

AMENDMENTS TO LB 397

Introduced by Business and Labor

1 1. Strike the original sections and insert the following
2 sections:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (4) Enrolled actuary means an individual who has
13 satisfied the qualifications set forth in the regulations of the
14 Joint Board for the Enrollment of Actuaries and who has been
15 approved by the Joint Board to perform actuarial services under the
16 federal Employee Retirement Income Security Act of 1974, 29 U.S.C.
17 1001 et seq.;

18 (5) Governmental service means all services performed
19 under employment by the State of Nebraska or any political or
20 governmental subdivision thereof, including public corporations,
21 municipalities, and public utilities;

22 (6) Industrial dispute includes any controversy between
23 public employers and public employees concerning terms, tenure,
24 or conditions of employment; the association or representation of
25 persons in negotiating, fixing, maintaining, changing, or seeking
26 to arrange terms or conditions of employment; or refusal to discuss
27 terms or conditions of employment;

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

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

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

11 (10) Noncertificated and noninstructional school employee
12 means a school employee who is not a certificated or instructional
13 employee;

14 (11) Private employer means an employer who is not a
15 public employer;

16 (12) Public employee includes any person employed by a
17 public employer;

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

21 (14) Public utility includes any person or governmental
22 entity, including any public corporation, public power district,
23 or public power and irrigation district, which carries on an
24 intrastate business in this state and over which the government
25 of the United States has not assumed exclusive regulation and
26 control, that furnishes transportation for hire, telephone service,
27 telegraph service, electric light, heat, or power service, gas for

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

3 (15) Supervisor means any public employee having
4 authority, in the interest of the public employer, to hire,
5 transfer, suspend, lay off, recall, promote, discharge, assign,
6 reward, or discipline other public employees, or responsibly to
7 direct them or to adjust their grievances, or effectively to
8 recommend such action, if in connection with such action, the
9 exercise of such authority is not a merely routine or clerical
10 nature, but requires the use of independent judgment.

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

13 48-801.01 Sections 48-801 to 48-838 and sections 10, 11,
14 12, and 15 of this act shall be known and may be cited as the
15 Industrial Relations Act.

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

18 48-802 To make operative the provisions of section 9,
19 Article XV, of the Constitution of Nebraska, the public policy of
20 the State of Nebraska is hereby declared to be as follows:

21 (1) The continuous, uninterrupted and proper functioning
22 and operation of the governmental service including governmental
23 service in a proprietary capacity and of public utilities engaged
24 in the business of furnishing transportation for hire, telephone
25 service, telegraph service, electric light, heat, or power service,
26 gas for heating or illuminating, whether natural or artificial,
27 or water service, or any one or more of them, to the people of

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

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

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

27 Sec. 4. Section 48-809, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 48-809 ~~The Commission of Industrial Relations is hereby~~
3 ~~granted full power to~~ commission may adopt all reasonable and
4 proper regulations to govern its proceedings, the filing of
5 pleadings, the issuance and service of process, and the issuance of
6 subpoenas for attendance of witnesses, ~~the power to~~ may administer
7 oaths, and ~~to~~ may regulate the mode and manner of all its
8 investigations, inspections, hearings, and trials. ~~In~~ Except as
9 otherwise provided in the Industrial Relations Act, in the taking
10 of evidence, the rules of evidence, prevailing in the trial of
11 civil cases in Nebraska, shall be observed by the ~~Commission of~~
12 ~~Industrial Relations-~~ commission.

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

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

26 Sec. 6. Section 48-813, Reissue Revised Statutes of
27 Nebraska, is amended to read:

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

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

1 the parties to the dispute have not jointly stipulated to the
2 enlargement of the time limit, then either party may file an action
3 for mandamus in the district court for Lancaster County to require
4 the commission to hold the hearing or to render its order and
5 findings if required. For purposes of this section, the hearing
6 on an industrial dispute shall not be deemed completed until the
7 record is prepared and counsel briefs have been submitted, if such
8 are required by the commission.

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

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

19 48-816 (1)(a) After a petition has been filed under
20 section 48-811, the clerk shall immediately notify the commission
21 which shall promptly take such preliminary proceedings as may be
22 necessary to ensure prompt hearing and speedy adjudication of the
23 industrial dispute. The commission ~~shall have power and authority~~
24 may, upon its own initiative or upon request of a party to the
25 dispute, ~~to~~ make such temporary findings and orders as ~~may be~~
26 necessary to preserve and protect the status of the parties,
27 property, and public interest involved pending final determination

1 of the issues. In the event of an industrial dispute between ~~an a~~
2 public employer and ~~an a~~ public employee or a labor organization
3 when such public employer and public employee or labor organization
4 have failed or refused to bargain in good faith concerning the
5 matters in dispute, the commission may order such bargaining to
6 begin or resume, as the case may be, and may make any such
7 order or orders as ~~may be~~ appropriate to govern the situation
8 pending such bargaining. The commission shall require good faith
9 bargaining concerning the terms and conditions of employment of
10 its employees by any public employer. Upon the request of either
11 party, the commission shall require the parties to an industrial
12 dispute to submit to mediation or factfinding. Upon the request
13 of ~~both parties,~~ either party, ~~a special master~~ resolution officer
14 may be appointed if the parties are within the provisions of
15 section ~~48-811.02-~~ 10 of this act. The commission shall appoint
16 mediators, factfinders, or ~~special masters~~ resolution officers for
17 such purpose. Such orders for bargaining, mediation, factfinding,
18 or a ~~special master~~ resolution officer proceeding may be issued at
19 any time during the pendency of an action to resolve an industrial
20 dispute. To bargain in good faith ~~shall mean~~ means the performance
21 of the mutual obligation of the public employer and the labor
22 organization to meet at reasonable times and confer in good faith
23 with respect to wages, hours, and other terms and conditions of
24 employment or any question arising thereunder and the execution of
25 a written contract incorporating any agreement reached if requested
26 by either party, but such obligation does not compel either party
27 to agree to a proposal or require the making of a concession.

1 (b) In negotiations between a public employer and a
2 labor organization representing firefighters or law enforcement
3 personnel, staffing related to issues of safety shall be mandatory
4 subjects of bargaining and staffing relating to scheduling work,
5 such as daily staffing, staffing by rank, and overall staffing
6 requirements, shall be permissive subjects of bargaining.

