

LEGISLATIVE BILL 661

Approved by the Governor April 8, 1987

Introduced by Barrett, 39; Warner, 25; Hall, 7;
McFarland, 28; Wesely, 26; Labeledz, 5;
Hannibal, 4; Scofield, 49; Hefner, 19;
Landis, 46; Marsh, 29; L. Johnson, 15

AN ACT relating to state employees; to amend sections 48-810, 48-811, 48-813, 48-817, 48-818, 81-1307, 81-1331, 81-1333, and 81-1334, Reissue Revised Statutes of Nebraska, 1943, and sections 48-816, 48-837, 48-838, and 48-842, Revised Statutes Supplement, 1986; to adopt the State Employees Collective Bargaining Act; to change and provide duties for the Director of Personnel and the Legislature; to eliminate certain provisions relating to salary surveys, classifications, and a longevity salary increase; to harmonize provisions; to provide severability; to repeal the original sections, and also sections 81-1335 to 81-1341 and 81-1345, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. Sections 1 to 22 of this act shall be known and may be cited as the State Employees Collective Bargaining Act.

Sec. 2. The Legislature hereby finds and declares that it is the public policy of this state and the purpose of the State Employees Collective Bargaining Act to promote harmonious, peaceful, and cooperative relationships between state government and its employees and to protect the public by assuring effective and orderly operations of government. Such policy is best effectuated by (1) recognizing the right of state employees in bargaining units to organize for the purpose of collective bargaining and (2) requiring state employees represented by an exclusive collective-bargaining agent to negotiate with and enter into written agreements with the Chief Negotiator of the Division of Employee Relations or any other negotiator hired by an employer-representative on matters of wages, hours, and other terms and conditions of employment.

Sec. 3. For purposes of the State Employees

Collective Bargaining Act, unless the context otherwise requires:

(1) Chief Negotiator shall mean the Chief Negotiator of the Division of Employee Relations in the Department of Personnel;

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

(3) Division shall mean the Division of Employee Relations;

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

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

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

(7) Issue shall mean broad subjects of negotiation which are presented to the Special Master pursuant to section 14 of this act. All aspects of wages shall be a single issue, all aspects of insurance shall be a single issue, and all other subjects of negotiations classified in broad categories shall be single issues;

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

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

bargaining unit other than a supervisory unit; and
(10) Special Master shall mean a factfinder
chosen pursuant to section 12 of this act.

Sec. 4. The State Employees Collective Bargaining Act shall be deemed cumulative to the Industrial Relations Act except when otherwise specifically provided or when inconsistent with the Industrial Relations Act, in which case the State Employees Collective Bargaining Act shall prevail.

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

Sec. 5. (1) For the purpose of implementing the state employees' right to organize for the purpose of collective bargaining, there are hereby created twelve bargaining units for all state agencies except the University of Nebraska, the Nebraska state colleges, and other constitutional offices. The units shall consist of state employees whose job classifications are occupationally and functionally related and who share a community of interest. The bargaining units shall be:

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

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

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

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

(e) Administrative Professional, which unit is composed of professional employees with general business

responsibilities, including accountants, buyers, personnel specialists, data processing personnel, and similar classes;

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

(g) Law Enforcement, which unit is composed of employees holding powers of arrest, including Nebraska State Patrol officers, game wardens, fire marshal personnel, and similar classes;

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

(i) Examining, Inspection, and Licensing, which unit is composed of employees empowered to review certain public and business activities, including driver-licensing personnel, revenue agents, bank and insurance examiners, various public health and protection inspectors, and similar classes;

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

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

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

All employees who are excluded from bargaining units pursuant to the Industrial Relations Act and all employees of the Department of Personnel shall be excluded from any bargaining unit of state employees.

(2) Any employee organization, including one which represents other state employees, may be certified or recognized as provided in the Industrial Relations Act as the exclusive collective-bargaining agent for a supervisory unit, except that such unit shall not have full collective-bargaining rights but shall be afforded only meet-and-confer rights.

