

**81-1383. Commission order; commission; powers; duties; procedure; modification; appeal.**

(1) No later than March 1, the commission shall enter an order on each unresolved issue.

(2)(a) The commission's order shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained by peer employers for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions.

(b)(i) In establishing wage rates, the commission shall take into consideration the overall compensation received by the employees at the time of the negotiations, having regard to:

(A) Wages for time actually worked;

(B) Wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions; and

(C) The continuity and stability of employment enjoyed by the employees.

(ii) The commission shall determine whether the total compensation of the members of the bargaining unit or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the total compensation falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the total compensation is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the total compensation is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the total compensation is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the total compensation is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis.

(c) For purposes of determining peer employer comparability, the following factors shall be used by the commission:

(i) Geographic proximity of the employer;

(ii) Size of the employer, which shall not be more than twice or less than one-half, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(iii) The employer's budget for operations and personnel; and

(iv) Nothing in this subdivision (2)(c) of this section shall prevent parties from stipulating to an array member that does not otherwise meet the criteria in such subdivision, and nothing in such subdivision shall prevent parties from stipulating to less than seven or more than nine array members.

(d) To determine comparability for employees of the Board of Regents of the University of Nebraska or employees of the Board of Trustees of the Nebraska State Colleges, the commission shall utilize peer institutions with similar enrollments and similar educational missions which may exclude land grant institutions or institutions that have a medical center or hospital. Additionally, the commission shall refer to peer institutions with similar program offerings including the level of degrees offered.

(e) 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 new and material change in the conditions from those prevailing at the time the original order was entered.

(3) In cases filed under the State Employees Collective Bargaining Act, the commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than those adopted pursuant to section 48-809. The commission shall receive evidence relating to array selection, job match, and wages and benefits which have been assembled by telephone, electronic transmission, or mail delivery and any such evidence shall be accompanied by an affidavit from the employer or any other person with personal knowledge which affidavit shall demonstrate the affiant's personal knowledge and competency to testify on the matters therein. The commission, with the consent of the parties to the dispute and in the presence of the parties to the dispute, may contact an individual employed by an employer under consideration as an array member by telephone to inquire as to the nature or value of a working condition, wage, or benefit provided by that particular employer as long as the individual in question has personal knowledge about the information being sought. The commission may rely upon information gained in such inquiry for its decision. Opinion testimony shall be received by the commission based upon evidence provided in accordance with this subsection. Testimony concerning job match shall be received if job match inquiries were conducted by telephone, electronic transmission, or mail delivery if the witness providing such testimony verifies the method of such job match inquiry and analysis.

(4) The commission shall file its findings of fact and conclusions of law with its order.

(5) Either party may, within thirty days after the date such order is filed, appeal to the Supreme Court. The standard of review for any appeal to the Supreme Court shall be as provided in subsection (4) of section 48-825.

(6) 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.

(7) All items agreed upon during the course of negotiations and not submitted as an unresolved issue to the commission 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 issues, the parties shall reduce the orders of the commission or the Supreme Court to writing and incorporate them into the contract without ratification.

**Source:** Laws 1987, LB 661, § 15; Laws 1991, LB 732, § 150; Laws 2011, LB397, § 28.

**Operative Date: October 1, 2011**