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

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

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

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

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

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

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

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

24 (6) A party to an action filed with the commission
25 may request the commission to send survey forms or data request
26 forms. The requesting party shall prepare its own survey forms
27 or data request forms and shall provide the commission the names

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

1 (7) (a) Except for those cases arising under section
2 48-818, the commission shall ~~be required to~~ make findings of facts
3 in all cases in which one of the parties to the dispute requests
4 findings. Such request shall be specific as to the issues on which
5 the party wishes the commission to make findings of fact.

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

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

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

1 conference setting in which all parties are represented.

2 Sec. 8. Section 48-817, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 48-817 After the hearing and any investigation, the
5 commission shall make all findings, findings of fact, recommended
6 decisions and orders, and decisions and orders in writing, which
7 findings, findings of fact, recommended decisions and orders,
8 and decisions and orders shall be entered of record. Except as
9 provided in the State Employees Collective Bargaining Act, the
10 final decision and order or orders shall be in effect from and
11 after the date therein fixed by the commission, but no such
12 order or orders shall be retroactive. ~~In~~ Except as provided
13 otherwise in the Industrial Relations Act, in the making of
14 any findings or orders in connection with any such industrial
15 dispute, the commission shall give no consideration to any evidence
16 or information which it may obtain through an investigation or
17 otherwise receive, except matters of which the district court
18 might take judicial notice, unless such evidence or information
19 is presented and made a part of the record in a hearing and
20 opportunity is given, after reasonable notice to all parties to the
21 controversy of the initiation of any investigation and the specific
22 contents of the evidence or information obtained or received, to
23 rebut such evidence or information either by cross-examination or
24 testimony.

25 Sec. 9. Section 48-818, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 48-818 (1) Except as provided in the State Employees

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

20 (2) For purposes of industrial disputes involving public
21 employers other than school districts, educational service units,
22 or community colleges with their certificated and instructional
23 employees, the commission shall first attempt to establish job
24 match comparisons of work with Nebraska public and private sector
25 employers. Only if sufficient Nebraska job match comparisons are
26 not available shall the commission include out-of-state job match
27 comparisons and, for such out-of-state comparisons, the commission

1 shall follow the principles of proximity and working conditions
2 as provided in the Industrial Relations Act and apply economic
3 variable adjustment as provided in the act.

4 (3) For purposes of industrial disputes involving public
5 employers other than school districts, educational service units,
6 and community colleges with their certificated and instructional
7 employees:

8 (a) Job matches shall be sufficient for comparison if
9 (i) evidence supports at least a seventy percent match based
10 on a composite of the duties and time spent performing those
11 duties and (ii) at least three job matches per classification are
12 available for comparison. If three job matches are not available,
13 the commission shall base its order on the historic relationship
14 of wages paid to such position over the last three fiscal years,
15 for which data is available, as compared to wages paid to a
16 position for which a minimum of three job matches are available.
17 The commission shall consider and use both public and private job
18 matches when available and appropriate, given the nature of the
19 work subject to comparison in a particular case;

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

22 (i) Geographically proximate public employers and private
23 employers and Nebraska public employers and private employers are
24 preferable for comparison;

25 (ii) The preferred size of an array is seven to thirteen
26 members. As few as five members may be chosen if all array members
27 are Nebraska employers;

1 (iii) If more than thirteen employers with job matches
2 are available, the commission shall limit the array to thirteen
3 members, based upon selecting array members with the highest number
4 of job matches at the highest job match percentage;

5 (iv) The commission shall not require a balanced number
6 of larger or smaller employers, a balanced number of public or
7 private employers, or a balanced number of Nebraska or out-of-state
8 employers;

9 (v) For private employers with more than one branch
10 facility in the geographic area of the array, only one branch
11 facility may be placed in the array and the one chosen shall
12 have the highest number of job matches at the highest job match
13 percentage;

14 (vi) If the array includes a public employer in a
15 metropolitan statistical area, only one public employer from such
16 metropolitan statistical area may be included in the array;

17 (vii) Arrays for public utilities that produce
18 radioactive material and energy pursuant to section 70-627.02 shall
19 have at least four members in its array that produce radioactive
20 material and energy. For public utilities that generate, transmit,
21 and distribute power, the array shall include members that also
22 perform these functions. For a public utility serving a city of the
23 primary class the array shall only include public power districts
24 in Nebraska that generate, transmit, and distribute power and any
25 out-of-state utilities whose number of employees is not more than
26 double or less than one-half of the public utility serving a
27 city of the primary class unless evidence establishes that there

1 are substantial differences which cause the work or conditions of
2 employment to be dissimilar;

3 (viii) In constructing an array for a public utility,
4 the commission shall use fifty-mile concentric circles until it
5 reaches the optimum array pursuant to subdivision (3)(b)(ii) of
6 this section; and

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

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

18 (i) Public employers and private employers in Nebraska
19 shall be presumed to provide same or similar working conditions
20 unless evidence establishes that there are substantial differences
21 which cause the work or conditions of employment to be dissimilar;

22 (ii) Public employers shall be presumed to provide the
23 same or similar working conditions if their population, if the
24 public employer is a county or municipality, their number of
25 employees if the public employer is a public utility, or the size
26 of their student enrollment if the public employer is a school
27 district, an educational service unit, or a community college with

1 noncertificated and noninstructional employees is not more than
2 double or less than one-half of the public employer before the
3 commission unless evidence establishes that there are substantial
4 differences which cause the work or conditions of employment to be
5 dissimilar;

6 (iii) Public employers located within a metropolitan
7 statistical area who meet the population requirements, if the
8 public employer is a county or municipality, or the size
9 requirement of their student enrollment, if the public employer
10 is a school district or an educational service unit, shall be
11 presumed to provide the same or similar working conditions if
12 the metropolitan statistical area in which they are located is
13 not more than double or less than one-half the metropolitan
14 statistical area population of the public employer before the
15 commission, unless evidence establishes that there are substantial
16 differences which cause the work or conditions of employment to be
17 dissimilar. Likewise, the presumption created by this subdivision
18 may be overcome in situations where evidence establishes that there
19 are substantial similarities which cause the work or conditions
20 of employment to be similar, allowing the commission to consider
21 public employers located within a metropolitan statistical area
22 even if the metropolitan statistical area population in which that
23 employer or employers are located is more than double or less
24 than one-half the metropolitan statistical area population of the
25 public employer before the commission. The burden of establishing
26 sufficient similarity is on the party seeking to include a public
27 employer located within a metropolitan statistical area which does

1 not meet the requirements established in this subdivision;

