

MINUTES OF THE House COMMITTEE ON Labor and IndustryThe meeting was called to order by Representative Arthur Douville at
Chairperson9:00 a.m. ~~noon~~ on March 6, 1985 in room 526-S of the Capitol.

All members were present except:

All members were present.

Committee staff present:

All present.

Conferees appearing before the committee:

Chairman Douville briefly reviewed H.B. 2013. He said this bill is an answer to the Pittsburg case. Jim Wilson went over the amended version of the bill. Representative Friedeman made a motion to incorporate Jim Wilson's amendments into the bill. The motion was seconded by Representative Sifers. A short discussion followed. A vote was taken and the motion passed. For the record Representative Dillon voted no.

Representative O'Neal made a motion to amend H.B. 2013 as per his attachment number 1. The motion was seconded by Representative Snowbarger. A discussion followed. A vote was taken and the motion passed.

Representative Bideau made a motion for further amend H.B. 2013 on page 12, line 418, reinserting the words "either party" and striking "the parties by joint agreement." On page 12, lines 420 through 423, reinserting the words "if the board determines an impass exists in meet and confer proceedings between a public employer and a recognized employee organization." On page 12, lines 430 and 431, reinserting the words "board shall" and striking the words "parties by joint agreement may." The motion was seconded by Representative Whiteman. There was a short discussion followed by a vote of the committee. The motion passed. For the record Representative Friedeman voted no.

Representative Sifers made a motion to pass out H.B. 2013 as amended. The motion was seconded by Representative Patrick. There was a discussion, a vote was taken and the motion was passed. For the record the following voted no: Representative Hensley, Representative Dillon and Representative Cribbs.

Written testimony was received from Bob Wootton, representing the views of Governor Carlin. See attachment number 2. Information requested by the committee from Dr. Richard S. Funk, from the Kansas Association of School Boards was passed out. See attachment number 3. Also attached is the amended version of the bill passed out by Jim Wilson of the Revisors office. See attachment number 4.

The meeting was adjourned at 10:00 a.m.

Labor & Industry

3-6-85

Rob Hodgen	KCCI	Topeka
Faith Lovato	DOA	Topeka
KEVIN DAVIS	DOA	
TERRI L. STEVENS	F.O.P	TOPEKA
Ruth Walters	AAUP	Topeka
Chris Miller	K.I.D	Topeka
Bruce Cooper	KNEA	Buhler
Bill Kauffman	Bd. of Regents	Topeka
Jean Sagan	Bd of Regents	Topeka

MICHAEL R. (MIKE) O'NEAL
 REPRESENTATIVE, 104TH DISTRICT—HUTCHINSON
 RENO COUNTY
 P.O. BOX 1868
 HUTCHINSON, KANSAS 67504



TOPEKA

HOUSE OF
 REPRESENTATIVES

M E M O R A N D U M

COMMITTEE ASSIGNMENTS
 MEMBER: JUDICIARY
 LABOR AND INDUSTRY
 PUBLIC HEALTH AND WELFARE

3-6-85
 Att. #1

Suggested Amendment to House Bill 2013

Commentary:

Some of the negative aspects of the Board of Regents vs. Pittsburg State case appear at syllabi. 2,3, 4 of the court decision. The Supreme Court held that in reviewing actions of the PERB the courts will apply the customary standards for the review of the acts of an administrative agency. The court further held that the legal interpretation of the statute by an administrative agency charged with this enforcement is entitled to a great deal of judicial deference. And the court further ruled that the ruling of an administrative agency in questions of law while not as conclusive as its findings of fact is nevertheless persuasive and given weight and may carry with it a strong presumption of correctness especially if the agency is one of professional confidence and experience.

The PERB was given a great deal of power when the Public Employer/Employee Relations Act was enacted. K.S.A. 75-4334 sets forth the procedure to be followed by PERB in resolving a controversy over alleged prohibited practices. In subsection b of that section (lines 553-556 of HB 2013) the findings of PERB as to fact are deemed to be conclusive. PERB may seek enforcement of its orders by petition in the district court and a party aggrieved by a decision of PERB may seek review of that order in the district court however, the scope of review of the district is limited. Such is not the case with the Kansas Commission on Civil Rights, an agency which performs a similar task of oversight and conciliation between parties who find themselves in an adversary setting.

Under the Kansas Acts Against Discrimination K.S.A. 44-1001 et seq, the Commission has the responsibility of handling complaints of discriminatory practices. K.S.A. 44-1011 sets forth the procedure the Commission is to follow. This procedure has worked well and should be looked upon as a model for the procedure that should be utilized by PERB. The major difference between the aggrieved party is entitled to a trial de novo at the district court level. Appeals from a final order of a district court are subject to review by the appellate courts in the same manner as other appeals from the district court in civil cases.

By utilizing the Acts Against Discrimination procedure we would not be placing PERB in a position where they are making legal conclusions which the Supreme Court has found to be entitled to almost automatic approval. Having PERB follow the procedure now employed by the Kansas Commission on Civil Rights would remove the possibility of favoritism on the part of PERB.

Attch. 1
 3/6/85

AMENDMENTS:

Accordingly I recommend that HB 2013 be amended as follows: By striking lines 545-563 and substituting the following language:

(c) The board may secure enforcement of any final order of the board by the district court of the county where the prohibited practice occurred, through mandamus or injunction in appropriate cases, or by action to compel the specific performance of the order, except that the provisions of K.S.A. 60-904 and amendments thereto shall not control injunction actions arising out of public employer/employee relations under this act. Such proceedings shall be initiated by the filing of a petition in such court, together with a transcript of the record upon the hearing before the board, and issuance of service of a copy of said petition as in civil actions. The court shall have the power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings an order/or decree, enforcing, modifying, and enforcing, as so modified, or setting aside in whole or in part the order of the board.

