-1385 nor file a petition  
9 with the commission invoking its jurisdiction as provided in the  
10 Industrial Relations Act, ~~but may, for two years from April 9,~~  
11 ~~1987,~~ continue to meet and confer with employer-representatives  
12 regarding those employees in such units as long as no other  
13 employee organization has been certified as the exclusive  
14 collective-bargaining agent for such employees pursuant to section  
15 81-1374 and may represent individual employees on grievance  
16 matters. Parties engaged in the meet-and-confer process shall not  
17 be entitled to file any case with the commission to establish  
18 any rate of pay or condition of employment, except that if those  
19 parties which meet and confer during this two-year period do not  
20 reach an agreement by June 30 preceding the beginning of the fiscal  
21 year, the existing agreement or contract shall be continued until  
22 such time as an agreement or contract for the remainder of the  
23 fiscal year has been reached.

24 Sec. 24. Section 81-1378, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 81-1378 (1) The dates indicated in sections 81-1379  
27 to 81-1384 shall refer to those dates immediately preceding the

1 beginning of the contract period for which negotiations are being  
2 conducted.

3 (2) When any date provided in sections 81-1379 to 81-1384  
4 falls on a Saturday, a Sunday, or any day declared by statutory  
5 enactment or proclamations of the Governor to be a holiday, the  
6 next following day which is not a Saturday, a Sunday, or a day  
7 declared by the enactment or proclamation to be a holiday shall be  
8 deemed to be the day indicated by such date.

9 (3) The dates indicated in sections 81-1382 and 81-1383  
10 are jurisdictional. Failure of either party to act in a timely  
11 manner shall result in a jurisdictional bar for either the  
12 commission or Supreme Court.

13 Sec. 25. Section 81-1379, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 81-1379 The Chief Negotiator and any other  
16 employer-representative and the exclusive collective-bargaining  
17 agent shall commence negotiations on or prior to the second  
18 Wednesday in September of the year preceding the beginning of the  
19 contract period, except that the first negotiations commenced by  
20 any bargaining unit may commence after such September date in  
21 order to accommodate any unresolved representation proceedings.  
22 All negotiations shall be completed on or before March 15 of the  
23 following year.

24 All negotiated agreements shall be in writing and signed  
25 by the parties. The authority to enter into the agreed-upon  
26 contract shall be vested in the following:

27 (1) For the University of Nebraska, the Board of Regents;

1           (2) For the Nebraska state colleges, the Board of  
2 Trustees of the Nebraska State Colleges;

3           (3) For other constitutional offices, the head of such  
4 office;

5           (4) For all other agencies, the Governor; and

6           (5) For the bargaining unit, a majority of those voting  
7 on ratification after notice of the contract terms is given and a  
8 secret ballot vote has been taken.

9           Nothing in the State Employees Collective Bargaining Act  
10 shall be construed to prohibit supplementary bargaining on behalf  
11 of employees in part of a bargaining unit concerning matters  
12 uniquely affecting such employees or cooperation and coordination  
13 of bargaining between two or more bargaining units. Supplementary  
14 bargaining in regard to employees for whom the Governor is  
15 the employer-representative shall be the responsibility of the  
16 Chief Negotiator and may be assigned to his or her designated  
17 representative.

18           Any agreements entered into pursuant to this section may  
19 be adjusted after March 15 only to reflect any order issued by the  
20 commission, ~~the Court of Appeals,~~ or the Supreme Court.

21           Sec. 26. Section 81-1381, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           81-1381 If the parties in labor contract negotiations  
24 do not reach a voluntary agreement by January 1, the dispute  
25 shall be submitted to a mediator mutually selected by the parties  
26 or appointed by the Federal Mediation and Conciliation Service.  
27 Mediation may continue indefinitely at the request of either party

1 or when appropriate in the judgment of the mediator. ~~or Special~~  
2 ~~Master~~. If necessary, mediation may continue after the exchange of  
3 final offers.

