

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011
COMMITTEE STATEMENT
LB397

Hearing Date: Wednesday April 13, 2011
Committee On: Business and Labor
Introducer: Lathrop
One Liner: Redefine a term in the Industrial Relations Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Wallman, Lathrop, Harr, Cook, Carlson, Ashford
Nay: 1 Senator Smith
Absent:
Present Not Voting:

Proponents: Steve Lathrop Dalton Tietjen	Representing: Introducer NAPE/AFSEME Local 61, LCEA, IBEW 1536, Neb. Utility Workers, UNO AAUP
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Opponents:	Representing:
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Neutral: John Corrigan William Harding	Representing: NE AFL-CIO League of Nebraska Municipalities
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Summary of purpose and/or changes:

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LB 397 makes a technical change to the definition of employee for purposes of the Industrial Relations Act.

Explanation of amendments:

Am 1116 replaces LB 397 with provisions of LB 555, as amended, and other provisions as follows:

Section 1: (pages 1-5): Amends section 48-801, the definitional section of the Industrial Relations Act. Rewrites the section and adds definitions for certificated employee, enrolled actuary, metropolitan statistical area, municipality, noncertificated and non instructional employee, public employee and employer, and private employer.

Section 2: (page 5) Makes technical changes.

Section 3: (pages 5-6): Makes technical changes to comport with the amendment.

Section 4: (pages 6-7): Amends 48-809 concerning rules of evidence, by clarifying that the rules of evidence applies "[e]xcept as otherwise provided in the Industrial Relations Act..."

Section 5: (page 7): Makes technical changes to comport with the amendment.

Section 6: (pages 7-9): Makes technical changes to comport with the amendment.

Section 7: (pages 9-16): Amends section 48-816 by making technical changes, but also adds a subsection specifying that in labor negotiations for firefighters and law enforcement, staffing related to safety is a mandatory subject of bargaining. Other issues of staffing are permissive bargaining subjects.

Section 8: (page 16): Makes technical changes to comport with the amendment.

Section 9 (pages 16-27) : Amends section 48-818. The original language of section 48-818 remains the same and will apply to certificated employees of school districts, educational service units, and community colleges. A new subsection is created pertaining to municipal corporations, counties, public utilities, and non-certificated and non-instructional employees.

Job matches (page 18): Establishes a 70% job match, at least 3 job matches must be available for a particular position and if 3 are not available, the commission must consider the historic relationship of wages paid for a position which has 3 job matches.

Array criteria (page 18-19): Creates a preference for geographically proximate public and private and Nebraska public and private employers. The preferred array size is 7 to 13, unless all the array members are Nebraska employers and in such case it can be as few as 5. If more than 13 employers are available, the 13 that have the highest number of job matches at the highest job match percentage will be chosen. The array does not have to have a balanced number of public or private, Nebraska and out-state, or large and small employers. Only one private employer's branch facility may be used. Only one public employer in a MSA may be used.

Arrays for public utilities (pages 19-21): If the subject employer has a nuclear facility, the array must include at least 4 employers with nuclear facilities. If the subject employer generates, transmits and distributes power, the array must include employers that perform these functions. The commission must use 50 mile concentric circles until it reaches the optimum array. The population guidelines do not apply to statewide facilities. Likewise, the population guidelines do not apply to a facility serving a city of the primary class unless the comparator is an out-of-state utility.

Same or similar working conditions (pages 20-23): Public and private Nebraska employers are presumed to provide same or similar working conditions unless evidence shows the conditions to be dissimilar. Public employers that meet the no more than double no less than half size criteria are presumed to provide same or similar conditions unless evidence shows the conditions to be dissimilar. Public employers in a MSA must meet the size criteria and the MSA must also meet the size criteria. An employer in a MSA that does not meet the size criteria may be considered if the party wanting inclusion establishes that the conditions are sufficiently similar. Public employers, other than utilities, not in a MSA cannot be compared to employers in a MSA. For metropolitan and primary class cities, private employers with a total full-time equivalent employment that meets the size criteria as compared to the full-time equivalent of the subject employer, are presumed to provide same or similar conditions, unless evidences shows dissimilarity. For cities other than the metropolitan and primary class, the relevant population for the subject employer is the bargaining unit in question.

Prevalent (page 23): For numeric values prevalent is the midpoint between the mean and median. All array members are included even if they do not provide the wage or benefit. For non-numeric, prevalent is the mode that the majority members that provide the benefit. If there is no clear mode, the benefit will remain unchanged.

Economic variable (page 23): When out-of-state employers are included in the array, parties may present economic variable evidence and such evidence does not have to show a direct impact on wages. The commission shall determine, what, if any, adjustment to make.

Mootness: (pages 23-24): The commission is required to value every economic item even if the year in question has

expired. Wage and benefit levels will be leveled over the twelve month period in dispute.

Rules of Evidence (page 24): Rules of evidence are not followed in wage cases. Foundation for obtaining job match evidence is relaxed.

