

48-838. Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.

(1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of public employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for public employees, except that in no event shall a contract between a public employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent public employees, nor shall any contract bar for more than three years a petition by public employees seeking an election to revoke the authority of an agent to represent them. 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 officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the public employer is located to conduct the election in accordance with the rules and regulations established by the commission. 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 public 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 public employees of less than departmental size shall not be appropriate.

(3) 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 percent 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) 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.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the

employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any public employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting public 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.

Source: Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7; Laws 2011, LB397, § 15.

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Cross References

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

Annotations

Before the restrictions prescribed by this section against undue fragmentation in the public employment area can be overcome, there must be strong evidence justifying the need and propriety of any additional division of a bargaining unit. *Sheldon Station Employees Assn. v. Nebraska P.P.D.*, 202 Neb. 391, 275 N.W.2d 816 (1979).

The considerations set forth in this section, in regard to collective bargaining units of employees, are not exclusive and the Commission of Industrial Relations may consider additional relevant factors in determining what bargaining unit of employees is appropriate. *American Fed. of S., C. & M. Emp. v. Counties of Douglas & Lancaster*, 201 Neb. 295, 267 N.W.2d 736 (1978).

Since the policy of the statute is opposition to undue fragmentation of bargaining units, the statute is not limited in applicability only to those governmental subdivisions enumerated. *American Fed. of S., C. & M. Emp. v. State*, 200 Neb. 171, 263 N.W.2d 643 (1978).

House officers of the University Medical Center have a community of interest separate from graduate students and assistants sufficient to warrant a separate bargaining unit of house officers only. *House Officers Assn. v. University of Nebraska Medical Center*, 198 Neb. 697, 255 N.W.2d 258 (1977).

In determining appropriate bargaining units for public employees, the provisions of this section shall be considered and other relevant factors may be considered. *American Assn. of University Professors v. Board of Regents*, 198 Neb. 243, 253 N.W.2d 1 (1977).