

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 472

FINAL READING

Introduced by Chambers, 11

Read first time January 17, 2007

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Commission of Industrial Relations; to
2 amend sections 48-801, 48-804, 48-804.01, 48-805, 48-806,
3 48-816.01, 48-838, and 49-617, Reissue Revised Statutes
4 of Nebraska; to change statutory references to members of
5 the commission; to harmonize provisions; and to repeal
6 the original sections.

7 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
7 trust, 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
10 or governmental subdivision thereof, any municipal corporation, or
11 any 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
15 or 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
18 this state and over which the government of the United States
19 has not 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
23 any 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

1 except the Nebraska National Guard or state militia. Employer shall
2 also mean any municipal corporation, any public power district or
3 public 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
14 concerning the association or representation of persons in
15 negotiating, fixing, maintaining, changing, or seeking to arrange
16 terms or conditions of employment, or refusal to discuss terms or
17 conditions of employment;

18 (8) Commission shall mean the Commission of Industrial
19 Relations; and

20 (9) Commissioner shall mean a member of the commission;
21 and

22 ~~(9)~~ (10) Supervisor shall mean any employee having
23 authority, in the interest of the employer, to hire, transfer,
24 suspend, lay off, recall, promote, discharge, assign, reward, or
25 discipline other employees, or responsibly to direct them or to

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

5 Sec. 2. Section 48-804, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 48-804 (1) The Commission of Industrial Relations shall
8 be composed of five judges ~~who shall be commissioners appointed by~~
9 the Governor, with the advice and consent of the Legislature. ~~Such~~
10 ~~judges~~ The commissioners shall be representative of the public.
11 ~~Of the three judges first appointed, one shall be appointed for~~
12 ~~a term of two years, one for a term of four years, and one~~
13 ~~for a term of six years, the terms to begin simultaneously upon~~
14 ~~qualification of the persons to be appointed within thirty days~~
15 ~~after May 31, 1947. Upon the expiration of the term of the three~~
16 ~~judges first appointed, each succeeding judge~~ Each commissioner
17 shall be appointed and hold office for a term of six years and
18 until his a successor shall have has qualified. ~~Two judges shall~~
19 ~~be appointed for six-year terms within thirty days after December~~
20 ~~25, 1969, with their successors to be appointed for a term of six~~
21 ~~years and until their successors have been appointed and qualified.~~
22 In case of a vacancy, in the office of judge of the Commission
23 of Industrial Relations, the Governor shall appoint his or her a
24 successor to fill the vacancy for the unexpired term.

25 (2) Any judge of the Commission of Industrial Relations

1 commissioner may be removed by the Governor for the same causes as
2 a judge of the district court may be removed.

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

14 (4) The ~~Commission of Industrial Relations~~ commission
15 shall not be subject to the provisions of the Administrative
16 Procedure Act.

17 Sec. 3. Section 48-804.01, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 48-804.01 The presiding ~~judge~~ officer of the ~~Commission~~
20 ~~of Industrial Relations~~ commission shall, with the advice and
21 consent of the Governor, appoint a clerk of such commission
22 who shall hold office at the pleasure of the commission. The
23 ~~judge presiding officer~~ shall in like manner appoint such other
24 assistants and employees as he or she may deem necessary. The clerk
25 shall, under the direction of the presiding ~~judge,~~ officer, keep

1 a full and true record of the proceedings of the commission, and
2 record all pleadings and other papers filed with the commission,
3 and no other action shall be taken thereon until the same has
4 been recorded. The clerk shall in like manner issue all necessary
5 notices and writs, superintend the business of the commission,
6 and perform such other duties as the commission may direct. All
7 other assistants and employees of the commission shall perform
8 such duties, pertaining to the affairs thereof, as the commission
9 may direct. The clerk of the commission shall administratively
10 determine, prior to a hearing on the question of representation,
11 the validity of the employee authorizations for representation by
12 an employee labor organization.

13 Sec. 4. Section 48-805, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 48-805 ~~The judges of the Commission of Industrial~~
16 ~~Relations~~ commissioners shall not be appointed because they are
17 representatives of either capital or labor, but they shall be
18 appointed because of their experience and knowledge in legal,
19 financial, labor, and industrial matters.

20 Sec. 5. Section 48-806, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 48-806 As soon as such compensation may be legally paid
23 under the Constitution of Nebraska, the compensation of ~~judges of~~
24 ~~the Commission of Industrial Relations~~ each commissioner shall be
25 two hundred fifty dollars per day for each day's time actually

1 engaged in the performance of the duties of ~~their~~ his or her
2 office. Each ~~judge~~ commissioner shall also be paid his or her
3 necessary traveling expenses incurred while away from his or her
4 place of residence upon business of the commission in accordance
5 with sections 81-1174 to 81-1177.

6 Sec. 6. Section 48-816.01, Reissue Revised Statutes of
7 Nebraska, is amended to read:

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

18 Sec. 7. Section 48-838, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 48-838 (1) The commission shall determine questions
21 of representation for purposes of collective bargaining for and
22 on behalf of employees and shall make rules and regulations
23 for the conduct of elections to determine the exclusive
24 collective-bargaining agent for employees, except that in no
25 event shall a contract between an employer and an exclusive

1 collective-bargaining agent act as a bar for more than three
2 years to any other party seeking to represent employees, nor
3 shall any contract bar for more than three years a petition
4 by employees seeking an election to revoke the authority of
5 an agent to represent them. Except as provided in the State
6 Employees Collective Bargaining Act, the commission shall certify
7 the exclusive collective-bargaining agent for employees affected
8 by the Industrial Relations Act following an election by secret
9 ballot, which election shall be conducted according to rules and
10 regulations established by the commission.