4 Sec. 27. Section 81-1382, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

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

11 (2) No later than January 15, the parties in labor  
12 contract negotiations shall submit all unresolved issues that  
13 resulted in impasse to the ~~Special Master~~ commission. No party  
14 shall submit an issue to the commission that was not subject  
15 to negotiations. The Special Master commission shall conduct a  
16 prehearing conference. ~~He or she~~ and shall have the authority to:

17 (a) Determine whether the issues are ready for  
18 adjudication;

19 (b) Accept stipulations;

20 (c) Schedule hearings;

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

22 (e) Order additional mediation if necessary; and

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

25 The ~~Special Master~~ commission may consult with the  
26 parties ex parte only with the concurrence of both parties.

27 ~~(3) The Special Master shall choose the most reasonable~~

1 final offer on each issue in dispute. In making such choice, he  
2 or she shall consider factors relevant to collective bargaining  
3 between public employers and public employees, including comparable  
4 rates of pay and conditions of employment as described in section  
5 48-818. The Special Master shall not apply strict rules of  
6 evidence. Persons who are not attorneys may present cases to  
7 the Special Master. The Special Master shall issue his or her  
8 ruling on or before February 15.

9           Sec. 28. Section 81-1383, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

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

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

1 determined by the commission pursuant to section 48-818, fall  
2 between the final offers of the parties.

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

15       (1) No later than March 1, the commission shall enter an  
16 order on each unresolved issue.

17       (2) (a) The commission's order shall establish rates of  
18 pay and conditions of employment which are comparable to the  
19 prevalent wage rates paid and conditions of employment maintained  
20 by peer employers for the same or similar work of workers  
21 exhibiting like or similar skills under the same or similar  
22 working conditions.

23       (b) (i) In establishing wage rates, the commission shall  
24 take into consideration the overall compensation received by the  
25 employees at the time of the negotiations, having regard to:

26       (A) Wages for time actually worked;

27       (B) Wages for time not worked, including vacations,

1 holidays, and other excused time, and all benefits received,  
2 including insurance and pensions; and

3 (C) The continuity and stability of employment enjoyed by  
4 the employees.

5 (ii) The commission shall determine whether the subject  
6 bargaining unit's total compensation falls within a ninety-eight  
7 percent to one hundred two percent range of the array's midpoint.  
8 If the total compensation falls within the ninety-eight percent  
9 to one hundred two percent range, the commission shall order no  
10 change in wage rates. If the total compensation is less than  
11 ninety-eight percent of the midpoint, the commission shall enter  
12 an order increasing wage rates to ninety-eight percent of the  
13 midpoint. If the total compensation is more than one hundred  
14 two percent of the midpoint, the commission shall enter an order  
15 decreasing wage rates to one hundred two percent of the midpoint.  
16 If the total compensation is more than one hundred seven percent  
17 of the midpoint, the commission shall enter an order reducing  
18 wage rates to one hundred two percent of the midpoint in three  
19 equal annual reductions. If the total compensation is less than  
20 ninety-three percent of the midpoint, the commission shall enter an  
21 order increasing wage rates to ninety-eight percent of the midpoint  
22 in three equal annual increases. If the commission finds that the  
23 year in dispute occurred during a time of recession, the applicable  
24 range will be ninety-five percent to one hundred two percent.  
25 For purposes of this section, recession occurrence means the two  
26 quarters immediately preceding the effective date of the contract  
27 term in which net state sales and use tax, individual income tax,

1 and corporate income tax receipts are less than the same quarters  
2 for the prior year. Each of these receipts shall be rate and base  
3 adjusted for state law changes. The Department of Revenue shall  
4 report and publish such receipts on a quarterly basis.

