One Hundred Second Legislature - First Session - 2011

Introducer's Statement of Intent

LB482

Chairperson: Senator Steve Lathrop

Committee: Business and Labor

Date of Hearing: February 07, 2011

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

1. **Job Match and Nebraska Preference** – The Nebraska Commission of Industrial Relations (CIR) needs legislative direction. The current CIR statutes do not contain enough definitions to clearly guide the CIR. In addition, the section on impasse resolution (48-818) does not establish any guidelines for the CIR and does not even define the term "prevalent." Presiding Judge Baylor of the CIR noted this problem in ***Hastings Education Association v. School District of Hastings***, 1 CIR No. 42 (1972), when he pointed out that the Legislature had not defined "prevalent" and said: "The standard now is one of general practice, occurrence, or acceptance, but the question of how general is general is left to the good judgment or feeling of the judges." ***Id.*** at 42-10. Since that time, the CIR has been inconsistent in applying its guidelines as the "good judgment or feeling" of the judges on the CIR changes. When confronted with such inconsistency, the Nebraska Supreme Court has noted that the CIR guidelines are not statutory requirements and that guidelines are "nothing more than a framework." ***IAFF Local 644 v. City of Lincoln***, 253 Neb. 837, 843 (1998). For these reasons, LB 482 is proposed to provide guidance to the CIR in the following primary areas:

A. **Job Match** – The CIR needs to be reminded that the primary purpose of Section 48-818 is to compare work, not employers. If work exists in the state of Nebraska in either the public sector or the private sector which matches the Nebraska municipality before the CIR, LB 482 requires the CIR to use the Nebraska information. The confused state of the guidelines under Section 48-818 was described by CIR Presiding Judge Gradwohl in ***FOP Lodge No. 8 v. County of Douglas***, 4 CIR 185, when he stated: "Although at times the abbreviated form of the language used to express the rule may appear to compare "employers," the essence of the statutory test established by Section 48-818 is one of work comparability." ***Id.*** at 191. The CIR was instructed by the Nebraska Supreme Court to follow this approach when the court reversed the CIR for failing to consider local private sector job matches and stated: "Whenever there is another employer in the same market hiring employees to perform same or similar skills, the salaries paid to those employees must be considered by the CIR unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar." ***See AFSCME Local 2088 v. County of Douglas***, 208 Neb. 511, 520 (1981). The CIR has not followed the direction of the Nebraska Supreme Court and has instead placed the burden of providing evidence about "similar working conditions" on the party wishing to use the local private sector comparisons. ***See AFSCME Local 1109 v. City of Grand Island***, 12 CIR 312, 319-20 (1996). This is exactly the opposite of the instruction given by the Nebraska Supreme Court and it is against the wishes of the Nebraska citizens. The CIR needs to be reminded and directed to utilize local job matches from both the public and the private sector in Nebraska when issuing decisions under Section 48-818.

B. **Nebraska Preference** – The Nebraska Supreme Court has expressed a strong preference for utilizing Nebraska job matches in constructing an array for comparison purposes under Section 48-818. ***See Lincoln County Sheriff's Association Local 546 v. County of Lincoln***, 216 Neb. 274, 278-79 (1984). Since LB 482 instructs the CIR to utilize both public sector and private sector job matches in the state of Nebraska, there will be less need for using out of state job matches. However, LB 482 places a higher burden of proof on the party wishing to utilize an out of state job match by requiring more evidence that the working conditions are the same or similar as the working conditions in Nebraska. All Nebraska public and private sector employers are presumed to have same or similar working conditions, but evidence of dissimilarity is admissible. If job matches from outside the state are used, an adjustment must be made for economic variables based upon median family income. Both municipal population and MSA population are used as filters when comparing to other municipalities.

2. **Cost** – One of the major problems for municipalities is the cost of litigating a matter in the CIR. LB 482 aims to reduce such costs significantly by instructing the CIR to operate more as an administrative fact finding agency than a court. For example, the Nebraska Rules of Evidence are not to be followed and witnesses may gather evidence on job match, array characteristics and wages and benefits by telephone, e-mail or regular mail, thereby greatly reducing the cost for expert witnesses. As a result of the ruling in ***Plattsmouth Police Department Collective Bargaining Committee v. City of Plattsmouth***, 205 Neb. 567, 570-71 (1980) that expert witnesses in comparability cases must follow the rules of evidence in establishing the "source and reliability" of comparability survey information, municipalities and municipal unions are now required to pay the cost of having an expert witness visit all survey locations. LB 482 is intended to reverse the ***Plattsmouth*** decision and change the statute so that the rules of evidence are not applicable and to allow expert witnesses to obtain survey information by telephone, e-mail and regular mail as long as an affidavit of authenticity is provided. In addition to saving money for municipal corporations and municipal unions, this change is more in keeping with the fact that the CIR is an administrative agency and not a court.

3. **Insurance and Retirement** – Two of the biggest cost items for municipalities are health insurance and retirement. The CIR has not done a good job of analyzing such benefits. The Nebraska Supreme Court instructed the CIR "to offset possible and favorable comparisons . . . with other comparisons which are favorable when reaching its decision establishing wage rates." ***Crete Education Association v. School District of Crete***, 193 Neb. 245, 258 (1975). However, the CIR routinely does not provide municipalities with any offset in health insurance or retirement area and merely compares plans based upon premiums paid. LB 482 would make a major change in this area in two ways. First, health insurance benefits and retirement benefits would be considered permissive subjects of bargaining and not subject to any ruling by the CIR in cases under 48-818 unless both parties agreed to have the CIR do so. Second, if the CIR was allowed to issue a ruling on retirement benefits, LB 482 instructs the CIR to not compare defined benefit plans with defined contribution plans.

4. **Bargaining** – In an effort to encourage the resolution of disputes at the bargaining table, LB 482 also requires each party to submit its economic or comparability analysis to the other party at the time it presents its economic proposal.

LB 482 is intended to instruct the CIR very clearly that Nebraska public and private sector job matches are to be utilized. Prior to LB 15 in 1969, all CIR comparisons were made with in-state job matches. After LB 15 was enacted, the CIR strayed from the initial directive to compare Nebraska job matches and repeatedly refused to follow instructions from the Nebraska Supreme Court. LB 482 provides clear direction to the CIR to use Nebraska job matches and to only use out of state job matches if high standards are met. Standards which were only contained in CIR guidelines in the past are now incorporated into the CIR statutes to provide predictability and consistency as the CIR issues rulings under Section 48-818.

Principal Introducer: _____

Senator Dennis Utter