

HOUSE BILL No. 2083

By Committee on Commerce, Labor and Economic Development

1-24

1 AN ACT concerning the public employees relations board; amending
2 K.S.A. 75-4327 and K.S.A. 2012 Supp. 75-4332 and repealing the
3 existing sections.
4

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

6 Section 1. K.S.A. 75-4327 is hereby amended to read as follows: 75-
7 4327. (a) Public employers shall recognize employee organizations for the
8 purpose of representing their members in relations with public agencies as
9 to grievances and conditions of employment. Employee organizations may
10 establish reasonable provisions for an individual's admission to or
11 dismissal from membership.

12 (b) Where an employee organization has been certified by the board
13 as representing a majority of the employees in an appropriate unit, or
14 recognized formally by the public employer pursuant to the provisions of
15 this act, the appropriate employer shall meet and confer in good faith with
16 such employee organization in the determination of conditions of
17 employment of the public employees as provided in this act, and may enter
18 into a memorandum of agreement with such recognized employee
19 organization.

20 (c) A recognized employee organization shall represent not less than a
21 majority of the employees of an appropriate unit. When a question
22 concerning the designation of an appropriate unit is raised by a public
23 agency, employee organization or by five or more employees, the public
24 employee relations board, at the request of any of the parties, shall
25 investigate such question and, after a hearing in accordance with the
26 provisions of the Kansas administrative procedure act, rule on the
27 definition of the appropriate unit in accordance with subsection (e) ~~of this~~
28 ~~section.~~

29 (d) Following determination of the appropriate unit of employees, the
30 public employee relations board, at the request of the public employer or
31 on petition of employees, shall investigate questions and certify to the
32 parties in writing, the names of the representatives that have been
33 designated for an appropriate unit. The filing of a petition for the
34 investigation or certification of a representative of employees shall show
35 the names of not less than 30% of the employees within an appropriate
36 unit. In any such investigation, the board may provide for an appropriate

1 hearing, shall determine voting eligibility and shall take a secret ballot of
2 employees in the appropriate unit involved to ascertain such
3 representatives for the purpose of formal recognition. Recognition shall be
4 granted only to an employee organization that has been selected as a
5 representative of an appropriate unit, in a secret ballot election, by a
6 majority of the employees in an appropriate unit who voted at such
7 election. Each employee eligible to vote shall be provided the opportunity
8 to choose the employee organization such employee wishes to represent
9 such employee, from among those on the ballot, or to choose "no
10 representation." When an election in which the ballot provided for three or
11 more choices between representatives and no representation resulted in no
12 choice receiving a majority of the valid votes cast, the board shall conduct
13 a run-off election by secret ballot. The ballot in a run-off election shall
14 only provide for a selection between the two choices receiving the largest
15 and second largest number of votes in the original election. The board is
16 authorized to hold elections to determine whether: (1) An employee
17 organization should be recognized as the formal representative of
18 employees in a unit; (2) an employee organization should replace another
19 employee organization as the formal representative of employees in a unit;
20 (3) a recognized employee organization should be decertified.

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

27 If the board has certified a formally recognized representative in an
28 appropriate unit, it shall not be required to consider the matter again for a
29 period of one year, unless the board determines that sufficient reason
30 exists. The board may promulgate such rules and regulations as may be
31 appropriate to carry out the provisions of subsections (c) and (d) ~~of this~~
32 ~~section.~~

33 (e) Any group of public employees considering the formation of an
34 employee organization for formal recognition, any public employer
35 considering the recognition of an employee organization on its own
36 volition and the board, in investigating questions at the request of the
37 parties as specified in this section, shall take into consideration, along with
38 other relevant factors: (1) The principle of efficient administration of
39 government; (2) the existence of a community of interest among
40 employees; (3) the history and extent of employee organization; (4)
41 geographical location; (5) the effects of overfragmentation and the
42 splintering of a work organization; (6) the provisions of K.S.A. 75-4325,
43 and amendments thereto; and (7) the recommendations of the parties

1 involved.

2 (f) A recognized employee organization shall not include: (1) Both
3 professional and other employees, unless a majority of the professional
4 employees vote for inclusion in the organization; (2) uniform police
5 employees and public property security guards with any other public
6 employees, but such employees may form their own separate homogenous
7 units; or (3) uniformed firemen with any other public employees, but such
8 employees may form their own separate homogenous units. The
9 employees of a public safety department of cities which has both police
10 and fire protection duties shall be an appropriate unit.

11 (g) It is the intent of this act that employer-employee relations
12 affecting the finances of a public employer shall be conducted at such
13 times as will permit any resultant memorandum of agreement to be duly
14 implemented in the budget preparation and adoption process. A public
15 employer, during the 60 days immediately prior to its budget submission
16 date, shall not be required to recognize an employee organization not
17 previously recognized, nor shall it be obligated to initiate or begin meet
18 and confer proceedings with any recognized employee organization for a
19 period of 30 days before and 30 days after its budget submission date.