5 (c) For purposes of determining peer employer  
6 comparability, the following factors shall be used by the  
7 commission:

8 (i) Geographic proximity of the employer;

9 (ii) Size of the employer, which shall not be more than  
10 twice or less than half, unless evidence establishes that there  
11 are substantial differences which cause the work or conditions of  
12 employment to be dissimilar; and

13 (iii) The employer's budget for operations and personnel.

14 (d) To determine comparability for employees of the Board  
15 of Regents of the University of Nebraska or employees of the Board  
16 of Trustees of the Nebraska State Colleges, the commission shall  
17 utilize peer institutions with similar enrollments and similar  
18 educational missions which may exclude land grant institutions or  
19 institutions that have a medical center or hospital. Additionally,  
20 the commission shall refer to peer institutions with similar  
21 program offerings including the level of degrees offered.

22 (e) Any order or orders entered may be modified on the  
23 commission's own motion or on application by any of the parties  
24 affected, but only upon a showing of a new and material change in  
25 the conditions from those prevailing at the time the original order  
26 was entered.

27 (3) In cases filed under the State Employees Collective

1 Bargaining Act, the commission shall not be bound by the usual  
2 common law or statutory rules of evidence or by any technical or  
3 formal rules of procedure, other than those adopted pursuant to  
4 section 48-809. The commission shall receive evidence relating to  
5 array selection, job match, and wages and benefits which have been  
6 assembled by telephone, electronic transmission, or mail delivery  
7 and any such evidence shall be accompanied by an affidavit from  
8 the employer or any other person with personal knowledge which  
9 affidavit shall demonstrate the affiant's personal knowledge and  
10 competency to testify on the matters therein. The commission, with  
11 the consent of the parties to the dispute and in the presence of  
12 the parties to the dispute, may contact an individual employed by  
13 an employer under consideration as an array member by telephone to  
14 inquire as to the nature or value of a working condition, wage,  
15 or benefit provided by that particular employer as long as the  
16 individual in question has personal knowledge about the information  
17 being sought. The commission may rely upon information gained in  
18 such inquiry for its decision. Opinion testimony shall be received  
19 by the commission based upon evidence provided in accordance with  
20 this subsection. Testimony concerning job match shall be received  
21 if job match inquiries were conducted by telephone, electronic  
22 transmission, or mail delivery if the witness providing such  
23 testimony verifies the method of such job match inquiry and  
24 analysis.

25 (4) The commission shall file its findings of fact and  
26 conclusions of law with its order.

27 (5) Either party may, within thirty days after the date

1 such order is filed, appeal to the Supreme Court. The standard of  
2 review for any appeal to the Supreme Court shall be as provided in  
3 subsection (4) of section 48-825.

4 ~~(4)~~ (6) The commission, the Court of Appeals, or the  
5 Supreme Court shall not enter an order for any period which is not  
6 the same as or included within the budget period for which the  
7 contract is being negotiated.

8 ~~(5)~~ (7) All items agreed upon during the course of  
9 negotiations and not ~~subject to appeal~~ submitted as an unresolved  
10 issue to the commission shall, when ratified by the parties,  
11 take effect concurrent with the biennial budget period and shall  
12 constitute the parties' contract. Upon final resolution of appeals  
13 of all unresolved ~~items,~~ issues, the parties shall reduce the  
14 orders of the commission, the Court of Appeals, or the Supreme  
15 Court to writing and incorporate them into the contract without  
16 ratification.

17 ~~(6)~~ The commission shall complete its deliberations and  
18 issue appropriate orders by July 1 or as soon thereafter as is  
19 practicable.

20 ~~(7)~~ The commission shall adopt expedited procedures to  
21 assure timely completion of any appeal filed pursuant to the State  
22 Employees Collective Bargaining Act.

23 Sec. 29. Section 81-1384, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 81-1384 ~~(1)~~ On March 16, the Chief Negotiator, any  
26 appointed negotiator for the Board of Regents, any appointed  
27 negotiator for the Board of Trustees of the Nebraska State

1 Colleges, and any appointed negotiator for other constitutional  
2 offices shall report to the Legislature and the Governor on the  
3 status of negotiations. The Governor may amend his or her budget  
4 recommendations accordingly.

