

# **Business and Labor Committee**

## **Interim Study Committee Report Legislative Resolution 228**

### **Examination of Commission of Industrial Relations**

December 2015

**Business and Labor Committee:**

Senator Burke Harr, Chair  
Senator Dave Bloomfield, Vice Chair  
Senator Ernie Chambers  
Senator Sue Crawford  
Senator Laura Ebke  
Senator Jerry Johnson  
Senator Sara Howard

Meghan Chaffee, Legal Counsel  
Lauren Williams, Committee Clerk

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## Interim Study Resolution

LR 228 -- Interim study to examine the Commission of Industrial Relations

Introduced by Harr, 8.

PURPOSE: The purpose of this resolution is to study the Commission of Industrial Relations and the current statutory requirements outlined in the Industrial Relations Act. The study shall include an examination of issues such as whether the act should be clarified regarding comparable wages, conditions of employment, or other related issues.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FOURTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Business and Labor Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

## History of Nebraska CIR

During the latter stages of World War I, inflation and strike activity were growing public concerns. These concerns were shared by the delegates to the Nebraska Constitutional Convention during 1920. 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. Proposal No. 333 addressed these concerns and can be found in the Nebraska Constitution Article XV, Section 9. The article was permissive in its directives to the Legislature. The Legislature may choose to enact laws related to labor disputes or “profiteering,” or they could choose not to pass laws. It could choose to deny the right to strike or it might not do so. The delegates purposefully did not want to tie the Legislature’s hands in addressing these problems as they arose over the course of time.

The Legislature could choose to establish a commission with quasi-legislative, quasi-executive, or quasi-judicial powers. It was not to be strictly a court established under the judicial branch, nor was it to be subject to the traditional separation of powers concept found in the Nebraska Constitution. It was to be an exception. The commission was to have the power to investigate, compel witnesses, and require the submission of evidence. It wasn’t until twenty seven years later that the Nebraska Legislature introduced legislation addressing its CIR.

In 1947, Nebraska introduced legislation which would make Article XV, Section 9 of the Nebraska Constitution operative. LB 537 (1947) restricted the CIR’s jurisdiction to “governmental service in a proprietary capacity” and cases involving public utilities. Eventually, the Legislature acted to extend CIR’s jurisdiction to all public sector employees.<sup>1</sup>

The thoughtful and deliberate actions taken by the Legislature to better CIR is a compromise as workers are prohibited from striking while still maintaining a meaningful avenue to be heard and address fairness in the workplace as compared to others performing similar work in similar conditions. These results better employers, employees, and all who rely on those employees, especially involving our public sector workers. We want constant police protection, fire protection; we want our water to be running and our lights to be on. We want street repairs and we want teachers in our schools. Strikes would interfere with all of those services and could be potentially disastrous.

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<sup>1</sup> For more information see David G Wagaman, “The Evolution of Some Legal-Economic Aspects of Collective Bargaining by Public Employees in Nebraska Since 1919,” *Nebraska History* 58 (1977) 474-489.

## Nebraska CIR Jurisdiction

The CIR is a last-resort option. It is only meant to be invoked when the parties reach an impasse in their negotiations of wages, terms and/or conditions. The CIR handles three types of cases: wage cases, representation cases, and others.

If impasse is reached during the course of the negotiations, one of the parties may request the CIR to establish wages and conditions of employment. If the parties agree, the case may be bifurcated into two separate parts, i.e. Part I to determine the array and Part II to determine wages and conditions of employment, if necessary. When determining wages and conditions, the CIR takes into account the overall compensation received by employees. The overall compensation requires that it be 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.

Both parties present evidence to make their case on what they believe to be a comparable array. The CIR then selects an array that it believes to be comparable and then sets wages and other conditions of employment based on the prevalent wages and conditions of employment of the selected array members. The CIR uses two key, objective factors to determine a comparable array: geographic proximity and size.

For representation cases, a petition may be filed by a union, or occasionally a joint request by the employer and union, requesting a certification election which would enable the union to act as the sole bargaining representative of the employees. If the petitioner can show a 30% interest among the employees, the CIR will hold a hearing to determine the appropriate bargaining unit, and then will conduct an election within that unit. Occasionally, a decertification petition will be filed to attempt to remove a currently certified or recognized representative.

Other CIR cases involve bargaining orders, may allege that certain prohibited practices have occurred, request mediation or fact-finding, or address other issues.

The CIR is an administrative agency with quasi-judicial powers. Proceedings before the CIR follow the rules of civil procedure applicable to District Courts, unless modified by Commission rules or statutes.

