

#### **48-801. Terms, defined.**

As used in the Industrial Relations Act, unless the context otherwise requires:

(1) Certificated employee has the same meaning as in section 79-824;

(2) Commission means the Commission of Industrial Relations;

(3) Commissioner means a member of the commission;

(4) Governmental service means all services performed under employment by the State of Nebraska or any political or governmental subdivision thereof, including public corporations, municipalities, and public utilities;

(5) Industrial dispute includes any controversy between public employers and public employees concerning terms, tenure, or conditions of employment; the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment; or refusal to discuss terms or conditions of employment;

(6) Instructional employee means an employee of a community college who provides direct instruction to students;

(7) Labor organization means any organization of any kind or any agency or employee representation committee or plan, in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(8) Metropolitan statistical area means a metropolitan statistical area as defined by the United States Office of Management and Budget;

(9) Municipality means any city or village in Nebraska;

(10) Noncertificated and noninstructional school employee means a school district, educational service unit, or community college employee who is not a certificated or instructional employee;

(11) Public employee includes any person employed by a public employer;

(12) Public employer means the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia;

(13) Public utility includes any person or governmental entity, including any public corporation, public power district, or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof; and

(14) Supervisor means any public employee having authority, in the interest of the public employer,

to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, or responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with such action the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

**Source:** Laws 1947, c. 178, § 1, p. 586; Laws 1967, c. 303, § 1, p. 823; Laws 1967, c. 304, § 1, p. 826; Laws 1969, c. 407, § 1, p. 1405; Laws 1972, LB 1228, § 1; Laws 1985, LB 213, § 1; Laws 1986, LB 809, § 2; Laws 1993, LB 121, § 294; Laws 2007, LB472, § 1; Laws 2011, LB397, § 1.

**Operative Date: October 1, 2011**

## **Annotations**

### **1. Constitutionality**

### **2. Jurisdiction of commission**

### **3. Bargaining units**

### **4. Miscellaneous**

#### **1. Constitutionality**

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. *American Fed. of S., C. & M. Emp. v. Department of Public Institutions*, 195 Neb. 253, 237 N.W.2d 841 (1976).

To pass scrutiny of Constitution of the United States, Nebraska Court of Industrial Relations, in case within its jurisdiction, must be deemed to have sufficient power to fully vindicate, preserve, and protect a federal constitutional right. *Teamsters Pub. Emp. U. Loc. 594 v. City of West Point*, 338 F.Supp. 927 (D. Neb. 1972).

#### **2. Jurisdiction of commission**

A mere request by a union for information regarding employee transfer lists and test results which is declined by the employer does not constitute an industrial dispute. *Neb. Pub. Emp. v. City of Omaha*, 235 Neb. 768, 457 N.W.2d 429 (1990).

A uniquely personal termination of employment does not constitute an industrial dispute, notwithstanding the fact it may involve a controversy concerning terms, tenure, or conditions of employment. *Wood v. Tesch*, 222 Neb. 654, 386 N.W.2d 436 (1986).

The Commission of Industrial Relations has jurisdiction, that is, authorized power, to resolve industrial disputes between agencies or departments of the State of Nebraska and their employees. *State Code Agencies Ed. Assn. v. Department of Pub. Insts.*, 219 Neb. 555, 364 N.W.2d 44 (1985).

The authority of the Court of Industrial Relations, now Commission of Industrial Relations, is limited to industrial disputes, as defined in this section. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

The University of Nebraska has the primary authority for establishing its own schedule of wages, terms and conditions of employment, and hours of labor but when an industrial dispute, as defined in this section, arises, the Commission of Industrial Relations acquires jurisdiction for the limited purpose of resolving such dispute. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

### **3. Bargaining units**

House officers of the University of Nebraska Medical Center are employees of the state entitled to participate in an appropriate bargaining unit. *House Officers Assn. v. University of Nebraska Medical Center*, 198 Neb. 697, 255 N.W.2d 258 (1977).

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).

### **4. Miscellaneous**

Employees lose the statutory protection of the Industrial Relations Act for conduct or speech if it is flagrant misconduct, which includes, but is not limited to, statements or actions that (1) are of an outrageous and insubordinate nature, (2) compromise the public employer's ability to accomplish its mission, or (3) disrupt discipline, as well as conduct that is clearly outside the bounds of any protection such as assault and battery or racial discrimination. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

Public employees belonging to a labor organization have the protected right to engage in conduct and make remarks, including publishing statements through the media, concerning wages, hours, or terms and conditions of employment. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

The Commission of Industrial Relations must balance the employee's right to engage in protected activity, which permits some leeway for impulsive behavior, against the employer's right to maintain order and respect for its supervisory staff. Factors that the commission may consider, but would not necessarily be determinative, include: (1) the place and subject matter of the conduct or speech, (2) whether the employee's conduct or speech was impulsive or designed, (3) whether the conduct or speech was provoked by the employer's conduct, and (4) the nature of the intemperate language or conduct. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375

(2007).

The Industrial Relations Act is not only an attempt to level the employment playing field, but is also a mechanism designed to protect the citizens of Nebraska from the effects and consequences of labor strife in public sector employment. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

Teachers in Class III, IV, and VI school districts are subject to provisions of Teachers' Professional Negotiation Act. *Lincoln Ed. Assn. v. School Dist. of Lincoln*, 214 Neb. 895, 336 N.W.2d 587 (1983).

School districts are employers and teachers are employees within terms of this act. *Sidney Education Assn. v. School Dist. of Sidney*, 189 Neb. 540, 203 N.W.2d 762 (1973).