(3) It is the intent of the Legislature that professional and managerial employee classifications and office and service employee classifications be grouped in broad occupational units for the University of Nebraska and the Nebraska state colleges established on

a university-wide or college-system-wide basis, including all campuses within the system. Any unit entirely composed of supervisory employees of the University of Nebraska or the Nebraska state colleges shall be afforded only meet-and-confer rights. The bargaining units for academic, faculty, and teaching employees of the University of Nebraska and the Nebraska state colleges shall continue as they exist on the effective date of this act, and any adjustments thereto or new units therefor shall continue to be determined pursuant to the Industrial Relations Act.

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

Sec. 6. The transition of bargaining units and certified exclusive collective-bargaining agents existing prior to and on the effective date of this act to those units prescribed in section 5 of this act and certified exclusive collective-bargaining agents shall be implemented as follows:

(1)(a) When the employees in a bargaining unit or units existing prior to and on the effective date of this act and represented by a single certified exclusive collective-bargaining agent comprise at least seventy per cent of the employees to be included in a bargaining unit prescribed in section 5 of this act and there is no other collective-bargaining agent certified to represent any of the other employees who would be included in the new unit, the certified exclusive collective-bargaining agent for the existing unit or units shall be entitled to a certification by the commission for the new bargaining unit without the necessity of a representation election.

(b) When the employees in two or more bargaining units existing prior to and on the effective date of this act and represented by two or more certified exclusive collective-bargaining agents together comprise at least eighty per cent of the employees to be included in a bargaining unit prescribed in section 5 of this act, an election shall be held

between the certified exclusive collective-bargaining agents for the existing units to determine which should be certified by the commission as the exclusive collective-bargaining agent for the new bargaining unit. The competing collective-bargaining agents shall be the only choices on the ballot.

If either of the competing collective-bargaining agents disclaims an interest in certification for the new bargaining unit, the remaining collective-bargaining agent, if it represents a majority of the employees to be included in the new bargaining unit, shall be entitled to a certification by the commission for the new bargaining unit without the necessity of a representation election. The disclaimer shall be in writing submitted to the competing collective-bargaining agent and the Department of Personnel and filed with the commission.

(c) When, on the effective date of this act, less than seventy per cent of the employees to be included in a bargaining unit prescribed in section 5 of this act are represented by existing certified collective-bargaining agents, representation of employees in the new bargaining unit shall be determined pursuant to procedures prescribed in section 48-838 and any rules and regulations adopted and promulgated pursuant thereto by the commission, except that the commission shall recognize representation claims existing on the effective date of this act, when such claims are sufficient in number, as satisfying the requirements of subsection (3) of section 48-838 for requests in writing:

(2) Any employee organization which prior to and on the effective date of this act has been the exclusive collective-bargaining agent of any employees may disclaim any interest in representation of such employees. The disclaimer shall be in writing and submitted to the competing collective-bargaining agent and the Department of Personnel and filed with the commission. Any two or more organizations which prior to and on the effective date of this act were exclusive collective-bargaining agents for any employees may combine, merge, or affiliate for purposes of representation of employees in a bargaining unit prescribed by section 5 of this act;

(3) The appropriate employer-representative for the State of Nebraska shall, upon receipt of a copy of the appropriate final certification order from the commission, recognize any employee organization's claim to certification as the exclusive collective-bargaining

agent which is based upon this section:

(4) The job classifications which compose each bargaining unit and, only for purposes of determining transition to new bargaining units as provided in this section, the number of employees within each job classification shall be found in the Appendix of the report entitled Nebraska State Government and Collective Bargaining, which report is on file with the Clerk of the Legislature on the effective date of this act. No job classification included within any bargaining unit shall be removed or reassigned from a unit until (a) two years after the effective date of this act or (b) there is a certified exclusive collective-bargaining agent for the unit, whichever occurs first. After such period, adjustments in the job classifications which compose any bargaining unit prescribed in section 5 of this act shall comply with the Industrial Relations Act and any rule and regulation adopted and promulgated pursuant thereto; and

(5) Except as otherwise provided in this section, procedures for determination of a certified exclusive collective-bargaining agent for any bargaining unit prescribed in section 5 of this act shall comply with section 48-838 and any rules and regulations adopted and promulgated pursuant thereto by the commission.