Once the petitioner has filed a case with the CIR, a panel of three commissioners is assigned. The case is heard by one commissioner, but three are required to make a decision. The respondent has 20 days to answer (except in prohibited practice cases where they have only 10 days to respond). Based upon the answer, the CIR may order a pretrial and/or a hearing. The purpose of the pretrial is to exchange exhibits, waive requirements of formal proof on undisputed facts, etc. in order to proceed with an effective and efficient hearing. CIR decisions may be appealed directly to the Court of Appeals.

The CIR employs five part-time commissioners appointed for six-year terms by the Governor, with legislative approval. The commissioners elect one of their members to serve as presiding commissioner for a two-year term.<sup>2</sup>

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<sup>2</sup> For more information see the Nebraska Commission of Industrial Relations website at <https://ncir.nebraska.gov/index>.



## **History of CIR Legislation LB 397 (2011)**

The Commission of Industrial Relations (CIR) is a state agency designed to resolve public sector labor controversies with jurisdiction over state and local government employees, including public utilities. Jurisdiction was originally over only public utilities, but was expanded to include all public employees in 1969. The State Constitution authorized the creation of such an agency, and state legislation in 1947 created the CIR.

In 2011, Senator Lathrop introduced LB 397 with the goal of bringing greater predictability and consistency to the CIR process of resolving labor disputes. LB 397 provided a vehicle to move forward legislation that resulted from a compromise reached among the stakeholders. LB 397 is the most recent CIR reform the Legislature has addressed to date.

Specifically, the bill:

- included a formula that allowed wages to be adjusted within a range between 98 percent and 102 percent of the average of an array;
- incorporated health insurance and pension benefits into an hourly rate value;
- allowed wage rates to be adjusted to reflect Nebraska's cost of living;
- specified a 70 percent match of duties performed and time spent performing those duties;
- established criteria for the size of comparable out-of-state cities and metropolitan statistical areas;
- provided a preferred array size between seven and nine;
- relaxed the rule of evidence requirement;
- required that three CIR commissioners be involved in cases regarding wage disputes; and
- required parties to provide proof that it rejected the other's last best final offer before the CIR can decide the dispute.

Lawmakers passed LB 397 on a 48-0 vote.

## LR 228 Report and Committee Findings

### **Introduction**

In May, Senator Harr introduced Legislative Resolution 228 with the purpose of examining the results of the Industrial Relations Act. In 2011, the Nebraska Legislature passed LB 397, the Industrial Relations Act, which looked to reform the CIR.

As four years have passed since LB 397 has taken effect, the Business and Labor Committee was charged with evaluating the implementation, experience and practice of the CIR. LR 228 allowed the Committee to determine if any clarifications, changes, or updates are necessary to make the CIR process more effective and fairer for all parties. LR 228 allowed interested parties to provide insight and reactions to the progress of the CIR reform following the passage of LB 397 in 2011.

This report provides a compilation of those responses as a piece of legislative record related to CIR legislation. A copy of this report has been filed with the Clerk of the Legislature and the Legislative Research Office.

In July, Senator Harr wrote a letter to sixteen stakeholders seeking feedback and input regarding what aspects of CIR are functioning properly and what aspects of CIR would benefit from being amended or clarified statutorily.

*[See Appendix A -- Letter from Senator Harr requesting feedback on statutory changes to CIR]*

The letter was mailed July 23, 2015 and the response deadline was set for August 29, 2015. At the time of this report, eight stakeholders have responded.

### **Distribution List**

Senator Harr mailed the letter to the following stakeholders as determined by the list of testifiers on LB 397 (2011):

1. Greater Omaha Chamber of Commerce
2. International Brotherhood of Electrical Workers
3. League of Nebraska Municipalities
4. Lincoln Chamber of Commerce
5. Lincoln Independent Business Association
6. Nebraska Association of County Officials
7. Nebraska Association of Public Employees/AFSCME Local 61
8. Nebraska Association of School Boards
9. Nebraska Chamber of Commerce
10. Nebraska Council of School Administrators
11. Nebraska Department of Administrative Services
12. Nebraska Professional Fire Fighters Association

13. Nebraska State AFL-CIO
14. Nebraska State Education Association
15. Nebraska State Lodge of the Fraternal Order of Police
16. UNO Chapter of the American Association of University Professors

## Responses Received

1. **International Brotherhood of Electrical Workers (IBEW)** submitted that there have not been a sufficient amount of CIR cases to make a determination regarding necessary adjustments. Therefore, they suggest making no changes at this time. Although no amendments were recommended, IBEW indicated LB 397 has reduced the number of wages cases brought before CIR due to cost, which forces parties to be realistic in their demands. Also, the timeliness of obtaining a hearing and decision from the CIR has been slow. However, with these issues in mind, IBEW recommends no changes.

