

48-816. Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.

(1)(a) 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 ensure prompt hearing and speedy adjudication of the industrial dispute. The commission may, upon its own initiative or upon request of a party to the dispute, make such temporary findings and orders as 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 a public employer and a public employee or a labor organization when such public employer and public 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 begin or resume, as the case may be, and may make any such order or orders as 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 public employer. Upon the request of either party, the commission shall require the parties to an industrial dispute to submit to mediation or factfinding. Before July 1, 2012, upon the request of both parties, a special master may be appointed if the parties are within the provisions of section 48-811.02. On and after July 1, 2012, upon the request of either party, a resolution officer may be appointed if the parties are within the provisions of section 48-818.01. The commission shall appoint mediators, factfinders, or before July 1, 2012, special masters and on and after such date resolution officers for such purpose. Such orders for bargaining, mediation, factfinding, or before July 1, 2012, a special master proceeding and on and after such date a resolution officer proceeding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith means the performance of the mutual obligation of the public 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.

(b) In negotiations between a municipality, municipally owned utility, or county and a labor organization, staffing related to issues of safety shall be mandatory subjects of bargaining and staffing relating to scheduling work, such as daily staffing, staffing by rank, and overall staffing requirements, shall be permissive subjects of bargaining.

(2) Except as provided in the State Employees Collective Bargaining Act, public employers may 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 may negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

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

(b) All firefighters and police officers employed in the fire department or police department of any municipality 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 bargaining unit represented by a public employee organization for the purposes of the Industrial Relations Act. Public employers shall be required to recognize a public employees bargaining 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 bargaining unit is designated or elected by public employees in the unit.

(c) All administrators employed by a Class V school district shall be presumed to have a community of interest and may join a single bargaining unit composed otherwise of teachers and other certificated employees for purposes of the Industrial Relations Act, except that the following administrators shall be exempt: The superintendent, associate superintendent, assistant superintendent, secretary and assistant secretary of the board of education, executive director, administrators in charge of the offices of state and federal relations and research, chief negotiator, and administrators in the immediate office of the superintendent. A Class V school district shall recognize a public employees bargaining unit composed of teachers and other certificated employees and administrators, except the exempt administrators, when such bargaining unit is formed by the public employees as provided in section 48-838 and may recognize such a bargaining unit as provided in subsection (2) of this section. In addition, all administrators employed by a Class V school district, except the exempt administrators, may form a separate bargaining unit represented either by the same bargaining agent for all collective-bargaining purposes as the teachers and other certificated employees or by another collective-bargaining agent of such administrators' choice. If a separate bargaining unit is formed by election as provided in section 48-838, a Class V school district shall recognize the bargaining unit and its agent for all purposes of collective bargaining. Such separate bargaining unit may also be recognized by a Class V school district as provided in subsection (2) of this section.

(4) When a public 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 public 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 public employee organizations in determining such terms and conditions of employment, including wages and hours.

(5) Upon receipt by a public employer of a request from a labor organization to bargain on behalf of public 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 public employer as the exclusive bargaining representative for the public employees in that bargaining unit.

(6) A party to an action filed with the commission may request the commission to send survey forms or data request forms. The requesting party shall prepare its own survey forms or data request forms and shall provide the commission the names and addresses of the entities to whom the documents shall be sent, not to exceed twenty addresses in any case. All costs resulting directly from the reproduction of such survey or data request forms and the cost of mailing such forms shall be taxed by the commission to the requesting party. The commission may (a) make studies and analyses of and act as a clearinghouse of information relating to conditions of employment of public employees throughout the state, (b) 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) 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) make available to public employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and public 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) establish, after consulting representatives of public employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, before July 1, 2012, special masters and on and after such date resolution officers, or members of factfinding boards.

(7)(a) Except for those cases arising under section 48-818, the commission shall 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 twenty-five 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 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.