20 (h) No employee organization shall be recognized unless it
21 establishes and maintains standards of conduct providing for: (1) The
22 maintenance of democratic procedures and practices, including periodic
23 elections by secret ballot and the fair and equal treatment of all members;
24 and (2) the maintenance of fiscal integrity, including accurate accounting
25 and periodic financial reports open to all members and the prohibition of
26 business or financial interests by officers which conflict with their
27 fiduciary responsibilities.

28 (i) *The board shall assess the reasonable costs for conducting a*
29 *secret ballot of the employees against the party seeking the election.*

30 Sec. 2. K.S.A. 2012 Supp. 75-4332 is hereby amended to read as
31 follows: 75-4332. (a) Public employers may include in memoranda of
32 agreement concluded with recognized employee organizations a provision
33 setting forth the procedures to be invoked in the event of disputes which
34 reach an impasse in the course of meet and confer proceedings. Such
35 memorandum shall define conditions under which an impasse exists, and if
36 the employer is bound by the budget law set forth in K.S.A. 79-2925 et
37 seq., and amendments thereto, the memorandum shall provide that an
38 impasse is deemed to exist if the parties fail to achieve agreement at least
39 14 days prior to budget submission date.

40 (b) In the absence of such memorandum of procedures, or upon the
41 failure of such procedures resulting in an impasse, either party may request
42 the assistance of the public employee relations board, or the board may
43 render such assistance on its own motion. In either event, if the board

1 determines an impasse exists in meet and confer proceedings between a
2 public employer and a recognized employee organization, the board shall
3 aid the parties in effecting a voluntary resolution of the dispute, and
4 request the appointment of a mediator or mediators, representative of the
5 public, from a list of qualified persons maintained by the secretary of
6 labor, and such appointment of a mediator or mediators shall be made
7 forthwith by the secretary.

8 (c) All verbal or written information transmitted between any party to
9 a dispute and a mediator conducting the proceeding, or the staff of an
10 approved program under K.S.A. 5-501 et seq., and amendments thereto,
11 shall be confidential communications. No admission, representation or
12 statement made in the proceeding shall be admissible as evidence or
13 subject to discovery. A mediator shall not be subject to process requiring
14 the disclosure of any matter discussed during the proceedings unless all the
15 parties consent to a waiver. Any party, including the neutral person or staff
16 of an approved program conducting the proceeding, participating in the
17 proceeding has a privilege in any action to refuse to disclose, and to
18 prevent a witness from disclosing, any communication made in the course
19 of the proceeding. The privilege may be claimed by the party or anyone
20 the party authorizes to claim the privilege.

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

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

27 (2) any information that the mediator is required to report under
28 K.S.A. 2012 Supp. 38-2223, and amendments thereto;

29 (3) any information that is reasonably necessary to stop the
30 commission of an ongoing crime or fraud or to prevent the commission of
31 a crime or fraud in the future for which there was an expressed intent to
32 commit such crime or fraud; or

33 (4) any information that the mediator is required to report or
34 communicate under the specific provisions of any statute or in order to
35 comply with orders of the court.

36 (e) If the impasse persists seven days after the mediators have been
37 appointed, the board shall request the appointment of a fact-finding board
38 of not more than three members, each representative of the public, from a
39 list of qualified persons maintained by the secretary of labor. The fact-
40 finding board shall conduct a hearing, may administer oaths, and may
41 request the board to issue subpoenas. It shall make written findings of facts
42 and recommendations for resolution of the dispute and, not later than 21
43 days from the day of appointment, shall serve such findings on the public

1 employer and the recognized employee organization. The board may make
2 this report public seven days after it is submitted to the parties. If the
3 dispute continues 14 days after the report is submitted to the parties, the
4 report shall be made public.

5 (f) If the parties have not resolved the impasse by the end of a 40-day
6 period, commencing with the appointment of the fact-finding board, or by
7 a date not later than 14 days prior to the budget submission date,
8 whichever date occurs first: (1) The representative of the public employer
9 involved shall submit to the governing body of the public employer
10 involved a copy of the findings of fact and recommendations of the fact-
11 finding board, together with the representative's recommendations for
12 settling the dispute; (2) the employee organization may submit to such
13 governing body its recommendations for settling the dispute; (3) the
14 governing body or a duly authorized committee thereof shall forthwith
15 conduct a hearing at which the parties shall be required to explain their
16 positions; and (4) thereafter, the governing body shall take such action as it
17 deems to be in the public interest, including the interest of the public
18 employees involved. The provisions of this subsection shall not be
19 applicable to the state and its agencies and employees.

20 (g) The cost for the mediation and fact-finding services provided by
21 the secretary of labor upon request of the board ~~shall be borne by the~~
22 ~~secretary of labor. All~~ and all other costs, including that of a neutral
23 arbitrator, shall be borne equally by the parties to a dispute.

24 Sec. 3. K.S.A. 75-4327 and K.S.A. 2012 Supp. 75-4332 are hereby
25 repealed.

26 Sec. 4. This act shall take effect and be in force from and after its
27 publication in the statute book.