2 (iv) Public employers other than public utilities
3 which are not located within a metropolitan statistical area
4 shall not be compared to public employers or private employers
5 located in a metropolitan statistical area. For purposes of this
6 subdivision, metropolitan statistical area includes municipalities
7 with populations of fifty thousand inhabitants or more;

8 (v) In comparisons involving a city of the metropolitan
9 class, a city of the primary class, a county containing a city of
10 the metropolitan class or a city of the primary class, or a school
11 district, an educational service unit, or a community college with
12 noncertificated and noninstructional employees, private employers
13 shall be presumed to provide the same or similar working conditions
14 if the total full-time equivalent employment of the private
15 employer is not more than double or less than one-half the
16 full-time equivalent employment of the public employer in question
17 unless evidence establishes that there are substantial differences
18 which cause the work or conditions of employment to be dissimilar;
19 and

20 (vi) In comparisons involving any political subdivision
21 other than a city of the metropolitan class, a city of the primary
22 class, a county containing a city of the metropolitan class or a
23 city of the primary class, or a school district, an educational
24 service unit or a community college with noncertificated and
25 noninstructional employees, private employers shall be presumed
26 to provide the same or similar working conditions if the total
27 full-time equivalent employment of the private employer is not

1 more than double or less than one-half the full-time equivalent
2 employment of the bargaining unit involved in the litigation
3 with the public employer in question unless evidence establishes
4 that there are substantial differences which cause the work or
5 conditions of employment to be dissimilar;

6 (d) Prevalent shall be determined as follows: (i) For
7 numeric values, prevalent shall be the midpoint between the
8 arithmetic mean and the arithmetic median. All array members
9 shall be included in the calculations even if they do not provide
10 the specialty pay or benefit which has numeric value; and (ii)
11 for non-numeric comparisons, prevalent shall be the mode that the
12 majority of the array members that provide such benefit if the
13 compared-to benefit is similar in nature. If there is no clear
14 mode, the benefit or working condition shall remain unaltered by
15 the commission;

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

23 (f) In determining total or overall compensation, the
24 commission shall value every economic item even if the year in
25 question has expired. The commission shall require that all wage
26 and benefit levels be leveled over the twelve-month period in
27 dispute to account for increases or decreases which occur in the

1 wage or benefit levels provided by any array member during such
2 twelve-month period;

3 (g) The rules of evidence shall not be followed. The
4 commission shall receive evidence relating to array selection,
5 job match, and wages and benefits which have been assembled by
6 telephone, electronic transmission, or mail delivery and any such
7 evidence shall be accompanied by an affidavit of authenticity from
8 the employer or any other person with personal knowledge providing
9 such evidence. The commission, with the consent of the parties to
10 the dispute, and in the presence of the parties to the dispute, may
11 contact an individual employed by an employer under consideration
12 as an array member by telephone to inquire as to the nature
13 or value of a working condition, wage, or benefit provided by
14 that particular employer as long as the individual in question
15 has personal knowledge about the information being sought. The
16 commission may rely upon information gained in such inquiry for
17 its decision. Opinion testimony shall be received by the commission
18 based upon evidence provided in accordance with this subdivision.
19 Testimony concerning job match shall be received if job match
20 inquires were conducted by telephone, electronic transmission, or
21 mail delivery if the witness providing such testimony verifies the
22 method of such job match inquiry and analysis;

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

27 (i) Once the array has been chosen, each array member and

1 the public employer of the subject bargaining unit shall provide a
2 copy of its most recent defined benefit pension actuarial valuation
3 report. Each array member and the public employer of the subject
4 bargaining unit shall provide the most recent copy of its health
5 insurance plans, covering a twelve-month period, with associated
6 employer and employee costs, to the parties and the commission.
7 Each array member and the public employer of the subject bargaining
8 unit shall indicate which plans are most used. The plans that are
9 most used shall be used for comparison;

10 (ii) Once the actuarial valuation reports are received,
11 the parties shall have thirty calendar days to determine whether
12 to have the pensions actuarially valued at an hourly rate value
13 other than equal. The hourly rate value for defined benefit plans
14 shall be presumed to be equal to that of the array selected
15 unless one or both of the parties presents evidence establishing
16 that the actuarially derived annual normal cost of the pension
17 benefit for each job classification in the subject bargaining unit
18 is above or below the midpoint of the market average normal cost
19 and such midpoint figure shall be established by applying uniform
20 assumptions and methodology using the census of bargaining unit
21 employees subject to the petition to all points compared using
22 accepted actuarial methods attested to by an enrolled actuary.
23 Any party who requests or presents evidence regarding actuarial
24 valuation of a defined benefit plan shall be responsible for
25 costs associated with such valuation and testimony. The actuarial
26 valuation is presumed valid, unless a party presents competent
27 actuarial evidence that the valuation is invalid;

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

4 (iv) The hourly rate value for health insurance shall be
5 established based upon premium payments;

6 (v) The commission shall not compare defined benefit
7 plans to defined contribution plans; and

8 (vi) The commission shall order increases or decreases in
9 wage rates by job classification based upon the hourly rate value
10 for these three benefits;

11 (i) For benefits other than defined benefit and defined
12 contribution retirement plans and health insurance plans, the
13 commission shall issue an order based upon a determination of
14 prevalency as determined under subdivision (3)(d) of this section;
15 and

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

18 (i) The order shall be retroactive with respect to
19 increases and decreases to the beginning of the bargaining year in
20 dispute;

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

24 (iii) The commission shall provide an offset to the
25 public employer when a lump-sum payment is due because benefits
26 were paid in excess of the prevalent as determined under
27 subdivision (3)(d) of this section or when benefits were paid below

1 the prevalent as so determined but wages were above prevalent;

2 (iv) The application of any decrease ordered in wages or
3 benefits by the commission shall be limited in application to newly
4 hired employees, voluntarily transferred employees, or employees
5 demoted to a lower job classification;

6 (v) All other employees in job classifications affected
7 by a commission-ordered decrease in wages or benefits shall be
8 frozen at the same level of all wages and benefits in effect at the
9 time of filing of the petition; and

10 (vi) The freeze shall last indefinitely and the
11 commission shall retain jurisdiction of the proceeding. Either
12 party may file an application with the commission to schedule
13 a hearing so that the party may present evidence supporting
14 the allegation that wages and benefits to the affected job
15 classifications are now below comparability as determined under the
16 Industrial Relations Act. If the evidence supports such allegation,
17 the commission shall issue an order ending the freeze of wages
18 and benefits at a date in the future which is an equal amount of
19 time from the modification order as the amount of time between the
20 initial commission order and the modification order. Nothing in
21 this subdivision shall prohibit parties from mutually agreeing to
22 end an ordered freeze.

