

Senate Substitute for HOUSE BILL No. 2326

By Committee on Education

3-19

1 AN ACT concerning school districts; relating to the professional
2 negotiations act; amending K.S.A. ~~{72-5422,}~~ 72-5423, ~~72-5429 and~~
3 ~~72-5430~~ and K.S.A. 2014 Supp. 72-5413 and repealing the existing
4 sections; **also repealing K.S.A. 72-5428**;

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

7 Section 1. K.S.A. 2014 Supp. 72-5413 is hereby amended to read as
8 follows: 72-5413. As used in this act, and ~~in acts amendatory thereof or~~
9 ~~supplemental amendments~~ thereto:

10 (a) The term "persons" includes one or more individuals,
11 organizations, associations, corporations, boards, committees,
12 commissions, agencies, or their representatives.

13 (b) "Board of education" means the state board of education pursuant
14 to its authority under K.S.A. 76-1001a and 76-1101a, and amendments
15 thereto, the board of education of any school district, the board of control
16 of any area vocational-technical school and the board of trustees of any
17 community college.

18 (c) "Professional employee" means any person employed by a board
19 of education in a position which requires a certificate issued by the state
20 board of education or employed by a board of education in a professional,
21 educational or instructional capacity, but shall not mean any such person
22 who is an administrative employee and, commencing in the 2006-2007
23 school year, shall not mean any person who is a retirant from school
24 employment of the Kansas public employees retirement system, regardless
25 of whether an agreement between a board of education and an exclusive
26 representative of professional employees that covers terms and conditions
27 of professional service provides to the contrary.

28 (d) "Administrative employee" means, in the case of a school district,
29 any person who is employed by a board of education in an administrative
30 capacity and who is fulfilling duties for which an administrator's certificate
31 is required under K.S.A. 72-7513, and amendments thereto; and, in the
32 case of an area vocational-technical school or community college, any
33 person who is employed by the board of control or the board of trustees in
34 an administrative capacity and who is acting in that capacity and who has
35 authority, in the interest of the board of control or the board of trustees, to
36 hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or

1 discipline other employees, or responsibly to direct them or to adjust their
2 grievances, or effectively to recommend a preponderance of such actions,
3 if in connection with the foregoing, the exercise of such authority is not of
4 a merely routine or clerical nature, but requires the use of independent
5 judgment.

6 (e) "Professional employees' organizations" means any one or more
7 organizations, agencies, committees, councils or groups of any kind in
8 which professional employees participate, and which exist for the purpose,
9 in whole or part, of engaging in professional negotiation with boards of
10 education with respect to the terms and conditions of professional service
11 or for the purpose of professional development or liability protection.

12 (f) "Representative" means any professional employees' organization
13 or any person it authorizes or designates to act in its behalf or any person a
14 board of education authorizes or designates to act in its behalf.

15 (g) "Professional negotiation" means meeting, conferring, consulting
16 and discussing in a good faith effort by both parties to reach agreement
17 with respect to the terms and conditions of professional service.

18 (h) "Mediation" means the effort through interpretation and advice by
19 an impartial third party to assist in reconciling a dispute concerning terms
20 and conditions of professional service which arose in the course of
21 professional negotiation between a board of education or its
22 representatives and representatives of the recognized professional
23 employees' organization.

24 ~~(i) "Fact-finding" means the investigation by an individual or board~~
25 ~~of a dispute concerning terms and conditions of professional service which~~
26 ~~arose in the course of professional negotiation, and the submission of a~~
27 ~~report by such individual or board to the parties to such dispute which~~
28 ~~includes a determination of the issues involved, findings of fact regarding~~
29 ~~such issues, and the recommendation of the fact-finding individual or~~
30 ~~board for resolution of the dispute.~~

31 ~~(j) (i)~~ "Strike" means an action taken for the purpose of coercing a
32 change in the terms and conditions of professional service or the rights,
33 privileges or obligations thereof, through any failure by concerted action
34 with others to report for duty including, but not limited to, any work
35 stoppage, slowdown, or refusal to work.

36 ~~(k) (j)~~ "Lockout" means action taken by a board of education to
37 provoke interruptions of or prevent the continuity of work normally and
38 usually performed by the professional employees for the purpose of
39 coercing professional employees into relinquishing rights guaranteed by
40 this act ~~and the act of which this section is amendatory.~~

41 ~~(l) (k)~~ (1) "Terms and conditions of professional service" means:
42 (A) *Minimum amount of* salaries and wages, including pay for duties
43 under supplemental contracts; hours and amounts of work; vacation

