

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 397**

Final Reading

Introduced by Lathrop, 12; Ashford, 20; McGill, 26; Utter, 33.

Read first time January 13, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 48-801, 48-801.01,  
2 48-802, 48-804, 48-809, 48-811, 48-813, 48-816, 48-817,  
3 48-818, 48-824, 48-838, 79-852, 79-2116, 81-1369,  
4 81-1371, 81-1372, 81-1373, 81-1375, 81-1378, 81-1379,  
5 81-1381, 81-1382, 81-1383, 81-1384, 81-1385, 81-1386, and  
6 81-1387, Reissue Revised Statutes of Nebraska; to change  
7 and eliminate provisions of the Industrial Relations Act  
8 and the State Employees Collective Bargaining Act; to  
9 provide and change collective-bargaining provisions; to  
10 provide for applicability of provisions; to harmonize  
11 provisions; to provide operative dates; to repeal the  
12 original sections; and to outright repeal sections  
13 48-811.02, 81-1374, 81-1380, 81-1389, and 81-1390,  
14 Reissue Revised Statutes of Nebraska.

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

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

3           48-801 As used in the Industrial Relations Act, unless  
4 the context otherwise requires:

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

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

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

24           ~~(4) Employer shall mean the State of Nebraska or any  
25 political or governmental subdivision of the State of Nebraska except~~

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

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

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

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

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

19 ~~(9) Commissioner shall mean a member of the commission;~~

20 and

21 ~~(10) Supervisor shall mean any employee having authority,~~  
22 ~~in the interest of the employer, to hire, transfer, suspend, lay off,~~  
23 ~~recall, promote, discharge, assign, reward, or discipline other~~  
24 ~~employees, or responsibly to direct them or to adjust their~~  
25 ~~grievances, or effectively to recommend such action, if in connection~~

1 ~~with the foregoing the exercise of such authority is not a merely~~  
2 ~~routine or clerical nature, but requires the use of independent~~  
3 ~~judgment.~~

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

6 (2) Commission means the Commission of Industrial  
7 Relations;

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

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

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

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

21 (7) Labor organization means any organization of any kind  
22 or any agency or employee representation committee or plan, in which  
23 public employees participate and which exists for the purpose, in  
24 whole or in part, of dealing with public employers concerning  
25 grievances, labor disputes, wages, rates of pay, hours of employment,

1 or conditions of work;

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

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

6 (10) Noncertificated and noninstructional school employee  
7 means a school district, educational service unit, or community  
8 college employee who is not a certificated or instructional employee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 48-804 (1) The Commission of Industrial Relations shall

1 be composed of five commissioners appointed by the Governor, with the  
2 advice and consent of the Legislature. The commissioners shall be  
3 representative of the public. Each commissioner shall be appointed  
4 and hold office for a term of six years and until a successor has  
5 qualified. In case of a vacancy, the Governor shall appoint a  
6 successor to fill the vacancy for the unexpired term.

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

9 (3) The commissioners shall, on July 1 of every odd-  
10 numbered year by a majority vote, select one of their number as  
11 presiding officer for the next two years, who shall preside at all  
12 hearings by the commission en banc, and shall assign the work of the  
13 commission to the several commissioners and perform such other  
14 supervisory duties as the needs of the commission may require. A  
15 majority of the commissioners shall constitute a quorum to transact  
16 business. The act or decision of any three of the commissioners shall  
17 in all cases be deemed the act or decision of the commission. Three  
18 commissioners shall preside over and decide all industrial disputes  
19 where the matter at issue is the comparability of wages, benefits,  
20 and terms and conditions of employment.

21 (4) The commission shall not be subject to the  
22 Administrative Procedure Act.

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

25 ~~48-809 The Commission of Industrial Relations is hereby~~



1 ~~granted full power to~~ commission may adopt all reasonable and proper  
2 regulations to govern its proceedings, the filing of pleadings, the  
3 issuance and service of process, and the issuance of subpoenas for  
4 attendance of witnesses, ~~the power to~~ may administer oaths, and ~~to~~  
5 may regulate the mode and manner of all its investigations,  
6 inspections, hearings, and trials. ~~In~~ Except as otherwise provided in  
7 the Industrial Relations Act or the State Employees Collective  
8 Bargaining Act, in the taking of evidence, the rules of evidence,  
9 prevailing in the trial of civil cases in Nebraska, shall be observed  
10 by the ~~Commission of Industrial Relations.~~ commission.

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

13           48-811 (1) Except as provided in the State Employees  
14 Collective Bargaining Act, any public employer, public employee, or  
15 labor organization, or the Attorney General of Nebraska on his or her  
16 own initiative or by order of the Governor, when any industrial  
17 dispute exists between parties as set forth in section 48-810, may  
18 file a petition with the ~~Commission of Industrial Relations~~  
19 commission invoking its jurisdiction. No adverse action by threat or  
20 harassment shall be taken against any public employee because of any  
21 petition filing by such employee, and the employment status of such  
22 employee shall not be altered in any way pending disposition of the  
23 petition by the commission except as provided in subsection (2) of  
24 this section.

25           (2) If a change in the employment status or in wages or

1 terms and conditions of employment is necessary, a motion by either  
2 party or by the parties jointly may be presented to the commission at  
3 that time and if the commission finds, based on a showing of evidence  
4 at a hearing thereon, that the requested change is both reasonable  
5 and necessary to serve an important public interest and that the  
6 employer has not considered a change in the employment status, wages,  
7 or terms and conditions of employment as a policy alternative on an  
8 equal basis with other policy alternatives to achieve budgetary  
9 savings, the commission may order that the requested change be  
10 allowed pending final resolution of the pending industrial dispute.

11 (3) Subsection (2) of this section does not apply to  
12 public employers subject to the State Employees Collective Bargaining  
13 Act.