*[See Appendix B -- Response letter from International Brotherhood of Electrical Workers]*

2. **Lincoln Independent Business Association (LIBA)** indicated that the current environment in which union negotiations take place creates uncertainties and inconsistencies in managing and negotiating those union salaries and benefits. LIBA holds that the current state of labor negotiations in which there are wage comparisons to other states is inappropriate based on the differences between state economies, employment environments, and costs of living. LIBA also noted the high cost of hiring experts to properly calculate comparable wages as a detriment to the current system.

*[See Appendix C -- Response letter from Lincoln Independent Business Association]*

3. **Nebraska Association of County Officials** submitted two letters: one from the Lancaster Board of Commissioners and the other from the Hall County Board of Supervisors.

The Lancaster County Board identified two main issues of concern: the high cost and complexity of actuarial studies to establish the hourly rate value (HRV) and the breadth of the term "safety" related to staffing issues. In regard to the high cost of actuarial studies, the Board holds that due to the cost, parties are more likely to stipulate that pension programs are comparable rather than spend the time and money necessary to establish the HRV. As for the second issue, the Board said concern has been expressed regarding the language in LB 397 pertaining to mandatory subjects of bargaining for staffing related to issues of safety. The Board holds that the term "safety" can be interpreted so broadly that all staffing issues could become mandatory subjects of bargaining.

*[See Appendix D -- Response letter from Lancaster County Board of Commissioners]*

The Hall County Board of Supervisors described a concern related to their current status a Metropolitan Statistical Area (MSA) and the requirements of comparison, forcing Hall County to be compared to other larger MSA's out of state. Hall County questions whether the MSA is the appropriate measure of likeness for comparability between counties. A

second concern was in regards to the local average wage of employees as a comparable for similar employment positions.

*[See Appendix E -- Response letter from Hall County Board of Supervisors]*

4. **Nebraska Association of School Boards (NASB)** provided a summary of the CIR negotiations of 2011 and outlined the four issues addressed that year for the NASB: 1) Mootness and timeliness; 2) calculating Federal Insurance Contributions Act (FICA) and retirement; 3) the determination of the midpoint hourly rate value for the selected array based on the unit's compensation range of 98-102%; and 4) increasing teachers' salaries for working in high poverty areas or remote areas in science, math, etc. Overall, the NASB is pleased with the CIR process as it stands and suggests no further changes at this time.

*[See Appendix F -- Response letter from Nebraska Association of School Boards]*

5. **Nebraska Department of Administrative Services** identified areas within the Act they believe need further clarification. Such suggested components include: 1) how individuals within the 90-102% ranges are to be treated or adjusted; 2) definition of "total compensation" as compared to "overall compensation"; 3) how continuity and stability of employment are measured or calculated; 4) removal of insurance and pensions from comparables; 5) how geographic proximity to the employer is determined; 6) employer size for the state; and 7) comparability of budgets for operations and personnel.

*[See Appendix G -- Response letter from Nebraska Department of Administrative Services]*

6. **Nebraska State AFL-CIO** stated that no changes were necessary at this time. The AFL-CIO believes LB 397 (2011) to be a reasonable compromise and although there have not been a significantly high number of cases brought before the CIR, the current statutory requirements have worked well.

*[See Appendix H -- Response letter from Nebraska State AFL-CIO]*

7. **Nebraska State Education Association (NSEA)** provided a summary of the CIR negotiations related to LB 397 and the NSEA's position on those issues. The NSEA supports the current law as it stands.

*[See Appendix I -- Response letter from Nebraska State Education Association]*

8. **UNO Chapter of the American Association of University Professors** indicated there were no concerns at this time.

*[See Appendix J -- Response letter from UNO Chapter of the American Association of University Professors]*

# Nebraska State Legislature

**SENATOR BURKE J. HARR**  
District 8

**LEGISLATIVE ADDRESS**

State Capitol  
PO Box 94604  
Lincoln, Nebraska 68509-4604  
(402) 471-2722  
[bharr@leg.ne.gov](mailto:bharr@leg.ne.gov)



**COMMITTEES**

Chairperson - Business and Labor  
Agriculture  
Revenue  
Committee on Committees  
Midwest Interstate Passenger Rail Compact

July 23, 2015

Dear Stakeholders,

In May, I introduced Legislative Resolution 228. The purpose of this resolution is to examine the results of the Industrial Relations Act. In 2011, the Nebraska Legislature passed LB 397, the Industrial Relations Act, which looked to reform the Court of Industrial Relations (“CIR”). At the time of its passage, LB 397 was hailed as a major piece of legislation that sought a “Nebraska solution” to the topic of public sector labor rights.

