that Deviney presented sufficient evidence of a genuine issue of material fact as to the foreseeability of contracting WNV. We therefore affirm the decision of the Court of Appeals.

AFFIRMED.

STATE OF NEBRASKA, APPELLANT, V. STATE CODE AGENCIES TEACHERS ASSOCIATION, NSEA-NEA, ALSO KNOWN AS STATE CODE AGENCIES EDUCATION ASSOCIATION, APPELLEE.

788 N.W.2d 238

Filed August 13, 2010. No. S-09-718.

1. **Commission of Industrial Relations: Appeal and Error.** In reviewing an appeal from the Commission of Industrial Relations in a case involving wages and conditions of employment, an order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other: (1) if the commission acts without or in excess of its powers, (2) if the order was procured by fraud or is contrary to law, (3) if the facts found by the commission do not support the order, and (4) if the order is not supported by a preponderance of the competent evidence on the record considered as a whole.
2. **Jurisdiction: Appeal and Error.** The question of jurisdiction is a question of law, which an appellate court resolves independently of the trial court.
3. **Statutes: Appeal and Error.** Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.
4. **Statutes.** A court must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless.
5. **Commission of Industrial Relations: Evidence.** Determinations made by the Commission of Industrial Relations in accepting or rejecting claimed comparables as to wage rates and other conditions of employment for purposes of establishing an array are within the field of its expertise and should be given due deference.
6. ____: ____. Generally, the Commission of Industrial Relations' guideline for assembling an array of school districts is to select districts from one-half to twice as large as the subject school. Although the size criterion is a general guideline and not a rigid rule, it is based on objective criteria, provides predictability, and should not be lightly disregarded when a sufficient number of comparables which meet the guideline exist.

Appeal from the Commission of Industrial Relations. Affirmed.

A. Stevenson Bogue and Jennifer R. Deitloff, Special Assistant Attorneys General, of McGrath, North, Mullin & Kratz, P.C., L.L.O., for appellant.

Mark D. McGuire, of McGuire & Norby, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

WRIGHT, J.

NATURE OF CASE

The State of Nebraska (State) appeals the decision of the Commission of Industrial Relations (CIR), which affirmed the Special Master's ruling implementing the final offer of the State Code Agencies Teachers Association (SCATA) for salary increases for the 2009-11 biennium. We affirm the decision of the CIR.

SCOPE OF REVIEW

[1] In reviewing an appeal from the CIR in a case involving wages and conditions of employment, an order or decision of the CIR may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other: (1) if the CIR acts without or in excess of its powers, (2) if the order was procured by fraud or is contrary to law, (3) if the facts found by the CIR do not support the order, and (4) if the order is not supported by a preponderance of the competent evidence on the record considered as a whole. See *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005).

FACTS

The SCATA is a bargaining agent that represents teachers employed by the State in employment negotiations with the State. Its membership consists of approximately 72 teachers who teach in 13 state-operated residential facilities, including centers for people with developmental disabilities, youth rehabilitation centers, treatment centers, and correctional centers located throughout Nebraska. The teachers are certified by the State of Nebraska and teach 877 students in grades kindergarten through 12.

The SCATA teachers' salaries are computed according to an index schedule made up of nine columns representing educational attainment and 18 steps representing each year of experience. An index number is assigned to each position on the schedule, and salaries for each position are calculated by multiplying the corresponding index number by the base salary. The first step in the first column, representing a first-year teacher with a bachelor's degree, has an index of "1" and is effectively equal to the base salary.

Each step and column beyond the base salary has an index 4 percent greater than the previous step and column, ranging from 1.04 to 1.96. Teachers who have obtained a master's degree plus 36 hours of education and have taught for 18 years—the maximum amount of education and experience provided for on the index schedule—receive 1.96 times the base salary. Increasing the base salary by a certain percentage has the effect of increasing every other salary on the schedule by that same percentage. As the base salary is the foundation for computing all other positions on the salary schedule, the parties negotiate wage increases in terms of an increase in base salary. Adding the indexes for all of the teachers in the district generates the staff index. The parties can determine the entire cost of a proposed salary schedule by multiplying the staff index by the base salary.