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

16 48-813 (1) Whenever the jurisdiction of the ~~Commission of~~  
17 ~~Industrial Relations~~ commission is invoked, notice of the pendency of  
18 the proceedings shall be given in such manner as the commission shall  
19 provide for serving a copy of the petition and notice of filing upon  
20 the adverse party. ~~An~~ A public employer or labor organization may be  
21 served by sending a copy of the petition filed to institute the  
22 proceedings and a notice of filing, which shall show the filing date,  
23 in the manner provided for service of a summons in a civil action.  
24 Such employer or labor organization shall have twenty days after  
25 receipt of the petition and notice of filing in which to serve and

1 file its response.

2           (2) The petitioner shall include its final offer, as  
3 voted by the petitioner, the governing body, or the bargaining unit  
4 or as considered pursuant to a ratification process, with its  
5 petition. The respondent shall include its final offer, as voted by  
6 the respondent, the governing body, or the bargaining unit or as  
7 considered pursuant to a ratification process, with its answer.  
8 Within fourteen days after filing of the answer, the parties shall  
9 vote to accept or reject or consider pursuant to a ratification  
10 process the other's final offer and file a subsequent pleading  
11 indicating the result. The vote concerning the governing body's final  
12 offer shall be published on its agenda and held where the public may  
13 attend. The commission shall not enter a final order on wages or  
14 conditions of employment unless both parties have rejected the  
15 others' final offer. This subsection does not apply to public  
16 employers subject to the State Employees Collective Bargaining Act.

17           ~~(2)~~(3) When a petition is filed to resolve an industrial  
18 dispute, a hearing shall mandatorily be held within sixty days from  
19 the date of filing thereof. A recommended decision and order in cases  
20 arising under section 48-818, an order in cases not arising under  
21 section 48-818, and findings if required, shall mandatorily be made  
22 and entered thereon within thirty days after such hearing. The time  
23 requirements specified in this section may be extended for good cause  
24 shown on the record or by agreement of the parties. Failure to meet  
25 such mandatory time requirements shall not deprive the commission of

1 jurisdiction. However, if the commission fails to hold a hearing on  
2 the industrial dispute within sixty days of filing or has failed to  
3 make a recommended decision and order, and findings of fact if  
4 required, in cases arising under section 48-818, or an order, and  
5 findings of fact if required, in cases not arising under section  
6 48-818, and findings, within thirty days after the hearing and good  
7 cause is not shown on the record or the parties to the dispute have  
8 not jointly stipulated to the enlargement of the time limit, then  
9 either party may file an action for mandamus in the district court  
10 for Lancaster County to require the commission to hold the hearing or  
11 to render its order and findings if required. For purposes of this  
12 section, the hearing on an industrial dispute shall not be deemed  
13 completed until the record is prepared and counsel briefs have been  
14 submitted, if such are required by the commission.

15 ~~(3)-(4)~~ Any party, including the State of Nebraska or any  
16 of its employer-representatives as defined in section 81-1371 or any  
17 political subdivision of the State of Nebraska, may waive such notice  
18 and may enter a voluntary appearance in any matter in the ~~Commission~~  
19 ~~of Industrial Relations.~~ commission. The giving of such notice in  
20 such manner shall subject the public employers, the labor  
21 organizations, and the persons therein to the jurisdiction of the  
22 ~~Commission of Industrial Relations.~~ commission.

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

25 48-816 (1)(a) After a petition has been filed under

1 section 48-811, the clerk shall immediately notify the commission  
2 which shall promptly take such preliminary proceedings as may be  
3 necessary to ensure prompt hearing and speedy adjudication of the  
4 industrial dispute. The commission ~~shall have power and authority~~  
5 may, upon its own initiative or upon request of a party to the  
6 dispute, ~~to~~ make such temporary findings and orders as ~~may be~~  
7 necessary to preserve and protect the status of the parties,  
8 property, and public interest involved pending final determination of  
9 the issues. In the event of an industrial dispute between ~~an a public~~  
10 employer and ~~an a public~~ employee or a labor organization when such  
11 public employer and public employee or labor organization have failed  
12 or refused to bargain in good faith concerning the matters in  
13 dispute, the commission may order such bargaining to begin or resume,  
14 as the case may be, and may make any such order or orders as ~~may be~~  
15 appropriate to govern the situation pending such bargaining. The  
16 commission shall require good faith bargaining concerning the terms  
17 and conditions of employment of its employees by any public employer.  
18 Upon the request of either party, the commission shall require the  
19 parties to an industrial dispute to submit to mediation or  
20 factfinding. ~~Upon~~ Before July 1, 2012, upon the request of both  
21 parties, a special master may be appointed if the parties are within  
22 the provisions of section 48-811.02. On and after July 1, 2012, upon  
23 the request of either party, a resolution officer may be appointed if  
24 the parties are within the provisions of section 11 of this act. The  
25 commission shall appoint mediators, factfinders, or ~~special masters~~

1 before July 1, 2012, special masters and on and after such date  
2 resolution officers for such purpose. Such orders for bargaining,  
3 mediation, factfinding, or a ~~special master~~ before July 1, 2012, a  
4 special master proceeding and on and after such date a resolution  
5 officer proceeding may be issued at any time during the pendency of  
6 an action to resolve an industrial dispute. To bargain in good faith  
7 ~~shall mean~~ means the performance of the mutual obligation of the  
8 public employer and the labor organization to meet at reasonable  
9 times and confer in good faith with respect to wages, hours, and  
10 other terms and conditions of employment or any question arising  
11 thereunder and the execution of a written contract incorporating any  
12 agreement reached if requested by either party, but such obligation  
13 does not compel either party to agree to a proposal or require the  
14 making of a concession.

15 (b) In negotiations between a municipality, municipally  
16 owned utility, or county and a labor organization, staffing related  
17 to issues of safety shall be mandatory subjects of bargaining and  
18 staffing relating to scheduling work, such as daily staffing,  
19 staffing by rank, and overall staffing requirements, shall be  
20 permissive subjects of bargaining.

21 (2) Except as provided in the State Employees Collective  
22 Bargaining Act, public employers ~~are hereby authorized to~~ may  
23 recognize employee organizations for the purpose of negotiating  
24 collectively in the determination of and administration of grievances  
25 arising under the terms and conditions of employment of their public

1 employees as provided in the Industrial Relations Act and ~~to~~may  
2 negotiate and enter into written agreements with such employee  
3 organizations in determining such terms and conditions of employment.