(d) Any person or entity aggrieved by an order made by the board may obtain judiciary review thereof in the said court by filing with the clerk of said court within 30 days of the date of service of the order a written appeal praying that such order be modified or set aside. The appeal shall certify that notice in writing of the appeal, with a copy of the appeal, has been given to all parties who have appeared before the board at their last known address, and to the board by service at the office of the board in Topeka. The evidence presented to the board, together with its findings in the order issued thereon, shall be certified by the board to said district court as its return. No order of the board shall be superceded or stayed during the proceeding on the appeal unless the district court shall so direct

(e) The court shall hear the appeal by trial de novo and the court may, in its discretion permit any party or the board to submit additional evidence on any issue. Said appeals shall be heard and determined by the court as expeditiously as possible. After hearings, the court may affirm the board's decision. If the decision by the board is not affirmed, the court may set aside or modify it, in whole or in part, or may remand the proceedings to the board for further disposition in accordance with the order of the court.

The board's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of judicial review of the order. The review shall be heard on the record without requirement of printing.

The board shall be deemed a party to the review of any order by the court.

The jurisdiction of the district court of the proper county as aforesaid shall be exclusive and its final order of decree shall be subject to review in the same manner as other appeals from the district court in civil cases.

NOTE: Change line 0564 to reflect that subsection (d) should now be (f).

STATE OF KANSAS



3-6-85
Att. #2

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612-1590

John Carlin Governor

Statement to the House Committee
on Labor and Industry
Concerning "Proposed Amendments"
on House Bill No. 2013
by Bob Wootton
March 6, 1985

Since I am unable to appear before the Committee today, Chairman Douville and Members of the Committee, please accept this written statement as an expression of Governor Carlin's response to this second version of House Bill 2013.

Governor Carlin reiterates his respectful opposition to this new version of House Bill 2013.

While the amendments proposed by this second attempt are far more subtle than the original version, the outcome, were the now amended bill to become law, would circumvent the stated purpose of the law, i.e., "the development of harmonious and cooperative relationships between government and its employees", just as surely as Version 1 would have done.

Simply put, these statutes should be left undisturbed. At long last, the Act is working. Experience by the affected parties, illuminating court decisions and the passage of time, have eliminated many of the problems first posed by the Act.

Gratuitous changes, shifting the advantage to one side or the other, would send a provocative signal to employer and employee alike.

The Committee may wish to question me in detail concerning the Governor's position on this bill. If so, I will be available at your pleasure.

In the meantime, Mr. Chairman and members of the Committee, I urge that you allow this bill to remain unacted upon in the Committee.

Thank you.

Attch. 2
3/6/85

March 6, 1985 (FINAL)

1984-85 NEGOTIATIONS SETTLEMENT REPORT BY KASB RESEARCH DEPARTMENT

By Gordon Nelson, Research Director

3-6-85
Att.#3

304 USD's settled, 100%, last year same date 100%

(Two districts, USD 260 & USD 308, had budget authority increases which were turned down by the voters; two, USD 443 & USD 457, dependent on 9/15/84 enrollment.)

IMPASSE RECORD

44 USD's have gone to impasse

6 have settled without mediation

23 have settled in mediation

FACT-FINDING RECORD

15 have requested fact-finding

2 settled before fact-finding

2 accepted fact-finder's report

5 settled (other than fact-finder's report)

6 unilateral board decision

	84-85 HIGH	84-85 LOW	84-85 MEDIAN	83-84 MEDIAN	82-83 MEDIAN
84-85 SCHED. BASE	\$18,000	\$10,450	\$15,000	\$13,700	\$13,000
\$ INC. OVER 83-84	\$2,665	-\$2,550@	\$1,200	\$750	\$1,000
% INC. OVER 83-84	20.9%	-19.6%@	8.5%	5.8%	8.5%
84-85 FRINGE	\$4,400	\$ 0*	\$1,320	NR	NR
\$ INC. OVER 83-84	\$3,600	0#	\$174		
% INC. OVER 83-84	999.9%/	0.0%#	14.3%		
PACKAGE % INC. OVER 1983-84 PACKAGE+	21.4%	4.7%	10.3%	7.3%	10%

@Three USD's made no increase in base, all into fringe or schedule changes; five USD's decreased the base to allow better fringe benefits.

*Two USD's reported no fringe benefit package.

#Seventy-six USD's made no change in fringe benefits.

+Not a budget increase percentage, but what the returning teacher can expect in all financial adjustments.

/One USD initiated a new fringe benefit at \$1,000.00.

The fringe benefit amount in this report is usually limited to the insurance group. The median reported is \$1,272.00; hence it could not include required fringe benefits like social security which alone would be about \$1,200.00. Since the KASB later negotiations data report gives detailed data on all fringe benefits, no attempt is made to verify the fringe benefit reported here.

Settlement printouts may be requested from the KASB Research Department on a regional, enrollment, or selected USD basis.

Attch. 3
3/6/85

HOUSE BILL No. 2013

By Special Committee on Labor and Industry

Re Proposal No. 30

12-18

3-6-85
ATT.#4

PROPOSED AMENDMENTS

For Consideration by House Labor and Industry

2-27-85

0018 AN ACT concerning public employer-employee relations; relat-
0019 ing to purpose and objective; certain definitions and prohib-
0020 ited practices; amending K.S.A. 75-4321, 75-4322, 75-4323,
0021 75-4327, ~~75-4332~~, 75-4333 and 75-4334 and repealing the
0022 existing sections.