23 Sec. 10. (1) The Legislature finds that it is in the
24 public's interest that collective bargaining involving school
25 districts, educational service units, and community colleges
26 and their certificated and instructional employees commence and
27 conclude in a timely fashion consistent with school district

1 budgeting and financing requirements. To that end, the timelines
2 in this section shall apply when the public employer is a school
3 district, educational service unit, or community college.

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

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

1 shall alternately strike names. The remaining individual shall
2 serve as the resolution officer.

3 (b) The resolution officer may:

4 (i) Determine whether the issues are ready for
5 adjudication;

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

9 (iii) Accept stipulations;

10 (iv) Schedule hearings;

11 (v) Prescribe rules of conduct for conferences;

12 (vi) Order additional mediation if necessary;

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

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

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

25 (d) If either party to a resolution officer proceeding
26 is dissatisfied with the resolution officer's decision, such party
27 shall have the right to file an action with the commission seeking

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

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

17 (5) On or before March 25 of the contract year in
18 question, negotiations, mediation, and factfinding shall end.

19 (6) If an agreement for the contract year in question has
20 not been achieved on or before March 25 of the contract year in
21 question, either party may, on or before the following April 10,
22 file a petition with the commission pursuant to sections 48-811 and
23 48-818 to resolve the industrial dispute for the contract year in
24 question. The commission shall render a decision on such industrial
25 dispute on or before September 15 of the contract year in question.

26 (7) Any existing collective-bargaining agreement will
27 continue in full force and effect until superseded by further

1 agreement of the parties or by an order of the commission. The
2 parties may continue to negotiate unresolved issues by mutual
3 agreement while the matter is pending with the commission.

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

9 (a) A salary schedule or objective method of determining
10 salaries;

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

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

18 Sec. 11. When the employer in a proceeding under section
19 48-818 is a school district, educational service unit, or community
20 college, such employer may allege it lacks the ability to pay
21 the costs of the terms and conditions of employment ordered by
22 the commission. In such event, the commission shall hold an
23 additional hearing and allow the school district, educational
24 service unit, or community college to present competent evidence
25 establishing its inability to pay the award of the commission. The
26 bargaining unit in such case shall be permitted to offer evidence
27 in response thereto. Such award shall not be adjusted in the

1 absence of substantial evidence of the employer's inability to pay
2 the commission's award.

3 Sec. 12. (1) When a school district has a student
4 enrollment of less than two hundred students in grades kindergarten
5 through twelve or its corporate name under section 79-405 includes
6 a county having less than one thousand residents, such school
7 district shall negotiate with the bargaining agent for its
8 certificated employees economic terms which provide a financial
9 incentive to those employees accepting or continuing employment
10 with the school district in certificated teacher shortage areas as
11 defined annually by the State Department of Education, except that:

12 (a) Such incentive shall not exceed ten percent of
13 the base salary or wage established by the collective-bargaining
14 agreement for certificated employees not assigned to teacher
15 shortage areas; and

16 (b) The assignment within the certificated teacher
17 shortage area shall be filled by an employee holding a valid
18 Nebraska teaching certificate endorsed in the teacher shortage
19 area.

20 (2) When a school district has a school building
21 or buildings identified by the State Department of Education
22 as an academically underachieving school, such school district
23 shall negotiate with the bargaining agent for its certificated
24 employees economic terms which provide a financial incentive
25 to certificated employees accepting or continuing employment
26 with the school district who are assigned to teach at the
27 underachieving school, except that such incentive shall not exceed

1 twenty percent of the base salary or wage established by the
2 collective-bargaining agreement for certificated employees not
3 assigned to an underachieving school.

4 (3) Notwithstanding the mandatory duty to negotiate
5 incentive in subsections (1) and (2) of this section, the incentive
6 payments may be offered to certificated employees at the sole
7 discretion of the school district. Nothing in this section shall be
8 construed to alter a school district's right to assign personnel to
9 particular schools.

10 (4) Incentive payments or programs under subsection (1)
11 or (2) of this section shall be considered by the commission in
12 its calculations and as part of total compensation of the school
13 district in resolving an industrial dispute or in entering a wage
14 order.

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

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

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

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

25 (b) Dominate or interfere in the administration of any
26 public employee organization;

27 (c) Encourage or discourage membership in any public

1 employee organization, committee, or association by discrimination
2 in 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,
5 or complaint or given any information or testimony under the
6 Industrial Relations Act or because the public employee has
7 formed, joined, or chosen to be represented by any public employee
8 organization;

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

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

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

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

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

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

27 (c) Refuse to bargain collectively with ~~an~~ a public

1 employer as required by the Industrial Relations Act; and

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

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

11 Sec. 14. Section 48-838, Reissue Revised Statutes of
12 Nebraska, is amended to read:

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

1 and regulations established by the commission.

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

18 (3) Except as provided in the State Employees Collective
19 Bargaining Act, the commission shall not order an election until
20 it has determined that at least thirty percent of the employees in
21 an appropriate unit have requested in writing that the commission
22 hold such an election. Such request in writing by an employee may
23 be in any form in which an employee specifically either requests
24 an election or authorizes the employee organization to represent
25 him or her in bargaining, or otherwise evidences a desire that an
26 election be conducted. Such request of an employee shall not become
27 a matter of public record. No election shall be ordered in one unit

1 more than once a year.

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

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

21 The certification of an exclusive collective-bargaining
22 agent shall not preclude any public employer from consulting with
23 lawful religious, social, fraternal, or other similar associations
24 on general matters affecting public employees so long as such
25 contracts do not assume the character of formal negotiations
26 in regard to wages, hours, and conditions of employment. Such
27 consultations shall not alter any collective-bargaining agreement

1 which may be in effect.

2 Sec. 15. Changes made to the Industrial Relations Act
3 by this legislative bill shall apply to petitions filed with the
4 commission on or after October 1, 2011.