State Senator Steve Lathrop, who led the negotiations on the bill stated, “Thanks for not buying into the hysteria. We treated public employees fairly and preserved, in a meaningful way, collective bargaining for public employees.”

Nebraska Governor Dave Heineman called the bill “a victory for taxpayers.” He went on to describe the changes to the Court of Industrial Relations as “substantial, meaningful, and comprehensive.”

With four years of implementation, experience, and practice, the Business and Labor Committee is conducting an interim study to determine if any clarifications, changes, or updates need to be made to allow CIR to be more effective and fairer for all parties. As part of this study, I would like to hear from you and gather your input regarding what aspects of CIR are functioning properly and what aspects of CIR would benefit from being amended or clarified statutorily.

Please submit your feedback to [bharr@leg.ne.gov](mailto:bharr@leg.ne.gov) or to the legislative address on the letterhead by August 29, 2015. Thank you in advance for your thoughtful consideration on this legislative resolution.

Sincerely,

A handwritten signature in blue ink that reads "Burke J. Harr".

Senator Burke J. Harr



Dan Quick  
Pres./ Bus. Mgr.  
IBEW Local 1597  
P.O. Box 10  
Grand Island, NE  
68802

August 28, 2015

Senator Buke Harr  
State Capitol  
PO Box 94604  
Lincoln, NE., 68509

RE: Commission of Industrial Relations

Dear Senator Harr:

Thank you for your letter of July 23, seeking comments on the Commission of Industrial Relations (CIR), and LB 397 from the 2011 Legislative Session.

On behalf of the IBEW and Local 1597 I would have the following thoughts:

1. The Legislation has certainly cut down on the number of Wage Cases brought before the CIR. It is our belief, that like our local, most of the effected parties are worried what result they would obtain under the new rules for Wage Cases. That probably is not a bad thing. It does force the parties to, ultimately, be realistic in their demands.
2. Everyone agrees that the cost of bringing a wage case now is basically prohibitive.
3. Despite the fact that there are basically no Wage Cases, getting a hearing and a decision from the CIR remains painfully slow. Never has it been so true: "Justice delayed is Justice denied." The CIR is supposed to be handling other issues than Wage Cases. Their slowness does nothing to help ongoing labor relations.
4. Our current belief is that the Law as it exists today has not had enough cases to make any determination regarding necessary adjustments. We suggest making no amendments in the upcoming Legislative Session.

Thank you for your time on this issue.

Respectfully,

Dan Quick  
President, IBEW Local 1597



# Lincoln Independent Business Association

35 YEARS STRONG

620 N. 48th Street, Suite 205 ♦ Lincoln, NE 68504

Phone: 402-466-3419 ♦ Fax: 402-466-7926 ♦ www.liba.org

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Bruce Bailey

**Public Relations**

Phil Young

**School Liaison**

Wanda Caffrey

**Legislative Action**

Ken Svoboda

**Youth**

Dustin Lottman

August 26, 2015

Business and Labor Committee  
c/o Senator Burke Harr, Chairperson  
Nebraska State Capitol  
Room #2010  
P.O. Box 94604  
Lincoln, NE 68509

*Via Hand Delivery*

Re: LR 228 – A Resolution To Study The Current Statutory Requirements  
Outlined In The Industrial Relations Act

Senator Harr and Members of the Business and Labor Committee:

I write on behalf of the members of the Lincoln Independent Business Association (“LIBA”) to submit our impressions regarding the current state of Nebraska’s Industrial Relations Act and the impact of LB 379 on the Act since its passage in 2011. Based on our investigation related to the changes implemented, the negotiations conducted over the past few years between municipalities and public employee unions, and conversations we have had with both elected officials and those involved in negotiations with public employee unions, we believe that more work is needed to address the shortcomings of the Commission on Industrial Relations (“CIR”) and Nebraska’s labor negotiation system. Simply put, the present environment in which union negotiations take place remains detrimental to the interests of the taxpayers of our great state.

During discussion surrounding LB 379 in 2011, LIBA voiced reservations about the shortcomings of the bill. The past few years have demonstrated that the best laid plans of those involved in crafting LB 379 have indeed fallen short of effectively addressing the most important concerns of government officials and taxpayers. Since the implementation of LB 379, municipalities dealing with employee unions have continued to face difficulty with regard to budgeting as a result of uncertainty surrounding union negotiations. Both city and county officials have expressed frustration with the CIR process and the revisions included in LB 379. At the end of the day, the revisions implemented in 2011 have not afforded municipalities or taxpayers any more certainty or consistency in managing and negotiating public employee union salaries and benefits.

