

1 **As Amended by House Committee**

2 *Session of 2002*

3  
4 **HOUSE BILL No. 2825**

5  
6 By Committee on Federal and State Affairs

7  
8 2-11

9  
10 AN ACT concerning public employer-employee relationships; relating to  
11 resolution of certain impasses; amending K.S.A. 75-4332 and repealing  
12 the existing section.

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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 75-4332 is hereby amended to read as follows: 75-  
16 4332. (a) Public employers may include in memoranda of agreement con-  
17 cluded with recognized employee organizations a provision setting forth  
18 the procedures to be invoked in the event of disputes which reach an  
19 impasse in the course of meet and confer proceedings. Such memoran-  
20 dum shall define conditions under which an impasse exists, and if the  
21 employer is bound by the budget law set forth in K.S.A. 79-2925 *et seq.*  
22 and amendments thereto, the memorandum shall provide that an impasse  
23 is deemed to exist if the parties fail to achieve agreement at least 14 days  
24 prior to budget submission date.

25 (b) In the absence of such memorandum of procedures, or upon the  
26 failure of such procedures resulting in an impasse, either party may re-  
27 quest the assistance of the public employee relations board, or the board  
28 may render such assistance on its own motion. In either event, if the  
29 board determines an impasse exists in meet and confer proceedings be-  
30 tween a public employer and a recognized employee organization, the  
31 board shall aid the parties in effecting a voluntary resolution of the dis-  
32 pute, and request the appointment of a mediator or mediators, represen-  
33 tative of the public, from a list of qualified persons maintained by the  
34 secretary of human resources, and such appointment of a mediator or  
35 mediators shall be made forthwith by the secretary.

36 (c) All verbal or written information transmitted between any party  
37 to a dispute and a mediator conducting the proceeding, or the staff of an  
38 approved program under K.S.A. 5-501 *et seq.* and amendments thereto  
39 shall be confidential communications. No admission, representation or  
40 statement made in the proceeding shall be admissible as evidence or  
41 subject to discovery. A mediator shall not be subject to process requiring  
42 the disclosure of any matter discussed during the proceedings unless all  
43 the parties consent to a waiver. Any party, including the neutral person

1 or staff of an approved program conducting the proceeding, participating  
2 in the proceeding has a privilege in any action to refuse to disclose, and  
3 to prevent a witness from disclosing, any communication made in the  
4 course of the proceeding. The privilege may be claimed by the party or  
5 anyone the party authorizes to claim the privilege.

6 (d) The confidentiality and privilege requirements of this section shall  
7 not apply to:

8 (1) Information that is reasonably necessary to establish a defense for  
9 the mediator or staff of an approved program conducting the proceeding  
10 in the case of an action against the mediator or staff of an approved  
11 program that is filed by a party to the mediation;

12 (2) any information that the mediator is required to report under  
13 K.S.A. 38-1522 and amendments thereto;

14 (3) any information that is reasonably necessary to stop the commis-  
15 sion of an ongoing crime or fraud or to prevent the commission of a crime  
16 or fraud in the future for which there was an expressed intent to commit  
17 such crime or fraud; or

18 (4) any information that the mediator is required to report or com-  
19 municate under the specific provisions of any statute or in order to comply  
20 with orders of the court.

21 (e) If the impasse persists seven days after the mediators have been  
22 appointed, the board shall request the appointment of a fact-finding  
23 board of not more than three members, each representative of the public,  
24 from a list of qualified persons maintained by the secretary of human  
25 resources. The fact-finding board shall conduct a hearing, may administer  
26 oaths, and may request the board to issue subpoenas. It shall make written  
27 findings of facts and recommendations for resolution of the dispute and,  
28 not later than 21 days from the day of appointment, shall serve such  
29 findings on the public employer and the recognized employee organiza-  
30 tion. The board may make this report public seven days after it is sub-  
31 mitted to the parties. If the dispute continues 14 days after the report is  
32 submitted to the parties, the report shall be made public.

33 (f) **If the public employer is not the state or a state agency and**  
34 **the parties have not resolved the impasse by the end of a ~~forty-day~~ 40-**  
35 **day period, commencing with the appointment of the fact-finding board,**  
36 **or by a date not later than 14 days prior to the budget submission date,**  
37 **whichever date occurs first. (1) The representative of the public employer**  
38 **involved shall submit to the governing body of the public employer in-**  
39 **involved a copy of the findings of fact and recommendations of the fact-**  
40 **finding board, together with the representative's recommendations for**  
41 **settling the dispute; (2) the employee organization may submit to such**  
42 **governing body its recommendations for settling the dispute; (3) the gov-**  
43 **erning body or a duly authorized committee thereof shall forthwith con-**

1 ~~duct a hearing at which the parties shall be required to explain their~~  
2 ~~positions; and (4) thereafter, the governing body shall take such action as~~  
3 ~~it deems to be in the public interest, including the interest of the public~~  
4 ~~employees involved. The provisions of this subsection shall not be appli-~~  
5 ~~cable to the state and its agencies and employees, commencing with~~  
6 ~~the appointment of the fact-finding board, or by a date not later~~  
7 ~~than 14 days prior to the budget submission date, whichever occurs~~  
8 ~~first: (1) The representative of the public employer involved shall~~  
9 ~~submit to the governing body of the public employer involved a~~  
10 ~~copy of the findings of fact and recommendations of the fact-find-~~  
11 ~~ing board, together with the representative's recommendations for~~  
12 ~~settling the dispute; (2) the employee organization may submit to~~  
13 ~~such governing body its recommendations for settling the dispute;~~  
14 ~~(3) the governing body or a duly authorized committee thereof~~  
15 ~~shall forthwith conduct a hearing at which the parties shall be re-~~  
16 ~~quired to explain their positions; and (4) thereafter, the governing~~  
17 ~~body shall take such action as it deems to be in the public interest,~~  
18 ~~including the interest of the public employees involved.~~

19 **(g) If the public employer is the state or a state agency and the**  
20 **parties have not resolved the impasse by the end of a 40-day period**  
21 *following receipt of the factfinders written findings and recommendations*  
22 *for resolution, the written findings of the factfinder shall become binding*  
23 *on the parties and a memorandum of agreement shall be implemented*  
24 *following the factfinders recommendations for resolution.*

25 ~~(g) (h)~~ **(h)** The cost for the mediation and fact-finding services provided  
26 by the secretary of human resources upon request of the board shall be  
27 borne by the secretary of human resources. All other costs, including that  
28 of a neutral arbitrator, shall be borne equally by the parties to a dispute.

29 Sec. 2. K.S.A. 75-4332 is hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after its  
31 publication in the statute book.

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