1 allowance, holiday, sick, extended, sabbatical; and other leave, and number
2 of holidays; retirement; insurance benefits; wearing apparel; pay for
3 overtime; jury duty; grievance procedure; including binding arbitration of
4 grievances; disciplinary procedure; resignations; termination—~~and~~
5 ~~nonrenewal~~ of contracts; reemployment of professional employees; terms
6 and form of the individual professional employee contract; probationary
7 period; professional employee appraisal procedures; each of the foregoing
8 being a term and condition of professional service, regardless of its impact
9 on the employee or on the operation of the educational system; (B) matters
10 which relate to privileges to be granted the recognized professional
11 employees' organization, including, but not limited to, voluntary payroll
12 deductions; dissemination of information regarding the professional
13 negotiation process and related matters to members of the bargaining unit
14 on school or college premises through direct contact with members of the
15 bargaining unit; reasonable leaves of absence for members of the
16 bargaining unit for organizational purposes, such as engaging in
17 professional negotiation and partaking of instructional programs properly
18 related to the representation of the bargaining unit; any of the foregoing
19 privileges which are granted the recognized professional employees'
20 organization through the professional negotiation process shall not be
21 granted to any other professional employees' organization; and (C) such
22 other matters as the parties mutually agree upon as properly related to
23 professional service including, but not limited to, employment incentive or
24 retention bonuses authorized under K.S.A. 72-8246, and amendments
25 thereto.

26 (2) Nothing in this act, and amendments thereto, shall authorize any
27 professional employees' organization to be granted the exclusive privilege
28 of access to the use of school or college facilities for meetings, the use of
29 bulletin boards on or about the facility or the use of school or college mail
30 systems.

31 (3) Nothing in this act, and amendments thereto, shall authorize the
32 diminution of any right, duty or obligation of either the professional
33 employee or the board of education which have been fixed by statute or by
34 the constitution of this state. Except as otherwise expressly provided in
35 this subsection (1), the fact that any matter may be the subject of a statute
36 or the constitution of this state does not preclude negotiation thereon so
37 long as the negotiation proposal would not prevent the fulfillment of the
38 statutory or constitutional objective.

39 (4) Matters which relate to the duration of the school term, and
40 specifically to consideration and determination by a board of education of
41 the question of the development and adoption of a policy to provide for a
42 school term consisting of school hours, *{and matters which relate to*
43 *nonrenewal of contracts}* are not included within the meaning of terms

1 and conditions of professional service and are not subject to professional
2 negotiation.

3 ~~(m)~~ **{(l)}** "Secretary" means the secretary of labor or a designee
4 thereof.

5 ~~(n)~~ **{(m)}** "Statutory declaration of impasse date" means ~~June 1~~ July
6 31 in the current school year.

7 ~~(o)~~ **{(n)}** "Supplemental contracts" means contracts for employment
8 duties other than those services covered in the principal or primary
9 contract of employment of the professional employee and shall include,
10 but not be limited to, such services as coaching, supervising, directing and
11 assisting extracurricular activities, chaperoning, ticket-taking, lunchroom
12 supervision, and other similar and related activities.

13 **{Sec. 2. K.S.A. 72-5422 is hereby amended to read as follows: 72-
14 5422. (a) Except as otherwise expressly provided herein by law, this act
15 shall not operate so as to annul, modify or preclude the renewal or
16 continuation of any lawful agreement heretofore entered into between a
17 board of education and a professional employees' organization covering
18 terms and conditions of professional service.**

19 **(b) Any agreement entered into between a board of education and a
20 professional employees' organization prior to July 1, 2015, shall continue
21 beyond such date if the express terms of such agreement provide for a date
22 upon which the agreement terminates or expires that is on or after July 1,
23 2015. In no event shall any such agreement be extended beyond any such
24 termination date provided therein, nor shall any such agreement be
25 renewed or otherwise continue to be in effect beyond any such termination
26 date.}**

27 **Sec. ~~2~~ {3.} K.S.A. 72-5423 is hereby amended to read as follows: 72-
28 5423. (a) Nothing in this act, or the act of which this section is
29 amendatory, shall be construed to change or affect any right or duty
30 conferred or imposed by law upon any board of education, except that
31 boards of education are required to comply with this act, and the act of
32 which this section is amendatory, in recognizing professional employees'
33 organizations, and when such an organization is recognized, the board of
34 education and the professional employees' organization shall enter into
35 professional negotiations on request of either party at any time during the
36 school year prior to issuance or renewal of the annual teachers' contracts.
37 Notices to negotiate on new items or to amend an existing contract must be
38 filed on or before ~~February 1~~ March 31 in any school year by either party,
39 such notices shall be in writing and delivered to the chief administrative
40 officer of the board of education or to the representative of the bargaining
41 unit and shall contain in reasonable and understandable detail the purpose
42 of the new or amended items desired.**

43 **(b) (1) Upon entering negotiations pursuant to this section, the**

1 *parties shall negotiate compensation of professional employees and hours*
2 *and amounts of work. In addition, each party may select not more than*
3 *three additional terms and conditions of professional service from the list*
4 *described in K.S.A. 72-5413(l)(1), and amendments thereto, for*
5 *negotiation. All other terms and conditions of professional service*
6 *described in K.S.A. 72-5413(l)(1), and amendments thereto, shall be*
7 *deemed permissive topics for negotiation and shall only be negotiated*
8 *upon the mutual agreement of the parties.*

