

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 619**

Introduced by Larson, 40.

Read first time January 19, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Industrial Relations Act; to amend  
2 sections 48-801, 48-811.02, 48-816, 79-852, and 79-2116,  
3 Reissue Revised Statutes of Nebraska, and section  
4 79-1028.01, Revised Statutes Cumulative Supplement, 2010;  
5 to remove school districts, learning communities, and  
6 educational service units from the provisions of the act;  
7 to harmonize provisions; to repeal the original sections;  
8 and to outright repeal section 79-1028, Reissue Revised  
9 Statutes of Nebraska.

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

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

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

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

8                   (2) Governmental service shall mean all services  
9 performed under employment by the State of Nebraska, any political or  
10 governmental subdivision thereof, any municipal corporation, or any  
11 public power district or public power and irrigation district, but  
12 not employment by a school district, learning community, or  
13 educational service unit;

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 or  
17 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 this  
20 state and over which the government of the United States has not  
21 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  
24 illuminating, whether natural or artificial, or water service, or any  
25 one or more thereof;

1           (4) Employer shall mean the State of Nebraska or any  
2 political or governmental subdivision of the State of Nebraska except  
3 the Nebraska National Guard, the ex-state militia, a school district,  
4 a learning community, or an educational service unit. Employer shall  
5 also mean any municipal corporation, any public power district or  
6 public power and irrigation district, or any public utility;

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

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

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

20           (8) Commission shall mean the Commission of Industrial  
21 Relations;

22           (9) Commissioner shall mean a member of the commission;  
23 and

24           (10) Supervisor shall mean any employee having authority,  
25 in the interest of the employer, to hire, transfer, suspend, lay off,

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

7           Sec. 2. Section 48-811.02, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           48-811.02 (1) This section shall apply only if the  
10 employer is a ~~school district, an educational service unit, or a~~  
11 community college, and this section shall not apply if the employer  
12 is the state or any other political subdivision of the state.

13           (2) After a petition has been filed under section 48-811,  
14 if the parties are eligible pursuant to subsection (1) of this  
15 section and both parties agree, they may request the appointment of a  
16 special master. The commission shall provide the parties with the  
17 names of five individuals qualified to serve as the special master.  
18 If the parties cannot agree on an individual, each party shall  
19 alternately strike names. The remaining individual shall serve as the  
20 special master. The special master shall have the authority to:

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

23           (b) Identify for resolution terms and conditions of  
24 employment that are in dispute and which were negotiated in good  
25 faith but upon which no agreement was reached;

1                   (c) Accept stipulations;  
2                   (d) Schedule hearings;  
3                   (e) Prescribe rules of conduct for the hearings;  
4                   (f) Order additional mediation if necessary; and  
5                   (g) Take any other action which may aid in resolution of  
6 the industrial dispute.

7                   (3) The special master may consult with a party ex parte  
8 only with the concurrence of all parties.

9                   (4) The special master shall choose the most reasonable  
10 final offer on each issue in dispute. In making such choice, he or  
11 she shall consider factors relevant to collective bargaining between  
12 public employers and public employees, including comparable rates of  
13 pay and conditions of employment as described in section 48-818. The  
14 special master shall not apply strict rules of evidence. Persons who  
15 are not attorneys may present cases to the special master.

16                   (5) Should either party to a special master proceeding be  
17 dissatisfied with the special master's decision, such party shall  
18 have the right to file an action with the commission seeking a  
19 determination of terms and conditions of employment pursuant to  
20 section 48-818. Such proceeding shall not constitute an appeal of the  
21 special master's decision, but rather shall be heard by the  
22 commission as an action brought pursuant to section 48-818. The  
23 commission shall resolve, pursuant to the mandates of such section,  
24 all of the issues identified by either party and which were  
25 recognized by the special master as an industrial dispute. Such

1 action shall be filed within thirty days after the filing with the  
2 commission of the decision of the special master or the decision of  
3 the special master shall be deemed final and binding.

4 (6) For purposes of this section, issue means broad  
5 subjects of negotiation which are presented to the special master  
6 pursuant to this section. All aspects of wages are a single issue,  
7 all aspects of insurance are a single issue, and all other subjects  
8 of negotiations classified in broad categories are single issues.

9 Sec. 3. Section 48-816, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

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

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

19 (2) Except as provided in the State Employees Collective  
20 Bargaining Act, public employers are hereby authorized to recognize  
21 employee organizations for the purpose of negotiating collectively in  
22 the determination of and administration of grievances arising under  
23 the terms and conditions of employment of their public employees as  
24 provided in the Industrial Relations Act and to negotiate and enter  
25 into written agreements with such employee organizations in

1 determining such terms and conditions of employment.

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

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

20 ~~(c) All administrators employed by a Class V school~~  
21 ~~district shall be presumed to have a community of interest and may~~  
22 ~~join a single bargaining unit composed otherwise of teachers and~~  
23 ~~other certificated employees for purposes of the Industrial Relations~~  
24 ~~Act, except that the following administrators shall be exempt: The~~  
25 ~~superintendent, associate superintendent, assistant superintendent,~~



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

22 (4) When an employee organization has been certified as  
23 an exclusive collective-bargaining agent or recognized pursuant to  
24 any other provisions of the Industrial Relations Act, the appropriate  
25 public employer shall be and is hereby authorized to negotiate

1 collectively with such employee organization in the settlement of  
2 grievances arising under the terms and conditions of employment of  
3 the public employees as provided in such act and to negotiate and  
4 enter into written agreements with such employee organizations in  
5 determining such terms and conditions of employment, including wages  
6 and hours.

