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## Article Title: The Evolution of Some Legal-Economic Aspects of Collective Bargaining by Public Employees in Nebraska Since 1919

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Article Summary: Private sector strikes and inflation in the 1920s and 1940s were followed in the 1960s by public sector employees' demands for the right to collective bargaining. The Nebraska Court of Industrial Relations, responsible for arbitrating public employees' disputes and preventing their strikes, has also worked to preserve their right to equity and due process.

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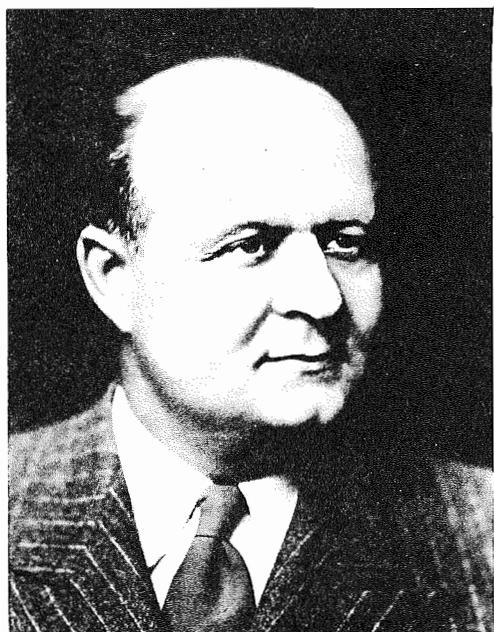
Legislation Related to the Nebraska Court of Industrial Relations: Article XV, section 9, Nebraska Constitution; LB 537 (1947): Nebraska Court of Industrial Relations Act; LB 485 (1967): Nebraska Teachers' Professional Negotiations Act; LB 15 (1969)

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Photographs / Images: delegates to the Nebraska Constitutional Convention of 1919-1920, which included debates on proposals for dealing with industrial disputes; Governor Val Peterson: during whose term the Nebraska Court of Industrial Relations Act (LB 537) became law



*Delegates to the Nebraska Constitutional Convention of 1919-1920, at which debate arose on various proposals for dealing with industrial disputes.*



*Governor Val Peterson, during whose term (1947-1953) the Nebraska Court of Industrial Relations Act (LB 537) was enacted.*

# THE EVOLUTION OF SOME LEGAL-ECONOMIC ASPECTS OF COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES IN NEBRASKA SINCE 1919

*By David G. Wagaman*

"The truly utopian is the unattainable, and we have seen too many utopists afterwards disillusioned and turned into pessimists and reactionaries, to warrant us in going further to social idealism than can be shown to be the best practical."<sup>1</sup> John R. Commons

During the latter portion of the 1960's and the early 1970's public sector employees exhibited an upsurge of interest in collective bargaining. Public employees in Nebraska were no exception. Many states and political subdivisions had to deal with employee demands for collective bargaining, without the aid of any existing statutory or judicial framework.<sup>2</sup> Indeed, few had recourse to an existing institution when developing responses to those demands. Most of them relied on private sector examples or experience entirely.<sup>3</sup> The State of Nebraska, however, was able to modify an existing institution and an existing statutory and judicial framework in developing responses to the demands for public sector collective bargaining.

This paper will examine the three stages of development of the statutory and judicial framework, and the concomitant development of the Nebraska Court of Industrial Relations.<sup>4</sup>

*Constitutional Authority of the Nebraska Court of Industrial Relations: 1919-1946*—During the latter stages of World War I and immediately following its close, inflation and strike activity increasingly concerned the public.<sup>5</sup> The delegates to the Nebraska Constitutional Convention, which convened in Lincoln on December 2, 1919, shared this public concern.<sup>6</sup> References were made during the Constitutional Convention to the Boston Police Strike of 1919, the Kansas Coal Strike of 1919, and the Omaha Packinghouse Workers Strike of 1917.<sup>7</sup> Inflation and "profiteering" were mentioned repeatedly.<sup>8</sup> Delegate W.J. Taylor went so far as to observe that "there is another matter in which the public is more concerned than labor disputes, that

which causes labor disputes, and that is the matter of the high cost of living and profiteering.”<sup>9</sup> One delegate, C. Petrus Peterson, was concerned with assuring the equity of the return to labor relative to capital.<sup>10</sup>

The delegates were aware of many different existing arbitration plans. The Alschuler plan, the Australian arbitration plan, the New Zealand arbitration plan, and the Canadian arbitration plan were mentioned specifically.<sup>11</sup> The Kansas Industrial Court, established in 1919, was examined in detail. Kansas Governor Henry J. Allen addressed the entire convention and explained the arbitration procedures adopted by the Kansas court.<sup>12</sup> Mr. Peterson spent three days in Kansas studying “the theory of the gentlemen down there who have established the first industrial court in the country.”<sup>13</sup>

During the course of the convention, the delegates debated various proposals whose primary purpose was to deal with the resolution of disputes arising between employers and employees in the course of producing and distributing goods and services. In the final days of the convention, the delegates agreed on the amended form of Proposal No. 333,<sup>14</sup> “one of the most thoroughly considered proposals at the Constitutional Convention.”<sup>15</sup>

Proposal No. 333 (article XV, section 9, of the Nebraska constitution) was so thoroughly debated that almost every word in it can be traced through the convention’s amendment process. The article was permissive in its directives to the Legislature. The Legislature could choose to pass laws or not to pass laws in the areas of labor disputes or “profiteering.” It could choose to deny the right to strike or it might not do so. The delegates did not want to tie the Legislature’s hands in dealing with these problems as they arose in the future.<sup>16</sup>