Sec. 7. Certified collective-bargaining agents representing bargaining units other than those prescribed in section 5 of this act shall not utilize the impasse procedures provided for in sections 12 to 17 of this act nor file a petition with the commission invoking its jurisdiction as provided in the Industrial Relations Act but may, for two years from the effective date of this act, continue to meet and confer with employer-representatives regarding those employees in such units as long as no other employee organization has been certified as the exclusive collective-bargaining agent for such employees pursuant to section 6 of this act and may represent individual employees on grievance matters. Parties engaged in the meet-and-confer process shall not be entitled to file any case with the commission to establish any rate of pay or condition of employment, except that if those parties which meet and confer during this two-year period do not reach an agreement by June 30 preceding the beginning of the fiscal year, the existing agreement or contract shall be continued until such time as an agreement or contract for the remainder of the fiscal year has been reached.

Sec. 8. There is hereby created within the

Department of Personnel the Division of Employee Relations to be headed by the Chief Negotiator who shall be appointed by, serve at the pleasure of, and represent the Governor. The division shall be responsible for negotiating and administering all labor contracts entered into by the State of Nebraska, except that the division shall not be responsible for contracts entered into by constitutional offices, the Board of Trustees of the Nebraska State Colleges, and the Board of Regents of the University of Nebraska.

The Chief Negotiator may, at the discretion of the Governor, also be the Director of Personnel. The Chief Negotiator shall for agencies within the jurisdiction of the division:

(1) Negotiate or supervise the negotiations of labor contracts on a statewide basis;

(2) Be responsible for the administration of all collective-bargaining agreements, except that the Chief Negotiator may delegate such responsibility to designated representatives who may be employees of state agencies when the Chief Negotiator deems it appropriate;

(3) Be vested with authority on all mandatory topics of bargaining to negotiate the contracts. Contracts may adjust or change rates of pay and other terms and conditions of employment that are mandatory topics of bargaining pursuant to the Industrial Relations Act and the State Employees Collective Bargaining Act;

(4) Make recommendations to the Governor and Legislature regarding wages, hours, and conditions of employment for all unorganized employees;

(5) Consult with agency and department heads regarding possible terms of labor contracts and administration of agreements when appropriate; and

(6) Manage the day-to-day operations of the division.

The division and the Chief Negotiator may represent any of the constitutional offices in labor contract negotiations and administration of contracts if requested to do so by such offices by resolution of the governing officer or body submitted to the Chief Negotiator and affected collective-bargaining agent and filed with the commission.

The responsibilities for negotiating contracts with employees of the Nebraska state colleges and the University of Nebraska shall not be exercised by the division and the Chief Negotiator. The Board of Regents and the Board of Trustees of the Nebraska State Colleges shall be responsible for negotiating contracts with

exclusive collective-bargaining agents for their employees.

Sec. 9. (1) The Chief Negotiator or any other employer-representative and the exclusive collective-bargaining agent for employees under the Chief Negotiator's or employer-representative's jurisdiction shall bargain and negotiate labor contracts in good faith and reasonably in advance of the budget-making process.

(2) Retirement programs shall not be bargainable by or on behalf of any state employee.

(3) The obligation to negotiate in good faith shall not compel the Chief Negotiator or any other employer-representative or the exclusive collective-bargaining agent to agree to a proposal or make a concession.

(4) All contracts involving state employees and negotiated pursuant to the Industrial Relations Act or the State Employees Collective Bargaining Act shall cover a two-year period coinciding with the biennial state budget, except that the first contract entered into by a bargaining unit may cover only the second fiscal year of the biennium.

Sec. 10. (1) The dates indicated in sections 11 through 16 of this act shall refer to those dates immediately preceding the beginning of the contract period for which negotiations are being conducted.

(2) When any date provided in sections 11 through 16 of this act falls on a Saturday, a Sunday, or any day declared by statutory enactment or proclamations of the Governor to be a holiday, the next following day which is not a Saturday, a Sunday, or a day declared by the enactment or proclamation to be a holiday shall be deemed to be the day indicated by such date.

Sec. 11. The Chief Negotiator and any other employer-representative and the exclusive collective-bargaining agent shall commence negotiations on or prior to the second Wednesday in September of the year preceding the beginning of the contract period, except that the first negotiations commenced by any bargaining unit after the effective date of this act may commence after such September date in order to accommodate any unresolved representation proceedings. All negotiations shall be completed on or before March 15 of the following year.