4 (3)(a) Except as provided in subdivisions (b) and (c) of  
5 this subsection, a supervisor shall not be included in a single  
6 bargaining unit with any other public employee who is not a  
7 supervisor.

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

22 (c) All administrators employed by a Class V school  
23 district shall be presumed to have a community of interest and may  
24 join a single bargaining unit composed otherwise of teachers and  
25 other certificated employees for purposes of the Industrial Relations

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

24 (4) When ~~an~~ a public employee organization has been  
25 certified as an exclusive collective-bargaining agent or recognized



1 pursuant to any other provisions of the Industrial Relations Act, the  
2 appropriate public employer shall be and is hereby authorized to  
3 negotiate collectively with such public employee organization in the  
4 settlement of grievances arising under the terms and conditions of  
5 employment of the public employees as provided in such act and to  
6 negotiate and enter into written agreements with such public employee  
7 organizations in determining such terms and conditions of employment,  
8 including wages and hours.

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

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

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

21 (7)(a) Except for those cases arising under section  
22 48-818, the commission shall ~~be required to~~ make findings of facts in  
23 all cases in which one of the parties to the dispute requests  
24 findings. Such request shall be specific as to the issues on which  
25 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 parties  
7 making the request to submit proposed findings of fact to the  
8 commission on the issues on which findings of facts are requested.

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

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

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

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

22           48-818 (1) Except as provided in the State Employees  
23 Collective Bargaining Act, the findings and order or orders may  
24 establish or alter the scale of wages, hours of labor, or conditions  
25 of employment, or any one or more of the same. In making such

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

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

22 (a) Job matches shall be sufficient for comparison if (i)  
23 evidence supports at least a seventy percent match based on a  
24 composite of the duties and time spent performing those duties and  
25 (ii) at least three job matches per classification are available for

1 comparison. If three job matches are not available, the commission  
2 shall base its order on the historic relationship of wages paid to  
3 such position over the last three fiscal years, for which data is  
4 available, as compared to wages paid to a position for which a  
5 minimum of three job matches are available;

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

8 (i) Geographically proximate public employers and  
9 Nebraska public employers are preferable for comparison;

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

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

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

23 (v) The commission shall not require a balanced number of  
24 larger or smaller employers or a balanced number of Nebraska or out-  
25 of-state employers;

1           (vi) If the array includes a public employer in a  
2 metropolitan statistical area other than the metropolitan statistical  
3 area in which the employer before the commission is located, only one  
4 public employer from such metropolitan statistical area may be  
5 included in the array;

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

25           (viii) In constructing an array for a public utility, the

1 commission shall use fifty-mile concentric circles until it reaches  
2 the optimum array pursuant to subdivision (2)(b)(ii) of this section;  
3 and

4 (ix) For a statewide public utility that provides service  
5 to a majority of the counties in Nebraska, any Nebraska public or  
6 private job match may be used without regard to the population or  
7 full-time equivalent employment requirements of this section, and any  
8 out-of-state job match may be used if the full-time equivalent  
9 employment of the out-of-state employer is no more than double and no  
10 less than one-half of the full time equivalent employment of the  
11 bargaining unit of the statewide public utility in question;

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

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

18 (ii) Public employers shall be presumed to provide the  
19 same or similar working conditions if (A) for public employers that  
20 are counties or municipalities, the population of such public  
21 employer is not more than double or less than one-half of the  
22 population of the public employer before the commission, unless  
23 evidence establishes that there are substantial differences which  
24 cause the work or conditions of employment to be dissimilar, (B) for  
25 public employers that are public utilities, the number of such public



1 employer's employees is not more than double or less than one-half of  
2 the number of employees of the public employer before the commission,  
3 unless evidence establishes that there are substantial differences  
4 which cause the work or conditions of employment to be dissimilar, or  
5 (C) for public employers that are school districts, educational  
6 service units, or community colleges with noncertificated and  
7 noninstructional school employees, the student enrollment of such  
8 public employer is not more than double or less than one-half of the  
9 student enrollment of the public employer before the commission,  
10 unless evidence establishes that there are substantial differences  
11 which cause the work or conditions of employment to be dissimilar;

12 (iii)(A) Public employers located within a metropolitan  
13 statistical area who meet the population requirements of subdivision  
14 (2)(c)(ii)(A) of this section, if the public employer is a county or  
15 municipality, or the student enrollment requirements of subdivision  
16 (2)(c)(ii)(C) of this section, if the public employer is a school  
17 district or an educational service unit, shall be presumed to provide  
18 the same or similar working conditions if the metropolitan  
19 statistical area population in which they are located is not more  
20 than double or less than one-half the metropolitan statistical area  
21 population of the public employer before the commission, unless  
22 evidence establishes that there are substantial differences which  
23 cause the work or conditions of employment to be dissimilar.

24 (B) The presumption created by subdivision (2)(c)(iii)(A)  
25 of this section may be overcome in situations where evidence

1 establishes that there are substantial similarities which cause the  
2 work or conditions of employment to be similar, allowing the  
3 commission to consider public employers located within a metropolitan  
4 statistical area even if the metropolitan statistical area population  
5 in which that employer or employers are located is more than double  
6 or less than one-half the metropolitan statistical area population of  
7 the public employer before the commission. The burden of establishing  
8 sufficient similarity is on the party seeking to include a public  
9 employer pursuant to this subdivision (2)(c)(iii)(B) of this section;  
10 and

11 (iv) Public employers other than public utilities which  
12 are not located within a metropolitan statistical area shall not be  
13 compared to public employers located in a metropolitan statistical  
14 area. For purposes of this subdivision, metropolitan statistical area  
15 includes municipalities with populations of fifty thousand  
16 inhabitants or more;