The Legislature could establish a commission with quasi-legislative, quasi-executive, and quasi-judicial powers.<sup>17</sup> It was not to be strictly a court established under other provisions of the Nebraska constitution dealing with only the judicial branch of government. Nor was it to be subject to the traditional “separation of powers” concept found in the Nebraska constitution; it was to be a specific exception.<sup>18</sup> In fact, the delegates rejected a proposal which would have allowed the Nebraska Legislature to establish a tribunal similar to the Kansas Court of Industrial Relations. They feared it would be declared unconstitutional.<sup>19</sup> However, the commission was to

have the power to investigate industrial relations, controversies, and instances of "profiteering" or "unconscionable gains." It was to have the power to compel witnesses to testify and to require the submission of evidence. It was not to have the power to enforce its orders. It was fully recognized that the commission would be exercising traditional legislative powers if it imposed wage settlements in administering enabling legislation passed by the Legislature. The jurisdiction of the commission could be extended to the public sector and portions of the private sector, according to debate on the article.<sup>20</sup>

At the close of the convention, the delegates had left the door wide open.<sup>21</sup> It was to be twenty-seven years before the Nebraska Legislature passed through that door.

*The Formative Years: 1947-1966*—Following the end of World War II, strike activity increased to record levels nationwide.<sup>22</sup> Inflation gained national attention.<sup>23</sup> Nebraska was no exception. In fact, a strike by Lincoln Telephone Company employees seems to have been a major cause of the introduction of two bills to make operative article XV, section 9, of the Nebraska constitution.<sup>24</sup> During the 60th Legislative Session (1947), Legislative Bill (LB) 349 was introduced by Senator C. Petrus Peterson, a delegate to the 1919-1920 constitutional convention.<sup>25</sup> At the request of Governor Val Peterson, Senator John P. McKnight introduced LB 537.

The bills were similar in many respects. Both bills established a three member Nebraska Court of Industrial Relations (NCIR) appointed by the governor with the advice and consent of the Legislature. Both gave the NCIR the power to establish or alter wages, hours, and conditions of employment in conformity with those generally prevailing in like or similar fields of employment. Employees, employers, employee organizations, the governor, and the attorney general could invoke the NCIR's jurisdiction. The NCIR could conduct investigations into industrial disputes, compel the attendance of witnesses, and compel the production of evidence. The NCIR's orders were to be equivalent to those of a district court and enforceable in the courts, with appeal of the NCIR's orders going directly to the Nebraska Supreme Court. Fines and imprisonment could be imposed for violations of the act.

However, the bills contained one important difference. LB 349 declared strikes and lockouts illegal in the private sector and in "governmental service in a proprietary capacity." The NCIR's

jurisdiction, therefore, would not have extended to the tax supported "governmental service." LB 537 declared strikes and lockouts in the "governmental service" and in "governmental service in a proprietary capacity" illegal. However, it did not extend the NCIR's jurisdiction to the purely private sector.

Eventually LB 537 was reported out of committee with nineteen amendments attached.<sup>26</sup> Three amendments were extremely important. First, a distinction was drawn between "governmental service" and "governmental service in a proprietary capacity"; and, the NCIR's jurisdiction was not to extend to the private sector. Second, the NCIR's jurisdiction was not to extend to "managerial employees." Third, the NCIR was given the power explicitly to order the assumption or resumption of "good faith" bargaining in all cases within its jurisdiction.

However, when LB 537, as amended, was placed on general file, Senator McKnight asked unanimous consent to adopt a "mimeographed substitute" in place of the amended version of LB 537. The "mimeographed substitute" was adopted and four amendments were made to it.<sup>27</sup> This version of LB 537, which was eventually passed by the Nebraska Legislature,<sup>28</sup> significantly differed from the amended committee version of the bill. First, the NCIR's jurisdiction was restricted to "governmental service in a proprietary capacity" and cases involving public utilities.<sup>29</sup> "Governmental service" was not within the court's jurisdiction and other private sector cases could be brought before it only upon the request of both parties involved in an industrial dispute. Second, managerial employees were not excluded from the court's jurisdiction. Third, the court could order "good faith" bargaining only in cases involving public utilities. Fourth, all information in connection with an industrial dispute had to be made part of the record of a hearing and be subject to cross-examination.

With the passage of LB 537 (the Nebraska Court of Industrial Relations Act), Nebraska had indeed entered into a field that was largely unexplored—the field of binding interest arbitration by administrative order. Between 1947-1966, twenty cases were filed with the Nebraska Court of Industrial Relations.<sup>30</sup> The cases included industrial disputes involving trucks, taxicabs and bus lines, along with public power districts and city public power or maintenance departments. Five strikes or lockouts were involved in the cases.<sup>31</sup> Two cases were appealed to the Nebraska Supreme Court.<sup>32</sup>

During the period of 1947-1966, labor unions made two attempts to repeal the Nebraska Court of Industrial Relations Act (NCIRA) because of the restrictions it placed on labor union activity in public utilities.<sup>33</sup> On two occasions, bills were introduced to allow public sector employers to make payroll deductions for charities and labor union dues; both bills were defeated.<sup>34</sup> Bills were introduced to correct what were deemed oversights in the NCIRA. For example, on five occasions,<sup>35</sup> bills were introduced to amend the NCIRA to: (1) direct the NCIR to hold representation elections and to provide procedures for it to follow in doing so, (2) direct the NCIR to define the unit appropriate for collective bargaining and to provide it with guidelines for doing so, and (3) allow the NCIR to order "good faith" bargaining in industrial disputes involving "government service in a proprietary capacity." On one occasion,<sup>36</sup> a bill was introduced to broaden the area of comparisons which the court could use in determining wages, hours and conditions of employment, and to direct the court to grant only *exclusive* recognition to employee organizations. One amendment to the NCIRA was passed in 1966, which provided for NCIR directed *advisory* arbitration panels to handle industrial disputes involving employees of cities with populations of five thousand or more (or a city under civil service, or paid fire departments).<sup>37</sup> However, no cases were ever filed under this provision which extended the NCIR's jurisdiction indirectly to "governmental service."