The language of LR 228 asks this Committee to examine the Commission on Industrial Relations and directs the Committee to determine, among other things, "whether the act should be clarified regarding comparable wages, [and] conditions of employment." There is clear need to revisit both issues and to revisit the entire Act. First, the current state of labor negotiations in Nebraska requires governments dealing with unions to meet standards for wages that are not realistic in Nebraska's employment environment. Many municipal departments are forced to match wage standards and conditions of employment with those of employers in states like Minnesota, Michigan, or Illinois based on the current state of the law. Such comparisons are not appropriate given the very real differences between the economies, employment environments, and costs of living between these states and Nebraska.

Additionally, uncertainty about the proper calculations under the current formula requires elected officials to walk a fine line when handling negotiations. This uncertainty is further exacerbated by the high cost of hiring appropriate experts to make accurate calculations. In the face of the large amount of control and discretion afforded the CIR when a dispute during negotiations arises, the difficulty of calculating "comparable wages" and benefits accurately restricts elected officials from negotiating strongly for the best interests of the taxpayers they represent. The result is that the voice of the taxpayer is largely silenced in the negotiation process.

The changes made in LB 379 do not go far enough in making labor negotiations consistent and flexible for the government officials charged with the important obligation of responsibly managing the public's finances. Frankly, more hard work from our Legislature and this Committee is crucial. Nebraskans deserve to see an earnest effort by this Committee to remove one of the biggest obstacles to the success of Nebraska municipal government and to address one of the largest expenses for taxpayers. Serious and tangible reform is still needed, and LIBA urges the members of the Business and Labor Committee to revisit the Industrial Relations Act.

Sincerely,



Coby Mach  
President





## LANCASTER COUNTY BOARD OF COMMISSIONERS

Roma Amundson      Larry Hudkins      Deb Schorr      Todd Wiltgen      Bill Avery  
Kerry Eagan, *Chief Administrative Officer*      Gwen Thorpe, *Deputy Chief Administrative Officer*

August 25, 2015

Senator Burke J. Harr  
State Capitol  
P.O. Box 94604  
Lincoln, NE 68509-4604

Re: LR 228, Review of 2011 Neb. Laws LB 397, The Industrial Relations Act

Dear Senator Harr:

This letter is being submitted by the Lancaster County Board of Commissioners pursuant to your request for information on how the Commission of Industrial Relations (CIR) is functioning after the passage of LB 397 in 2011. The CIR plays a crucial role in the establishment of wages and benefits for public employees, and the County Board appreciates the opportunity to comment on this important matter. Based on information received from local public officials who work directly with the CIR, Lancaster County offers the following observations.

As a preliminary matter, it must be noted that only one written decision has been issued by the CIR since the passage of LB 397. Parties may be reluctant to become the test case under the reforms. The paucity of cases from the CIR interpreting the new law makes it difficult to judge whether the reforms are functioning as intended or whether further clarifications are needed.

One concern that has been identified is the high cost and complexity of performing actuarial studies to establish the hourly rate value (HRV) when comparing direct benefit pension plans. The cost of performing one actuarial study can be costly. For example, an actuarial study for the City of Lincoln's direct benefit pension plan costs between \$60,000-\$70,000. If up to date actuarial studies are required for all members of the array the cost becomes prohibitive. Additionally, comparing actuarial studies is a complex process. Under these circumstances the parties are more likely to stipulate that pension programs are comparable rather than spend the money and time necessary to establish the HRV for pension plans.

### APPENDIX D


Concern has also been expressed regarding the following language in LB 397: "...staffing related to issues of safety shall be mandatory subjects of bargaining and staffing relating to scheduling work, such as daily staffing, staffing by rank, and overall staffing requirements, shall be permissive subjects of bargaining."

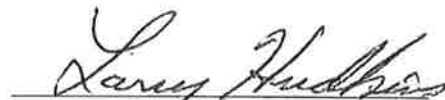
The term "safety" can be interpreted so broadly that all staffing issues could become mandatory subjects of bargaining, thereby undermining management's traditional right to determine staffing requirements. In fact, the County is already seeing requests to bargain over routine staffing under the auspices of safety concerns. The legislative history on LB 397 indicates this language was added to address police and fire concerns with how public safety could be compromised by inadequate staffing. The County Board believes additional clarification is needed to limit mandatory bargaining to police and fire staffing issues which could directly impact public safety.