17 (d) Prevalent shall be determined as follows: (i) For  
18 numeric values, prevalent shall be the midpoint between the  
19 arithmetic mean and the arithmetic median. For fringe benefits,  
20 prevalent shall be the midpoint between the arithmetic mean and the  
21 arithmetic median as long as a majority of the array members provide  
22 the benefit; and (ii) for nonnumeric comparisons, prevalent shall be  
23 the mode that the majority of the array members provide if the  
24 compared-to benefit is similar in nature. If there is no clear mode,  
25 the benefit or working condition shall remain unaltered by the

1 commission;

2 (e) For any out-of-state employer, the parties may  
3 present economic variable evidence and the commission shall determine  
4 what, if any, adjustment is to be made if such evidence is presented.  
5 The commission shall not require that any such economic variable  
6 evidence be shown to directly impact the wages or benefits paid to  
7 employees by such out-of-state employer;

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

14 (g) In cases filed pursuant to this subsection (2) of  
15 this section, the commission shall not be bound by the usual common  
16 law or statutory rules of evidence or by any technical or formal  
17 rules of procedure, other than those adopted by rule pursuant to  
18 section 48-809. The commission shall receive evidence relating to  
19 array selection, job match, and wages and benefits which have been  
20 assembled by telephone, electronic transmission, or mail delivery,  
21 and any such evidence shall be accompanied by an affidavit from the  
22 employer or any other person with personal knowledge which affidavit  
23 shall demonstrate the affiant's personal knowledge and competency to  
24 testify on the matters thereon. The commission, with the consent of  
25 the parties to the dispute, and in the presence of the parties to the

1 dispute, may contact an individual employed by an employer under  
2 consideration as an array member by telephone to inquire as to the  
3 nature or value of a working condition, wage, or benefit provided by  
4 that particular employer as long as the individual in question has  
5 personal knowledge about the information being sought. The commission  
6 may rely upon information gained in such inquiry for its decision.  
7 Opinion testimony shall be received by the commission based upon  
8 evidence provided in accordance with this subdivision. Testimony  
9 concerning job match shall be received if job match inquiries were  
10 conducted by telephone, electronic transmission, or mail delivery if  
11 the witness providing such testimony verifies the method of such job  
12 match inquiry and analysis;

13 (h) In determining the value of defined benefit and  
14 defined contribution retirement plans and health insurance plans or  
15 health benefit plans, the commission shall use an hourly rate value  
16 calculation as follows:

17 (i) Once the array has been chosen, each array member and  
18 the public employer of the subject bargaining unit shall provide a  
19 copy of its most recent defined benefit pension actuarial valuation  
20 report. Each array member and the public employer of the subject  
21 bargaining unit shall provide the most recent copy of its health  
22 insurance plans or health benefit plans, covering the preceding  
23 twelve-month period, with associated employer and employee costs, to  
24 the parties and the commission. Each array member shall also provide  
25 information concerning premium equivalent payments and contributions

1 for health savings accounts. Each array member and the public  
2 employer of the subject bargaining unit shall indicate which plans  
3 are most used. The plans that are most used shall be used for  
4 comparison;

5 (ii) Once the actuarial valuation reports are received,  
6 the parties shall have thirty calendar days to determine whether to  
7 have the pensions actuarially valued at an hourly rate value other  
8 than equal. The hourly rate value for defined benefit plans shall be  
9 presumed to be equal to that of the array selected unless one or both  
10 of the parties presents evidence establishing that the actuarially  
11 derived annual normal cost of the pension benefit for each job  
12 classification in the subject bargaining unit is above or below the  
13 midpoint of the average normal cost. Consistent methods and  
14 assumptions are to be applied to determine the annual normal cost of  
15 any defined benefit pension plan of the subject bargaining unit and  
16 each array member. For this purpose, the entry age normal actuarial  
17 cost method is recommended. The actuarial assumptions that are  
18 selected for this purpose should reflect expectations for a defined  
19 benefit pension plan maintained for the employees of the subject  
20 bargaining unit and acknowledge the eligibility and benefit  
21 provisions for each respective defined benefit pension plan. In this  
22 regard, different eligibility and benefit provisions may suggest  
23 different retirement or termination of employment assumptions. The  
24 methods and assumptions shall be attested to by an actuary holding a  
25 current membership with the American Academy of Actuaries. Any party

1 who requests or presents evidence regarding actuarial valuation of a  
2 defined benefit plan shall be responsible for costs associated with  
3 such valuation and testimony. The actuarial valuation is presumed  
4 valid, unless a party presents competent actuarial evidence that the  
5 valuation is invalid;

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

8 (iv) The hourly rate value for health insurance plans or  
9 health benefit plans shall be established based upon the public  
10 employer's premium payments, premium equivalent payments, and public  
11 employer and public employee contributions to health savings  
12 accounts;

13 (v) The commission shall not compare defined benefit  
14 plans to defined contribution plans or defined contribution plans to  
15 defined benefit plans; and

16 (vi) The commission shall order increases or decreases in  
17 wage rates by job classification based upon the hourly rate value for  
18 health-related benefits, benefits provided for retirement plans, and  
19 wages;

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

25 (j) The commission shall issue an order regarding

1 increases or decreases in base wage rates or benefits as follows:

2 (i) The order shall be retroactive with respect to  
3 increases and decreases to the beginning of the bargaining year in  
4 dispute;

5 (ii) The commission shall determine whether the hourly  
6 rate value of the bargaining unit's members or classification falls  
7 within a ninety-eight percent to one hundred two percent range of the  
8 array's midpoint. If the hourly rate value falls within the ninety-  
9 eight percent to one hundred two percent range, the commission shall  
10 order no change in wage rates. If the hourly rate value is less than  
11 ninety-eight percent of the midpoint, the commission shall enter an  
12 order increasing wage rates to ninety-eight percent of the midpoint.  
13 If the hourly rate value is more than one hundred two percent of the  
14 midpoint, the commission shall enter an order decreasing wage rates  
15 to one hundred two percent of the midpoint. If the hourly rate value  
16 is more than one hundred seven percent of the midpoint, the  
17 commission shall enter an order reducing wage rates to one hundred  
18 two percent of the midpoint in three equal annual reductions. If the  
19 hourly rate value is less than ninety-three percent of the midpoint,  
20 the commission shall enter an order increasing wage rates to ninety-  
21 eight percent of the midpoint in three equal annual increases. If the  
22 commission finds that the year in dispute occurred during a time of  
23 recession, the applicable range will be ninety-five percent to one  
24 hundred two percent. For purposes of this subdivision (2)(j) of this  
25 section, recession occurrence means the two nearest quarters in time,