The case law which evolved during this period was extremely crucial for the further development of the NCIR. The NCIR asserted its jurisdiction over disputes involving employees working for "governments operating in a proprietary capacity."<sup>38</sup> It acknowledged the federal government's preemption of the field of statutory regulation of peaceful strikes involving public utilities.<sup>39</sup> It acknowledged that it had no authority to *impose* settlements in representation or appropriate unit cases.<sup>40</sup> It exercised its authority to issue temporary injunctions to stop strikes or lockouts within its jurisdiction.<sup>41</sup> It exercised its authority to set wages, hours, and other conditions of employment;<sup>42</sup> and it restricted its comparisons to the labor market in which the dispute arose or to all adjoining labor markets within the state where necessary.<sup>43</sup> The NCIR defined an employee organization and an industrial dispute as broadly as possible under the act.<sup>44</sup> The court set the precedent that it

would do as little investigating as possible and would rely on evidence submitted by the parties to the greatest extent feasible.<sup>45</sup> Also, the Nebraska Supreme Court reversed the NCIR and stated that it could not order “good faith bargaining” in cases involving “government operating in a proprietary capacity”; however, it could impose settlements.<sup>46</sup>

At the close of 1966, it seemed as if the NCIR would continue its relatively obscure and noncontroversial existence. However, events of the decade were to thrust the NCIR into a position of prominence and authority in Nebraska public sector labor relations.

*Public Sector Industrial Democracy in Nebraska: 1967-1975—*

In 1967 in response to testimony by labor organization representatives,<sup>47</sup> employees,<sup>48</sup> senators<sup>49</sup> and two judges from the NCIR,<sup>50</sup> the Nebraska Legislature amended the NCIRA to allow the NCIR to order “good faith” bargaining in cases involving “government operating in a proprietary capacity”<sup>51</sup> and in cases involving cities with a population of five thousand or more (or a city under civil service, or employees of a paid fire department).<sup>52</sup> However, no wage settlement could be imposed by the NCIR in the latter case.<sup>53</sup> Also, the state and its political subdivisions were authorized to consider allowing employee requested payroll deductions; however, deductions were not mandatory upon request.<sup>54</sup>

The Nebraska Teachers’ Professional Negotiations Act (NTPNA) was passed in the form of LB 485 in 1967. The “meet and confer” statute provided for nonbinding fact-finding in the case of industrial disputes involving larger (class III, IV, V) school districts<sup>55</sup> in Nebraska. The NCIR was not to become involved in the procedures and school boards could not be forced to recognize an employee organization.<sup>56</sup>

LB 15, one of the most significant pieces of legislation in the history of Nebraska public sector labor relations, was introduced in 1969.<sup>57</sup> It was introduced in response to the United States Court of Appeals ruling in the *Woodward* case,<sup>58</sup> which cited the inadequacies of the NCIR, and in response to public employee and labor organization pressures.<sup>59</sup> The original version of the bill was very similar to New York’s Taylor Law.<sup>60</sup>

However, Senator Henry F. Pedersen successfully amended LB 15 so as to “fit it into” the existing NCIRA.<sup>61</sup> The final version<sup>62</sup> of the bill contained very significant provisions.<sup>63</sup> First, public employees were granted representation rights and

public employers were granted the authority to recognize and negotiate with employee organizations. Second, all public employers except the State National Guard were subject to the provisions of the act. School districts were subject to the act following exhaustion of the NTPNA's provisions.<sup>64</sup> Third, the NCIR was to administer the act. It could not order "good faith" bargaining where the dispute involved "governmental service," but it could impose binding interest arbitration awards concerning wages, hours, and conditions of employment. However, comparisons were no longer limited to the labor market area where the dispute arose or to all adjoining labor market areas in the state; comparisons could be statewide, regional, or conceivably nationwide.<sup>65</sup> Fourth, the NCIR was given the authority to resolve representation disputes; however, no procedures were provided, nor were guidelines established for the determination of the appropriate unit for collective bargaining. Also, no provision was made for exclusive recognition. Fifth, all collective bargaining agreements signed by state agencies were to coincide with the fiscal year of the state and be approved by the Nebraska Legislature. Sixth, strikes and lockouts were declared illegal and violators were subject to fines and imprisonment.<sup>66</sup> Seventh, employees were given protection against adverse action or harassment when exercising their rights under the act.<sup>67</sup>

Between 1971 and the end of 1975 fifteen bills were introduced which would have affected the NCIRA as amended by LB 15. The bills which passed (LB 1228<sup>68</sup> LB 1402<sup>69</sup> and LB 819<sup>70</sup>) produced some modifications, but none materially affected the jurisdiction of the NCIR.