In negotiating a new collective bargaining agreement for the contract period of July 1, 2009, to June 30, 2011, the SCATA and the State reached an impasse. Pursuant to the State Employees Collective Bargaining Act (Bargaining Act), Neb. Rev. Stat. §§ 81-1369 to 81-1390 (Reissue 2008), the parties met with a mediator on January 9, 2009, and reached a tentative agreement subject to the SCATA members' ratification. A ratification vote was held from January 12 to 14, which resulted in the SCATA members' rejecting the contract.

On January 15, 2009, the SCATA invoked the Special Master procedure pursuant to the Bargaining Act and the parties exchanged final offers. The State submitted a motion to dismiss the Special Master proceeding, claiming that the SCATA failed to timely submit a final offer on or before January 10, as required by § 81-1382(1). The Special Master denied the

State's motion, concluding that the parties did exchange final offers as contemplated by the statute.

SCATA's Final Offer

The SCATA's final offer was based on an array of eight comparison districts based on a "labor market" theory, that is, the array included the "host city" school districts that establish the local labor market for teachers in the communities in which state facilities are located. For example, the Beatrice State Developmental Center is located in Beatrice, so the SCATA included the Beatrice school district as a comparator. The SCATA's array included Beatrice, Fillmore Central, Hastings, Johnson County, Kearney, Lincoln, Omaha, and York school districts. Its theory was that the State had to compete with the local public schools in the labor market for teachers.

Based on its analysis of this array, the SCATA concluded that the SCATA teachers' base salaries lagged significantly behind base salaries in the array districts. The SCATA's base salary for 2008-09 was $28,273. The mean, median, and midpoint of base salaries for 2008-09 calculated from the SCATA's proposed array produced figures of $30,330, $29,425, and $29,877, respectively. The mean is the arithmetic average of the salaries in the array. The median is the middle value in the array. The SCATA relied most heavily on the midpoint figure in its comparability analyses, which it calculated by taking the average of the mean and median figures. The SCATA's final offer proposed an actual increase in base salary of 4.2 percent to $29,459 in 2009-10.

Although salary information for 2009-10 was available for only Lincoln and York, and not available for any district for 2010-11, the SCATA analyzed wage increases from 1998 to 2008 for five districts: Beatrice, Hastings, Kearney, Lincoln, and York, which resulted in a midpoint annual increase of 3.95 percent. Based on this calculation, the SCATA's final offer proposed an increase of 3.9 percent to $30,609 for 2010-11.

State's Final Offer

The State proposed an array of nine comparison districts based on district size guidelines and geographic proximity determined by commuting distance to State facilities.

The State's array includes the school districts of Ashland-Greenwood, Beatrice, Fillmore Central, Hastings, Holdrege, Johnson County, Kearney, Ralston, and York. It notes that size is an array selection criteria the CIR has heavily relied upon. Using its selected array districts, the State calculated mean, median, and midpoint salaries of $28,698, $28,850, and $28,774, respectively. It proposed a final offer with an increase in base salary of 4 percent to $29,404 for contract year 2009-10. Claiming it could not rely on speculative data for the 2010-11 salary increases, the State offered an increase of 1.4 percent to $29,816 for 2010-11.

Special Master Hearing

On January 28, 2009, the parties participated in a hearing before the Special Master in Lincoln. The only unresolved issue presented for resolution was wages. Both parties had the opportunity to present all the evidence they deemed appropriate. On February 3, the Special Master issued his ruling selecting the SCATA's final offer as most reasonable.

In reaching his decision, the Special Master included all comparator school districts presented by both parties, resulting in an 11-member array. He concluded that although Lincoln and Omaha are large districts, they were reasonable comparables considering the SCATA's argument that the State had to compete in those labor markets to recruit and retain teachers. He also accepted the State's recommendations of the Ashland-Greenwood, Holdrege, and Ralston districts, noting that they were within commuting distance of host cities. The other six districts—Beatrice, Fillmore Central, Hastings, Johnson County, Kearney, and York—were included in both the SCATA's and the State's arrays. The parties stipulated that all school districts proposed were sufficiently similar under Neb. Rev. Stat. § 48-818 (Reissue 2004).