As a final matter, the Lancaster County Board has long been concerned that the CIR can not take into account the ability of a political subdivision to pay when making comparability decisions. While the Board is still concerned with this issue, LB 397 did put in place several provisions which will smooth the impact of compensation increases on our property tax payers. Specifically, when total compensation is less than 93% of the midpoint, the CIR can now order the increase to 98% to be implemented in three equal annual increases. Also, if a dispute is decided by the CIR during a recession, as defined by LB 397, the bottom range drops from 98% to 95%. Both of these provisions could soften the impact of a large increase.


Please do not hesitate to contact our office if you have any questions.

Respectfully submitted,

  
Roma Amundson, Chair

  
Larry Hudkins, Vice Chair

  
Deb Schorr

  
Bill Avery

  
Todd Wiltgen



# Hall County Board of Supervisors

121 South Pine Street, Grand Island, NE 68801  
Phone (308) 385-5093 Fax (308) 385-5094 TDD (800) 833-7352  
Stacey Ruzicka, Executive Assistant to the County Board

August 25, 2015

Senator Burke Harr  
District 8 - State Capitol  
PO Box 94604  
Lincoln, NE 68509-4604

Dear Senator Harr,

Thank you for receiving comment regarding the Industrial Relations Act of 2011. Hall County with a population of approximately 60,720 people is considered the largest of the small counties and the smallest by far of the large counties, Sarpy, Lancaster and Douglas. When the City of Grand Island's population exceeded 50,000, Grand Island, along with Hall County was placed in a new status as a Metropolitan Statistical Area (MSA).

The Industrial Relations Act of 2011 uses the MSA as the designation of small/large for the purpose of employment compensation comparability. Considering the population extremes between Hall County and other Nebraska MSA's and given the requirement that counties cannot be compared to counties less than half or more than twice their size when setting wages and benefits, Hall County was required to go out of the state to find counties for comparability. Although Hall County was able to find counties in other states within an MSA which fit the requirement of less than twice its size, the MSA's were in general much larger than the MSA of which Hall County is a part. It is generally accepted that this will be the situation for Hall County for decades to come.

In addition, the Industrial Relations Act does not provide for the local average wage of employees, as a comparable for similar employment positions. Therefore, the compensation average of local business is not given any consideration when setting wages for Hall County employees doing similar work.

Considering its new status as an MSA, Hall County contracted for a current Wage Survey Study with Paul Essman and Associates. The result has been an increased compensation for many employees of approximately 20% or more. Hall County would be happy to send you a copy of our new wage study and the information regarding the increase that was required to reach the new levels of comparability if it would be of assistance.

In summary, Hall County would like to have you consider whether the MSA is the appropriate measure of likeness for comparability between counties or if the Industrial Relations Act should set its own threshold, such as a population of 150,000 as a measure of large vs. small counties. In addition, Hall County would like you to consider including, when possible, the

Supervisors

Scott Arnold, Chair 384-3905 ♦ Pamela E. Lancaster 381-2754 ♦ Douglas Lanfear 384-7289 ♦ Daniel Purdy 381-8463  
Gary Quandt 382-8255 ♦ Jane Richardson 382-5878 ♦ Stephen Schuppan 380-0362

**APPENDIX E**

local wage of similar employment positions as one of the appropriate comparables for salary and benefits of government employees.

Thank you again for taking comment regarding the Industrial Relation Act of 2011.

Sincerely,

A handwritten signature in cursive script that reads "Pamela E. Lancaster". The signature is written in black ink and is positioned above the printed name.

Pamela E. Lancaster  
Hall County Supervisor

Supervisors

Scott Arnold, Chair 384-3905 ♦ Pamela E. Lancaster 381-2754 ♦ Douglas Lanfear 384-7289 ♦ Daniel Purdy 381-8463  
Gary Quandt 382-8255 ♦ Jane Richardson 382-5878 ♦ Stephen Schuppan 380-0362

## **CIR Meeting with Nebraska Association of School Boards**

August 28, 2015  
Sen. Harr's Office

### Attending meeting:

- Senator B. Harr
- Meghan Chaffee, Legal Counsel for Business & Labor Committee
- John Spatz, Executive Director for Nebraska Association of School Boards (NASB)
- Jennifer Jorgensen, Legal Counsel for NASB

### CIR Negotiations of 2011:

- NASB addressed four items:
  - Mootness/timeline
    - Reluctantly supported it
    - Working well
  - Calculating FICA and retirement
    - Working well
  - Adjusting range of 98-102%
    - Working well
  - Increasing teachers' salaries to work in remote areas of the state or high-poverty areas teaching science, math, etc.
    - This item did not make it into LB 397
    - NASB is not bringing bill to address this topic

### Summary:

NASB is pleased with how the CIR process is working since passage of LB 397 in 2011. The Association suggests no further changes at this time.