The remaining bills were either indefinitely postponed or withdrawn. They dealt with such subjects as repealing the amended version of the NCIRA,<sup>71</sup> not integrating the NTPNA and the NCIRA,<sup>72</sup> providing for mandatory "dues checkoff,"<sup>73</sup> repealing all existing state statutes governing state employee pay and other employee benefits,<sup>74</sup> allowing collective bargaining contracts to include binding contract arbitration provisions,<sup>75</sup> and allowing the NCIR to examine the cost of living and possibly other factors such as ability to pay and productivity in addition to comparisons when making binding interest arbitration awards.<sup>76</sup>

During fiscal years 1969-1974, eighty fact-findings involving school districts occurred.<sup>77</sup> Seventeen did not resolve the dispute

and went on to the NCIR.<sup>78</sup> In total, the NCIR heard ninety-two cases over the period.<sup>79</sup> Twelve cases went on to the Supreme Court,<sup>80</sup> with the NCIR being upheld in all but one case.<sup>81</sup> No strikes have occurred since 1964 and relatively stable employer-employee relations have been maintained. Also, the Nebraska Supreme Court designated the NCIR a commission.<sup>82</sup> However, in addition to resolving disputes and avoiding strikes, the NCIR has extended the basic elements of industrial democracy<sup>83</sup> to most Nebraska public employees.<sup>84</sup> This is, perhaps, its most important contribution.

*Some Concluding Observations*—The Nebraska Court of Industrial Relations has constitutional roots in the period of strikes and inflation following World War I. Inflation and strike activity following World War II prodded the Nebraska Legislature into bringing it into statutory existence. During the inflationary period of the Viet Nam War<sup>85</sup> following President John F. Kennedy's Executive Order 10988<sup>86</sup> and during the general turmoil associated with the anti-war and civil rights movements, the Nebraska Legislature acted to extend the jurisdiction of the NCIR to all public sector employees. In a sense, the constitutional and statutory framework accompanying the NCIR has evolved in response to various similar crises over the last fifty-eight years. However, the case law has evolved fairly slowly and methodically over the last thirty years, establishing a form of common law framework.

While the primary purpose behind the creation of the NCIR has been the resolving of disputes and the resulting prevention of strikes by public employees, the equity and due process functions increasingly have begun to dominate the activities of the court. The court's binding interest arbitration orders do provide a form of equity where collective bargaining breaks down. Employees are assured rights of representation and due process, even though the right to strike is taken away. Although the labor market concept no longer exists in statute and comparisons may tend to go outside the labor market area, the emphasis is still placed on some form of market concept providing equity.<sup>87</sup>

Some scholars argue that collective bargaining cannot occur without the right to strike; and indirectly they imply that without it industrial democracy does not exist.<sup>88</sup> However, in Nebraska, the NCIRA does provide the basic elements of industrial democracy to most public employees and provides a form of equity in binding interest arbitration rulings based on a

market concept. The right to strike might increase public employee wages and benefits beyond that equity standard; however, if exercised it might simply alienate taxpayers or provide excessive economic power because of the relative inelasticity of the demand for public goods.<sup>89</sup> The Nebraska Court of Industrial Relations, while it may not attain the "social ideal" has become "commonplace and natural"<sup>90</sup> and may be the best practical for Nebraska.

### NOTES

(This paper is an abridgement of the author's Ph.D. dissertation, "Public Employee Impasse Resolution: A Historical Examination of the Nebraska Experience with Some Comparisons to the New York State Experience," written at the University of Nebraska, Lincoln, 1977.)

1. John R. Commons, *Institutional Economics: Its Place in Political Economy* (Madison: The University of Wisconsin Press, 1934), 742.

2. William H. Miernyk, *The Economics of Labor and Collective Bargaining*, 2nd ed. (Lexington: D.C. Heath and Company, 1973), 341, 466.

3. Charles M. Rehmus, "An Overview of Labor Relations in the Public Service," *Collective Bargaining and Dispute Settlement in the Public and Private Sectors, A Review and Evaluation*, ed. Harold S. Roberts and John B. Ferguson (Honolulu: University of Hawaii, Industrial Relations Center, 1970), 7.

4. Two other papers dealing with this general topic from differing viewpoints are: Wallace E. Good, "Public Employee Impasse Resolution by Judicial Order: The Nebraska Court of Industrial Relations," *Journal of Law and Education*, II (April, 1973), 253-265; John M. Gradwohl, "Labor-Management Relations and Nebraska Constitutional Revision," *Nebraska Law Review*, XL (June, 1961), 648-696.

5. Ashenfelter and Pencavel have estimated that "over the years 1917-1920, the average annual rate of change of prices was on the order of 14 percent." Orley Ashenfelter and John H. Pencavel, "American Trade Union Growth: 1900-1960," *Quarterly Journal of Economics*, LXXXIII (August, 1969), 448. Strike activity during World War I was in large part connected with organizing activities of the Industrial Workers of the World (IWW). See Philip Taft and Selig Perlman, *History of Labor in the United States, 1896-1932*, IV (1935), 386-432; William Preston, *Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933* (Cambridge, 1963); Philip S. Foner, *History of the Labor Movement in the United States: the Industrial Workers of the World, 1905-1917* (New York, 1965); Melvyn Dubofsky, *We Shall Be All* (Chicago, 1969); Patrick Renshaw, *The Wobblies: The Story of Syndicalism in the United States* (New York, 1968).

6. For information detailing labor strife more specifically in the Midwest, see: Philip Taft, "The I.W.W. in the Grain Belt," *Labor History* (Winter, 1960), 53-67; Philip Taft, "The Federal Trials of the I.W.W.," *Labor History* (Winter, 1962), 57-91; Russell Lowell Beebe, "History of Labor Organization and Legislation in Nebraska to 1918," (MA thesis, University of Nebraska, 1938); David Wagaman, "The Industrial Workers of the World in Nebraska, 1914-1920," *Nebraska History* (Fall, 1975), 295-337; Partial Report, Board of Mediation and Investigation of Labor Troubles in Omaha; June 18 to August 1, 1917, Department of Labor, State of Nebraska, August 1, 1917; "Report on Settlement of Packinghouse Workers," *Nebraska: State Council of Defense*, Series 1, Box 1, folder 3, Nebraska State Historical Society, Manuscript Collection.