75-4330,

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. K.S.A. 75-4321 is hereby amended to read as fol-
0025 lows: 75-4321. (a) The legislature hereby finds and declares that:

0026 (1) The people of this state have a fundamental interest in the
0027 development of harmonious and cooperative relationships be-
0028 tween government and its employees;

0029 (2) the denial by some public employers of the right of public
0030 employees to organize and the refusal by some to accept the
0031 principle and procedure of full communication between public
0032 employers and public employee organizations can lead to
0033 various forms of strife and unrest;

and the refusal by some to accept the principle and procedure of full communication between public employers and public employee organizations

0034 (3) the state has a basic obligation to protect the public by
0035 assuring, at all times, the orderly and uninterrupted operations
0036 and functions of government;

0037 (4) there neither is, nor can be, an analogy of statuses be-
0038 tween public employees and private employees, in fact or law,
0039 because of inherent differences in the employment relationship
0040 arising out of the unique fact that the public employer was
0041 established by and is run for the benefit of all the people and its
0042 authority derives not from contract nor the profit motive inherent
0043 in the principle of free private enterprise, but from the constitu-
0044 tion, statutes, civil service rules, regulations and resolutions; and

0045 (5) the difference between public and private employment is

Atch. f
3/6/85

0046 further reflected in the constraints that bar any abdication or
0047 bargaining away by public employers of their continuing legis-
0048 lative discretion and in the fact that constitutional provisions as
0049 to contract, property, and due process do not apply to the public
0050 employer and employee relationship.

0051 (b) Subject to the provisions of subsection (c), it is the pur-
0052 pose of this act to obligate *provide a procedure that* public
0053 agencies, public employees and their representatives ~~to enter~~
0054 ~~into discussions with affirmative willingness to resolve griev-~~
0055 ~~ances and disputes relating to~~ *may utilize in order to meet and*
0056 *confer concerning* conditions of employment, acting within the
0057 framework of law. It is also the purpose of this act to promote the
0058 improvement of employer-employee relations within the various
0059 public agencies of the state and its political subdivisions by
0060 providing a uniform basis for recognizing the right of public
0061 employees to join organizations of their own choice, or to refrain
0062 from joining, and be represented by such organizations in their
0063 employment relations and dealings with public agencies.

0064 (c) The governing body of any public employer, other than
0065 the state and its agencies, by a majority vote of all the members
0066 may elect to bring such public employer under the provisions of
0067 this act, and upon such election the public employer and its
0068 employees shall be bound by its provisions from the date of such
0069 election. Once an election has been made to bring the public
0070 employer under the provisions of this act it continues in effect
0071 unless rescinded by a majority vote of all members of the gov-
0072 erning body. No vote to rescind shall take effect until the termi-
0073 nation of the next complete budget year following such vote.

0074 Sec. 2. K.S.A. 75-4322 is hereby amended to read as follows:
0075 75-4322. As used in this act:

0076 (a) "Public employee" means any person employed by any
0077 public agency, except those persons classed as supervisory em-
0078 ployees, professional employees of school districts, as defined by
0079 subsection (c) of K.S.A. 72-5413 *and amendments thereto*,
0080 elected and management officials, and confidential employees.

0081 (b) "Supervisory employee" means any individual who nor-
0082 mally performs different work from ~~his or her~~ *such individual's*

0083 subordinates, having authority, in the interest of the employer, to
 0084 hire, transfer, suspend, lay off, recall, promote, discharge, assign,
 0085 reward, or discipline other employees, or responsibly to direct
 0086 them, or to adjust their grievances, or effectively to recommend a
 0087 preponderance of such actions, if in connection with the forego-
 0088 ing the exercise of such authority is not of a merely routine or
 0089 clerical nature, but requires the use of independent judgment. A
 0090 memorandum of agreement may provide for a definition of
 0091 "supervisory employees" as an alternative to the definition
 0092 herein.

0093 (c) "Confidential employee" means any employee whose
 0094 unrestricted access to confidential personnel files or other infor-
 0095 mation concerning the administrative operations of a public
 0096 agency, or whose functional responsibilities or knowledge in
 0097 connection with the issues involved in the meet and confer
 0098 process would make his or her *such employee's* membership in
 0099 the same employee organization as other employees incompati-
 0100 ble with his *such employee's* official duties.

0101 (d) "Professional employee" includes any employee: (1)
 0102 Whose work is predominantly intellectual and varied in charac-
 0103 ter as opposed to routine mental, manual, mechanical, or physi-
 0104 cal work; involves the consistent exercise of discretion and
 0105 judgment; requires knowledge of an advanced type in a field of
 0106 science or learning customarily acquired by prolonged study in
 0107 an institution of higher learning; or (2) who has completed
 0108 courses of prolonged study as described in paragraph (1) of this
 0109 subsection, and is performing related work under the supervi-
 0110 sion of a professional person in order to qualify as a professional
 0111 employee as defined in paragraph (1) of this subsection; or (3)
 0112 ~~attorneys-at-law~~ or any other person who is registered as a
 0113 qualified professional by a board of registration or other public
 0114 body established for such purposes under the laws of this state.

who is an attorney-at-law

0115 (e) "Elected and management officials" means any elective
 0116 official and any appointed officer charged by law with major
 0117 administrative and management responsibilities.

0118 (f) "Public agency" or "public employer" means every gov-
 0119 ernmental subdivision, including any county, township, city,

0120 school district, special district, board, commission, or instru-
0121 mentality or other similar unit whose governing body exercises
0122 similar governmental powers, and the state of Kansas and its
0123 state agencies.

0124 (g) "Governing body" means the legislative body, policy
0125 board or other authority of the public employer possessing leg-
0126 islative or policymaking responsibilities pursuant to the consti-
0127 tution or laws of this state.

0128 (h) "Representative of the public agency" means the chief
0129 executive officer of the public employer or his or her *such chief*
0130 *executive's* designee, except when the governing body provides
0131 otherwise, and except in the case of the state of Kansas and its
0132 state agencies. Such chief executive shall be for counties, the
0133 chairman *chairperson* of the board of county commissioners; for
0134 cities, the mayor, city manager or city superintendent; for school
0135 districts, the president of the board of education; and for other
0136 local units, such similar elected or appointed officer. In the case
0137 of the state of Kansas and its state agencies, "representative of
0138 the public employer" means a team of persons, ~~the head of~~
0139 ~~which shall be a person designated by the secretary of adminis-~~
0140 ~~tration and the [heads] of [the] state agency [or state agencies]~~
0141 involved or one person designated by each such state agency
0142 head.