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

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

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

22 Any employee may choose his or her own representative
23 in any grievance or legal action regardless of whether or not an
24 exclusive collective-bargaining agent has been certified. If an
25 employee who is not a member of the labor organization chooses

1 to have legal representation from the labor organization in any
2 grievance or legal action, such employee shall reimburse the labor
3 organization for his or her pro rata share of the actual legal fees
4 and court costs incurred by the labor organization in representing
5 the employee in such grievance or legal action.

6 The certification of an exclusive collective-bargaining
7 agent shall not preclude any employer from consulting with lawful
8 religious, social, fraternal, or other similar associations on
9 general matters affecting employees so long as such contracts do
10 not assume the character of formal negotiations in regard to wages,
11 hours, and conditions of employment. Such consultations shall not
12 alter any collective-bargaining agreement which may be in effect.

13 Sec. 8. Section 49-617, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 49-617 The Revisor of Statutes shall cause the statutes
16 to be printed. The printer shall deliver all completed copies to
17 the Supreme Court. These copies shall be held and disposed of
18 by the court as follows: Sixty copies to the State Library to
19 exchange for statutes of other states; five copies to the State
20 Library to keep for daily use; not to exceed twenty-five copies
21 to the Legislative Council for bill drafting and related services
22 to the Legislature and executive state officers; as many copies
23 to the Attorney General as he or she has attorneys on his or her
24 staff; as many copies to the Commission on Public Advocacy as it
25 has attorneys on its staff; up to sixteen copies to the State

1 Court Administrator; twelve copies to the Tax Commissioner; eight
2 copies to the Nebraska Publications Clearinghouse; six copies to
3 the Public Service Commission; four copies to the Secretary of
4 State; four copies to the Clerk of the Legislature for use in his
5 or her office and three copies to be maintained in the legislative
6 chamber, one copy on each side of the chamber and one copy at
7 the desk of the Clerk of the Legislature, under control of the
8 sergeant at arms; three copies to the Auditor of Public Accounts;
9 two copies each to the Governor of the state, the Chief Justice
10 and each judge of the Supreme Court, each judge of the Court
11 of Appeals, the Clerk of the Supreme Court, the Reporter of the
12 Supreme Court and Court of Appeals, the Commissioner of Labor, and
13 the Revisor of Statutes; one copy each to the Secretary of State
14 of the United States, each Indian tribal court located in the State
15 of Nebraska, the library of the Supreme Court of the United States,
16 the Adjutant General, the Air National Guard, the Commissioner of
17 Education, the State Treasurer, the Board of Educational Lands and
18 Funds, the Director of Agriculture, the Director of Administrative
19 Services, the Director of Aeronautics, the Director of Economic
20 Development, the director of the Public Employees Retirement Board,
21 the Director-State Engineer, the Director of Banking and Finance,
22 the Director of Insurance, the Director of Motor Vehicles, the
23 Property Tax Administrator, the Director of Veterans' Affairs,
24 the Director of Natural Resources, the Director of Correctional
25 Services, the Nebraska Emergency Operating Center, each judge of

1 the Nebraska Workers' Compensation Court, each ~~judge~~ commissioner
2 of the Commission of Industrial Relations, the Nebraska Liquor
3 Control Commission, the State Real Estate Commission, the Tax
4 Equalization and Review Commission, the secretary of the Game
5 and Parks Commission, the Board of Pardons, the Department of
6 Health and Human Services, the Department of Health and Human
7 Services Regulation and Licensure, the Department of Health and
8 Human Services Finance and Support, each state institution under
9 the Department of Health and Human Services, each state institution
10 under the State Department of Education, the State Surveyor, the
11 Nebraska State Patrol, the materiel division of the Department of
12 Administrative Services, the personnel division of the Department
13 of Administrative Services, the Nebraska Motor Vehicle Industry
14 Licensing Board, the Board of Trustees of the Nebraska State
15 Colleges, each of the Nebraska state colleges, each district
16 judge of the State of Nebraska, each judge of the county court,
17 each judge of a separate juvenile court, the Lieutenant Governor,
18 each United States Senator from Nebraska, each United States
19 Representative from Nebraska, each clerk of the district court
20 for the use of the district court, the clerk of the Nebraska
21 Workers' Compensation Court, each clerk of the county court, each
22 county attorney, each county public defender, each county law
23 library, and the inmate library at all state penal and correctional
24 institutions, and each member of the Legislature shall be entitled
25 to two complete sets, and two complete sets of such volumes as are

1 necessary to update previously issued volumes, but each member of
2 the Legislature and each judge of any court referred to in this
3 section shall be entitled, on request, to an additional complete
4 set. Copies of the statutes distributed without charge, as listed
5 in this section, shall be the property of the state or governmental
6 subdivision of the state and not the personal property of the
7 particular person receiving a copy. Distribution of statutes to the
8 library of the College of Law of the University of Nebraska shall
9 be as provided in sections 85-176 and 85-177.

10 Sec. 9. Original sections 48-801, 48-804, 48-804.01,
11 48-805, 48-806, 48-816.01, 48-838, and 49-617, Reissue Revised
12 Statutes of Nebraska, are repealed.