7. *Proceedings of the Nebraska Constitutional Convention* (Compiled under the authority of the convention by Clyde H. Barnard, Secretary, 1919, 1920), 1564, 1567, 1568, 1618-1637.

8. *Ibid.*, 1694, 1971. 9. *Ibid.*, 1961. 10. *Ibid.*, 1563-1565.

11. *Ibid.*, 1618-1637, 1997. The Alschuler plan was the arbitration procedure adopted by Judge Samuel Alschuler in the Chicago Packinghouse Workers Strike, 1918. David Brody, *Labor in Crisis: The Steel Strike of 1919* (New York: Lippincott Co., 1965), 61. The New Zealand arbitration plan first was given statutory existence in 1894 when the economy was predominantly agricultural, and serving primarily local markets. Joel Seidman, *Industrial Relations Systems of the United States and New Zealand: A Comparison* (Honolulu: University of Hawaii, 1975), 1. The Australian arbitration plan originated in the 1890's and some Canadian provinces have compulsory arbitration procedures to this day. Lloyd G. Reynolds, *Labor Economics and Labor Relations*, 6th ed. (Englewood Cliffs: Prentice Hall, 1974), 359, 360.

12. *Nebraska Constitutional Convention*, 1618-1637.

13. *Ibid.*, 1694.

14. *Ibid.*, 2721. In its present form, Proposal 333 (article XV, section 9, of the Nebraska constitution) states: "Laws may be enacted providing for the investigation, submission and determination of controversies between employers and employees in any business or vocation affected with a public interest and for the prevention of unfair business practices and unconscionable gains in any business or vocation affecting the public welfare. An Industrial Commission may be created for the purpose of administering such laws, and appeals shall lie to the Supreme Court from the final orders and judgements of such commission."

15. Gradwohl, "Labor Management Relations," 654.

16. *Nebraska Constitutional Convention*, 1555-1557, 1559.

17. *Ibid.*, 1555-1557, 1559, 1967, 1981, 2454.

18. *Ibid.*, 1994, 2001, 2459, 2475.

19. *Ibid.*, 1940, 2001. The Kansas Court was declared unconstitutional in 1921. *Court of Industrial Relations v. Wolff Packing Co.* 109 Kan. 629, 644, 201 Pac 418, 425 (1921) reversed 262 U.S. 522, 544 (1923).

20. With the introduction of Proposal No. 329 by the Industrial Relations Committee, it became clear from testimony of Wm. H. Pitzer and James A. Donohoe that Proposal 329 gave the Legislature power to pass laws creating a commission to deal with industrial relations controversies "in which the public welfare was affected." There was no mention of limiting controversies in which public welfare was affected to only private sector employer-employee controversies. Peterson mentioned employees of municipally-owned public utilities, firemen, and policemen when defining public service employees. An amendment which specifically would have *excluded* public service employees from the coverage of the proposed constitutional amendment was introduced by F.C. Radke and was defeated by the delegates.

Peterson introduced Proposal No. 333 and supported L.J. TePoel's amended version of Proposal No. 333. TePoel stated that his amended version of Proposal No. 333 would reach only public service enterprises and public servants and would not reach purely private enterprises. Heasty's substitute for Proposal No. 333 did drop the term public service from the proposed constitutional amendment; however, Heasty specifically stated that the term "public interest" in the first clause of his amendment was to exclude purely private enterprises from jurisdiction of the laws passed by the Legislature to regulate industrial relations controversies. The first clause was to apply to public sector or public service employees. The second clause which included the term "public welfare" was to cover "profiteering" and "unconscionable gains" arising in any business transaction or activity. The second clause was, therefore, to apply to both private and public sectors. Furthermore, Heasty admitted that his proposal did not differ substantially from Peterson's. *Nebraska Constitutional Convention*, 1555-1559, 1563-1565, 1691-1694, 1959, 1960, 1976, 1985, 1986, 1998-2004, 2454-2457.

21. Delegate James A. Donohoe stated: "Here is the door, wide open, here is a field that is unexplored. Here is a problem that the civilization of this country for a century past has not investigated or has not invaded." *Nebraska Constitutional Convention*, 1559.

22. Benjamin J. Taylor and Fred Witney, *Labor Relations Law* (Englewood Cliffs: Prentice-Hall, Inc., 1971), 203.

23. *Ibid.* Between June 15, 1946 and December 15, 1946, the cost of living index moved from 133.3 to 153.3, an increase of 15 percent.

24. See the message presented to the Nebraska Legislature by Governor Val Peterson. *Legislative Journal* (April 7, 1947), 957-959.

25. Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, March 28, 1947, 1. According to his testimony, Senator Peterson introduced the bill because industrial conditions in 1947 were very similar to those in 1919.

26. Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, April 14, 1947, 1, 2. Senator Peterson stated that LB 349 and LB 537 were similar; and, he would support LB 537.

27. *Legislative Journal*, April 28, 1947, 1203, 1204.

28. *Legislative Journal*, May 13, 1947, 1404.

29. This is significant because all electric power is publicly owned in Nebraska.

30. David G. Wagaman, "Public Employee Impasse Resolution: A Historical Examination of the Nebraska Experience With Some Comparisons to the New York State Experience" (Ph.D dissertation, University of Nebraska-Lincoln, 1977), 351-356.

31. *Ibid.*

32. Case No. 13, *Raymond Dibbern, et al. v. City of Grand Island, a Municipal Corporation, et al.* (1959), dismissed by the Nebraska Supreme Court, December 21, 1959; *International Brotherhood of Electrical Workers, Local Union No. 507 v. The City of Hastings, Nebraska, a Municipal Corporation, and Board of Public Works, City of Hastings, Nebraska* 179 Neb. 455, 138 N.W. 2d 822 (1965) reversing the NCIR in part.