Considering salary data from all 11 array districts, the Special Master calculated that the SCATA base salary was $1,021 below the midpoint of comparison base salaries and $1,161 below the base salary that would produce the midpoint schedule cost. He concluded that the SCATA teachers' salaries lagged significantly behind peer salaries for the 2008-09 year.

Noting that the parties were bargaining for future comparability for 2009-10 and 2010-11, the Special Master forecast base salaries for 2009-10 and 2010-11. He based the prediction on historical average increases of 3.25 percent during the 1998-99 to 2008-09 period and considered that for 2009-10, the base salary in Lincoln increased 3.14 percent and the base salary in York increased 2.76 percent. Characterizing his estimate as "extremely conservative," the Special Master predicted that base salaries for 2009-10 in the remaining districts would increase by 2.5 percent and that they would increase by 2 percent for 2010-11. He determined that the SCATA's final offer moved the bargaining unit members closer to true comparability for the upcoming biennium and selected the SCATA's offer as being the most reasonable.

The State timely appealed the Special Master's decision to the CIR. Before the hearing, the SCATA filed a motion in limine to prevent the State from offering new evidence or new witness testimony for the CIR to consider. The State opposed the motion and indicated it wished to submit "updated and previously unavailable" evidence of terms and conditions of employment of the comparator employers. See brief for appellant at 8. The CIR granted the SCATA's motion, reasoning that because it was charged to act as an "appellate body," the matter should proceed as an appeal on the record made at the Special Master hearing.

The State submitted an offer of proof for the record. The first exhibit of the offer of proof was a table of base salaries for 2008-09 for the nine districts proposed by the State. The information in the table was identical to the information relied on by the Special Master except that it did not include Lincoln or Omaha. The second exhibit of the offer of proof consisted of tables showing salary information for the State's final offer, the SCATA final offer, and comparability figures calculated by the State from its proposed array. It assumed no salary increases in array districts for the second year.

On May 11, 2009, the CIR held a hearing to resolve the following issues as presented by the State: (1) whether the Special Master had jurisdiction to issue a ruling in the case; (2) whether the decision of the Special Master with respect

to wages was significantly disparate from prevalent rates of pay and conditions of employment as determined by the CIR, pursuant to § 48-818; (3) whether the Special Master's array selection was improper; and (4) whether the Special Master's prediction of wage increases in 2009-10 and 2010-11 should be given deference. The CIR affirmed the Special Master's order. The State appeals.

ASSIGNMENTS OF ERROR

The State alleges the CIR erred in (1) determining the Special Master had jurisdiction, (2) granting the SCATA's motion in limine and refusing to allow the parties to submit additional evidence, (3) determining that the Special Master's decision to include Lincoln and Omaha in the array was not significantly disparate, (4) determining that the Special Master's prediction of wage increases for 2010-11 was to be given deference, and (5) determining that the Special Master's decision that the Bargaining Act requires the setting of wages for the second year of the contract without comparability data was not significantly disparate under § 48-818.

ANALYSIS

Special Master Jurisdiction

[2] The first issue is whether the Special Master had jurisdiction to resolve the parties' dispute. The question of jurisdiction is a question of law, which an appellate court resolves independently of the trial court. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007). In this case, jurisdiction is determined by the Bargaining Act.

The purpose of the Bargaining Act is to "promote harmonious, peaceful, and cooperative relationships between state government and its employees and to protect the public by assuring effective and orderly operations of government." § 81-1370. In furtherance of this purpose, the Legislature sets forth a specific schedule for contract negotiations. Bargaining must begin on or before the second Wednesday in September of the year preceding the beginning of the contract period. § 81-1379. No later than January 10, the parties "shall reduce to writing and sign all agreed-upon issues and exchange final offers on each

unresolved issue. Final offers may not be amended or modified without the concurrence of the other party." § 81-1382(1). "No later than January 15, the parties . . . shall submit all unresolved issues that resulted in impasse to the Special Master." § 81-1382(2).