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

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

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

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

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

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

Nothing in the State Employees Collective Bargaining Act shall be construed to prohibit supplementary bargaining on behalf of employees in part of a bargaining unit concerning matters uniquely affecting such employees or cooperation and coordination of bargaining between two or more bargaining units. Supplementary bargaining in regard to employees for whom the Governor is the employer-representative shall be the responsibility of the Chief Negotiator and may be assigned to his or her designated representative.

Any agreements entered into pursuant to this section may be adjusted after March 15 only to reflect any order issued by the commission or the Supreme Court.

Sec. 12. At the initiation of negotiations but no later than December 15, (1) all parties to labor contract negotiations with the University of Nebraska shall choose a single factfinder, (2) all parties to labor contract negotiations with the Nebraska state colleges shall choose a single factfinder, (3) all parties to labor contract negotiations with any other constitutional office shall choose a single factfinder for the negotiations involving such office, and (4) all parties to labor contract negotiations with the Chief Negotiator shall choose a single factfinder. Such fact-finders shall be known as Special Masters.

The commission shall maintain lists of qualified individuals to serve as Special Masters. Special Masters shall not be limited to residents of Nebraska. The commission shall develop procedures which would allow bargaining units and any employer-representative to choose its Special Master by striking names from a list provided by the commission, except that such procedures shall be used only in the absence of an alternative procedure proposed and mutually agreed upon by the parties. The costs of the Special Master shall be borne equally by the parties to the dispute submitted to the Special Master.

Sec. 13. If the parties in labor contract

negotiations do not reach a voluntary agreement by January 1, the dispute shall be submitted to a mediator mutually selected by the parties or appointed by the Federal Mediation and Conciliation Service. Mediation may continue indefinitely at the request of either party or when appropriate in the judgment of the mediator or Special Master. If necessary, mediation may continue after the exchange of final offers.

Sec. 14. (1) No later than January 10, the parties in labor contract negotiations shall reduce to writing and sign all agreed-upon issues and exchange final offers on each unresolved issue. Final offers may not be amended or modified without the concurrence of the other party.

(2) No later than January 15, the parties in labor contract negotiations shall submit all unresolved issues that resulted in impasse to the Special Master. The Special Master shall conduct a prehearing conference. He or she shall have the authority to:

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

(b) Accept stipulations;

(c) Schedule hearings;

(d) Prescribe rules of conduct for the hearings;

(e) Order additional mediation if necessary; and

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

The Special Master may consult with the parties ex parte only with the concurrence of both parties.

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

Sec. 15. (1) The Special Master's ruling shall be binding, except that the Chief Negotiator or any other employer-representative or the certified collective-bargaining agent may appeal an adverse ruling on an issue to the commission on or before March 15. No party shall file an appeal after March 15. No party

shall present an issue to the commission that was not subject to negotiations and ruled upon by the Special Master. There shall be no change in the unresolved issues while the appeal is pending.

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

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

(4) The commission or the Supreme Court shall not enter an order for any period which is not the same as or included within the budget period for which the contract is being negotiated.

(5) All items agreed upon during the course of negotiations and not subject to appeal shall, when ratified by the parties, take effect concurrent with the biennial budget period and shall constitute the parties' contract. Upon final resolution of appeals of all unresolved items, the parties shall reduce the commission's or Supreme Court's orders to writing and incorporate them into the contract without ratification.

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

(7) The commission shall adopt expedited procedures to assure timely completion of any appeal filed pursuant to the State Employees Collective

Bargaining Act.

Sec. 16. (1) On March 16, the Chief Negotiator, any appointed negotiator for the Board of Regents, any appointed negotiator for the Board of Trustees of the Nebraska State Colleges, and any appointed negotiator for other constitutional offices shall report to the Legislature and the Governor on the status of negotiations. The Governor may amend his or her budget recommendations accordingly.

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

Sec. 17. (1) If the exclusive collective-bargaining agent appeals an adverse ruling from the Special Master on any or all issues to the commission or the Supreme Court, there shall be no change in the term or condition of employment in effect in that issue or issues during the pendency of the appeal. Orders adjusting the term or condition of employment in an issue or issues shall be effective beginning with final resolution of the appeal or January 1 of the first fiscal year of the contract period, whichever is earlier.