5 Sec. 16. Section 79-824, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 79-824 For purposes of sections 79-824 to 79-842, unless
8 the context otherwise requires:

9 (1) Certificated employee means and includes all teachers
10 and administrators as defined in section 79-101, other than
11 substitute teachers, who are employed one-half time or more by
12 any class of school district;

13 (2) School board means the governing board or body of any
14 class of school district;

15 (3) Probationary certificated employee means a teacher
16 or administrator who has served under a contract with the school
17 district for less than three successive school years in any school
18 district, unless extended one or two years by a majority vote
19 of the board in a Class IV or V school district, except that
20 after September 1, 1983, in Class IV and V school districts the
21 requirement shall be three successive school years. the school
22 board grants permanent status within such three-year probationary
23 period as provided in section 79-828. Probationary certificated
24 employee also means superintendents, regardless of length of
25 service;

26 (4) Just cause means: (a) Incompetency, which includes,
27 but is not limited to, demonstrated deficiencies or shortcomings

1 in knowledge of subject matter or teaching or administrative
2 skills; (b) neglect of duty; (c) unprofessional conduct; (d)
3 insubordination; (e) immorality; (f) physical or mental incapacity;
4 (g) failure to give evidence of professional growth as required in
5 section 79-830; or (h) other conduct which interferes substantially
6 with the continued performance of duties;

7 (5) Permanent certificated employee means a teacher or
8 administrator who has served the probation period as defined in
9 this section; and

10 (6) School year, for purposes of employment, means
11 three-fourths of the school year or more on duty, exclusive of
12 summer school.

13 A certificated employee who has been hired to fulfill the
14 duties of another certificated employee who is on leave of absence
15 shall not accrue rights under sections 79-824 to 79-842 during the
16 period that the employee is fulfilling such duties.

17 Sec. 17. Section 79-828, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 79-828 (1) The contract of a probationary certificated
20 employee shall be deemed renewed and remain in full force and
21 effect unless amended or not renewed in accordance with sections
22 79-824 to 79-842.

23 (2) The purpose of the probationary period is to allow
24 the employer an opportunity to evaluate, assess, and assist the
25 employee's professional skills and work performance prior to the
26 employee obtaining permanent status.

27 All probationary certificated employees employed by Class

1 I, II, III, and VI school districts shall, during each year of
2 probationary employment, be evaluated at least once each semester,
3 unless the probationary certificated employee is a superintendent,
4 in accordance with the procedures outlined below:

5 The probationary employee shall be observed and
6 evaluation shall be based upon actual classroom observations for
7 an entire instructional period. If deficiencies are noted in
8 the work performance of any probationary employee, the evaluator
9 shall provide the teacher or administrator at the time of the
10 observation with a list of deficiencies, a list of suggestions
11 for improvement and assistance in overcoming the deficiencies, and
12 followup evaluations and assistance when deficiencies remain.

13 A school board may grant a probationary certificated
14 employee performing teaching duties permanent status prior to
15 completion of the three-year probationary period based on frequent
16 evaluations that demonstrate exemplary performance, except that
17 such action by the governing board shall take place no later than
18 April 15 of the year preceding the school year such permanent
19 status takes effect.

20 If the probationary certificated employee is a
21 superintendent, he or she shall be evaluated twice during the first
22 year of employment and at least once annually thereafter.

23 Any certificated employee employed prior to September
24 1, 1982, by the school board of any Class I, II, III, or VI
25 school district shall serve the probationary period required by law
26 prior to such date and shall not be subject to any extension of
27 probation.

1 (3) If the school board or the superintendent or
2 superintendent's designee determines that it is appropriate to
3 consider whether the contract of a probationary certificated
4 employee or the superintendent should be amended or not renewed for
5 the next school year, such certificated employee shall be given
6 written notice that the school board will consider the amendment
7 or nonrenewal of such certificated employee's contract for the
8 ensuing school year. Upon request of the certificated employee,
9 notice shall be provided which shall contain the written reasons
10 for such proposed amendment or nonrenewal and shall be sufficiently
11 specific so as to provide such employee the opportunity to prepare
12 a response and the reasons set forth in the notice shall be
13 employment related.

14 (4) The school board may elect to amend or not renew
15 the contract of a probationary certificated employee for any reason
16 it deems sufficient if such nonrenewal is not for constitutionally
17 impermissible reasons, and such nonrenewal shall be in accordance
18 with sections 79-824 to 79-842. Amendment or nonrenewal for reason
19 of reduction in force shall be subject to sections 79-824 to 79-842
20 and 79-846 to 79-849.

21 (5) Within seven calendar days after receipt of
22 the notice, the probationary certificated employee may make a
23 written request to the secretary of the school board or to the
24 superintendent or superintendent's designee for a hearing before
25 the school board.

26 (6) Prior to scheduling of action or a hearing on
27 the matter, if requested, the notice of possible amendment

1 or nonrenewal and the reasons supporting possible amendment or
2 nonrenewal shall be considered a confidential employment matter as
3 provided in sections 79-539, 79-8,109, and 84-1410 and shall not be
4 released to the public or any news media.

5 (7) At any time prior to the holding of a hearing or
6 prior to final determination by the school board to amend or not
7 renew the contract involved, the probationary certificated employee
8 may submit a letter of resignation for the ensuing year, which
9 resignation shall be accepted by the school board.

10 (8) The probationary certificated employee shall be
11 afforded a hearing which shall not be required to meet the
12 requirements of a formal due process hearing as set forth in
13 section 79-832 but shall be subject to section 79-834.

14 Sec. 18. Section 79-852, Reissue Revised Statutes of
15 Nebraska, is amended to read:

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

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

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

23 Sec. 20. 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
26 known and may be cited as the State Employees Collective Bargaining
27 Act.

1 Sec. 21. Section 81-1371, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-1371 For purposes of the State Employees Collective
4 Bargaining Act, unless the context otherwise requires:

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

8 (2) Commission shall mean the Commission of Industrial
9 Relations;

10 (3) Division shall mean the Division of Employee
11 Relations of the Department of Administrative Services;

12 (4) Employee or state employee shall mean any employee of
13 the State of Nebraska;

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

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

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

1 (8) Issue shall mean broad subjects of negotiation which
2 are presented to the ~~Special Master~~ commission pursuant to section
3 81-1382. All aspects of wages shall be a single issue, all aspects
4 of insurance shall be a single issue, and all other subjects of
5 negotiations classified in broad categories shall be single issues;

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

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

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

25 Sec. 22. Section 81-1372, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 81-1372 The State Employees Collective Bargaining Act

1 shall be deemed ~~cumulative~~ controlling for public employees and
2 public employers covered by such act and is supplementary to
3 the Industrial Relations Act except when otherwise specifically
4 provided or when inconsistent with the Industrial Relations Act,
5 in which case the State Employees Collective Bargaining Act shall
6 prevail.

