

## LEGISLATIVE BILL 819

Approved by the Governor April 13, 1974

Introduced by F. Lewis, 45

AN ACT to amend sections 48-807, 48-808, 48-814, 48-815, and 84-901, Reissue Revised Statutes of Nebraska, 1943, and sections 48-804, 48-813, and 48-838, Revised Statutes Supplement, 1972, relating to the Court of Industrial Relations; to permit a change in office location; to provide for a court clerk; to provide procedures and exemption from Chapter 84, article 9; to remove the power to issue summons; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 48-804, Revised Statutes Supplement, 1972, be amended to read as follows:

48-804. (1) The Court of Industrial Relations shall be composed of five judges who shall be appointed by the Governor, with the advice and consent of the legislature. Such judges shall be representative of the public. Of the three judges first appointed, one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, the terms to begin simultaneously upon qualification of the persons to be appointed within thirty days after May 31, 1947. Upon the expiration of the term of the three judges first appointed, each succeeding judge shall be appointed and hold office for a term of six years and until his successor shall have qualified. Two judges shall be appointed for six-year terms within thirty days after December 25, 1969, with their successors to be appointed for a term of six years and until their successors have been appointed and qualified. In case of a vacancy in the office of judge of the Court of Industrial Relations, the Governor shall appoint his successor to fill the vacancy for the unexpired term.

(2) The judges shall on July 1 of every odd-numbered year by a majority vote select one of their number as presiding judge for the next two years, who shall preside at all hearings by the Court of Industrial Relations en banc, and shall assign the work of the court to the several judges and perform such other supervisory duties as the needs of the court may require. A majority of the judges of the court shall constitute a quorum to transact business. The act or decision of any three of

the judges thereof shall in all cases be deemed the act or decision of the court.

(3) The Court of Industrial Relations shall not be subject to the provisions of Chapter 84, article 9.

Sec. 2. That section 48-807, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-807. The Court of Industrial Relations shall may have its office at the capitol in the city of Lincoln or such other location as the court may, with the approval of the Governor, determine. It shall keep a record of all of its proceedings, which shall be a public record and subject to inspection the same as other public records of this state.

Sec. 3. The presiding judge of the Court of Industrial Relations shall, with the advice and consent of the Governor, appoint a clerk of such court who shall hold office at the pleasure of the court. The judge shall in like manner appoint such other assistants and employees as he may deem necessary. The clerk shall, under the direction of the presiding judge, keep a full and true record of the proceedings of the court, record all pleadings and other papers filed with the court, and no other action shall be taken thereon until the same has been recorded. The clerk shall in like manner issue all necessary notices and writs, superintend the business of the court, and perform such other duties as the court may direct. All other assistants and employees of the court shall perform such duties, pertaining to the affairs thereof, as the court may direct. The clerk of the court shall administratively determine, prior to a hearing on the question of representation, the validity of the employee authorizations for representation by an employee labor organization.

Sec. 4. The clerk and all other assistants and employees of the court shall receive such salaries as the court may with the approval of the Governor determine, but not to exceed the amount of the appropriation made for such purpose. Such salaries shall be payable in the same manner as the salaries of other state employees. The clerk and other assistants and employees of the court shall be entitled, while traveling on the business of the court, to be reimbursed by the state for necessary traveling expenses.

Sec. 5. The clerk of the Court of Industrial Relations shall, before entering upon or discharging any of the duties of his office, give bond with security to

be approved by the Governor in an amount not less than five thousand dollars conditioned for the faithful performance of his duties, which bond shall be filed in the office of the Secretary of State. Such clerk shall, before entering upon the duties of his office, take and subscribe the statutory oath of office.

Sec. 6. That section 48-808, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~48-808. The Clerk of the Supreme Court shall be ex-officio clerk of the Court of Industrial Relations. He shall receive and file all pleadings, issue all process, certify to all transcripts, and perform such other duties as the Court of Industrial Relations may require.~~ The court may also appoint a reporter to take in shorthand and transcribe in duplicate all testimony given in hearings and trials before the court, and file one copy of the testimony among the permanent records of the court, and certify and transmit the other copy to the Supreme Court in case the matter shall be appealed to the Supreme Court under the provisions of section 48-812.

Sec. 7. That section 48-813, Revised Statutes Supplement, 1972, be amended to read as follows:

~~48-813. Whenever the jurisdiction of the Court of Industrial Relations is invoked, notice of the pendency of the proceedings shall be given either by summons issued and served as summonses are issued and served in the district courts, or, in the discretion of the court, by publication in a legal newspaper of general circulation in the State of Nebraska two consecutive weeks. Such notice shall fix the time and place for hearing and in general terms set forth the matters to be heard and determined. Whenever such jurisdiction is invoked naming the State of Nebraska or any of its departments as a party defendant, summons shall issue upon the filing of such petition directed to the sheriff of Lancaster County, Nebraska, who shall serve the summons upon the state by serving the same upon the Governor and Attorney General, and in any action, the subject matter of which in whole or in part relates to or grew out of the conduct of any special department or institution of the state, summons shall also issue to the sheriff of the county in which the principal office of such special department or institution is situated, and the sheriff of such county shall also serve the chief officer of such department or institution. Such notice may be waived by voluntary appearance. The court may in its discretion use such additional means of publication as the court may deem advisable. in such manner as the~~

court shall provide for serving a copy of the petition and notice of filing upon the adverse party. An employer or labor organization may be served by sending a copy of the petition filed to institute the proceedings and a notice of filing, which shall show the filing date, by any form of mail requiring a signed receipt, addressed to a principal officer at the usual place of activity of the employer or labor organization. Such employer or labor organization shall have twenty days after receipt of the petition and notice of filing in which to serve and file its response. When a petition is filed to resolve an industrial dispute, a hearing shall be held within sixty days from the date of filing thereof, and an order made and entered thereon within thirty days after such hearing. The method of process provided in this section shall apply to suits naming the State of Nebraska or any of its departments as a party defendant. Any party, including the State of Nebraska or any of its departments or any political subdivision of the State of Nebraska, may waive such notice and may enter a voluntary appearance in any matter in the Court of Industrial Relations. Whenever the State of Nebraska or any of its departments is named as a party defendant, notice shall be mailed to the Governor and Attorney General and, in any action the subject matter of which in whole or in part relates to or grew out of the conduct of any special department or institution of the state, to the chief officer of such department or institution. The giving of such notice in such manner shall subject the employers, the labor organizations, and the persons therein to the jurisdiction of the Court of Industrial Relations.

Sec. 8. That section 48-814, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-814. The Court of Industrial Relations may employ such expert accountants, engineers, stencographers, attorneys, and other employees as the court finds necessary. Officers and employees of the court, whose salaries are not fixed by law, shall be paid such compensation as may be fixed by the court with the approval of the Governor. ~~7--except--after--january--17--1957--the--Clerk--of--the--Supreme--Court--shall--receive--no--compensation--as--an--employee--or--officer--of--the--court--in--addition--to--his--salary--as--Clerk--of--the--Supreme--Court.~~

Sec. 9. That section 48-815, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-815. The court shall provide itself with a proper seal and shall have the power and authority to

issue summonses--and subpoenas and to compel the attendance of witnesses and parties and to compel the production of relevant books, correspondence, files, records, and accounts of any person, corporation, association, or labor organization affected, and to make any and all investigations necessary to ascertain the truth in regard to the matters before the court. Subpoenas for the production of books, correspondence, files, records and accounts shall be issued by the said court only after notice to the owner and person in possession thereof and opportunity to be heard as to the relevancy of such subpoena.

Sec. 10. That section 48-838, Revised Statutes Supplement, 1972, be amended to read as follows:

48-838. (1) The court shall determine questions of representation for purposes of collective bargaining for and on behalf of employees, and shall make rules and regulations for the conduct of elections to determine the exclusive collective bargaining agent for employees; Provided, that in no event shall a contract between an employer and an exclusive collective bargaining agent act as a bar for more than three years to any other party seeking to represent employees, nor shall any contract bar for more than three years a petition by employees seeking an election to revoke the authority of an agent to represent them. The court shall certify the exclusive collective bargaining agent for employees affected by sections 48-801 to 48-823 following an election by secret ballot, which election shall be conducted according to rules and regulations established by the court.

(2) The election shall be conducted by one member of the court who shall be designated to act in such capacity by the presiding judge of the court, or the court may appoint the clerk of the district court of the county in which the principal office of the employer is located to conduct the election in accordance with the rules and regulations established by the court. The court shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination the court shall consider established bargaining units and established policies of the employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of employees of less than departmental size shall not be appropriate.

(3) The court shall not order an election until it has determined that at least thirty per cent of the

employees in an appropriate unit have requested in writing that the court hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) The court shall only certify an exclusive collective bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment; Provided, that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he is a member of a labor organization, from bringing matters to the attention of his superior or other appropriate officials, and any employee may choose his own representative in any grievance or legal action, and such right of representation shall not preclude any employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective bargaining agreement which may be in effect.

Sec. 11. That section 84-901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-901. As used in sections 84-901 to 84-916:

(1) Agency means each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules, except the Adjutant General's office as provided in Chapter 55, the courts, including the Nebraska Workmen's Compensation Court, the Court of Industrial Relations, and the Legislature;

(2) Rule means any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure but not including regulations concerning the internal management of the agency not

affecting private rights, private interests, or procedures available to the public, and not including permits, certificates of public convenience and necessity, franchises, rate orders, and rate tariffs, and any rules of interpretation thereof, and for the purpose of this act every rule which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests; and

(3) Contested case means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.

Sec. 12. That original sections 48-807, 48-808, 48-814, 48-815, and 84-901, Reissue Revised Statutes of Nebraska, 1943, and sections 48-804, 48-813, and 48-838, Revised Statutes Supplement, 1972, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.