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

Sec. 18. (1) It shall be a prohibited practice for any employer, employee, employee organization, or exclusive collective-bargaining agent to refuse to negotiate in good faith with respect to mandatory topics of bargaining.

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

(a) Interfere with, restrain, or coerce state employees in the exercise of rights granted by the State

Employees Collective Bargaining Act or the Industrial Relations Act;

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

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

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

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

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

(g) Refuse to participate in good faith in any impasse procedures for state employees as set forth in sections 12 to 17 of this act.

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

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

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

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

(d) Refuse to participate in good faith in any impasse procedures for state employees set forth in sections 12 to 17 of this act.

(4) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not

constitute or be evidence of any unfair labor practice under any of the provisions of the Industrial Relations Act or the State Employees Collective Bargaining Act if such expression contains no threat of reprisal or force or promise of benefit.

Sec. 19. (1) Proceedings against a party alleging a violation of section 18 of this act shall be commenced by filing a complaint with the commission within one hundred eighty days of the alleged violation thereby causing a copy of the complaint to be served upon the accused party. The accused party shall have ten days within which to file a written answer to the complaint. If the commission determines that the complaint has no basis in fact, the commission may dismiss the complaint. If the complaint has a basis in fact, the commission shall set a time for hearing. The parties shall be permitted to be represented by counsel, summon witnesses, and request the commission to subpoena witnesses on the requester's behalf.

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

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

(4) Any order or decision of the commission may be modified, reversed, or set aside by the Supreme Court on one or more of the following grounds and on no other:

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

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

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

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

Sec. 20. The commission shall adopt and promulgate rules and regulations necessary to carry out the State Employees Collective Bargaining Act.

Sec. 21. Pending (1) the inclusion of the employee in a bargaining unit prescribed in section 5 of this act and represented by an exclusive

collective-bargaining agent determined pursuant to section 6 of this act or (2) the elapse of two years from the effective date of this act, whichever comes first, there shall be no change in any term or condition of employment which is a mandatory topic of bargaining for any employee for whom the Governor is the employer-representative and who is represented by an exclusive collective-bargaining agent for a bargaining unit not prescribed by section 5 of this act unless such change is made pursuant to a meet-and-confer agreement as provided for in section 7 of this act or at the direction of the Legislature.

Sec. 22. Nothing in the State Employees Collective Bargaining Act shall be construed to affect any petition involving state employees filed with the commission prior to the effective date of Laws 1986, LB 1250.

Sec. 23. That section 48-810, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-810. All Except as provided in the State Employees Collective Bargaining Act, industrial disputes involving governmental service, service of a public utility, or other disputes as the Legislature may provide shall be settled by invoking the jurisdiction of the Commission of Industrial Relations, except that ; PROVIDED, such commission shall have no jurisdiction over any persons, organizations, or school districts subject to the provisions of the Nebraska Teachers' Professional Negotiations Act, sections 79-1287 to 79-1295, until all provisions of such act have been exhausted without resolution of the dispute involved.

Sec. 24. That section 48-811, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

Sec. 25. That section 48-813, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

48-813. (1) Whenever the jurisdiction of the Commission of Industrial Relations is invoked, notice of the pendency of the proceedings shall be given in such manner as the commission 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, in the manner provided for service of a summons in a civil action. 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.

(2) When a petition is filed to resolve an industrial dispute, a hearing shall mandatorily be held within sixty days from the date of filing thereof. A recommended decision and order in cases arising under section 48-818, an order in cases not arising under section 48-818, and findings if required, shall mandatorily be made and entered thereon within thirty days after such hearing. The time requirements specified in this section may be extended for good cause shown on the record or by agreement of the parties. Failure to meet such mandatory time requirements shall not deprive the commission of jurisdiction. However, if the commission fails to hold a hearing on the industrial dispute within sixty days of filing or has failed to make a recommended decision and order, and findings of fact if required, in cases arising under section 48-818, or an order, and findings of fact if required, in cases not arising under section 48-818, and findings, within thirty days after the hearing and good cause is not shown on the record or the parties to the dispute have not jointly stipulated to the enlargement of the time limit, then either party may file an action for mandamus in the district court for Lancaster County to require the commission to hold the hearing or to render its order and findings if required. For purposes of this section, the hearing on an industrial dispute shall not be deemed completed until the record is prepared and counsel briefs have been submitted, if such are required by the commission.