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Pete Ricketts, Governor

August 26, 2015

Senator Burke Harr  
District 08  
State Capitol, Room 2010  
PO Box 94604  
Lincoln, NE 68509

RE: *Letter of July 23, 2015*

Dear Senator Harr:

I am responding to your letter of July 23, 2015, in regard to changes that were made in the State Employees Collective Bargaining Act by LB 397 in 2011. The changes made have been helpful where they have provided more clarity and direction than previously existed. However, there are still some areas where further clarification would be appreciated.

Currently many terms and processes are undefined by statute, thus open to interpretation. This inserts subjectivity into the process, and creates a situation where both parties to a labor issue may feel that they stand to gain by taking a matter to impasse and litigating it in front of the Commission. Clearer standards will remove incentive by creating greater predictability, allowing parties to negotiate accordingly.

We have suggested some components needing clarification below:

Neb. Rev. Stat. § 81-1383 (2)(b)(ii) mentions that if total compensation is less than 98 percent of the midpoint, an order will be entered increasing wage rates to 98 percent of the midpoint. Conversely, if total compensation is more than 102 percent of the midpoint, an order is to be entered decreasing the wage rate to 102 percent of the midpoint. Wage rates appear to mean the hiring rate and the maximum rate for each classification. The ranges can be adjusted easily enough, but how individuals within the ranges are to be treated or adjusted is unclear and left to interpretation.

In Neb. Rev. Stat. § 81-1383 (2)(b)(ii), "total compensation" is not defined. Does this term have the same meaning as the term "overall compensation" mentioned in § 81-1383 (2)(b)(i)? Further direction needs to be provided as to how total compensation is calculated.

Neb. Rev. Stat. § 81-1383(2)(b)(i)(C) requires continuity and stability of employment to be considered when establishing wage rates. Further clarification is needed as to how continuity and stability of employment are to be measured or calculated and what adjustments will or could be made based on these factors.

Neb. Rev. Stat. 81-1383(2)(b)(i)(B) indicates that in establishing wage rates, overall compensation will be taken into consideration, including insurance and pensions. Insurance and pension benefits are difficult to compare. To obtain an accurate comparison requires expensive actuarial services. Administrative Services recommends that insurance and pensions be removed from the factors used to make comparisons.

**APPENDIX G**

Neb. Rev. Stat. § 81-1383 (2)(c)(i) uses the term "geographic proximity to the employer." However, it is unclear as to how proximity is determined. In the case of a state, this could be measured from state capital to state capital or from closest border to closest border.

Neb. Rev. Stat. § 81-1383 (2)(c)(ii) mentions the size of the employer. For the State's purposes, is this measured by total number of state employees, the number of employees in the classified personnel system, the number of employees in the covered bargaining units, or is size measured by total population of the state?

Neb. Rev. Stat. § 81-1383 (2)(c)(iii) indicates that the employer's budget for operations and personnel will be used in determining peer comparability. How are budgets for operations and personnel to be compared? Is this the total state budget, or the total payroll with or without benefits? Again, this could be a very complex comparison depending on how the peer budgets are structured and how budget is defined. Possibly this provision could be clarified or eliminated.

Thank you for the opportunity to respond on this topic.

Sincerely,



Byron L. Diamond, Director  
Department of Administrative Services

cc: Bo Botelho, Deputy Director and General Counsel  
William Wood, Chief Negotiator



Mike Zgud, Interim President/Secretary-Treasurer, Nebraska State AFL-CIO

5418 S 27<sup>th</sup> Street. Suite 1

Omaha, Nebraska, 68107

August 27, 2015

Senator Burke J Harr, District 5

State Capitol, P.O. Box 94604

Lincoln, Nebraska 68509-4604

Dear Senator Harr:

In a recent letter, you asked for input on LR 228. The purpose is to examine results of the Industrial Relations Act, LB 397. As a Public Employee and member of NAPE/AFSCME Local 61, it was of great interest to me. At the time, I believed it to be a reasonable compromise and still share that opinion. I believe that your quotes from both Senator Steve Lathrop and former Governor Dave Heineman still ring true today.

The interim study being conducted by the Business and Labor Committee has asked if any clarifications or changes need to be made to the CIR. To my knowledge it has worked well for both Public Employees and the entities that employ them. My understanding is also that there have not been a significant number of cases that have been brought before the CIR. On behalf of the working women and men of Nebraska represented by public employees unions, I ask that the Business and Labor Committee not bow to pressure from the Platte Institute, ALEC, and other groups of their ilk to jeopardize the good work done by people of good will four years ago. The citizens of Nebraska deserve good public services and those who provide them need fair compensation for the work that they do.