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

14 Sec. 23. Section 81-1373, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-1373 (1) For the purpose of implementing the state
17 employees' right to organize for the purpose of collective
18 bargaining, there are hereby created twelve bargaining units
19 for all state agencies except the University of Nebraska, the
20 Nebraska state colleges, and other constitutional offices. The
21 units shall consist of state employees whose job classifications
22 are occupationally and functionally related and who share a
23 community of interest. The bargaining units shall be:

24 (a) Maintenance, Trades, and Technical, which unit is
25 composed of generally recognized blue collar and technical classes,
26 including highway maintenance workers, carpenters, plumbers,
27 electricians, print shop workers, auto mechanics, engineering aides

1 and associates, and similar classes;

2 (b) Administrative Support, which unit is composed of
3 clerical and administrative nonprofessional classes, including
4 typists, secretaries, accounting clerks, computer operators, office
5 service personnel, and similar classes;

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

9 (d) Social Services and Counseling, which unit is
10 composed of generally professional-level workers providing services
11 and benefits to eligible persons. Classes shall include job
12 service personnel, income maintenance personnel, social workers,
13 counselors, and similar classes;

14 (e) Administrative Professional, which unit is composed
15 of professional employees with general business responsibilities,
16 including accountants, buyers, personnel specialists, data
17 processing personnel, and similar classes;

18 (f) Protective Service, which unit is composed of
19 institutional security personnel, including correctional officers,
20 building security guards, and similar classes;

21 (g) Law Enforcement, which unit is composed of employees
22 holding powers of arrest, including Nebraska State Patrol officers
23 and sergeants, conservation officers, fire marshal personnel, and
24 similar classes. Sergeants, investigators, and patrol officers
25 employed by the Nebraska State Patrol as authorized in section
26 81-2004 shall be presumed to have a community of interest with each
27 other and shall be included in this bargaining unit notwithstanding

1 any other provision of law which may allow for the contrary;

2 (h) Health and Human Care Professional, which unit
3 is composed of community health, nutrition, and health service
4 professional employees, including nurses, doctors, psychologists,
5 pharmacists, dietitians, licensed therapists, and similar classes;

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

12 (j) Engineering, Science, and Resources, which unit
13 is composed of specialized professional scientific occupations,
14 including civil and other engineers, architects, chemists,
15 geologists and surveyors, and similar classes;

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

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

20 All employees who are excluded from bargaining units
21 pursuant to the Industrial Relations Act, all employees of the
22 personnel division of the Department of Administrative Services,
23 and all employees of the Division of Employee Relations of the
24 Department of Administrative Services shall be excluded from any
25 bargaining unit of state employees.

26 (2) Any employee organization, including one which
27 represents other state employees, may be certified or recognized

1 as provided in the Industrial Relations Act as the exclusive
2 collective-bargaining agent for a supervisory unit, except that
3 such unit shall not have full collective-bargaining rights but
4 shall be afforded only meet-and-confer rights.

5 (3) It is the intent of the Legislature that professional
6 and managerial employee classifications and office and service
7 employee classifications be grouped in broad occupational units
8 for the University of Nebraska and the Nebraska state colleges
9 established on a university-wide or college-system-wide basis,
10 including all campuses within the system. Any unit entirely
11 composed of supervisory employees of the University of Nebraska or
12 the Nebraska state colleges shall be afforded only meet-and-confer
13 rights. ~~Except as provided in subsection (4) of this section, the~~
14 The bargaining units for academic, faculty, and teaching employees
15 of the University of Nebraska and the Nebraska state colleges shall
16 continue as they exist existed on April 9, 1987, plus the addition
17 of Kearney State College, and any adjustments thereto or new units
18 therefor shall continue to be determined pursuant to the Industrial
19 Relations Act.

20 (4) ~~Except as provided in subdivision (2)(c) of section~~
21 ~~85-1,119, when the institution now known as Kearney State College~~
22 ~~is transferred to the control and management of the Board of~~
23 ~~Regents of the University of Nebraska, any academic, faculty, and~~
24 ~~teaching employees of Kearney State College who are included in~~
25 ~~a bargaining unit and represented by a certified or recognized~~
26 ~~collective-bargaining agent as of June 30, 1991, shall, on~~
27 ~~and after July 1, 1991, compose a separate bargaining unit of~~

1 University of Nebraska employees, and such agent shall be entitled
2 to certification by the commission for the new bargaining unit
3 without the necessity of a representation election. Any adjustments
4 to the unit or the representation thereof shall be determined
5 pursuant to the Industrial Relations Act.

6 ~~(5)~~ (4) Other constitutional offices shall continue
7 to subscribe to the procedures for unit determination in the
8 Industrial Relations Act, except that the commission is further
9 directed to determine the bargaining units in such manner as to (a)
10 reduce the effect of overfragmentation of bargaining units on the
11 efficiency of administration and operations of the constitutional
12 office and (b) be consistent with the administrative structure
13 of the constitutional office. Any unit entirely composed of
14 supervisory employees of a constitutional office shall be afforded
15 only meet-and-confer rights.

16 Sec. 24. Section 81-1375, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 81-1375 Certified collective-bargaining agents
19 representing bargaining units other than those prescribed in
20 section 81-1373 shall not utilize the impasse procedures provided
21 for in sections ~~81-1380~~ 81-1381 to 81-1385 nor file a petition
22 with the commission invoking its jurisdiction as provided in the
23 Industrial Relations Act, but may, for two years from April 9,
24 1987, continue to meet and confer with employer-representatives
25 regarding those employees in such units as long as no other
26 employee organization has been certified as the exclusive
27 collective-bargaining agent for such employees pursuant to section

1 ~~81-1374 and may represent individual employees on grievance~~
2 ~~matters. Parties engaged in the meet-and-confer process shall not~~
3 ~~be entitled to file any case with the commission to establish~~
4 ~~any rate of pay or condition of employment, except that if those~~
5 ~~parties which meet and confer during this two-year period do not~~
6 ~~reach an agreement by June 30 preceding the beginning of the fiscal~~
7 ~~year, the existing agreement or contract shall be continued until~~
8 ~~such time as an agreement or contract for the remainder of the~~
9 ~~fiscal year has been reached.~~

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

12 81-1378 (1) The dates indicated in sections 81-1379
13 to 81-1384 shall refer to those dates immediately preceding the
14 beginning of the contract period for which negotiations are being
15 conducted.

