

LEGISLATIVE BILL 832

Approved by the Governor April 12, 1984

Introduced by McDonald, 31; R. Peterson, 21

AN ACT relating to the Commission of Industrial Relations; to amend sections 48-816 and 48-817, Revised Statutes Supplement, 1982, and section 48-813, Revised Statutes Supplement, 1983; to change provisions relating to hearings, findings, decisions, and orders as prescribed; and to repeal the original sections.

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

Section 1. That section 48-813, Revised Statutes Supplement, 1983, 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, and 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 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. 2. That section 48-816, Revised Statutes Supplement, 1982, be amended to read as follows:

48-816. (1) After a petition has been filed under the provisions of section 48-811, the clerk shall immediately notify the members of the Commission of Industrial Relations, 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 fact-finding, and may appoint mediators or fact-finders for this purpose. Such orders for bargaining, mediation, or fact-finding 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 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 this act, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

(3) All firefighters ~~firemen~~ and police officers ~~poicemen~~ 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 this act. Public employers shall be required to recognize an employee's negotiating unit composed of firefighters ~~firemen~~ and police officers ~~poicemen~~ 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 this 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 this 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, fact-finding 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 fact-finding 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. 3. That section 48-817, Revised Statutes Supplement, 1982, be amended to read as follows:
48-817. After the hearing and any

investigation, the commission shall make all ~~its~~ findings, findings of fact, recommended decisions and orders, and decisions and ~~enter its order or~~ orders in writing, ~~which findings, findings of fact, recommended decisions and orders, and decisions and~~ ~~decisions and~~ ~~decisions and~~ ~~order or~~ orders shall be entered of record. The final decision and ~~such~~ 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. 4. In any request for temporary relief under Chapter 48, the Commission of Industrial Relations shall mandatorily hold the initial hearing within ten days from the date of the filing.

Sec. 5. That original sections 48-816 and 48-817, Revised Statutes Supplement, 1982, and section 48-813, Revised Statutes Supplement, 1983, are repealed.