The State argues that adherence to the January 10 deadline is mandatory. It points to *State Code Agencies Ed. Assn. v. State*, 231 Neb. 23, 434 N.W.2d 684 (1989), in support of its claim that the deadline is absolute and, thus, that the Special Master lacked jurisdiction. In *State Code Agencies Ed. Assn.*, the State Code Agencies Education Association was certified as the bargaining agent for teachers employed by the State on October 28, 1987, and attempted to initiate contract negotiations on November 2. The State refused on the ground that bargaining did not begin before the second Wednesday in September, as required by § 81-1379. Although the CIR directed the State to begin negotiations, we reversed, noting that the association had full knowledge of the timing requirements and had chosen not to timely initiate the actions necessary to become certified and start the negotiations.

Likewise, in the case at bar, the State claims that the January 10 deadline is jurisdictional. We disagree. January 10 simply marks the end of the negotiations between the parties. The Bargaining Act permits parties to agree to modify final offers after January 10; therefore, January 10 is not the litmus test for CIR jurisdiction. See § 81-1382(1).

As the CIR notes in *State Law Enforcement Barg. Council v. State of NE*, 13 C.I.R. 104, 109 (1998), the primary purpose of the Bargaining Act is to "encourage voluntary resolution of disputes in the collective bargaining process, and, to the extent the parties failed in achieving voluntary agreement on all issues, to provide an efficient, speedy, simple, cost effective means for resolving all remaining unresolved issues."

The parties' actions were in furtherance of this purpose, as the negotiators reached a voluntary tentative final agreement in mediation on January 9, 2009. No unresolved issues existed from January 9 until January 14, when ratification failed. The parties then exchanged new final offers and submitted the unresolved issues to the Special Master in accordance with

the timeline set forth in § 81-1382(2). We conclude that the parties' actions complied with § 81-1382 and that the Special Master had jurisdiction.

Motion in Limine and Denial of Additional Evidence

The next issue is whether parties can present additional evidence to the CIR after the Special Master hearing. After the State appealed the Special Master's ruling to the CIR, the SCATA filed a motion in limine to prevent the offering of additional evidence. The CIR sustained the motion, reasoning that allowing additional evidence at this stage of the proceedings would permit parties to "bolster what defects now apparently exist in the evidence."

[3] An appeal of a Special Master's ruling to the CIR is governed by the Bargaining Act. Therefore, we must interpret the Bargaining Act to determine whether the CIR correctly sustained the motion. Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court. *Underhill v. Hobelman*, 279 Neb. 30, 776 N.W.2d 786 (2009).

Section 81-1383(1) of the Bargaining Act provides that parties "may appeal an adverse ruling on an issue to the commission on or before March 15. . . . No party shall present an issue to the [CIR] that was not subject to negotiations and ruled upon by the Special Master." Section 81-1383(2) instructs:

> (2) The [CIR] shall show significant deference to the Special Master's ruling and shall only set the ruling aside upon a finding that the ruling is significantly disparate from prevalent rates of pay or conditions of employment as determined by the [CIR] pursuant to section 48-818. The [CIR] shall not find the Special Master's ruling to be significantly disparate from prevalent rates of pay or conditions of employment in any instance when the prevalent rates of pay or conditions of employment, as determined by the [CIR] pursuant to section 48-818, fall between the final offers of the parties.

Section 48-818 of the Industrial Relations Act provides that the CIR shall establish rates of pay which are comparable to

the prevalent wage rates paid for the same or similar work. In contrast to the Bargaining Act, the Industrial Relations Act provides in part that if a special master is appointed under that act,

> [s]hould either party to a special master proceeding be dissatisfied with the special master's decision, such party shall have the right to file an action with the [CIR] seeking a determination of terms and conditions of employment pursuant to section 48-818. Such proceeding shall *not* constitute an appeal of the special master's decision, but rather shall be heard by the [CIR] as an action brought pursuant to section 48-818.

Neb. Rev. Stat. § 48-811.02(5) (Reissue 2004) (emphasis supplied). The Industrial Relations Act provides the parties with the right to file an action with the CIR and is explicit that such proceeding filed with the CIR after the Special Master's decision is not an appeal. § 48-811.02(5).