(3) Any party, including the State of Nebraska or any of its departments employer-representatives as defined in section 3 of this act or any political subdivision of the State of Nebraska, may waive such notice and may enter a voluntary appearance in any

matter in the Commission of Industrial Relations. The giving of such notice in such manner shall subject the employers, the labor organizations, and the persons therein to the jurisdiction of the Commission of Industrial Relations.

Sec. 26. That section 48-816, Revised Statutes Supplement, 1986, be amended to read as follows:

48-816. (1) After a petition has been filed under section 48-811, the clerk shall immediately notify the commission, which shall promptly take such preliminary proceedings as may be necessary to insure a prompt hearing and speedy adjudication of the industrial dispute. The commission shall have power and authority upon its own initiative or upon request of a party to the dispute to make such temporary findings and orders as may be necessary to preserve and protect the status of the parties, property, and public interest involved, pending final determination of the issues. In the event of an industrial dispute between an employer and an employee or a labor organization when such employer and employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to be begun or resumed, as the case may be, and may make any such order or orders as may be appropriate to govern the situation pending such bargaining. The commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any employer, including school districts covered by the Nebraska Teachers' Professional Negotiations Act after all provisions of such act have been exhausted without resolution of the dispute involved. The commission may require the parties to an industrial dispute to submit to mediation or factfinding and may appoint mediators or factfinders for this purpose. Such orders for bargaining, mediation, or factfinding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith shall mean the performance of the mutual obligation of the employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(2) ~~Public~~ Except as provided in the State

Employees Collective Bargaining Act. public employers are hereby authorized to recognize employee organizations for the purpose of negotiating collectively in the determination of, and administration of grievances arising under, the terms and conditions of employment of their public employees as provided in the Industrial Relations Act and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

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

(b) All firefighters and police officers employed in the fire department or police department of any municipal corporation in a position or classification subordinate to the chief of the department and his or her immediate assistant or assistants holding authority subordinate only to the chief shall be presumed to have a community of interest and may be included in a single negotiating unit represented by an employee organization for the purposes of the Industrial Relations Act. Public employers shall be required to recognize an employee's negotiating unit composed of firefighters and police officers holding positions or classifications subordinate to the chief of the fire department or police department and his or her immediate assistant or assistants holding authority subordinate only to the chief when such negotiating unit is designated or elected by employees in the unit.

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

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

(6) The commission shall have the authority (a) to make studies and analyses of and act as a clearinghouse of information relating to conditions of employment of public employees throughout the state, (b) to request from any government, and such governments are authorized to provide, such assistance, services, and data as will enable it properly to carry out its functions and powers, (c) to conduct studies of problems involved in representation and negotiation, including, but not limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies, (d) to make available to employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and employee organizations statistical data relating to wages, benefits, and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations, and (e) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators or members of factfinding boards.

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

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

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

(d) In cases arising under section 48-818, the commission shall issue a recommended decision and order, which decision and order shall become final within ten days of entry unless either party to the dispute files with the commission a request for a posttrial conference. If such a request is filed, the commission shall hold a posttrial conference within ten days of

receipt of such request and shall issue an order within ten days after holding of such posttrial conference which order shall become the final order in the case. The purpose of such posttrial conference shall be to allow the commission to hear from the parties on those portions of the recommended decision and order which is not based upon or which mischaracterizes evidence in the record and to allow the commission to correct any such errors after having heard the matter in a conference setting in which all parties are represented.

Sec. 27. That section 48-817, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-817. After the hearing and any investigation, the commission shall make all findings, findings of fact, recommended decisions and orders, and decisions and orders in writing, which findings, findings of fact, recommended decisions and orders, and decisions and orders shall be entered of record. The Except as provided in the State Employees Collective Bargaining Act, the final decision and order or orders shall be in effect from and after the date therein fixed by the commission, but no such order or orders shall be retroactive. In the making of any findings or orders in connection with any such industrial dispute, the commission shall give no consideration to any evidence or information which it may obtain through an investigation or otherwise receive, except matters of which the district court might take judicial notice, unless such evidence or information is presented and made a part of the record in a hearing and opportunity is given, after reasonable notice to all parties to the controversy of the initiation of any investigation and the specific contents of the evidence or information obtained or received, to rebut such evidence or information either by cross-examination or testimony.