5 ~~(2) If the Chief Negotiator advises the Legislature that~~  
6 ~~the state has appealed a Special Master's ruling, the Legislature~~  
7 ~~may by a resolution approved by a three-fifths vote of its~~  
8 ~~members by the conclusion of its regular session direct the Chief~~  
9 ~~Negotiator to withdraw the pending appeal and accept the terms of~~  
10 ~~the Special Master's ruling. This subsection shall not apply to any~~  
11 ~~negotiators appointed by the Board of Regents, Board of Trustees of~~  
12 ~~the Nebraska State Colleges, or other constitutional offices.~~

13 Sec. 30. Section 81-1385, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 81-1385 ~~(1) If the exclusive collective-bargaining agent~~  
16 ~~appeals an adverse ruling from the Special Master on any or all~~  
17 ~~issues, there shall be no change in the term or condition of~~  
18 ~~employment in effect in that issue or issues during the pendency~~  
19 ~~of the appeal. Orders adjusting the term or condition of employment~~  
20 ~~in an issue or issues shall be effective beginning with final~~  
21 ~~resolution of the appeal or January 1 of the first fiscal year of~~  
22 ~~the contract period, whichever is earlier.~~

23 ~~(2) If the employer appeals an adverse ruling from the~~  
24 ~~Special Master on any or all issues, there shall be no change in~~  
25 ~~the term or condition of employment in effect in that issue or~~  
26 ~~issues during the pendency of the appeal. Upon final resolution,~~  
27 ~~the commission, Court of Appeals, or Supreme Court shall order~~

1 ~~increases or other changes in a term or condition of employment to~~  
2 ~~be concurrent with the biennial budget. Interest shall be paid by~~  
3 ~~the state on all withheld wages or insurance premium payments.~~

4 When an unresolved issue proceeds to the commission,  
5 there shall be no change in the term or condition of employment  
6 in effect in that issue or issues until the commission has ruled  
7 and any subsequent appeal to the Supreme Court has been concluded.  
8 Orders adjusting the term or condition of employment in an issue  
9 or issues shall be effective beginning with final resolution of  
10 the appeal. Upon final resolution, the commission or Supreme Court  
11 shall order increases or other changes in a term or condition  
12 of employment to be concurrent with the biennial budget. Interest  
13 shall be paid, at the rate established by section 45-103 which is  
14 in effect at the time of the final order, by the state on all  
15 withheld wages or insurance premium payments.

16 Sec. 31. Section 81-1386, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 81-1386 (1) It shall be a prohibited practice for  
19 any employer, employee, employee organization, or exclusive  
20 collective-bargaining agent to refuse to negotiate in good faith  
21 with respect to mandatory topics of bargaining.

22 (2) It shall be a prohibited practice for any employer or  
23 the employer's negotiator to:

24 (a) Interfere with, restrain, or coerce state employees  
25 in the exercise of rights granted by the State Employees Collective  
26 Bargaining Act or the Industrial Relations Act;

27 (b) Dominate or interfere in the administration of any

1 employee organization;

2 (c) Encourage or discourage membership in any employee  
3 organization, committee, or association by discrimination in  
4 hiring, tenure, or other terms or conditions of employment;

5 (d) Discharge or discriminate against a state employee  
6 because the employee has filed an affidavit, petition, or complaint  
7 or given any information or testimony under the Industrial  
8 Relations Act or the State Employees Collective Bargaining Act  
9 or because the employee has formed, joined, or chosen to be  
10 represented by any employee organization;

11 (e) Refuse to negotiate collectively with representatives  
12 of exclusive collective-bargaining agents as required in the  
13 Industrial Relations Act and the State Employees Collective  
14 Bargaining Act;

15 (f) Deny the rights accompanying certification or  
16 exclusive recognition granted in the Industrial Relations Act or  
17 the State Employees Collective Bargaining Act; and

18 (g) Refuse to participate in good faith in any impasse  
19 procedures for state employees as set forth in sections ~~81-1380~~  
20 81-1381 to 81-1385.