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

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

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

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

24 (2) On or before September 1 of the year preceding the  
25 contract year in question, the certificated and instructional



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

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

25 (b) The resolution officer may:

- 1           (i) Determine whether the issues are ready for  
2 adjudication;
- 3           (ii) Identify for resolution terms and conditions of  
4 employment that are in dispute and which were negotiated in good  
5 faith but upon which no agreement was reached;
- 6           (iii) Accept stipulations;
- 7           (iv) Schedule hearings;
- 8           (v) Prescribe rules of conduct for conferences;
- 9           (vi) Order additional mediation if necessary;
- 10          (vii) Take any other action which may aid in resolution  
11 of the industrial dispute; and
- 12          (viii) Consult with a party ex parte only with the  
13 concurrence of all parties.
- 14          (c) The resolution officer shall choose the most  
15 reasonable final offer on each issue in dispute. In making such  
16 choice, he or she shall consider factors relevant to collective  
17 bargaining between public employers and public employees, including  
18 comparable rates of pay and conditions of employment as described in  
19 subsection (1) of section 48-818. The resolution officer shall not  
20 apply strict rules of evidence. Persons who are not attorneys may  
21 present cases to the resolution officer.
- 22          (d) If either party to a resolution officer proceeding is  
23 dissatisfied with the resolution officer's decision, such party shall  
24 have the right to file an action with the commission seeking a  
25 determination of terms and conditions of employment pursuant to

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

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

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

22 (6) If an agreement for the contract year in question has  
23 not been achieved on or before the date for negotiation, mediation,  
24 or factfinding to end in subsection (5) of this section, either party  
25 may, within fourteen days after such date, file a petition with the

1 commission pursuant to sections 48-811 and subsection (1) of 48-818  
2 to resolve the industrial dispute for the contract year in question.  
3 The commission shall render a decision on such industrial dispute on  
4 or before September 15 of the contract year in question.

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

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

15 (a) A salary schedule or objective method of determining  
16 salaries;

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

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

24 Sec. 12. When determining total compensation pursuant to  
25 subsection (1) of section 48-818 for a school district, educational

1 service unit, or community college with their certificated and  
2 instructional employees, the commission shall consider the employer's  
3 contribution to retirement plans and health insurance premiums,  
4 premium equivalent payments, or cash equivalent payments and any  
5 other costs, including Federal Insurance Contributions Act  
6 contributions, associated with providing such benefits.

7           Sec. 13. When establishing wage rates pursuant to  
8 subsection (1) of section 48-818 for a school district, educational  
9 service unit, or community college with their certificated and  
10 instructional employees, the commission shall determine whether the  
11 total compensation of the members of the bargaining unit or  
12 classification falls within a ninety-eight percent to one hundred two  
13 percent range of the array's midpoint. If the total compensation  
14 falls within the ninety-eight percent to one hundred two percent  
15 range, the commission shall order no change in wage rates. If the  
16 total compensation is less than ninety-eight percent of the midpoint,  
17 the commission shall enter an order increasing wage rates to ninety-  
18 eight percent of the midpoint. If the total compensation is more than  
19 one hundred two percent of the midpoint, the commission shall enter  
20 an order decreasing wage rates to one hundred two percent of the  
21 midpoint. If the total compensation is more than one hundred seven  
22 percent of the midpoint, the commission shall enter an order reducing  
23 wage rates to one hundred two percent of the midpoint in three equal  
24 annual reductions. If the total compensation is less than ninety-  
25 three percent of the midpoint, the commission shall enter an order

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

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

15           48-824 (1) It is a prohibited practice for any public  
16 employer, public employee, public employee organization, or  
17 collective-bargaining agent to refuse to negotiate in good faith with  
18 respect to mandatory topics of bargaining.

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

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

23           (b) Dominate or interfere in the administration of any  
24 public employee organization;

25           (c) Encourage or discourage membership in any public

1 employee organization, committee, or association by discrimination in  
2 hiring, tenure, or other terms or conditions of employment;

3 (d) Discharge or discriminate against ~~an~~a public  
4 employee because the employee has filed an affidavit, petition, or  
5 complaint or given any information or testimony under the Industrial  
6 Relations Act or because the public employee has formed, joined, or  
7 chosen to be represented by any public employee organization;

8 (e) Refuse to negotiate collectively with representatives  
9 of collective-bargaining agents as required by the Industrial  
10 Relations Act;

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

13 (g) Refuse to participate in good faith in any impasse  
14 procedures for public employees as set forth in the Industrial  
15 Relations Act.

16 (3) It is a prohibited practice for any public employee,  
17 public employee organization, or bargaining unit or for any  
18 representative or collective-bargaining agent to:

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

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

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

3           (d) Refuse to participate in good faith in any impasse  
4 procedures for public employees as set forth in the Industrial  
5 Relations Act.

6           (4) The expressing of any view, argument, or opinion, or  
7 the dissemination thereof, whether in written, printed, graphic, or  
8 visual form, is not evidence of any unfair labor practice under any  
9 of the provisions of the Industrial Relations Act if such expression  
10 contains no threat of reprisal or force or promise of benefit.

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

13           48-838 (1) The commission shall determine questions of  
14 representation for purposes of collective bargaining for and on  
15 behalf of public employees and shall make rules and regulations for  
16 the conduct of elections to determine the exclusive collective-  
17 bargaining agent for public employees, except that in no event shall  
18 a contract between ~~an~~a public employer and an exclusive collective-  
19 bargaining agent act as a bar for more than three years to any other  
20 party seeking to represent public employees, nor shall any contract  
21 bar for more than three years a petition by public employees seeking  
22 an election to revoke the authority of an agent to represent them.  
23 Except as provided in the State Employees Collective Bargaining Act,  
24 the commission shall certify the exclusive collective-bargaining  
25 agent for employees affected by the Industrial Relations Act



1 following an election by secret ballot, which election shall be  
2 conducted according to rules and regulations established by the  
3 commission.