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

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

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

17 (7)(a) Except for those cases arising under section  
18 48-818, the commission shall be required to make findings of facts in  
19 all cases in which one of the parties to the dispute requests  
20 findings. Such request shall be specific as to the issues on which  
21 the party wishes the commission to make findings of fact.

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

1           (c) If findings of fact are requested under subdivision  
2 (a) or (b) of this subsection, the commission may require the parties  
3 making the request to submit proposed findings of fact to the  
4 commission on the issues on which findings of facts are requested.

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

19           Sec. 4. Section 79-852, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           79-852 The collective-bargaining agreement of the school  
22 district or districts forming the unified system or reorganized  
23 school district with the largest number of teacher employees shall  
24 continue in full force and effect and govern all teachers in the  
25 unified system or reorganized school district until replaced by a

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

15           Sec. 5. Section 79-1028.01, Revised Statutes Cumulative  
16 Supplement, 2010, is amended to read:

17           79-1028.01 (1) For each school fiscal year, a school  
18 district may exceed its maximum general fund budget of expenditures  
19 minus the special education budget of expenditures by a specific  
20 dollar amount for:

21           (a) Expenditures for repairs to infrastructure damaged by  
22 a natural disaster which is declared a disaster emergency pursuant to  
23 the Emergency Management Act;

24           (b) Expenditures for judgments, ~~except judgments or~~  
25 ~~orders from the Commission of Industrial Relations,~~ obtained against

1 a school district which require or obligate a school district to pay  
2 such judgment, to the extent such judgment is not paid by liability  
3 insurance coverage of a school district;

4 (c) Expenditures pursuant to the Retirement Incentive  
5 Plan authorized in section 79-855 or the Staff Development Assistance  
6 authorized in section 79-856;

7 (d) Expenditures of incentive payments or base fiscal  
8 year incentive payments to be received in such school fiscal year  
9 pursuant to section 79-1011;

10 (e) Expenditures of amounts received from educational  
11 entities as defined in section 79-1201.01 for providing distance  
12 education courses through the Educational Service Unit Coordinating  
13 Council to such educational entities;

14 (f) Either (i) the first and second school fiscal years  
15 the district will be participating in Network Nebraska for the full  
16 school fiscal year or (ii) school fiscal year 2008-09, if the school  
17 district participated in Network Nebraska for all of school fiscal  
18 year 2007-08, for the difference of the estimated expenditures for  
19 such school fiscal year for telecommunications services, access to  
20 data transmission networks that transmit data to and from the school  
21 district, and the transmission of data on such networks as such  
22 expenditures are defined by the department for purposes of the  
23 distance education and telecommunications allowance minus the dollar  
24 amount of such expenditures for the second school fiscal year  
25 preceding the first full school fiscal year the district participates

1 in Network Nebraska;

2 (g) Expenditures to pay another school district for the  
3 transfer of land from such other school district;

4 (h) Expenditures in school fiscal years 2009-10 through  
5 2013-14 to pay for employer contributions pursuant to subsection (2)  
6 of section 79-958 to the School Retirement System of the State of  
7 Nebraska to the extent that such expenditures exceed the employer  
8 contributions under such subsection that would have been made at a  
9 contribution rate of seven and thirty-five hundredths percent;

10 (i) Expenditures in school fiscal years 2009-10 through  
11 2013-14 to pay for school district contributions pursuant to  
12 subdivision (1)(c)(i) of section 79-9,113 to the Class V School  
13 Employees Retirement System to the extent that such expenditures  
14 exceed the school district contributions under such subdivision that  
15 would have been made at a contribution rate of seven and thirty-seven  
16 hundredths percent;

17 (j) Expenditures for sums agreed to be paid by a school  
18 district to certificated employees in exchange for a voluntary  
19 termination occurring prior to July 1, 2009;

20 (k) Expenditures for new elementary attendance sites in  
21 the first year of operation or the first year of operation after  
22 being closed for at least one school year if such elementary  
23 attendance site will most likely qualify for the elementary site  
24 allowance in the immediately following school fiscal year as  
25 determined by the state board; and

1                   (1) Any expenditures in school fiscal years 2016-17 and  
2 2017-18 of amounts specified in the notice provided by the  
3 Commissioner of Education pursuant to section 79-309.01 for teacher  
4 performance pay.

5                   (2) The state board shall approve, deny, or modify the  
6 amount allowed for any exception to the maximum general fund budget  
7 of expenditures minus the special education budget of expenditures  
8 pursuant to this section.

9                   Sec. 6. Section 79-2116, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

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

23                   Sec. 7. Original sections 48-801, 48-811.02, 48-816,  
24 79-852, and 79-2116, Reissue Revised Statutes of Nebraska, and  
25 section 79-1028.01, Revised Statutes Cumulative Supplement, 2010, are



1 repealed.

2                   Sec. 8. The following section is outright repealed:

3 Section 79-1028, Reissue Revised Statutes of Nebraska.