33. Nebraska Legislature, *Hearings Before the Committee on the Judiciary*, Sixty-Seventh Session, March 16, 1955, 3; Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, April 8, 1959, 5.

34. Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, February 6, 1957, 1-2; Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, March 18, 1959, 2.

35. Nebraska Legislature, *Hearings Before the Committee on Government*, Sixty-First Session, March 18, 1949, 1; Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, March 23, 1953, 1-10; Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, Sixty-Seventh Session, March 14, 1955, 1; Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, April 5, 1961, 6; Nebraska Legislature, *Hearings Before the Committee on Labor and Public Welfare*, February 6, 1963, 3.

36. Nebraska Legislature, *Hearings Before the Committee on Government*, March 18, 1949, 1.

37. Nebraska Legislature, *Labor Committee: Statement on LB 257*, March 23, 1965; *Legislative Journal*, May 26, 1965, 1768, 1803.

38. Case No. 2, *Local Union 739, International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor v. The Central Nebraska Public Power and Irrigation District, the Loup River Public Power District and the Platte Valley Public Power and Irrigation District* (1948); Case No. 13, *Raymond Dibbern, et al. v. City of Grand Island, a Municipal Corporation, et al.* (1959).

39. Case No. 18, *Safeway Cabs, Inc., a corporation v. Taxi Cab Drivers Union Local 762, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al.* (1964).

40. Case No. 4, *Yellow Cab, Inc., a corporation, 619 South 20th Street, Omaha, Nebraska v. Transport Workers Union of America, CIO, Local 228, an unincorporated labor organization, 1515 1/2 Capitol Avenue, Omaha, Nebraska* (1950).

41. *Ibid.*; Case No. 6, *Lincoln City Lines, Inc., a corporation 720 J Street, Lincoln, Nebraska v. Division No. 1293 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, an unincorporated labor organization, 217 North 11th Street, Lincoln, Nebraska* (1952).

42. Case No. 2, *op. cit.*; Case No. 13, *op. cit.*; Case No. 14, *Kramer Power Station Employees Committee, v. Nebraska Public Power System, Loup River Public Power District and Platte Valley Public Power and Irrigation District* (1960); Case No. 16, *Kramer Power Station Employees Committee v. Loup River Public Power District and Platte Valley Public Power and Irrigation District* (1964).

43. *Ibid.*

44. Case No. 14, *op. cit.*; Case No. 16, *op. cit.*

45. Case No. 2, *op. cit.*; Case No. 16, *op. cit.*

46. *International Brotherhood of Electrical Workers, Local Union No. 507 v. The City of Hastings, Nebraska, a Municipal Corporation, and Board of Public Works, City of Hastings, Nebraska*, 179 Neb. 455, 138 N.W. 2d 822 (1965).

47. Nebraska Legislature, *Hearings Before the Committee on Education*, April 17, 1967, 1-22; Nebraska Legislature, *Judiciary Committee Hearings*, March 15, 1967, 1-23, 30-32; Nebraska Legislature, *Hearings Before the Labor Committee*, March 22, 1967, 3.

48. *Ibid.*

49. Nebraska Legislature, *Hearings Before the Committee on Labor*, March 22, 1967, 3; Nebraska Legislature, *Floor Debate on LB 583*, May 18, 1967, 2397, 2398; Nebraska Legislature, *Floor Debate on LB 875*, May 10, 1967, 2186-2187.

50. Nebraska Legislature, *Judiciary Committee Hearings*, February 1, 1967, 20. Judge John Gradwohl testified during the hearing, "I don't think that there are overwhelming problems of wages and hours and working conditions. I think the thing that's really bugging the people, to the extent that I have observed the evidence, is the fact that they can't talk to their boss through representatives of their own choosing."

51. LB 298 and LB 583, *Session Laws of Nebraska*, 1967. The Attorney General of the State of Nebraska ruled that the phrase "government operating in a proprietary capacity" referred to only functions of a municipal corporation. *The Reports of the Attorney General of the State of Nebraska*, 1967-68, 48.

52. LB 875, *Session Laws of Nebraska*, 1967.

53. *Legislative Journal*, May 15, 1967, 1960.

54. LB 523, *Session Laws of Nebraska*, 1967.

55. Sen. Lester Harsh: "Let's look at a Class I school district where you usually have one or two teachers. I don't think you need this negotiation in this case. Of course a Class II school district is one that's below 1,000 people. You do not have nearly as many people involved and we just thought this was not a large enough system that you would need this sort of bill to apply." Nebraska Legislature, *Floor Debate on LB 485*, June 14, 1967, 3342.

56. LB 485, *Session Laws of Nebraska*, 1967.

57. Nebraska Legislature, *Hearings Before the Committee on Labor*, January 29, 1969, 2-10.

58. *American Federation of State, County, and Municipal Employees, AFL-CIO, LeRoy Gage, and John Engleman v. Milton Woodward, as City Commissioner of the City of North Platte, Nebraska*, 406 F. 2d 137 (8th Circuit, 1969). In this case, employees Gage and Engleman were allegedly discharged for union organizing activities by Woodward, the commissioner in charge of the street department of North Platte. Gage and Engleman claimed \$5,000 damage under the Civil Rights Act of 1871. The court agreed with the plaintiffs, following innumerable United States Supreme Court precedents including the *Tilendis* case. *McLaughlin v. Tilendis*, 398 F. 2d 287 (7th Cir., 1968). The court also pointed out that the right to freedom of association was protected by the Constitution of the State of Nebraska, article XV, section 13, and the laws of Nebraska, *Reissue Revised Statutes of 1943, Sec. 48-127*. In conclusion, the court observed that the defendants contended that the plaintiffs had to exhaust all available state judicial and administrative remedies prior to seeking relief in United States District Court and the NCIR. The court concluded: "We do not determine whether it is necessary to exhaust adequate state judicial and administrative remedies as the remedies have not shown to be adequate. . . The court of industrial relations is one of limited powers. See, *International Bro. of Elec.*