[4] Where § 48-811.02(5) of the Industrial Relations Act proclaims that the CIR's review is *not* an appeal, § 81-1383(1) of the Bargaining Act specifically states that the CIR's review is an appeal of an adverse ruling. A court must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless. *Herrington v. P.R. Ventures*, 279 Neb. 754, 781 N.W.2d 196 (2010). As we are required to give meaning to each word in the language of the statute, the Legislature's description of the action as an appeal in the Bargaining Act is controlling. The Legislature has clearly established a method of review for cases arising under the Bargaining Act that is more circumscribed than those arising under the Industrial Relations Act.

The Bargaining Act is cumulative to the Industrial Relations Act, except where the provisions are inconsistent, in which case the Bargaining Act prevails. § 81-1372. Although the CIR acts as a specialized body of first impression in the Industrial Relations Act, the Legislature clearly changes the CIR's role in the Bargaining Act to that of an appellate body. This interpretation is in line with the other provisions of the Bargaining Act designed to streamline the negotiation process.

Furthermore, the CIR is required to give significant deference to the Special Master's ruling. § 81-1383(2). The Special Master is required to determine the most reasonable final offer on each disputed issue, and then the CIR's review is limited. It is only to set the ruling aside if it finds the ruling is significantly disparate. § 81-1383. The CIR could not give deference to the Special Master if it allowed new evidence, because such evidence would not have been taken into consideration in the initial ruling. Allowing additional evidence would significantly dilute that required deference and would cause the Special Master hearing to be a mere formality. Accordingly, permitting supplementary evidence would render the language of § 81-1383(2) meaningless. There is nothing in the statute that allows parties to present additional evidence before the CIR, and the procedure following the Special Master ruling is for the Legislature to determine.

We note that the CIR has previously permitted additional evidence following the Special Master hearing. See *State Law Enforcement Barg. Council v. State of NE*, 13 C.I.R. 104 (1998). That case was not appealed to this court, and therefore, the issue was not previously presented to us and we do not find that case instructive or in any way binding.

Even if the CIR was permitted to receive and consider additional evidence, the offer of proof does not show that the receipt of such evidence would have made a difference in this case. The State's offer of proof purported to be a corrected version of exhibit 25, which was received by the Special Master. The only correction was changing the number of contract days for Hastings from 187 to 185, which had the effect of raising Hastings' base salary from $29,100 to $29,420. This caused the 2008-09 mean base salary of the State's proposed array to increase from $28,662 to $28,698, median base salary to be unchanged, and midpoint base salary to increase from $28,756 to $28,774. These are the same figures cited and used by the Special Master in his ruling.

The other offer of proof submitted by the State was a table of salary figures that the State claimed utilized "previously presented information and data to provide the Commission with data and a method for comparing the final offers of both parties

with comparability." The State explains that in assembling this data, it assumed no increase in base salaries for the second year of the contract on the ground that it believed speculative data were prohibited. As we reach the opposite conclusion in later analysis in this opinion, this offer of proof would not have made a difference in this case. All of the evidence proffered by the State in its offer of proof is either not helpful to its case, redundant of evidence already in the record before the Special Master, or based on incorrect assumptions. The CIR's decision would not have been different had it taken this information into consideration.

We conclude that the parties are not permitted to offer additional evidence before the CIR and that the CIR did not err in granting the motion in limine and in denying the State's requests. Section 81-1383(1) clearly characterizes the CIR's review of the Special Master's ruling as an appeal, and it does not provide for the admission of additional evidence.

Inclusion of Lincoln and Omaha in Array

The State also argues that the CIR should not have affirmed the Special Master's inclusion of Lincoln and Omaha school districts in the array. The State claims that Lincoln and Omaha are too large to be array members.