0143 (i) "Employee organization" means any organization which
0144 includes employees of a public agency and which has as one of
0145 its primary purposes representing such employees in dealings
0146 with that public agency over conditions of employment and
0147 grievances.

0148 (j) "Recognized employee organization" means an employee
0149 organization which has been formally acknowledged by the
0150 public agency or certified as representing a majority of the
0151 employees of an appropriate unit.

0152 (k) "Business agent" means any authorized person who is a
0153 full-time official of an employee organization and whose princi-
0154 pal duties are to act or to attempt to act for an employee organi-
0155 zation (1) in proceedings to meet and confer and other proceed-
0156 ings involving a memorandum of agreement, (2) in servicing

composed of

as chairperson

, except that, in the case of public employees of state educational institutions under the control and supervision of the state board of regents who are in the unclassified service under the Kansas civil service act, "representative of the public employer" means a team of persons composed of a chairperson and such other persons as may be designated by the state board of regents to serve thereon

head

each

0157 existing memorandums of agreement, or (3) in organizing em-
0158 ployees into employee organizations.

0159 (l) "Board" means the public employee relations board es-
0160 tablished pursuant to this act.

0161 (m) "Meet and confer in good faith" *is means* the process
0162 whereby the representative of a public agency and representa-
0163 tives of recognized employee organizations have the mutual
0164 obligation personally to meet and confer in order to exchange
0165 freely information, opinions and proposals to endeavor to reach
0166 agreement on regarding conditions of employment.

in good faith

0167 (n) "Memorandum of agreement" means a written memo-
0168 randum of understanding arrived at by the representatives of the
0169 public agency and a recognized employee organization which
0170 may be presented to the governing body of a public employer or
0171 its statutory representative and to the membership of such orga-
0172 nization for appropriate action.

have the mutual obligation personally to

0173 (o) "Mediation" means effort by an impartial third party to
0174 assist in reconciling a dispute regarding conditions of employ-
0175 ment between representatives of the public agency and rec-
0176 ognized employee organizations through interpretation and ad-
0177 vice.

0178 (p) "Fact-finding" means investigation of such a dispute by
0179 an individual, panel, or board with the fact-finder submitting a
0180 report to the parties describing the issues involved; the report
0181 shall contain recommendations for settlement and may be made
0182 public.

0183 (q) "Arbitration" means interpretation of the terms of an
0184 existing or a new memorandum of agreement or investigation of
0185 disputes by an impartial third party whose decision may or may
0186 not be final and binding. Arbitration is advisory when the results
0187 are not binding upon the parties; it is final and binding when
0188 both parties, of their own volition, agree to submit a dispute to,
0189 and to abide by the decision of, the impartial third party.

0190 (r) "Strike" means an action taken for the purpose of coercing
0191 a change in the conditions, rights, privileges or obligations of
0192 employment through the failure by concerted action with others
0193 to report for duty or to work at usual capability in the perform-

0194 ance of the normal duties of employment.

0195 (s) "Lockout" means action taken by the public employer to
0196 provoke interruptions of or prevent the continuity of work nor-
0197 mally and usually performed by the employees for the purpose of
0198 coercing the employees into relinquishing rights guaranteed by
0199 this act.

0200 (t) "Conditions of employment" means salaries, wages, hours
0201 of work, vacation allowances, sick and injury leave, number of
0202 holidays, retirement benefits, insurance benefits, prepaid legal
0203 service benefits, wearing apparel, premium pay for overtime,
0204 shift differential pay, jury duty and grievance procedures, but
0205 nothing in this act shall authorize the adjustment or change of
0206 ~~such~~ matters which have been fixed by statute or by the consti-
0207 tution of this state.

0208 (u) "Grievance" means a statement of dissatisfaction by a
0209 public employee, supervisory employee, employee organization
0210 or public employer concerning interpretation of a memorandum
0211 of agreement or traditional work practice.

0212 (v) "Budget submission date" means (1) for any public em-
0213 ployers subject to the budget law in K.S.A. 79-2925 *et seq.*, and
0214 amendments thereto, the date of July 1, and (2) for any other
0215 public employer the date fixed by law. "Budget submission
0216 date" means, in the case of the state and its state agencies, the
0217 date of September 15.

0218 (w) "Legislature" means the legislature of the state of Kan-
0219 sas.

0220 (x) "State agency" means the same as is ascribed thereto in
0221 K.S.A. 75-3701 and amendments thereto.

0222 Sec. 3. K.S.A. 75-4323 is hereby amended to read as follows:
0223 75-4323. (a) There is hereby created the public employee rela-
0224 tions board, which shall consist of five members appointed by
0225 the governor, subject to confirmation by the senate as provided
0226 in K.S.A. 75-4315b and amendments thereto. One member shall
0227 be representative of public employers; one member shall be
0228 representative of public employees; and three members shall be
0229 representative of the public at large and hold no other public
0230 office or public employment. Of the three members representing

any

or any matter which may not be included in a memorandum of agreement as provided in K.S.A. 75-4330 and amendments thereto

0231 the public, one shall be selected by the board as chairperson
0232 thereof. Not more than three members of the board shall be
0233 members of the same political party. Each member shall be
0234 appointed for a term of four years. The governor shall appoint
0235 qualified successors to fill vacancies occurring by reason of the
0236 expiration of the terms. In case of any other vacancy on the
0237 board, the governor shall appoint a qualified successor for the
0238 unexpired term.