*Wkrs., Local Union No. 507 v. City of Hastings*, 179 Neb. 455, 138 N.W. 2d 822 (1965). It is neither authorized to restrain public officials from discriminating against public employees because of union membership nor empowered to correct the results of such discrimination. . . . The inadequacy of the administrative procedure for resolution of this dispute is obvious. *Reissue Revised Statutes of 1943, Section 48-836*, provides that a decision or report of an arbitration board as to a dispute submitted to it shall be advisory only and shall not be binding on either party."

59. During debate on LB 15 Senator Terry Carpenter stated: "I hope you will believe me when I say that no labor union in this state or outside of this state had anything to do with the introduction of this bill or its contents. I became concerned because as a matter of habit I read many of these periodicals on the business level such as *Business Week* and everyone understands that we do have problems in the field of public employees." Nebraska Legislature, *Floor Debate on LB 15*, February 5, 1969, 133, 134. However, in testimony before the Labor Committee in 1972, Richard Nisley, past president of the Nebraska Federation of Labor, AFL-CIO, stated: "I was one of the persons that was quite instrumental in having LB 15 drafted. It was drafted in my office with the assistance of my counselor Bob O'Connor and myself." Nebraska Legislature, *Hearings Before the Committee on Labor*, February 16, 1972, 20.

60. When compared to the New York state Taylor Law in existence in 1969, the provisions were virtually identical to the point where the administering agency had the same name—the Public Employment Relations Board.

61. *Legislative Journal*, February 19, 1969, 658.

62. LB 15, *Session Laws of Nebraska*, 1969.

63. Senator Carpenter commented on the final version: "It is my added opinion that we get this or nothing. It's that simple. We may not even get this." Nebraska Legislature, *Floor Debate on LB 15*, February 19, 1969, 209.

64. *Legislative Journal*, February 5, 1969, 417.

65. In its final version (and the version in which it exists today) this portion of the NCIRA states: Sec. 48-818; The findings and order or orders may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making such findings and order or orders, the Court of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. In establishing wage rates the court shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance, pensions, and the continuity and stability of employment enjoyed by the employees."

66. According to the introducer, the prevention of strikes was the major impetus behind the original version of LB 15. Senator Carpenter, summing up in hearings, stated: "This bill means exactly what it says. It is effective. It will stop a strike of any public employee in this state. And that's the purpose of it." Nebraska Legislature, *Hearings Before the Committee on Labor*, January 29, 1969, 24.

67. In addition to the NCIRA, Nebraska is also a "right-to-work state." In 1946 the citizens of Nebraska adopted Sections 13, 14, and 15 of article XV of the Nebraska Constitution. Section 14 defines the term "labor organization." Section 13 states that no person shall be denied employment because of membership or affiliation with a labor organization or for lack thereof. Section 15 makes article XV self-executing and allows legislation to be passed to facilitate its operation. These sections apply to both private and public sectors. Case No. 33, *Mid-Plains Education Association v. Mid-Plains Voc.-Tech. College* (1971); *Mid-Plains Education Association v. Mid-Plains Nebraska Technical College*, 189 Neb. 37, 199 N.W. 2d 747.

68. LB 1228, *Session Laws of Nebraska*, Eight-Second Legislature, Second Session, 1972. LB 1228 made a number of procedural and administrative changes in the NCIRA. Most importantly, however, it amended the NCIRA so that the State of Nebraska was

named specifically as an employer. Also, the NCIR was directed to establish rules and regulations for holding secret ballot elections and it was given the authority to grant exclusive recognition after an election. Nebraska Legislature, *Hearings Before the Committee on Labor*, February 2, 1972, 1-26.

69. LB 1402, *Session Laws of Nebraska*, Eighty-Second Legislature, Second Session 1972. LB 1402 amended the NCIRA so as to provide the court with specific legislative guidelines for determining the appropriate unit for collective bargaining by paid firemen and policemen. Nebraska Legislature, *Hearings Before the Committee on Labor*, February 16, 1972, 17-25.

70. LB 819, *Session Laws of Nebraska*, Eighty-Third Legislature, First Session, 1973. LB 819 was largely administrative in nature. Its provisions were to insure that the court would operate more expeditiously and efficiently. Most importantly, the court was to elect a presiding judge every two years and it could appoint one of its members to act for the entire court. In addition, the clerk could direct representation elections and all petitions were to be responded to in twenty days, with the court holding a hearing within sixty days of the filing of a petition and entering an order within thirty days of the hearing. Nebraska Legislature, *Hearings Before the Committee on Government, Military and Veteran Affairs*, February 12, 1974, 1-12.

71. Nebraska Legislature, *Hearings Before the Committee on Labor*, February 24, 1971, 19-53.

72. Nebraska Legislature, *Hearings Before the Committee on Government and Military Affairs*. March 11, 1971, 61-70.

73. Nebraska Legislature, *Hearings Before the Committee on Labor*, February 14, 1973, 23-33; Nebraska Legislature, Clerk of the Legislature, *After Adjournment Worksheet*, May 29, 1975.

74. Nebraska Legislature, *Hearings Before the Committee on Labor*, February 13, 1974, 66-70; Nebraska Legislature, Clerk of the Legislature, *After Adjournment Worksheet*, May 29, 1975.