Respectfully submitted,

Mike Zgud, Interim President/Secretary-Treasurer, Nebraska State AFL-CIO

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Nebraska State Education Association  
Nancy Fulton, *President* · Craig R. Christiansen, *Executive Director*

*A member-directed union representing 28,000 public school teachers, faculty and education support professionals across Nebraska.*

August 28, 2015

Senator Burke J. Harr  
Legislative District 8  
State Capitol  
PO Box 94604  
Lincoln, NE 68509-4604

Dear Senator Harr:

Thank you for your generous invitation to submit our organizational opinion on Legislative Resolution 228. The question for this interim study is whether there are “clarifications, changes, or updates that need to be made” in the CIR process, particularly in the implementation of LB 397.

As the Executive Director of the Nebraska State Education Association, it is my opinion that on the whole, LB 397 has not compromised the ability of instructional employees to effectively bargain comparable economic terms and conditions of employment. In fact, I believe the bill has in many ways benefited employees by changing the culture of collective bargaining from “bargaining to the CIR” to a culture of “bargaining to settlement.” I believe this to be true for a number of reasons.

First, I believe that adoption of a bargaining calendar has imposed a timeline and structure for bargaining that has benefited the NSEA organizationally. Prior to LB 397, many locals were not motivated to begin bargaining until they were well within the school year and were therefore working without a contract. This practice had a number of undesirable consequences, and many local teacher associations often looked to the NSEA to bail them out with a CIR action as the end of the school year approached. The bargaining calendar has changed that, and has provided a structure by which we have been able to shift the focus of bargaining responsibility back to the local teacher association and have built local capacities around this responsibility. The structure and timelines set forth in the calendar, together with required participation and responsibility by local negotiators, has achieved the legislative goal of securing early settlements at a local level without involvement by the CIR.

The addition of mediation/arbitration or “resolution officer” component to the Industrial Relations Act has also achieved the desired result of securing settlements without the involvement of the CIR. *I am not aware of a single CIR adjudication for instructional employees since the effective date of LB 397.* There has been only one case in which a hearing was held before a resolution officer. That case settled during the mediation stage of the proceeding. Although we have engaged resolution officers for other locals, in each of those cases settlement was reached prior to a hearing being held.

In my judgment, had those cases arisen prior to the adoption of LB 397, they may very well have ended up in a contested proceeding before the CIR. I believe this to be true not only because the resolution officer proceedings necessarily involve the local associations more directly in the outcome, but because it involves school district administrators and board members more directly as well. We have seen since the adoption of LB 397 more school districts conducting comparability studies as part of the negotiation process. When administrators and board members are able to see an outcome based on data and analysis that is similar to that generated by the local association, settlements occur without the effects of a contested case before the CIR.

Of course, the most controversial component of LB 397 is the "4% window." Because this provision deprives the CIR of authority to enter a wage order if the evidence shows that current wages are within 2% of "midpoint", the NSEA feared that this would have the effect of systematically driving down the midpoint. In fact, however, teachers have averaged annual increases in total compensation at a rate of approximately 3.5% per year. For that reason, I do not believe it can be said that teachers have suffered any diminution of compensation as a result of LB 397.

We support the current bargaining law as it is. The changes effected by LB 397 have resulted in reasonable improvements in the labor process for all parties. The temptation to "tweak" the bargaining law is unnecessary and may put bargaining itself at risk. I urge the Committee to allow the beneficial effects of LB 397 to continue.

A handwritten signature in cursive script that reads "Craig R. Christiansen". The signature is written in black ink and is positioned above the typed name.

Craig R. Christiansen, PhD  
Executive Director  
Nebraska State Education Association



August 27, 2015

Senator Burke J. Harr  
Chair, Business and Labor Committee  
Nebraska State Legislature  
State Capitol  
P.O. Box 94604  
Lincoln, NE 68509-4604

Dear Senator Harr,

Thank you very much for your work on the important issue of the Court of Industrial Relations. I especially appreciate your reaching out to the American Association of University Professors – University of Nebraska Omaha Chapter to solicit any concerns we might have.

We do not have any concerns at this time. Again, my thanks to you and the members of the Business and Labor Committee.

Sincerely,

Karen Falconer Al-Hindi, Ph.D.  
Professor  
President, American Association of University Professors  
– University of Nebraska Omaha Chapter