[5,6] Determinations made by the CIR in accepting or rejecting claimed comparables as to wage rates and other conditions of employment for purposes of establishing an array are within the field of its expertise and should be given due deference. See *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005). Generally, the CIR's guideline for assembling an array of school districts is to select districts from one-half to twice as large as the subject school. *Allen Ed. Assoc. v. Allen Consolidated Schools*, 14 C.I.R. 101 (2002); *Scotts Bluff Co. Sch. Dist. No. 79-0064 v. Lake Minatare Education Assoc.*, 13 C.I.R. 256 (1999) (citing numerous cases). Although the size criterion is a general guideline and not a rigid rule, it is based on objective criteria, provides predictability, and should not be lightly disregarded when a sufficient number of

comparables which meet the guideline exist. *Lake Minatare Education Assoc., supra.*

However, size of the district is only one factor the CIR considers when reviewing an array of comparables. Other factors used to determine comparability are geographic proximity, population, job descriptions, job skills, and job conditions. See *Hyannis Ed. Assn., supra*. In selecting cities in reasonably similar labor markets for the purpose of comparison of prevalent wage rates, the question is whether, as a matter of fact, the cities selected for comparison are sufficiently similar and have enough like characteristics or qualities to make comparison appropriate. *Omaha Assn. of Firefighters v. City of Omaha*, 194 Neb. 436, 231 N.W.2d 710 (1975). The State argues that Lincoln and Omaha should be excluded because of the size of the districts.

The SCATA represents approximately 72 teachers who teach approximately 877 students in 13 facilities located across Nebraska. Unlike most school district negotiation cases, where the school district may be the only employer of teachers in the city or town, the "district" represented by the SCATA has employees in facilities located within other school districts. We have stated that

> "[w]henever there is another employer in the same market hiring employees to perform same or similar skills, the salaries paid to those employees must be considered by the CIR *unless* evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar."

Douglas Cty. Health Dept. Emp. Assn. v. Douglas Cty., 229 Neb. 301, 311, 427 N.W.2d 28, 37 (1988) (quoting *AFSCME Local 2088 v. County of Douglas*, 208 Neb. 511, 304 N.W.2d 368 (1981), *disapproved on other grounds, Hyannis Ed. Assn., supra*). Furthermore, in this case, the parties stipulated that aside from size, all of the school districts were sufficiently similar under § 48-818.

The SCATA's members teach in facilities located in Beatrice, Geneva (Fillmore Central), Hastings, Tecumseh (Johnson County), Kearney, Lincoln, McCook, Omaha, and

York. The final 11-district array used by the Special Master was as follows:

District	Enrollment	2008-09 Base Salary	Proposed By
Ashland-Greenwood	848	$28,500	State
Beatrice	2,143	$30,100	Both
Fillmore Central	630	$28,650	Both
Hastings	3,375	$29,420	Both
Holdrege	1,150	$27,800	State
Johnson County	549	$28,850	Both
Kearney	5,084	$29,429	Both
Lincoln	34,061	$34,908	SCATA
Omaha	48,075	$32,285	SCATA
Ralston	3,095	$26,533	State
York	1,232	$29,000	Both

Beatrice, Hastings, Kearney, Lincoln, Omaha, and Ralston all exceed the twice-as-large guideline, yet both parties proposed Beatrice, Hastings, and Kearney.

The State claims that failure to adhere to the twice-as-large guideline was error. It calculates that by including Ashland-Greenwood, Lincoln, Omaha, and Ralston as array districts, the Lincoln and Omaha areas were weighted as 36 percent of the array and argues that those markets were weighted too heavily. However, as noted by the CIR, 5 of the 13 facilities, or 38 percent, are located in Lincoln or Omaha.

The Special Master noted that all districts proposed by both parties were within reasonable driving distances of state facilities; therefore, he did not exclude any district based on geographic proximity. Regarding the inclusion of Lincoln and Omaha in the array, the Special Master found that five districts exceeded the size guideline and that there was "no persuasive reason for tossing out" all of them. He acknowledged that Lincoln and Omaha were "vastly larger" than the SCATA district but determined that a large percentage of the SCATA's labor market came from those areas. He included all proposed districts in the array.

On appeal, the CIR concluded that the Special Master's use of all 11 of the proposed array school districts to determine comparability was not significantly disparate from § 48-818.

It also reiterated the facts that the facilities are located within other school districts is unique, that both parties failed to adhere to the size guidelines, and that the parties stipulated that all school districts were sufficiently similar.