75. Nebraska Legislature, Clerk of the Legislature, *After Adjournment Worksheet*, Eighty-Fourth Legislature, First Session, May 29, 1975.

76. *Ibid.*

77. For more details see David G. Wagaman, "Public Employee Impasse Resolution:..... 275, 286.

78. *Ibid.*, 351-377.

79. Only industrial disputes involving class III, IV, and V school districts involve fact-finding; all other disputes go directly to the NCIR regardless of public sector origin.

80. *City of Grand Island v. American Federation of State, County, and Municipal Employees, AFL-CIO*, 186 Neb. 711, 185 N.W. 2d 860, 1971; *Teamsters Public Employees Union Local No. 594 v. City of West Point, Nebraska*, 338 F. Supp. 927 (D.C.N.B., 1972); *School District of Seward Education Association v. School District of Seward*, 188 Neb. 772, 199 N.W. 2d 752, 1972; *Mid-Plains Education Association v. Mid-Plains Nebraska Technical College, North Platte*, 189 Neb. 37, 199 N.W. 2d 747, 1972; *Sidney Education Association v. The School District of Sidney, in the County of Cheyenne*, 189 Neb. 540, 203 N.W. 2d 762, 1973; *Nebraska Department of Roads Employees Association v. Department of Roads*, 189 Neb. 754, 205 N.W. 2d, 110, 1973; *Nebraska Council of Educational Leaders v. Nebraska State Department of Education* 189 Neb. 811, 205 N.W. 2d 537, 1973; *Crete Education Association v. The School District of Crete* 193 Neb. 245, 226 N.W. 2d 752, 1975; *Omaha Association of Firefighters, Local 385 v. City of Omaha*. 194 Neb. 436, 1975; *Orleans Education Association v. The School District of Orleans*, 193 Neb. 675, 229 N.W. 2d 752, 1975; *American Federation of State, County and Municipal Employees, AFL-CIO v. Department of Public Institutions State Hospitals of Nebraska*, 64 *Supreme Court Journal* 253. (Advance Sheets), 1976; *Omaha Association of Firefighters, Local 385 v. City of Omaha*, Docket No. 40030, 1975.

81. *City of Grand Island v. American Federation of State, County and Municipal Employees, AFL-CIO*, 186 Neb. 711, 185 N.W. 2d 860, 1971.

82. *School District of Seward Education Association v. School District of Seward*, 188 Neb. 772, 199 N.W. 2d 752, 1972; *Orleans Education Association v. The School District of Orleans*, 193 Neb. 675, 229 N.W. 2d 172, 1975; *American Federation of State, County, and Municipal Employees, AFL-CIO, v. Department of Public Institutions State Hospitals of the State of Nebraska*, 64 *Supreme Court Journal* 253, Advance Sheets, 1976.

83. Milton Derber states that industrial democracy contains the following elements: representation, participation, equal rights and opportunities, right of dissent, due process, responsibility, minimum standards, information, and personal dignity. Milton Derber, *The American Idea of Industrial Democracy, 1865-1965* (Urbana: University of Illinois Press, 1970), 3-25. This author does not subscribe to the thesis that public sector collective bargaining, a democratic form of government, and the maintenance of sovereignty are incompatible. For an able presentation of this thesis see: Sylvester Petro, "Sovereignty and Compulsory Public Sector Bargaining," *Wake Forest Law Review*, X (March, 1974), 25-165.

84. The Nebraska Supreme Court has implied that the NCIRA applies to all political subdivisions, the employees of the Nebraska Legislature, and all departments under the direction of the Legislature in the Nebraska Constitution, including possibly the Department of Public Institutions, the Department of Education, the Department of Educational Lands and Funds, Nebraska University; and Nebraska state colleges. Executive departments and judicial departments may not be under this act. *American Federation of State, County and Municipal Employees, AFL-CIO, v. Department of Public Institutions State Hospitals of the State of Nebraska*, 64 *Supreme Court Journal* 253, Advance Sheets, 1976.

85. Miernyk, *The Economics of Labor*, 133.

86. *Ibid.*, 349.

87. The NCIR has commented on this point. "However, the Legislature decided that the services provided by employees subject to our jurisdiction were too vital to allow interruption while employer and employees tested the merits of their charms by trial by battle. When discussion is barren, employer and employees in the public sector are wanted here. Judicial mandate replaces economic power on the determination of wages. However, the Legislature in providing for a judicial determination of wages did not deprive either management or labor of its market power. Rather it commanded that we so set wages and conditions of employment that employers are required to pay the market price of labor. In other words, we are to set wages at the level on which the parties ultimately would have settled if they were free to exert the range of leverage available in an unregulated labor market." Case No. 117, *Omaha Association of Fire Fighters, Local 385 v. City of Omaha* (1974).

88. Jacob Finkelman, "When Bargaining Fails," *Collective Bargaining in the Public Service: Theory and Practice*, ed. Kenneth O. Warner (Chicago: Public Personnel Association, 1967), 120. Theodore W. Kheel, "Strikes and Public Employment," *Michigan Law Review*, LXVII (March, 1969), 939-942.

89. Harry H. Wellington and Ralph K. Winter, Jr., *The Unions and the Cities* (Washington, D.C.: Brookings Institution, 1971), 12-21, 167; Harry H. Wellington and Ralph K. Winter, Jr., "The Limits of Collective Bargaining in Public Employment," *Yale Law Journal*, LXXVIII (June, 1969), 1124; Allan Weisenfeld, "Public Employees Are Still Second Class Citizens," *Labor Law Journal*, XXIX (March, 1969), 142.

90. John R. Commons, *The Legal Foundations of Capitalism* (Madison: University of Wisconsin Press, 1924), 242.