16 (2) When any date provided in sections 81-1379 to 81-1384
17 falls on a Saturday, a Sunday, or any day declared by statutory
18 enactment or proclamations of the Governor to be a holiday, the
19 next following day which is not a Saturday, a Sunday, or a day
20 declared by the enactment or proclamation to be a holiday shall be
21 deemed to be the day indicated by such date.

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

26 Sec. 26. Section 81-1379, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 81-1379 The Chief Negotiator and any other
2 employer-representative and the exclusive collective-bargaining
3 agent shall commence negotiations on or prior to the second
4 Wednesday in September of the year preceding the beginning of the
5 contract period, except that the first negotiations commenced by
6 any bargaining unit may commence after such September date in
7 order to accommodate any unresolved representation proceedings.
8 All negotiations shall be completed on or before March 15 of the
9 following year.

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

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

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

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

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

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

22 Nothing in the State Employees Collective Bargaining Act
23 shall be construed to prohibit supplementary bargaining on behalf
24 of employees in part of a bargaining unit concerning matters
25 uniquely affecting such employees or cooperation and coordination
26 of bargaining between two or more bargaining units. Supplementary
27 bargaining in regard to employees for whom the Governor is

1 the employer-representative shall be the responsibility of the
2 Chief Negotiator and may be assigned to his or her designated
3 representative.

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

7 Sec. 27. Section 81-1381, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 81-1381 If the parties in labor contract negotiations
10 do not reach a voluntary agreement by January 1, the dispute
11 shall be submitted to a mediator mutually selected by the parties
12 or appointed by the Federal Mediation and Conciliation Service.
13 Mediation may continue indefinitely at the request of either party
14 or when appropriate in the judgment of the mediator. ~~or Special~~
15 ~~Master.~~ If necessary, mediation may continue after the exchange of
16 final offers.

17 Sec. 28. Section 81-1382, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 81-1382 (1) No later than January 10, the parties in
20 labor contract negotiations shall reduce to writing and sign all
21 agreed-upon issues and exchange final offers on each unresolved
22 issue. Final offers may not be amended or modified without the
23 concurrence of the other party.

24 (2) No later than January 15, the parties in labor
25 contract negotiations shall submit all unresolved issues that
26 resulted in impasse to the ~~Special Master.~~ commission. No party
27 shall submit an issue to the commission that was not subject

1 to negotiations. ~~The Special Master~~ commission shall conduct a
2 prehearing conference. ~~He or she~~ and shall have the authority to:

3 (a) Determine whether the issues are ready for
4 adjudication;

5 (b) Accept stipulations;

6 (c) Schedule hearings;

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

8 (e) Order additional mediation if necessary; and

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

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

13 ~~(3) The Special Master shall choose the most reasonable~~
14 ~~final offer on each issue in dispute. In making such choice, he~~
15 ~~or she shall consider factors relevant to collective bargaining~~
16 ~~between public employers and public employees, including comparable~~
17 ~~rates of pay and conditions of employment as described in section~~
18 ~~48-818. The Special Master shall not apply strict rules of~~
19 ~~evidence. Persons who are not attorneys may present cases to~~
20 ~~the Special Master. The Special Master shall issue his or her~~
21 ~~ruling on or before February 15.~~

22 Sec. 29. Section 81-1383, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 81-1383 ~~(1)~~ The Special Master's ruling shall be
25 binding, except that the Chief Negotiator or any other
26 employer-representative or the certified collective-bargaining
27 agent may appeal an adverse ruling on an issue to the commission

1 on or before March 15. No party shall file an appeal after March
2 15. No party shall present an issue to the commission that was
3 not subject to negotiations and ruled upon by the Special Master.
4 There shall be no change in the unresolved issues while the appeal
5 is pending.

6 (2) The commission shall show significant deference to
7 the Special Master's ruling and shall only set the ruling aside
8 upon a finding that the ruling is significantly disparate from
9 prevalent rates of pay or conditions of employment as determined by
10 the commission pursuant to section 48-818. The commission shall not
11 find the Special Master's ruling to be significantly disparate from
12 prevalent rates of pay or conditions of employment in any instance
13 when the prevalent rates of pay or conditions of employment, as
14 determined by the commission pursuant to section 48-818, fall
15 between the final offers of the parties.

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

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

3 (2) (a) The commission's order shall establish rates of
4 pay and conditions of employment which are comparable to the
5 prevalent wage rates paid and conditions of employment maintained
6 by peer employers for the same or similar work of workers
7 exhibiting like or similar skills under the same or similar
8 working conditions.

9 (b) In establishing wage rates, the commission shall
10 take into consideration the overall compensation received by the
11 employees at the time of the negotiations, having regard to:

12 (i) Wages for time actually worked;

13 (ii) Wages for time not worked, including vacations,
14 holidays, and other excused time, and all benefits received,
15 including insurance and pensions; and

16 (iii) The continuity and stability of employment enjoyed
17 by the employees.

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

21 (i) Geographic proximity of the employer;

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

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

27 (d) To determine comparability for employees of the Board

1 of Regents of the University of Nebraska or employees of the Board
2 of Trustees of the Nebraska State Colleges, the commission shall
3 utilize peer institutions with similar enrollments and similar
4 educational missions which may exclude land grant institutions or
5 institutions that have a medical center or hospital. Additionally,
6 the commission shall refer to peer institutions with similar
7 program offerings including the level of degrees offered.

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

13 (3) The rules of evidence shall not be followed. The
14 commission shall receive evidence relating to array selection,
15 job match, and wages and benefits which have been assembled by
16 telephone, electronic transmission, or mail delivery and any such
17 evidence shall be accompanied by an affidavit of authenticity from
18 the employer or any other person with personal knowledge providing
19 such evidence. The commission, with the consent of the parties to
20 the dispute, and in the presence of the parties to the dispute, may
21 contact an individual employed by an employer under consideration
22 as an array member by telephone to inquire as to the nature
23 or value of a working condition, wage, or benefit provided by
24 that particular employer as long as the individual in question
25 has personal knowledge about the information being sought. The
26 commission may rely upon information gained in such inquiry for
27 its decision. Opinion testimony shall be received by the commission

1 based upon evidence provided in accordance with this subdivision.
2 Testimony concerning job match shall be received if job match
3 inquiries were conducted by telephone, electronic transmission, or
4 mail delivery if the witness providing such testimony verifies the
5 method of such job match inquiry and analysis.

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

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

12 ~~(4)~~ (5) The commission, the Court of Appeals, or the
13 Supreme Court shall not enter an order for any period which is not
14 the same as or included within the budget period for which the
15 contract is being negotiated.