We may modify, reverse, or set aside an order of the CIR on one or more of the following grounds and no other: (1) if the CIR acts without or in excess of its powers, (2) if the order was procured by fraud or is contrary to law, (3) if the facts found by the CIR do not support the order, and (4) if the order is not supported by a preponderance of the competent evidence on the record considered as a whole. See *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005).

There is no evidence that the CIR acted without or in excess of its powers in affirming the decision of the Special Master, nor is there evidence that the order was procured by fraud or is contrary to law. Comparing the Lincoln and Omaha school districts to the facilities represented by the SCATA, the districts meet comparability criteria in the areas of geographic proximity, job descriptions, job skills, and job conditions. The Special Master and CIR thoughtfully considered the impact of including comparators exceeding the size guidelines and found there was a persuasive argument for including such comparators.

We conclude that the facts support the CIR's order by a preponderance of the competent evidence on the record considered as a whole. The CIR did not err in affirming the Special Master's decision to include Lincoln and Omaha in the array.

Wage Increases for 2010-11

The State's remaining assignments of error relate to the Special Master's setting of wages for 2010-11. It claims that the CIR erred in affirming the Special Master's conclusion that the Bargaining Act requires the setting of wages for the second year of the contract even if there is insufficient comparability data. The State also claims that the Special Master's salary increase figures for 2010-11 were speculative and that, therefore, the CIR should not have shown deference to the figures.

As noted above, we are limited in our review. See *Hyannis Ed. Assn., supra*. There is no evidence that the CIR acted without or in excess of its powers in giving deference to the Special Master's decision or that the CIR's order was procured by fraud or is contrary to law. Accordingly, we consider whether the facts found by the CIR support its order and whether the order is supported by a preponderance of the competent evidence on the record considered as a whole.

Section 81-1377(4) of the Bargaining Act states that "[a]ll contracts involving state employees and negotiated pursuant to the Industrial Relations Act or the . . . Bargaining Act shall cover a two-year period coinciding with the biennial state budget . . . ." Other sections of the Bargaining Act make it clear that the Legislature crafted the Bargaining Act in order to have a known amount to include in the biennial budget. See §§ 81-1377(1), 81-1383(4) and (5), 81-1384(1), and 81-1385(2). By requiring state employees to negotiate a 2-year contract coinciding with the biennial state budget, the Legislature has placed emphasis on knowing the cost it will incur for state employee contracts for the biennial budget.

Negotiations pursuant to the Industrial Relations Act require comparable figures to set salaries for the following year. See § 48-818. See, also, *Lincoln Fire Fighters Assn. v. City of Lincoln*, 198 Neb. 174, 252 N.W.2d 607 (1977); *Bellevue Police Officers Association v. The City of Bellevue, Nebraska*, 8 C.I.R. 186 (1986). Because the Bargaining Act requires 2-year contracts negotiated on a rigid timeline, which may occur before full comparability data are available, the requirements of the two acts are inconsistent. When the Industrial Relations Act and the Bargaining Act are inconsistent, the Bargaining Act prevails. Therefore, the comparability requirement of the Industrial Relations Act is superseded by the 2-year contract requirement of the Bargaining Act. § 81-1372. We find that the State and the SCATA must negotiate a 2-year contract regardless of the availability of comparable data.

We must then consider whether the CIR erred in giving deference to the Special Master's decision. Section 81-1383(2) instructs that the CIR "shall show significant deference to the Special Master's ruling and shall only set the ruling aside upon

a finding that the ruling is significantly disparate from prevalent rates of pay or conditions of employment as determined by the [CIR] pursuant to section 48-818."

Although the CIR typically does not make decisions on wages or benefits based on speculation, see *Douglas Cty. Health Dept. Emp. Assn. v. Douglas Cty.*, 229 Neb. 301, 427 N.W.2d 28 (1988), *disapproved on other grounds, Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005), and *General Drivers & Helpers Union v. Co. of Douglas*, 13 C.I.R. 202 (1999), appropriate comparability data for the second year of the contract did not exist at the time of negotiations. However, the absence of such data does not absolve the State of its duty under § 81-1377 to negotiate a 2-year contract. As the Special Master noted, failing to predict salary increases for future years would result in the SCATA teachers' salaries being significantly below actual comparability and in a constant catchup status.