0239 (b) Members of the public employee relations board attend-
0240 ing meetings of the board, or attending a subcommittee meeting
0241 thereof authorized by the board, shall be paid compensation,
0242 subsistence allowances, mileage and other expenses as provided
0243 in K.S.A. 75-3223 and amendments thereto. The secretary of
0244 human resources shall provide office space and such clerical and
0245 other staff assistance as necessary to assist the board in carrying
0246 out the provisions of this act.

0247 (c) The secretary of human resources may establish, after
0248 consulting with representatives of employee organizations and
0249 of public agencies, panels of qualified persons, broadly repre-
0250 sentative of the public, to be available to serve as mediators,
0251 arbitrators or members of fact-finding boards and may appoint or
0252 may contract with such persons as necessary for the performance
0253 of the board's functions, including but not limited to mediators,
0254 members of fact-finding boards and representatives of employee
0255 organizations and public employers to serve as technical advi-
0256 sors to fact-finding boards. Such persons shall perform the duties
0257 and exercise the powers prescribed by the secretary, by the
0258 board or by law. The secretary shall fix the compensation of such
0259 persons and shall provide for reimbursement of their expenses
0260 within the amounts made available therefor by the legislature.

0261 (d) In addition to the authority provided in other sections, the
0262 board may:

0263 (1) Establish procedures for the prevention of improper
0264 public employer and employee organization practices as pro-
0265 vided in K.S.A. 75-4333, except that the board shall provide only
0266 for the entering of an order directing the public agency or
0267 employee organization to meet and confer in good faith in the

0269 case of a claimed violation of subsection (b)(5) or (c)(3) of that
 0269 section and amendments thereto. The pendency of proceedings
 0270 under this paragraph shall not be used as the basis to delay or
 0271 interfere with determination of representation status pursuant to
 0272 K.S.A. 75-4327 and amendments thereto or with meeting and
 0273 conferring.

0274 (2) Hold such hearings and make such inquiries as it consid-
 0275 ers necessary to carry out properly its functions and powers. For
 0276 the purpose of such hearings and inquiries, the board may
 0277 administer oaths and affirmations, examine witnesses and docu-
 0278 ments, take testimony and receive evidence and compel attend-
 0279 ance of witnesses and the production of documents by the
 0280 issuance of subpoenas. Any of these powers may be delegated to
 0281 any member of the board or to any person appointed by the
 0282 secretary of human resources to perform the functions of the
 0283 board. The subpoenas shall be regulated and enforced in the
 0284 same manner as provided for the secretary of human resources
 0285 under the provisions of K.S.A. 44-611 and amendments thereto.
 0286 (3) Make, amend and rescind such rules and regulations, and
 0287 exercise such other powers, as appropriate to effectuate the
 0288 purposes and provisions of this act.

0289 (e) The board shall intervene in the public employer-public
 0290 employee relations of political subdivisions to the minimum
 0291 extent possible to secure the objectives expressed in K.S.A.
 0292 75-4321 and amendments thereto.

0293 Sec. 4. K.S.A. 75-4327 is hereby amended to read as follows:
 0294 75-4327. (a) Public employers shall recognize employee organi-
 0295 zations for the purpose of representing their members in rela-
 0296 tions with public agencies as to grievances and conditions of
 0297 employment. Employee organizations may establish reasonable
 0298 provisions for an individual's admission to or dismissal from
 0299 membership.

0300 (b) Where an employee organization has been certified by
 0301 the board as representing a majority of the employees in an
 0302 appropriate unit, or recognized formally by the public employer
 0303 pursuant to the provisions of this act, the appropriate employer
 0304 shall meet and confer in good faith with such employee organi-

, except that the board shall provide only for the entering of
 an order directing the public agency or employee organization
 to meet and confer in good faith in the case of a claimed
 violation of subsection (b)(5) or (c)(3) of that section

in good faith

0305 zation in the determination of *regarding* conditions of employ-
0306 ment of the public employees as provided in this act, and may
0307 enter into a memorandum of agreement with such recognized
0308 employee organization.

0309 (c) A recognized employee organization shall represent not
0310 less than a majority of the employees of an appropriate unit.
0311 When a question concerning the designation of an appropriate
0312 unit is raised by a public agency, employee organization or by
0313 five or more employees, the public employee relations board, at
0314 the request of any of the parties, shall investigate such question
0315 and, after a hearing, rule on the definition of the appropriate unit
0316 in accordance with subsection (e) of this section.

0317 (d) Following determination of the appropriate unit of em-
0318 ployees, the public employee relations board, at the request of
0319 the public employer or on petition of employees, shall inves-
0320 tigate questions and certify to the parties in writing, the names of
0321 the representatives that have been designated for an appropriate
0322 unit. The filing of a petition for the investigation or certification
0323 of a representative of employees shall show the names of not less
0324 than 30% of the employees within an appropriate unit. In any
0325 such investigation, the board may provide for an appropriate
0326 hearing, shall determine voting eligibility and shall take a secret
0327 ballot of employees in the appropriate unit involved to ascertain
0328 such representatives for the purpose of formal recognition. Rec-
0329 ognition shall be granted only to an employee organization that
0330 has been selected as a representative of an appropriate unit, in a
0331 secret ballot election, by a majority of the employees in an
0332 appropriate unit who voted at such election. Each employee
0333 eligible to vote shall be provided the opportunity to choose the
0334 employee organization such employee wishes to represent such
0335 employee, from among those on the ballot, or to choose "no
0336 representation." When an election in which the ballot provided
0337 for three or more choices between representatives and no repre-
0338 sentation resulted in no choice receiving a majority of the valid
0339 votes cast, the board shall conduct a run-off election by secret
0340 ballot. The ballot in a run-off election shall only provide for a
0341 selection between the two choices receiving the largest and

0342 second largest number of votes in the original election. The
0343 board is authorized to hold elections to determine whether: (1)
0344 An employee organization should be recognized as the formal
0345 representative of employees in a unit; (2) an employee organi-
0346 zation should replace another employee organization as the
0347 formal representative of employees in a unit; (3) a recognized
0348 employee organization should be decertified.