16 ~~(5)~~ (6) All items agreed upon during the course of
17 negotiations and not subject to appeal submitted as an unresolved
18 issue to the commission shall, when ratified by the parties,
19 take effect concurrent with the biennial budget period and shall
20 constitute the parties' contract. Upon final resolution of appeals
21 of all unresolved items, issues, the parties shall reduce the
22 orders of the commission, the Court of Appeals, or the Supreme
23 Court to writing and incorporate them into the contract without
24 ratification.

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

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

4 Sec. 30. Section 81-1384, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 81-1384 ~~(1)~~ On March 16, the Chief Negotiator, any
7 appointed negotiator for the Board of Regents, any appointed
8 negotiator for the Board of Trustees of the Nebraska State
9 Colleges, and any appointed negotiator for other constitutional
10 offices shall report to the Legislature and the Governor on the
11 status of negotiations. The Governor may amend his or her budget
12 recommendations accordingly.

13 ~~(2) If the Chief Negotiator advises the Legislature that~~
14 ~~the state has appealed a Special Master's ruling, the Legislature~~
15 ~~may by a resolution approved by a three-fifths vote of its~~
16 ~~members by the conclusion of its regular session direct the Chief~~
17 ~~Negotiator to withdraw the pending appeal and accept the terms of~~
18 ~~the Special Master's ruling. This subsection shall not apply to any~~
19 ~~negotiators appointed by the Board of Regents, Board of Trustees of~~
20 ~~the Nebraska State Colleges, or other constitutional offices.~~

21 Sec. 31. Section 81-1385, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 81-1385 ~~(1)~~ If the exclusive collective-bargaining agent
24 appeals an adverse ruling from the Special Master on any or all
25 issues, there shall be no change in the term or condition of
26 employment in effect in that issue or issues during the pendency
27 of the appeal. Orders adjusting the term or condition of employment

1 in an issue or issues shall be effective beginning with final
2 resolution of the appeal or January 1 of the first fiscal year of
3 the contract period, whichever is earlier.

4 (2) If the employer appeals an adverse ruling from the
5 Special Master on any or all issues, there shall be no change in
6 the term or condition of employment in effect in that issue or
7 issues during the pendency of the appeal. Upon final resolution,
8 the commission, Court of Appeals, or Supreme Court shall order
9 increases or other changes in a term or condition of employment to
10 be concurrent with the biennial budget. Interest shall be paid by
11 the state on all withheld wages or insurance premium payments.

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

24 Sec. 32. Section 81-1386, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 81-1386 (1) It shall be a prohibited practice for
27 any employer, employee, employee organization, or exclusive

1 collective-bargaining agent to refuse to negotiate in good faith
2 with respect to mandatory topics of bargaining.

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

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

8 (b) Dominate or interfere in the administration of any
9 employee organization;

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

13 (d) Discharge or discriminate against a state employee
14 because the employee has filed an affidavit, petition, or complaint
15 or given any information or testimony under the Industrial
16 Relations Act or the State Employees Collective Bargaining Act
17 or because the employee has formed, joined, or chosen to be
18 represented by any employee organization;

19 (e) Refuse to negotiate collectively with representatives
20 of exclusive collective-bargaining agents as required in the
21 Industrial Relations Act and the State Employees Collective
22 Bargaining Act;

23 (f) Deny the rights accompanying certification or
24 exclusive recognition granted in the Industrial Relations Act or
25 the State Employees Collective Bargaining Act; and

26 (g) Refuse to participate in good faith in any impasse
27 procedures for state employees as set forth in sections ~~81-1380~~

1 81-1381 to 81-1385.

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

5 (a) Interfere with, restrain, coerce, or harass any
6 state employee with respect to any of the employee's rights under
7 the Industrial Relations Act or the State Employees Collective
8 Bargaining Act;

9 (b) Interfere, restrain, or coerce an employer with
10 respect to rights granted in the Industrial Relations Act or
11 the State Employees Collective Bargaining Act or with respect
12 to selecting a representative for the purposes of negotiating
13 collectively on the adjustment of grievances;

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

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

20 (4) The expressing of any views, argument, or opinion,
21 or the dissemination thereof, whether in written, printed, graphic,
22 or visual form, shall not constitute or be evidence of any unfair
23 labor practice under any of the provisions of the Industrial
24 Relations Act or the State Employees Collective Bargaining Act if
25 such expression contains no threat of reprisal or force or promise
26 of benefit.

27 Sec. 33. Section 81-1387, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 81-1387 (1) Proceedings against a party alleging a
3 violation of section 81-1386 shall be commenced by filing a
4 complaint with the commission within one hundred eighty days of
5 the alleged violation thereby causing a copy of the complaint to
6 be served upon the accused party. The accused party shall have ten
7 days within which to file a written answer to the complaint. If the
8 commission determines that the complaint has no basis in fact, the
9 commission may dismiss the complaint. If the complaint has a basis
10 in fact, the commission shall set a time for hearing. The parties
11 shall be permitted to be represented by counsel, summon witnesses,
12 and request the commission to subpoena witnesses on the requester's
13 behalf.

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

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

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

27 (a) If the commission acts without or in excess of its

1 powers;

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

4 (c) If the facts found by the commission do not support
5 the order; and

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

8 Sec. 34. Sections 10, 11, 12, 16, 17, 35, and 39 of
9 this act become operative on July 1, 2012. Section 34 of this act
10 becomes operative on its effective date. The remaining sections of
11 this act become operative on October 1, 2011.

12 Sec. 35. Original sections 79-824 and 79-828, Reissue
13 Revised Statutes of Nebraska, are repealed.

14 Sec. 36. Original sections 48-801, 48-801.01, 48-802,
15 48-809, 48-811, 48-813, 48-816, 48-817, 48-818, 48-824, 48-838,
16 79-852, 79-2116, 81-1369, 81-1371, 81-1372, 81-1373, 81-1375,
17 81-1378, 81-1379, 81-1381, 81-1382, 81-1383, 81-1384, 81-1385,
18 81-1386, and 81-1387, Reissue Revised Statutes of Nebraska, are
19 repealed.

20 Sec. 37. The following section is outright repealed:
21 Section 48-811.02, Reissue Revised Statutes of Nebraska.

22 Sec. 38. The following sections are outright repealed:
23 Sections 81-1374, 81-1380, 81-1389, and 81-1390, Reissue Revised
24 Statutes of Nebraska.