To avoid lagging salaries and because actual comparability data were not available for most districts for the 2009-10 year and were unavailable for all districts for 2010-11, the Special Master forecast salaries based on historical increases. He considered salary data provided by the SCATA for five of the comparison districts for the period of 1998-99 to 2008-09. The base salaries in these districts increased an average of 3.95 percent annually during that time period. During the same time period, the SCATA base salaries increased an annual average of 3.25 percent. The Special Master noted the declining private economy, the expected modest decline in state revenues for 2008, and the increases in base salaries for 2009-10 in Lincoln and York of 3.14 percent and 2.76 percent respectively.

Considering this evidence and characterizing his estimate as "extremely conservative," the Special Master forecast that base salaries for the remaining comparison districts would increase by 2.5 percent for 2009-10 and 2 percent for 2010-11. Relying on this prediction, the Special Master determined that although both the State's and the SCATA's final offers brought the SCATA teachers closer to true comparability, the SCATA's offer did a much better job of doing so.

For 2010-11, the SCATA's final offer was an increase of 3.9 percent, based on its calculation that the SCATA raises averaged 3.25 percent over the last 10 years. Although the State protested that it could not make an offer for 2010-11 due to the lack of array data, it ultimately offered an increase of 1.4 percent. The Special Master concluded that both parties submitted reasonable final offers and that both parties' final offers propose reasonable increases in the SCATA base salary for 2009-10. But the Special Master found that the SCATA's final offer for 2010-11 was more reasonable than the State's and better moved the SCATA's members toward true comparability. Recognizing the importance attached to comparability in § 81-1382(3) of the Bargaining Act and § 48-818 of the Industrial Relations Act, he found that the SCATA's final offer was more reasonable.

On appeal, the CIR acknowledged that the Legislature had charged that it "shall show significant deference to the Special Master's ruling and shall only set the ruling aside upon a finding that the ruling is significantly disparate from prevalent rates of pay or conditions of employment as determined by the [CIR] pursuant to section 48-818." See § 81-1383(2). The CIR further determined that the Special Master's ruling fit within the intent and spirit of § 48-818 and that his ruling was clearly based on comparability. Accordingly, it concluded that the Special Master's decision was not significantly disparate and affirmed his ruling.

Considering the facts found by the Special Master and the CIR, as well as the competent evidence on the record, we find that the facts support the CIR's order and that the order is supported by a preponderance of the competent evidence on the record considered as a whole. See *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005). Therefore, there are no grounds for this court to modify, reverse, or set aside the decision of the CIR.

CONCLUSION

The CIR correctly determined that it had jurisdiction to hear the appeal in this case. It did not err in disallowing additional evidence to be submitted, finding that the Special Master's

inclusion of Lincoln and Omaha school districts in the array was not significantly disparate, or finding that the Special Master was correct in requiring the parties to negotiate a 2-year contract even though sufficient comparability data were not available. We affirm the decision of the CIR.

AFFIRMED.

THE BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES, APPELLANT, V. STATE COLLEGE EDUCATION ASSOCIATION, APPELLEE.

787 N.W.2d 246

Filed August 13, 2010. No. S-09-738.

1. **Commission of Industrial Relations: Appeal and Error.** In reviewing an appeal from the Commission of Industrial Relations in a case involving wages and conditions of employment, an order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other: (1) if the commission acts without or in excess of its powers, (2) if the order was procured by fraud or is contrary to law, (3) if the facts found by the commission do not support the order, and (4) if the order is not supported by a preponderance of the competent evidence on the record considered as a whole.

Appeal from the Commission of Industrial Relations. Affirmed.

Patrick J. Barrett, of Fraser Stryker, P.C., L.L.O., for appellant.

Mark D. McGuire, of McGuire & Norby, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

WRIGHT, J.

NATURE OF CASE

The Board of Trustees of the Nebraska State Colleges (Board) appeals the decision of the Commission of Industrial Relations (CIR), which affirmed the Special Master's ruling implementing the final offer of the State College Education