Source: Laws 1947, c. 178, § 16, p. 591; Laws 1967, c. 303, § 2, p. 825; Laws 1969, c. 407, § 5, p. 1408; Laws 1972, LB 1402, § 1; Laws 1972, LB 1228, § 3; Laws 1979, LB 444, § 5; Laws 1984, LB 832, § 2; Laws 1985, LB 213, § 2; Laws 1986, LB 809, § 5; Laws 1987, LB 524, § 2; Laws 1987, LB 661, § 26; Laws 1988, LB 519, § 1; Laws 1988, LB 684, § 1; Laws 1988, LB 942, § 1; Laws 1995, LB 365, § 2; Laws 2011, LB397, § 8.

Operative Date: October 1, 2011

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

Annotations

1. Commission authority

2. Collective bargaining units

3. Miscellaneous

1. Commission authority

The Commission of Industrial Relations has the statutory authority to enter temporary orders concerning wages, hours, or terms and conditions of employment, pending the resolution of an industrial dispute. *Transport Workers v. Transit Auth. of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984).

The authority granted to the Commission of Industrial Relations under this section is limited in nature. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

Court of Industrial Relations does not have power to order collective bargaining by a public utility operated by government in a proprietary capacity. *International Brotherhood of Electrical Workers v. City of Hastings*, 179 Neb. 455, 138 N.W.2d 822 (1965).

2. Collective bargaining units

A deviation clause in a teacher contract falls under the category of "wages, hours, and other terms of employment, or any question arising thereunder," as stated in subsection (1) of this section, and is a subject of mandatory bargaining. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005).

Pursuant to subsection (3)(a) of this section, a single bargaining unit cannot include supervisors and those whom the supervisors responsibly direct. *PLPSO v. Papillion/La Vista School Dist.*, 252 Neb. 308, 562 N.W.2d 335 (1997).

The enactment of subsection (3)(c) of this section, exempting certain Class V school district administrators from the operation of subsection (3)(a), does not evidence a legislative purpose or intent to permit like administrators in school districts of whatever class to do the same. *PLPSO v. Papillion/La Vista School Dist.*, 252 Neb. 308, 562 N.W.2d 335 (1997).

A community of interest is presumed among all police officers holding positions subordinate to the chief of the department and his or her immediate assistants. *City of*

Omaha v. Omaha Police Union Local 101, 222 Neb. 197, 382 N.W.2d 613 (1986).

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain the same bargaining agent. Nebraska Assn. of Pub. Emp. v. Nebraska Game & Parks Commission, 197 Neb. 178, 247 N.W.2d 449 (1976).

This section in classifying officers of municipal police and fire departments differently in regard to membership in bargaining units from officers in other departments is not thereby rendered unconstitutional as special legislation. Local Union No. 647 v. City of Grand Island, 196 Neb. 693, 244 N.W.2d 515. (1976).

The 1969 amendment authorizing public employers to recognize employee organizations and to negotiate collectively cannot be attacked as unconstitutional by city which invokes its provisions. City of Grand Island v. American Federation of S. C. & M. Employees, 186 Neb. 711, 185 N.W.2d 860 (1971).

3. Miscellaneous

Police response time to a two-officer 911 emergency dispatch call relates to officer safety, and, thus, the manner in which it is determined affects a condition of employment. Omaha Police Union Local 101 v. City of Omaha, 274 Neb. 70, 736 N.W.2d 375 (2007).

For purposes of bringing error proceedings, this statute does not require public employers to act in a judicial manner when administering pay scale grievances. Kropp v. Grand Island Pub. Sch. Dist. No. 2, 246 Neb. 138, 517 N.W.2d 113 (1994).

Subsection (1) of this section requires good faith bargaining, but only after a petition has been filed invoking the jurisdiction of the commission. Subsection (4) of this section does not require good faith bargaining; it simply authorizes public employers to negotiate with unions regarding the settlement of grievances and the establishment of written agreements as to wages, hours, and other conditions of employment. Subsection (5) of this section requires good faith bargaining, but only after an employer receives a request to bargain from the union. This section, unlike the National Labor Relations Act, does not establish a duty to bargain. Without this statutory authorization, a public employer would not have the right to bargain with public employees. Kuhl v. Skinner, 245 Neb. 794, 515 N.W.2d 641 (1994).