0349 Any petition calling for an election in accordance with this
0350 section shall be dismissed by the board without determining the
0351 questions raised therein if such petition is filed more than 150
0352 days or less than 90 days prior to the expiration date of an
0353 existing memorandum of agreement which governs the terms
0354 and conditions of employment of the employees within the
0355 appropriate unit.

0356 If the board has certified a formally recognized representative
0357 in an appropriate unit, it shall not be required to consider the
0358 matter again for a period of one year, unless the board deter-
0359 mines that sufficient reason exists. The board may promulgate
0360 such rules and regulations as may be appropriate to carry out the
0361 provisions of subsections (c) and (d) of this section.

0362 (e) Any group of public employees considering the formation
0363 of an employee organization for formal recognition, any public
0364 employer considering the recognition of an employee organiza-
0365 tion on its own volition and the board, in investigating questions
0366 at the request of the parties as specified in this section, shall take
0367 into consideration, along with other relevant factors: (1) The
0368 principle of efficient administration of government; (2) the exis-
0369 tence of a community of interest among employees; (3) the
0370 history and extent of employee organization; (4) geographical
0371 location; (5) the effects of overfragmentation and the splintering
0372 of a work organization; (6) the provisions of K.S.A. 75-4325 and
0373 amendments thereto; and (7) the recommendations of the parties
0374 involved.

0375 (f) A recognized employee organization shall not include: (1)
0376 Both professional and other employees, unless a majority of the
0377 professional employees vote for inclusion in the organization; (2)
0378 uniform police employees and public property security guards

0379 with any other public employees, but such employees may form
0380 their own separate homogenous units; or (3) uniformed firemen
0381 with any other public employees, but such employees may form
0382 their own separate homogenous units. The employees of a public
0383 safety department of cities which has both police and fire pro-
0384 tection duties shall be an appropriate unit.

0385 (g) It is the intent of this act that employer-employee rela-
0386 tions affecting the finances of a public employer shall be con-
0387 ducted at such times as will permit any resultant memorandum
0388 of agreement to be duly implemented in the budget preparation
0389 and adoption process. A public employer, during the 60 days
0390 immediately prior to its budget submission date, shall not be
0391 required to recognize an employee organization not previously
0392 recognized, nor shall it be obligated to initiate or begin meet and
0393 confer proceedings with any recognized employee organization
0394 for a period of 30 days before and 30 days after its budget
0395 submission date.

0396 (h) No employee organization shall be recognized unless it
0397 establishes and maintains standards of conduct providing for: (1)
0398 The maintenance of democratic procedures and practices, in-
0399 cluding periodic elections by secret ballot and the fair and equal
0400 treatment of all members; and (2) the maintenance of fiscal
0401 integrity, including accurate accounting and periodic financial
0402 reports open to all members and the prohibition of business or
0403 financial interests by officers which conflict with their fiduciary
0404 responsibilities.

0405 Sec. 5. K.S.A. 75-4332 is hereby amended to read as follows:
0406 75-4332. (a) Public employers may include in ~~memoranda~~ of
0407 agreement concluded with recognized employee organizations a
0408 provision setting forth the procedures to be invoked in the event
0409 of disputes which reach an impasse in the course of meet and
0410 confer proceedings. ~~Such~~ memorandum shall define conditions
0411 under which an impasse exists, and if the employer is bound by
0412 the budget law set forth in K.S.A. 79-2925 et seq., and amend-
0413 ments thereto, the memorandum shall provide that an impasse is
0414 deemed to exist if the parties fail to achieve agreement at least
0415 fourteen (14) 14 days prior to budget submission date.

a memorandum

Any

of agreement containing such procedures

of agreement

in a memorandum of agreement

0416 (b) In the absence of such ~~memorandum of~~ procedures, or
0417 upon the failure of such procedures resulting in an impasse,
0418 either party ~~the parties by joint agreement~~ may request the
0419 assistance of the public employee relations board, or the board
0420 may render such assistance on its own motion. In either event, if
0421 the board determines an impasse exists in meet and confer
0422 proceedings between a public employer and a recognized em-
0423 ployee organization, If requested, the board shall aid the parties
0424 in effecting a voluntary resolution of the dispute, and request the
0425 appointment of a mediator or mediators, representative of the
0426 public, from a list of qualified persons maintained by the secre-
0427 tary of human resources, and such appointment of a mediator or
0428 mediators shall be made forthwith by the secretary.

0429 (c) If the impasse persists seven (7) days after the mediators
0430 have been appointed, the board shall ~~parties by joint agreement~~
0431 may request the appointment of a fact-finding board of not more
0432 than three (3) members, each representative of the public, from a
0433 list of qualified persons maintained by the secretary of human
0434 resources. The fact-finding board shall conduct a hearing, may
0435 administer oaths, and may request the board to issue subpoenas.
0436 It shall make written findings of facts and recommendations for
0437 resolution of the dispute and, not later than ~~twenty-one (21)~~ 21
0438 days from the day of appointment, shall serve such findings on
0439 the public employer and the recognized employee organization.
0440 The board may make this report public seven (7) days after it is
0441 submitted to the parties. If the dispute continues ~~fourteen (14)~~ 14
0442 days after the report is submitted to the parties, the report shall
0443 be made public.

0444 (d) If the parties have not resolved the impasse by the end of
0445 a forty-day period, commencing with the appointment of the
0446 fact-finding board, or by a date not later than ~~fourteen (14)~~ 14
0447 days prior to the budget submission date, whichever date occurs
0448 first: (1) The representative of the public employer involved
0449 shall submit to the governing body of the public employer
0450 involved a copy of the findings of fact and recommendations of
0451 the fact-finding board, together with his or her ~~such board's~~
0452 recommendations for settling the dispute; (2) the employee

0453 organization may submit to such governing body its recommen-
 0454 dations for settling the dispute; (3) the governing body or a duly
 0455 authorized committee thereof shall forthwith conduct a hearing
 0456 at which the parties shall be required to explain their positions;
 0457 and (4) thereafter, the governing body shall take such action as it
 0458 deems to be in the public interest, including the interest of the
 0459 public employees involved. The provisions of this subsection
 0460 shall not be applicable to the state and its agencies and employ-
 0461 ees.