4 (2) The election shall be conducted by one member of the  
5 commission who shall be designated to act in such capacity by the  
6 presiding officer of the commission, or the commission may appoint  
7 the clerk of the district court of the county in which the principal  
8 office of the public employer is located to conduct the election in  
9 accordance with the rules and regulations established by the  
10 commission. Except as provided in the State Employees Collective  
11 Bargaining Act, the commission shall also determine the appropriate  
12 unit for bargaining and for voting in the election, and in making  
13 such determination, the commission shall consider established  
14 bargaining units and established policies of the public employer. It  
15 shall be presumed, in the case of governmental subdivisions such as  
16 municipalities, counties, power districts, or utility districts with  
17 no previous history of collective bargaining, that units of public  
18 employees of less than departmental size shall not be appropriate.

19 (3) Except as provided in the State Employees Collective  
20 Bargaining Act, the commission shall not order an election until it  
21 has determined that at least thirty percent of the employees in an  
22 appropriate unit have requested in writing that the commission hold  
23 such an election. Such request in writing by an employee may be in  
24 any form in which an employee specifically either requests an  
25 election or authorizes the employee organization to represent him or

1 her in bargaining, or otherwise evidences a desire that an election  
2 be conducted. Such request of an employee shall not become a matter  
3 of public record. No election shall be ordered in one unit more than  
4 once a year.

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

15 Any employee may choose his or her own representative in  
16 any grievance or legal action regardless of whether or not an  
17 exclusive collective-bargaining agent has been certified. If an  
18 employee who is not a member of the labor organization chooses to  
19 have legal representation from the labor organization in any  
20 grievance or legal action, such employee shall reimburse the labor  
21 organization for his or her pro rata share of the actual legal fees  
22 and court costs incurred by the labor organization in representing  
23 the employee in such grievance or legal action.

24 The certification of an exclusive collective-bargaining  
25 agent shall not preclude any public employer from consulting with

1 lawful religious, social, fraternal, or other similar associations on  
2 general matters affecting public employees so long as such contracts  
3 do not assume the character of formal negotiations in regard to  
4 wages, hours, and conditions of employment. Such consultations shall  
5 not alter any collective-bargaining agreement which may be in effect.

6           Sec. 16. Changes made to the Industrial Relations Act by  
7 this legislative bill shall apply to petitions filed with the  
8 commission on or after October 1, 2011, except for petitions filed  
9 involving school districts, educational service units, and community  
10 colleges with their certificated and instructional employees for  
11 which such changes shall apply on or after July 1, 2012.

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

14           79-852 The collective-bargaining agreement of the school  
15 district or districts forming the unified system or reorganized  
16 school district with the largest number of teacher employees shall  
17 continue in full force and effect and govern all teachers in the  
18 unified system or reorganized school district until replaced by a  
19 successor agreement, and the teachers employed by the unified system  
20 or reorganized school district and previously employed by the school  
21 districts involved in the formation of the unified system or  
22 reorganized school district shall automatically be included in that  
23 bargaining unit but no certificated public school employee shall be  
24 compelled to join any organization or association. If only one  
25 collective-bargaining agreement is in effect in the school districts

1 which are a part of the unification or reorganization, that  
2 collective-bargaining agreement shall continue in full force and  
3 effect until replaced by a successor agreement and the teachers  
4 employed by the other school districts involved in the unification or  
5 reorganization shall automatically be included in that bargaining  
6 unit. For purposes of the Industrial Relations Act, the unified  
7 system shall be deemed ~~an~~ a public employer as defined in section  
8 48-801.

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

11           79-2116 Terms and conditions of employment of school  
12 employees providing services for an elementary learning center shall  
13 be established by the negotiated agreement of the learning community  
14 employing such school employees to provide services. For certificated  
15 employees as defined in ~~subdivision (1) of~~ section 79-824, the  
16 learning community shall be deemed to be ~~an~~ a public employer as  
17 defined in ~~subdivision (4) of~~ section 48-801. Compensation paid to  
18 school employees for services provided to a learning community shall  
19 be subject to the School Employees Retirement Act unless such  
20 employee is employed by a Class V school district, in which case  
21 compensation paid such school employee shall be subject to the Class  
22 V School Employees Retirement Act.

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

25           81-1369 Sections 81-1369 to ~~81-1390~~ 81-1388 shall be

1 known and may be cited as the State Employees Collective Bargaining  
2 Act.

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

5           81-1371 For purposes of the State Employees Collective  
6 Bargaining Act, unless the context otherwise requires:

7           (1) Chief Negotiator shall mean the Chief Negotiator of  
8 the Division of Employee Relations of the Department of  
9 Administrative Services;

10           (2) Commission shall mean the Commission of Industrial  
11 Relations;

12           (3) Division shall mean the Division of Employee  
13 Relations of the Department of Administrative Services;

14           (4) Employee or state employee shall mean any employee of  
15 the State of Nebraska;

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

18           (6) Employer-representative shall mean (a) for  
19 negotiations involving employees of the University of Nebraska, the  
20 Board of Regents, (b) for negotiations involving employees of the  
21 Nebraska state colleges, the Board of Trustees of the Nebraska State  
22 Colleges, (c) for negotiations involving employees of other  
23 constitutional agencies, the governing officer or body for each such  
24 agency, and (d) for negotiations involving other state employees, the  
25 Governor;

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

5                   (8) Issue shall mean broad subjects of negotiation which  
6 are presented to the ~~Special Master~~ commission pursuant to section  
7 81-1382. All aspects of wages shall be a single issue, all aspects of  
8 insurance shall be a single issue, and all other subjects of  
9 negotiations classified in broad categories shall be single issues;

