

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2083

By Committee on Commerce, Labor and Economic Development

1-24

1 AN ACT concerning the public-employees **employee** relations board;  
2 amending K.S.A. 75-4327 and K.S.A. 2012 Supp. 75-4332 and  
3 repealing the 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. For*  
30 **the purposes of this subsection, the term "costs" shall include amounts**  
31 **expended by the board for printing of ballots and necessary postage.**

32 Sec. 2. K.S.A. 2012 Supp. 75-4332 is hereby amended to read as  
33 follows: 75-4332. (a) Public employers may include in memoranda of  
34 agreement concluded with recognized employee organizations a provision  
35 setting forth the procedures to be invoked in the event of disputes which  
36 reach an impasse in the course of meet and confer proceedings. Such  
37 memorandum shall define conditions under which an impasse exists, and if  
38 the employer is bound by the budget law set forth in K.S.A. 79-2925 et  
39 seq., and amendments thereto, the memorandum shall provide that an  
40 impasse is deemed to exist if the parties fail to achieve agreement at least  
41 14 days prior to budget submission date.

42 (b) In the absence of such memorandum of procedures, or upon the  
43 failure of such procedures resulting in an impasse, either party may request

1 the assistance of the public employee relations board, or the board may  
2 render such assistance on its own motion. In either event, if the board  
3 determines an impasse exists in meet and confer proceedings between a  
4 public employer and a recognized employee organization, the board shall  
5 aid the parties in effecting a voluntary resolution of the dispute, and  
6 request the appointment of a mediator or mediators, representative of the  
7 public, from a list of qualified persons maintained by the secretary of  
8 labor, and such appointment of a mediator or mediators shall be made  
9 forthwith by the secretary.

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

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

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

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

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

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

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

1 and recommendations for resolution of the dispute and, not later than 21  
2 days from the day of appointment, shall serve such findings on the public  
3 employer and the recognized employee organization. The board may make  
4 this report public seven days after it is submitted to the parties. If the  
5 dispute continues 14 days after the report is submitted to the parties, the  
6 report shall be made public.

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

22 ~~(g) The cost for the mediation and fact-finding services provided by~~  
23 ~~the secretary of labor upon request of the board shall be borne by the~~  
24 ~~secretary of labor. All and all other costs, including that of a neutral~~  
25 ~~arbitrator, **The cost for the fees of court reporters and fact finders**~~  
26 ~~**provided by the secretary of labor upon the request of the board** shall~~  
27 ~~be borne equally by the parties to a dispute.~~

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

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