0462 (e) The cost for the mediation and fact-finding services pro-
 0463 vided by the secretary of human resources upon request of the
 0464 board shall be borne by the secretary of human resources. All
 0465 other costs, including that of a neutral arbitrator, shall be borne
 0466 equally by the parties to a dispute.

0467 Sec. 6. K.S.A. 75-4333 is hereby amended to read as follows:
 0468 75-4333. (a) ~~The commission of any prohibited practice, as de-~~
 0469 ~~finied in this section; among other actions; shall constitute evi-~~
 0470 ~~dence of bad faith in meet and confer proceedings.~~

0471 (b) It shall be a prohibited practice for a public employer or
 0472 its designated representative willfully to:

0473 (1) Interfere, restrain or coerce public employees in the ex-
 0474 ercise of rights granted in K.S.A. 75-4324 *and amendments*
 0475 *thereto;*

0476 (2) dominate, interfere or assist in the formation, existence, or
 0477 administration of any employee organization;

0478 (3) encourage or discourage membership in any employee
 0479 organization, committee, association or representation plan by
 0480 discrimination in hiring, tenure or other conditions of employ-
 0481 ment, or by blacklisting;

0482 (4) discharge or discriminate against an employee because he
 0483 or she has filed any affidavit, petition or complaint or given any
 0484 information or testimony under this act, or because he or she has
 0485 formed, joined or chosen to be represented by any employee
 0486 organization;

0487 (5) ~~refuse to meet and confer in good faith with representa-~~
 0488 ~~tives of recognized employee organizations as required in K.S.A.~~
 0489 ~~75-4327;~~

The commission of any prohibited practice, as defined in this section, among other actions, shall constitute evidence of bad faith in meet and confer proceedings.

refuse to meet and confer in good faith with representatives of recognized employee organizations as required in K.S.A. 75-4327 and amendments thereto;

0490 (6) deny the rights accompanying certification or formal rec-
0491 ognition granted in K.S.A. 75-4328 and amendments thereto; or

(6)

0492 (7) deliberately and intentionally avoid mediation, fact-find-
0493 ing, and arbitration endeavors as provided in K.S.A. 75-4332; or

(7)

0494 (8) ~~(b)~~ institute or attempt to institute a lockout.
0495 (e) ~~(b)~~ It shall be a prohibited practice for public employees

0496 or employee organizations willfully to:

0497 (1) Interfere with, restrain or coerce public employees in the
0498 exercise of rights granted in K.S.A. 75-4324 and amendments
0499 thereto;

0500 (2) interfere with, restrain or coerce a public employer with
0501 respect to management rights granted in K.S.A. 75-4326 and
0502 amendments thereto, or with respect to selecting a representa-
0503 tive for the purposes of meeting and conferring or the adjustment
0504 of grievances ~~(b)~~

0505 (3) refuse to meet and confer in good faith with a public
0506 employer as required in K.S.A. 75-4327;

refuse to meet and confer in good faith with a public employer as required in K.S.A. 75-4327 and amendments thereto; or

0507 (4) deliberately and intentionally avoid mediation, fact-find-
0508 ing and arbitration efforts as provided in K.S.A. 75-4332; or

(4)

0509 (5) engage in a strike.
0510 (d) ~~(e)~~ It shall be a prohibited practice for a public employee

0511 organization to endorse candidates, spend any of its income,
0512 directly or indirectly, for partisan or political purposes or engage
0513 in any kind of activity advocating or opposing the election of
0514 candidates for any public office.

0515 (e) ~~(b)~~ In the application and construction of this section,
0516 fundamental distinctions between private and public employ-
0517 ment shall be recognized, and no body of federal or state law
0518 applicable wholly or in part to private employment shall be
0519 regarded as binding or controlling precedent.

0520 Sec. 7. K.S.A. 75-4334 is hereby amended to read as follows:
0521 75-4334. (a) Any controversy concerning prohibited practices
0522 may be submitted to the board. Proceedings against the party
0523 alleged to have committed a prohibited practice shall be com-
0524 menced within six (6) months of the date of such alleged practice
0525 by service upon it by the board of a written notice, together with
0526 a copy of the charges. The accused party shall have seven (7)

(f) It shall not be considered a prohibited practice for a public employer to:
(1) in the case of the state and the state agencies, to adopt, amend or revoke any rule and regulation that may affect conditions of employment if the adoption, amendment or revocation is not contrary to specific provisions in any memorandum of agreement that is in effect at the time such adoption, amendment or revocation is implemented and the adoption, amendment or revocation of any rule and regulation is accomplished pursuant to the rules and regulations filing act;
(2) implement any change, or make recommendations for any change, in conditions of employment at any stage of proceedings under the public employer-employee relations act if such change is not contrary to specific provisions in any memorandum of agreement that is in effect at the time such change is implemented; or
(3) discuss any matter pertaining to conditions of employment with any employee or group of employees of the public employer.

0527 days within which to serve a written answer to such charges,
0528 unless the board determines an emergency exists and requires
0529 the accused party to serve a written answer to such charges
0530 within twenty-four (24) 24 hours of their receipt. A strike or
0531 lockout shall be construed to be an emergency. The board's
0532 hearing will be held promptly thereafter and at such hearing, the
0533 parties shall be permitted to be represented by counsel and to
0534 summon witnesses in their behalf. Compliance with the techni-
0535 cal rules of evidence shall not be required. The board may use its
0536 rule-making power, as provided in K.S.A. 75-4323 and amend-
0537 ments thereto, to make any other procedural rules it deems
0538 necessary to carry on this function.