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

16                   (10) Meet-and-confer rights shall mean the rights of  
17 employees to discuss wages, hours, and other terms and conditions of  
18 employment with the appropriate employer-representative but shall not  
19 require either party to enter into a written agreement. Employees  
20 afforded meet-and-confer rights shall not be entitled to utilize the  
21 impasse resolution procedures provided in the State Employees  
22 Collective Bargaining Act or to file a petition with the commission  
23 invoking its jurisdiction as provided in the Industrial Relations Act  
24 for the purpose of obtaining an order or orders under section 48-818.  
25 Meet-and-confer rights shall not apply to any bargaining unit other

1 than a supervisory unit. ~~;~~ and

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

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

6 81-1372 The State Employees Collective Bargaining Act  
7 shall be deemed ~~cumulative-controlling for state employees and state~~  
8 employers covered by such act and is supplementary to the Industrial  
9 Relations Act except when otherwise specifically provided or when  
10 inconsistent with the Industrial Relations Act, in which case the  
11 State Employees Collective Bargaining Act shall prevail.

12 The State of Nebraska, its employees, employee  
13 organizations, and exclusive collective-bargaining agents shall have  
14 all the rights and responsibilities afforded employers, employees,  
15 employee organizations, and exclusive collective-bargaining agents  
16 pursuant to the Industrial Relations Act to the extent that such act  
17 is not inconsistent with the State Employees Collective Bargaining  
18 Act.

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

21 81-1373 (1) For the purpose of implementing the state  
22 employees' right to organize for the purpose of collective  
23 bargaining, there are hereby created twelve bargaining units for all  
24 state agencies except the University of Nebraska, the Nebraska state  
25 colleges, and other constitutional offices. The units shall consist

1 of state employees whose job classifications are occupationally and  
2 functionally related and who share a community of interest. The  
3 bargaining units shall be:

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

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

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

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

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

25 (f) Protective Service, which unit is composed of



1 institutional security personnel, including correctional officers,  
2 building security guards, and similar classes;

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

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

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

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

25 (k) Teachers, which unit is composed of employees

1 required to be licensed or certified as a teacher; and

2 (1) Supervisory, which unit is composed of employees who  
3 are supervisors as defined in section 48-801.

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

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

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

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

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

19 ~~(5)-(4)~~ Other constitutional offices shall continue to  
20 subscribe to the procedures for unit determination in the Industrial  
21 Relations Act, except that the commission is further directed to  
22 determine the bargaining units in such manner as to (a) reduce the  
23 effect of overfragmentation of bargaining units on the efficiency of  
24 administration and operations of the constitutional office and (b) be  
25 consistent with the administrative structure of the constitutional

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

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

25 81-1378 (1) The dates indicated in sections 81-1379 to

1 81-1384 shall refer to those dates immediately preceding the  
2 beginning of the contract period for which negotiations are being  
3 conducted.

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

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

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

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

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

1 shall be vested in the following:

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

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

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

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

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

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

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

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

25 81-1381 If the parties in labor contract negotiations do

1 not reach a voluntary agreement by January 1, the dispute shall be  
2 submitted to a mediator mutually selected by the parties or appointed  
3 by the Federal Mediation and Conciliation Service. Mediation may  
4 continue indefinitely at the request of either party or when  
5 appropriate in the judgment of the mediator. ~~or Special Master.~~ If  
6 necessary, mediation may continue after the exchange of final offers.

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

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

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

20 (a) Determine whether the issues are ready for  
21 adjudication;

22 (b) Accept stipulations;

23 (c) Schedule hearings;

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

25 (e) Order additional mediation if necessary; and

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

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

5                   ~~(3) The Special Master shall choose the most reasonable~~  
6 ~~final offer on each issue in dispute. In making such choice, he or~~  
7 ~~she shall consider factors relevant to collective bargaining between~~  
8 ~~public employers and public employees, including comparable rates of~~  
9 ~~pay and conditions of employment as described in section 48-818. The~~  
10 ~~Special Master shall not apply strict rules of evidence. Persons who~~  
11 ~~are not attorneys may present cases to the Special Master. The~~  
12 ~~Special Master shall issue his or her ruling on or before February~~  
13 ~~15.~~

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

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

24                   ~~(2) The commission shall show significant deference to~~  
25 ~~the Special Master's ruling and shall only set the ruling aside upon~~



1 ~~a finding that the ruling is significantly disparate from prevalent~~  
2 ~~rates of pay or conditions of employment as determined by the~~  
3 ~~commission pursuant to section 48-818. The commission shall not find~~  
4 ~~the Special Master's ruling to be significantly disparate from~~  
5 ~~prevalent rates of pay or conditions of employment in any instance~~  
6 ~~when the prevalent rates of pay or conditions of employment, as~~  
7 ~~determined by the commission pursuant to section 48-818, fall between~~  
8 ~~the final offers of the parties.~~

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

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

23 (2)(a) The commission's order shall establish rates of  
24 pay and conditions of employment which are comparable to the  
25 prevalent wage rates paid and conditions of employment maintained by

1 peer employers for the same or similar work of workers exhibiting  
2 like or similar skills under the same or similar working conditions.

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

6 (A) Wages for time actually worked;

7 (B) Wages for time not worked, including vacations,  
8 holidays, and other excused time, and all benefits received,  
9 including insurance and pensions; and

10 (C) The continuity and stability of employment enjoyed by  
11 the employees.

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

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

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

17 (i) Geographic proximity of the employer;

18 (ii) Size of the employer, which shall not be more than  
19 twice or less than one-half, unless evidence establishes that there  
20 are substantial differences which cause the work or conditions of  
21 employment to be dissimilar;

22 (iii) The employer's budget for operations and personnel;

23 and

24 (iv) Nothing in this subdivision (2)(c) of this section  
25 shall prevent parties from stipulating to an array member that does

1 not otherwise meet the criteria in such subdivision, and nothing in  
2 such subdivision shall prevent parties from stipulating to less than  
3 seven or more than nine array members.