Sec. 28. That section 48-818, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-818. The Except as provided in the State Employees Collective Bargaining Act, the findings and order or orders may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making such findings and order or orders, the Commission of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or

similar skills under the same or similar working conditions. In establishing wage rates the commission shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees. Any order or orders entered may be modified on the commission's own motion or on application by any of the parties affected, but only upon a showing of a change in the conditions from those prevailing at the time the original order was entered.

Sec. 29. That section 48-837, Revised Statutes Supplement, 1986, be amended to read as follows:

48-837. Public employees shall have the right to form, join, and participate in or to refrain from forming, joining, or participating in any employee organization of their own choosing. Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment and the administration of grievances arising thereunder. Any such agreements with the State of Nebraska or any agency thereof shall cover a biennial period coinciding with the biennial budgeting period of the state and shall be subject to approval by the Legislature. Any agreement with the State of Nebraska or any agency thereof for fiscal year 1986-87 on nonsalary or nonclassification issues need not be approved by the Legislature and may be for a period shorter than the budgeting period, except that if there is no agreement by June 30, 1986, the existing agreement or contract shall be continued until such time as an agreement or contract for the remainder of the 1986-87 fiscal year has been reached. Any agreements or contracts for the 1987-89 biennium shall be on an annual fiscal-year basis.

Sec. 30. That section 48-838, Revised Statutes Supplement, 1986, be amended to read as follows:

48-838. (1) The commission 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, except 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 Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding judge of the commission, or the commission 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 commission. The Except as provided in the State Employees Collective Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission 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 Except as provided in the State Employees Collective Bargaining Act, the commission 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 commission 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 or her 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 Except as provided in the State Employees Collective Bargaining Act, the commission 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, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials, and any employee may choose his or her 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. 31. That section 48-842, Revised Statutes Supplement, 1986, be amended to read as follows:

48-842. The jurisdiction of the Commission of Industrial Relations to establish salary or base salary levels or other terms of compensation for state employees shall not be invoked before the end of the 1987 regular session of the Legislature and if so invoked shall only be effective beginning with fiscal year 1987-88 and each fiscal year thereafter. The Legislature may, during the 1987 regular session, prohibit by law any order of the Commission of Industrial Relations relating to state employees for fiscal year 1987-88 if it finds such order will be inconsistent with any legislation passed during the 1987 regular session dealing with collective bargaining by state employees. The Legislature hereby finds and declares that the State Employees Collective Bargaining Act enacted by the Ninetieth Legislature, First Session, 1987, is inconsistent with an order relating to state employees for fiscal year 1987-88 and therefore such orders shall be prohibited.

Sec. 32. That section 81-1307, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1307. The Director of Personnel shall be responsible for the administration of the Department of Personnel. Subject to the review powers of the State Personnel Board, the director shall be responsible for development of recommendations on personnel policy and

for development of specific administrative systems and shall have the authority to make adopt, promulgate, and enforce rules and regulations pertaining thereto. Specific administrative systems for which the director is responsible shall include but not be limited to the following:

- (1) Employment Services:
 - (a) General employment policies and procedures;
 - (b) Position classification plans;
 - (c) Job descriptions;
 - (d) Job specifications;
 - (e) Salary or pay plans;
 - (f) Staffing patterns; and
 - (g) Recruiting, examination, and certification of qualified applicants for employment and the maintenance of registers of qualified candidates for employment for all positions in state government;
- (2) Personnel Records:
 - (a) A system of records and statistical reports containing general data on all employees, including current salary levels and such other information as may be required by the operating needs of state departments and agencies and the budget division of the Department of Administrative Services; and
 - (b) Standards for the development and maintenance of personnel records to be maintained within operating departments of the state government;
- (3) Personnel Management:
 - (a) Minimum standards for evaluation of employee efficiency and a system of regular evaluation of employee performance;
 - (b) Administrative guidelines governing such matters as hours of work, promotions, transfers, demotions, probation, terminations and reductions in force, salary actions, and other such matters as may not be otherwise provided for by law;
 - (c) Administrative policies and general procedural instructions for use by all state agencies relating to such matters as employee benefits, vacation, sick leave, holidays, insurance, sickness and accident benefits, and other employee benefits as the Legislature may from time to time prescribe; and
 - (d) A system of formally defined relationships between the department and departments and agencies to be covered by the state personnel system;
- (4) Salary and Wage Survey: Measuring through the use of surveys, the state's comparative level of employee compensation with the labor market;