0539 (b) The board shall state its findings of facts upon all the
0540 testimony and shall either dismiss the complaint or determine
0541 that a prohibited practice has been or is being committed. If the
0542 board finds that the party accused has committed or is commit-
0543 ting a prohibited practice, the board shall make findings as
0544 authorized by this act and shall file the same in the proceedings.
0545 Any person aggrieved by a final order of the board granting or
0546 denying in whole or in part the relief sought may obtain a review
0547 of such order in the district court, in the judicial district where all
0548 of the major geographical area of the public employer is located,
0549 by filing in such court a petition praying that the order of the
0550 board be modified or set aside, with copy of the complaint filed
0551 with the board, and thereupon the aggrieved party shall file in
0552 the court the record in the proceeding certified by the board.
0553 Findings of the board as to the facts shall be conclusive unless it
0554 is made to appear to the court's satisfaction that the findings of
0555 fact were not supported by substantial evidence and the record
0556 considered as a whole.

0557 (c) The board is hereby authorized to file a petition in the
0558 district court to enforce its final orders until such time as they are
0559 modified or set aside by the court. The procedures for obtaining
0560 injunction and allied remedies shall be as set forth in the code of
0561 civil procedure, except that the provisions of K.S.A. 60-904 and
0562 amendments thereto shall not control injunction actions arising
0563 out of public employer-employee relations under this act.

0564 (d) In the event there is an alleged violation of either ~~Sub-~~
 0565 ~~sections (b)(8) or (c)(5) (b)(9)~~ of K.S.A. 75-4333 and
 0566 amendments thereto, the aggrieved party is authorized to seek
 0567 relief in district court in the manner provided for the board in
 0568 subsection (c) of this section while proceedings on such prohib-
 0569 ited practices are pending before the board. Any ruling of the
 0570 district court shall remain in effect until set aside by the court on
 0571 motion of the parties or of the board or upon review of the
 0572 board's order as provided by subsection (b).

subsection (b) (7) or (c) (4)

0573 Sec ~~5~~ K.S.A. 75-4321, 75-4322, 75-4323, 75-4327, 75-4332,
 0574 75-4333 and 75-4334 are hereby repealed.

(Insert attached sections 8 and 9)

10.

75-4330,

0575 Sec ~~9~~ This act shall take effect and be in force from and
 0576 after its publication in the statute book.

11.

Sec. 8. K.S.A. 75-4330 is hereby amended to read as follows: 75-4330. (a) The scope of a memorandum of agreement may ~~extend to all matters relating to~~ include conditions of employment, except that no memorandum of agreement shall include any proposals relating to (1) any subject preempted, fixed or governed by federal or state law, by ordinary resolutions or charter resolutions adopted by a board of county commissioners under K.S.A. 19-101 to 19-101c, inclusive, and amendments thereto or by a municipal ordinance passed adopted under the provisions of section 5 of article 12 of the Kansas constitution, (2) public employee rights defined in K.S.A. 75-4324 and amendments thereto, (3) public employer rights defined in K.S.A. 75-4326 and amendments thereto, ex (4) the authority and power of any civil service commission, personnel board, personnel agency or its agents established by statute, resolution or ordinance ex-special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence, from which appointments or promotions may be made to positions in the competitive division of the classified service of the public employer served by such civil service commission or personnel board, (5) any matter fixed or governed by the Kansas constitution or the United States constitution, (6) any matter fixed or governed by the Kansas civil service act and any acts amendatory thereof or supplemental thereto or any personnel rules and regulations adopted by the secretary of administration, (7) the classification plan or the pay plan for the classified service under the Kansas civil service act or any pay plan or other pay schedule or authorization for the unclassified service under the Kansas civil service act, or (8) any matter fixed or governed by any rule and regulation or policy adopted by the state board of regents. Any memorandum of agreement relating to conditions of employment entered into may be executed for a maximum period of three ~~(3)~~ years, notwithstanding the provisions of the cash basis law as contained in K.S.A. 10-1102 et seq. and amendments thereto and the budget law as contained in K.S.A. 79-2925 et seq. and amendments thereto.

(b) Such memorandum of agreement may contain a grievance procedure and may provide for the impartial arbitration of any disputes that arise on the interpretation of the memorandum of agreement. Such arbitration shall be advisory or final and binding, as determined by the memorandum of agreement, and may provide for the use of a fact-finding board. The public employee relations board is authorized to establish rules for procedure of arbitration in the event the agreement has not established such rules. In the absence of arbitrary and capricious rulings by the fact-finding board during arbitration, the decision of that board shall be final. Appeals shall be taken in accordance with the provision of K.S.A. 60-2101 and any amendment thereto.

(c) Notwithstanding the other provisions of this section and the act of which this section is a part, when a memorandum of agreement applies to the state or to any state agency, the same shall not be effective as to any matter requiring passage of legislation or state--finance--council approval by the governor, until approved as provided in this subsection (c). When executed, each such memorandum of agreement shall be submitted to the state finance--council governor for consideration and appropriate action. ~~Any--part--or--parts--of--a--memorandum--of--agreement--which relate--to--a--matter--which--can--be--implemented--by--amendment--of--rules and--regulations--of--the--secretary--of--administration--or--by amendment--of--the--pay--plan--and--pay--schedules--of--the--state--may--be approved--or--rejected--by--the--state--finance--council,--and--if approved,--shall--thereupon--be--implemented--by--it--to--become effective--at--such--time--or--times--as--it--specifies.~~ Any part or parts of a memorandum of agreement which require passage of legislation for the implementation thereof shall be submitted to the legislature at its next regular session, and if approved by the legislature shall become effective on a date specified by the legislature.

New Sec. 9. The provisions of K.S.A. 75-4321 to 75-4337, inclusive, shall be known and may be cited as the public employer-employee relations act.