4 (d) To determine comparability for employees of the Board  
5 of Regents of the University of Nebraska or employees of the Board of  
6 Trustees of the Nebraska State Colleges, the commission shall utilize  
7 peer institutions with similar enrollments and similar educational  
8 missions which may exclude land grant institutions or institutions  
9 that have a medical center or hospital. Additionally, the commission  
10 shall refer to peer institutions with similar program offerings  
11 including the level of degrees offered.

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

17 (3) In cases filed under the State Employees Collective  
18 Bargaining Act, the commission shall not be bound by the usual common  
19 law or statutory rules of evidence or by any technical or formal  
20 rules of procedure, other than those adopted pursuant to section  
21 48-809. The commission shall receive evidence relating to array  
22 selection, job match, and wages and benefits which have been  
23 assembled by telephone, electronic transmission, or mail delivery and  
24 any such evidence shall be accompanied by an affidavit from the  
25 employer or any other person with personal knowledge which affidavit

1 shall demonstrate the affiant's personal knowledge and competency to  
2 testify on the matters therein. The commission, with the consent of  
3 the parties to the dispute and in the presence of the parties to the  
4 dispute, may contact an individual employed by an employer under  
5 consideration as an array member by telephone to inquire as to the  
6 nature or value of a working condition, wage, or benefit provided by  
7 that particular employer as long as the individual in question has  
8 personal knowledge about the information being sought. The commission  
9 may rely upon information gained in such inquiry for its decision.  
10 Opinion testimony shall be received by the commission based upon  
11 evidence provided in accordance with this subsection. Testimony  
12 concerning job match shall be received if job match inquiries were  
13 conducted by telephone, electronic transmission, or mail delivery if  
14 the witness providing such testimony verifies the method of such job  
15 match inquiry and analysis.

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

18 (5) Either party may, within thirty days after the date  
19 such order is filed, appeal to the Supreme Court. The standard of  
20 review for any appeal to the Supreme Court shall be as provided in  
21 subsection (4) of section 48-825.

22 ~~(4)-(6)~~ The commission, ~~the Court of Appeals,~~ or the  
23 Supreme Court shall not enter an order for any period which is not  
24 the same as or included within the budget period for which the  
25 contract is being negotiated.

1           ~~(5)~~(7) All items agreed upon during the course of  
2 negotiations and not ~~subject to appeal~~ submitted as an unresolved  
3 issue to the commission shall, when ratified by the parties, take  
4 effect concurrent with the biennial budget period and shall  
5 constitute the parties' contract. Upon final resolution of appeals of  
6 all unresolved ~~items~~, issues, the parties shall reduce the orders of  
7 the commission, ~~the Court of Appeals~~, or the Supreme Court to writing  
8 and incorporate them into the contract without ratification.

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

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

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

17           81-1384 ~~(1)~~—On March 16, the Chief Negotiator, any  
18 appointed negotiator for the Board of Regents, any appointed  
19 negotiator for the Board of Trustees of the Nebraska State Colleges,  
20 and any appointed negotiator for other constitutional offices shall  
21 report to the Legislature and the Governor on the status of  
22 negotiations. The Governor may amend his or her budget  
23 recommendations accordingly.

24           ~~(2) If the Chief Negotiator advises the Legislature that~~  
25 ~~the state has appealed a Special Master's ruling, the Legislature may~~

1 ~~by a resolution approved by a three-fifths vote of its members by the~~  
2 ~~conclusion of its regular session direct the Chief Negotiator to~~  
3 ~~withdraw the pending appeal and accept the terms of the Special~~  
4 ~~Master's ruling. This subsection shall not apply to any negotiators~~  
5 ~~appointed by the Board of Regents, Board of Trustees of the Nebraska~~  
6 ~~State Colleges, or other constitutional offices.~~

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

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

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

25           When an unresolved issue proceeds to the commission,

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

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

14           81-1386 (1) It shall be a prohibited practice for any  
15 employer, employee, employee organization, or exclusive collective-  
16 bargaining agent to refuse to negotiate in good faith with respect to  
17 mandatory topics of bargaining.

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

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

23           (b) Dominate or interfere in the administration of any  
24 employee organization;

25           (c) Encourage or discourage membership in any employee



1 organization, committee, or association by discrimination in hiring,  
2 tenure, or other terms or conditions of employment;

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

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

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

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

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

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

1           (b) Interfere, restrain, or coerce an employer with  
2 respect to rights granted in the Industrial Relations Act or the  
3 State Employees Collective Bargaining Act or with respect to  
4 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 ~~81-1380-81-1381~~  
11 to 81-1385.

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

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

20           81-1387 (1) Proceedings against a party alleging a  
21 violation of section 81-1386 shall be commenced by filing a complaint  
22 with the commission within one hundred eighty days of the alleged  
23 violation thereby causing a copy of the complaint to be served upon  
24 the accused party. The accused party shall have ten days within which  
25 to file a written answer to the complaint. If the commission

1 determines that the complaint has no basis in fact, the commission  
2 may dismiss the complaint. If the complaint has a basis in fact, the  
3 commission shall set a time for hearing. The parties shall be  
4 permitted to be represented by counsel, summon witnesses, and request  
5 the commission to subpoena witnesses on the requester's 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

1 the competent evidence on the record considered as a whole.

2           Sec. 33. Sections 11, 12, 13, and 35 of this act become  
3 operative on July 1, 2012. Section 33 of this act becomes operative  
4 on its effective date. The other sections of this act become  
5 operative on October 1, 2011.

6           Sec. 34. Original sections 48-801, 48-801.01, 48-802,  
7 48-804, 48-809, 48-811, 48-813, 48-816, 48-817, 48-818, 48-824,  
8 48-838, 79-852, 79-2116, 81-1369, 81-1371, 81-1372, 81-1373, 81-1375,  
9 81-1378, 81-1379, 81-1381, 81-1382, 81-1383, 81-1384, 81-1385,  
10 81-1386, and 81-1387, Reissue Revised Statutes of Nebraska, are  
11 repealed.

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

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