Hourly Rate Value (pages 24-26): Commission shall use hourly rate value to value defined benefit and contribution plans and health insurance plans. Each array member and subject employer must provide its most recent actuarial valuation reports and health insurance plans. Parties have 30 days to decide whether to have the pension valued at an hourly rate value. For defined benefit plans the HRV shall be presumed equal unless a party that has paid for an actuarial valuation, establishes that the annual normal cost is above or below the midpoint. The valuation is deemed valid, unless a party presents competent actuarial evidence showing that it is invalid. The commission shall adjust wage rates based upon the HRV. For defined contribution plans, the commission shall compare employer contributions. For health insurance, the commission shall compare premium payments. The commission cannot compare defined benefit to defined contribution plans.

Valuing other benefits (page 26): The commission shall use a prevalency determination as explained above.

How wage increases and decreases will be ordered (page 26-27): Orders are retroactive to the beginning of the year in dispute. Parties have 25 days to negotiate modifications to wages and benefits. If no agreement, the commission shall decide. The commission will provide the employer with an off-set when benefits were above prevalent or when benefits were below prevalent, but wages were above prevalent. Decreases are limited to new hires, voluntary transfers, or demoted employees. Otherwise, when decreases are ordered, the wages or benefits are frozen indefinitely. The commission can end the freeze if evidence subsequently shows that the wages and benefits are below comparability. However, the freeze shall continue for the same amount of time between the initial order and modification order. Parties may mutually agree to end the freeze.

Section 10 (pages 27-31): Pertains to school districts, educational service units, and community colleges and their certificated and instructional employees. Creates a negotiation time-line and mandatory mediation with a resolution officer, unless both parties decide to forgo the mediation. Negotiations must begin by November 1. If no agreement by February 8, the parties must submit to mandatory mediation, unless the parties agree to forgo. The resolution officer chooses the most reasonable final offer on each issue in dispute. If a party is not satisfied with the resolution officer's decision, the party may file an action with the CIR. Such action is not an appeal and is a new proceeding under section 48-818. If there is no such filing, the resolution officer's decision is final and binding. If by March 25, there is no agreement or decision by the resolution officer, a party may file a petition with the CIR by April 10. The CIR must issue a decision by September 15.

Section 11 (pages 31-32): Ability to pay. For school districts, educational service units, and community colleges and their certificated employees, an employer may request an additional hearing and allege an inability to pay the commission's order.

Section 12 (pages 32-33): Requires smaller school districts to negotiate financial incentives for retaining or recruiting employees in designated shortage areas. Requires school districts that have an academically underachieving school, to negotiate financial incentives for retaining or recruiting employees. The incentive payments are offered at the school district's discretion and school districts retain the ability to assign personnel to certain schools.

Section 13 (pages 33-35): Makes technical changes to comport with the amendment.

Section 14 (pages 35-38): Makes technical changes to comport with the amendment.

Section 15 (page 38): Sets effective date of October 1, 2011.

Section 16 (pages 38-39): Amends section 79-824 concerning the definition of probationary certificated employee by allowing a school board to grant permanent status before the end of the three-year probationary period.

Section 17 (pages 39-42): Amends section 79-828 by allowing a school board to grant permanent status before the end of the three-year probationary period if frequent evaluations show exemplary performance.

Section 18 (pages 42-43): Makes technical changes to comport with the amendment.

Section 19 (page 43): Makes technical changes to comport with the amendment.

Section 20 (page 43): Makes technical changes.

Section 21 (pages 44-45): Amends section 81-1371 of the State Employees Collective Bargaining Act, by removing reference to the special master.

Section 22 (pages 45): Makes technical changes.

Section 23 (pages 46-50): Removes outdated language.

Section 24 (pages 50-51): Makes technical changes and removes outdated language.

Section 25 (page 51): Specifies that the dates indicated in section 24 are jurisdictional and failure to comply with the dates shall result in a jurisdictional bar.

Section 26 (pages 51-53): Clarifies that appeals from the commission's order are directly to the Nebraska Supreme Court.

Section 27 (page 53): Removes reference to the special master.

Section 28 (pages 53-54): Amends section 81-1382 by removing reference of the special master and replacing with the commission. Clarifies that only those issues negotiated may be considered by the commission.

Section 29 (pages 54-59): Amends section 81-1383 relating to the appeal process. Removes language pertaining to the special master/commission appeal process and replaces with language establishing criteria for wage cases. Requires the commission to enter an order by March 1. The commission must consider overall compensation including: wages for time actually worked and not worked, benefits, and the continuity and stability of enjoyed employment. Criteria for comparability include: geographic proximity, size of the employer (no more than double or less than half unless evidence establishes that the conditions are dissimilar), and the employer's budget for operations and personnel. Orders may only be modified upon a showing of a new and material change in conditions. Rules of evidence are not to be followed. Appeals are to the Nebraska Supreme Court.

Section 30 (page 59): Removes reference to the special master.

Section 31 (59-60): Clarifies that once an issue is presented to the commission, no changes can be made to the terms or conditions of employment until the commission has ruled and any subsequent appeal is resolved.

Section 32 (pages 60-62): Makes technical changes.

Section 33: (pages 62-64): Removes reference to the Court of Appeals and replaces with the Nebraska Supreme Court.

Section 34: (page 64): The effective date for the sections pertaining to schools is July 1, 2012. October 1, 2011, is the effective date for the other changes.

Steve Lathrop, Chairperson