21 (3) It shall be a prohibited practice for any employees,  
22 employee organization, or bargaining unit or for any of their  
23 representatives or exclusive collective-bargaining agents to:

24 (a) Interfere with, restrain, coerce, or harass any  
25 state employee with respect to any of the employee's rights under  
26 the Industrial Relations Act or the State Employees Collective  
27 Bargaining Act;

1           (b) Interfere, restrain, or coerce an employer with  
2 respect to rights granted in the Industrial Relations Act or  
3 the State Employees Collective Bargaining Act or with respect  
4 to selecting a representative for the purposes of negotiating  
5 collectively on the adjustment of grievances;

6           (c) Refuse to bargain collectively with an employer as  
7 required in the Industrial Relations Act or the State Employees  
8 Collective Bargaining Act; and

9           (d) Refuse to participate in good faith in any impasse  
10 procedures for state employees set forth in sections ~~81-1380~~  
11 81-1381 to 81-1385.

12           (4) The expressing of any views, argument, or opinion,  
13 or the dissemination thereof, whether in written, printed, graphic,  
14 or visual form, shall not constitute or be evidence of any unfair  
15 labor practice under any of the provisions of the Industrial  
16 Relations Act or the State Employees Collective Bargaining Act if  
17 such expression contains no threat of reprisal or force or promise  
18 of benefit.

19           Sec. 32. Section 81-1387, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           81-1387 (1) Proceedings against a party alleging a  
22 violation of section 81-1386 shall be commenced by filing a  
23 complaint with the commission within one hundred eighty days of  
24 the alleged violation thereby causing a copy of the complaint to  
25 be served upon the accused party. The accused party shall have ten  
26 days within which to file a written answer to the complaint. If the  
27 commission determines that the complaint has no basis in fact, the

1 commission may dismiss the complaint. If the complaint has a basis  
2 in fact, the commission shall set a time for hearing. The parties  
3 shall be permitted to be represented by counsel, summon witnesses,  
4 and request the commission to subpoena witnesses on the requester's  
5 behalf.

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

12 (3) Any party aggrieved by any decision or order of the  
13 commission may, within thirty days from the date such decision or  
14 order is filed, appeal therefrom to the ~~Court of Appeals~~. Supreme  
15 Court.

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

19 (a) If the commission acts without or in excess of its  
20 powers;

21 (b) If the order was procured by fraud or is contrary to  
22 law;

23 (c) If the facts found by the commission do not support  
24 the order; and

25 (d) If the order is not supported by a preponderance of  
26 the competent evidence on the record considered as a whole.

27 Sec. 33. Sections 11, 12, 13, and 35 of this act become

1 operative on July 1, 2012. Section 33 of this act becomes operative  
2 on its effective date. The other sections of this act become  
3 operative on October 1, 2011.

4           Sec. 34. Original sections 48-801, 48-801.01, 48-802,  
5 48-804, 48-809, 48-811, 48-813, 48-816, 48-817, 48-818, 48-824,  
6 48-838, 79-852, 79-2116, 81-1369, 81-1371, 81-1372, 81-1373,  
7 81-1375, 81-1378, 81-1379, 81-1381, 81-1382, 81-1383, 81-1384,  
8 81-1385, 81-1386, and 81-1387, Reissue Revised Statutes of  
9 Nebraska, are repealed.

10           Sec. 35. The following section is outright repealed:  
11 Section 48-811.02, Reissue Revised Statutes of Nebraska.

12           Sec. 36. The following sections are outright repealed:  
13 Sections 81-1374, 81-1380, 81-1389, and 81-1390, Reissue Revised  
14 Statutes of Nebraska.