and

(a) A current survey of prevailing salary and wage levels for positions comparable to those predominant in the departments and agencies of the state. Such survey shall be used to review the adequacy of current salary ranges for positions in the state government and shall be the basis for establishment and any revision of the state pay plan; when approved by the Legislature the pay plan shall prescribe rates of pay for each class of nonexempt position, laws to the contrary notwithstanding; and

(b) A survey of salary and wage rates for positions exempted from coverage by either the Joint Merit System Council or the state personnel service, including but not limited to the faculty and administrators of the state colleges and the University of Nebraska, exempted constitutional officers, and other positions compensation for which is fixed by law; and

(5) Payroll Certification and Staffing Patterns: The director shall work with the budget division of the Department of Administrative Services in the provision of certified information or in the performance of work as necessary to assure the following:

(a) That payrolls of all departments and agencies of the state government consist of employees who have been authorized for those departments and agencies by the budget division of the Department of Administrative Services;

(b) That staffing patterns for each department and agency of state government conform with those authorized by the budget division;

(c) That revisions to staffing patterns of all state departments and agencies have been approved by the budget division;

(d) That each monthly or other payroll of each department and agency of state government is reviewed to assure that salary increases for any employee are in accordance with the approved state pay plan and that all actions affecting payrolls have been authorized by the budget division;

(e) That merit increases provided for any employee of the state are the result of positive action by the appropriate supervisor;

(f) That the state's pay plan, as enacted by the Legislature, together with such amendments as may occur, is explained in appropriate handbooks for employees of the state;

(g) That pay plans covering any position or

positions exempted from the state personnel service are reviewed by the Director of Personnel; and

(h) That comparative salary data is prepared biennially for all positions exempted from the state personnel service.

Sec. 33. The Director of Personnel shall measure, through the use of salary surveys, the competitive standing of state salaries with salary levels of the labor market. The State Personnel Board shall review the methodology and results of the survey. A report of the survey findings, including the board's review, shall be provided to the Legislature and the Governor along with the recommendations regarding wages, hours, and terms and conditions of employment for unorganized employees by the Chief Negotiator pursuant to section 8 of this act.

Sec. 34. The Legislature shall consider the results of the salary survey and any recommendation from the Governor, Director of Personnel, or Chief Negotiator concerning unorganized state employee salary increases when making appropriations to state agencies. The Legislature shall attempt to provide an appropriate balance between assuring that all employees performing at a satisfactory level will receive appropriate salary increases and the need for administrative flexibility to reward those who perform at a superior level.

Sec. 35. That section 81-1331, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1331. As used in sections 81-1330 to ~~81-1335~~ 81-1334, state employee shall mean any employee of the state or of any state agency, specifically including all administrative, professional, academic, and other personnel of the University of Nebraska, the four state colleges, the technical community colleges, and the State Department of Education, but excluding any employee or officer of the state whose salary is set by the Constitution or by statute.

Sec. 36. That section 81-1333, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1333. The Director of Personnel shall adopt and promulgate rules and regulations to implement the provisions of sections 81-1331 to 81-1334, 81-1335 and the provisions of sections 81-1336 to 81-1345. Such rules and regulations shall be prepared in a manner which will not substantially change the State of Nebraska Classification and Pay Plan.

Sec. 37. That section 81-1334, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1334. Agencies, boards, and commissions not covered by the State Personnel System are directed to develop administrative procedures so that the provisions of sections 81-1331 to ~~81-1335~~ 81-1334 can be implemented in a manner similar to that prescribed in the rules and regulations of the Department of Personnel.

Sec. 38. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 39. That original sections 48-810, 48-811, 48-813, 48-817, 48-818, 81-1307, 81-1331, 81-1333, and 81-1334, Reissue Revised Statutes of Nebraska, 1943, and sections 48-816, 48-837, 48-838, and 48-842, Revised Statutes Supplement, 1986, and also sections 81-1335 to 81-1341 and 81-1345, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 40. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.