9 (2) *For purposes of this section, the term "compensation" means {the*
10 ***minimum amount of*** *salary and wages, supplemental contract salaries*
11 *and pay for overtime.*

12 (3) *The provisions of this subsection shall not apply to negotiations*
13 *between a board of education and a professional employees' organization*
14 *negotiating for the purpose of reaching their first agreement.*

15 (c) *Except as otherwise expressly provided in this subsection, every*
16 *meeting, conference, consultation and discussion between a professional*
17 *employees' organization or its representatives and a board of education or*
18 *its representatives during the course of professional negotiation and every*
19 *hearing conducted by the secretary under K.S.A. 72-5426, and*
20 *amendments thereto, for determination of the question of the existence of*
21 *impasse is subject to the provisions of the Kansas open meetings law, and*
22 *any amendments or supplements thereto. Meetings, conferences,*
23 *consultations and discussions held by the secretary under K.S.A. 72-5426,*
24 *and amendments thereto, for investigation of the question of the existence*
25 *of impasse, and meetings, conferences, consultations and discussions held*
26 *during the course of and in connection with, and the meeting required at*
27 *the conclusion of, impasse resolution proceedings, as provided for in*
28 *K.S.A. 72-5427 and 72-5428, and amendments to such sections thereto,*
29 *are specifically made exempt from the provisions of the Kansas open*
30 *meetings law, and any amendments or supplements thereto.*

31 ~~(e)-(d)~~ *Nothing in this act, or the act of which this section is*
32 ~~amendatory,~~ *shall be construed to authorize a strike by professional*
33 *employees.*

34 ~~(d)-(e)~~ *Any agreement lawfully made under the provisions of this act,*
35 ~~or the act of which this section is amendatory,~~ *may be adopted by*
36 *reference and made a part of the employment contract between any*
37 *professional employee of the applicable negotiating unit and a board of*
38 *education for a period of not to exceed three years.*

39 (f) *Those individuals selected by the board of education and the*
40 *professional employees' organization to conduct negotiations pursuant to*
41 *this act shall complete training on conducting negotiations each year. The*
42 *content and format of the training for these individuals shall be*
43 *determined by the respective party each individual represents in*

1 negotiations.

2 *{Sec. 4. K.S.A. 72-5429 is hereby amended to read as follows: 72-*
3 *5429. All of the costs incurred for mediation under K.S.A. 72-5427 and*
4 *for fact-finding under K.S.A. 72-5428, and amendments thereto, shall be*
5 *borne equally by the board of education and the professional employees'*
6 *organization involved therein. The payment of such costs shall be at*
7 *such time and in such manner as is determined by the secretary.*

8 *Sec. 5. K.S.A. 72-5430 is hereby amended to read as follows: 72-*
9 *5430. (a) The commission of any prohibited practice, as defined in this*
10 *section, among other actions, shall constitute evidence of bad faith in*
11 *professional negotiation.*

12 *(b) It shall be a prohibited practice for a board of education or its*
13 *designated representative willfully to:*

14 *(1) Interfere with, restrain or coerce professional employees in the*
15 *exercise of rights granted in K.S.A. 72-5414, and amendments thereto;*

16 *(2) dominate, interfere or assist in the formation, existence, or*
17 *administration of any professional employees' organization;*

18 *(3) discriminate in regard to hiring or any term or condition of*
19 *employment to encourage or discourage membership in any professional*
20 *employees' organization;*

21 *(4) discharge or discriminate against any professional employee*
22 *because such professional employee has filed any affidavit, petition or*
23 *complaint or given any information or testimony under this act, or*
24 *because such professional employee has formed, joined or chosen to be*
25 *represented by any professional employees' organization;*

26 *(5) refuse to negotiate in good faith with representatives of*
27 *recognized professional employees' organizations as required in K.S.A.*
28 *72-5423, and amendments thereto;*

29 *(6) deny the rights accompanying recognition of a professional*
30 *employees' organization which are granted in K.S.A. 72-5415, and*
31 *amendments thereto;*

32 *(7) refuse to participate in good faith in the mediation as provided*
33 *in K.S.A. 72-5427 or fact-finding efforts as provided in K.S.A. 72-5428,*
34 *and amendments thereto, or arbitration pursuant to an agreement*
35 *entered into pursuant to K.S.A. 72-5424, and amendments thereto; or*

36 *(8) institute or attempt to institute a lockout.*

37 *(c) It shall be a prohibited practice for professional employees or*
38 *professional employees' organizations or their designated*
39 *representatives willfully to:*

40 *(1) Interfere with, restrain or coerce professional employees in the*
41 *exercise of rights granted in K.S.A. 72-5414, and amendments thereto;*

42 *(2) interfere with, restrain or coerce a board of education with*
43 *respect to rights or duties which are reserved thereto under K.S.A. 72-*

1 *5423, and amendments thereto, or with respect to selecting a*
2 *representative for the purpose of professional negotiation or the*
3 *adjustment of grievances;*

4 *(3) refuse to negotiate in good faith with the board of education or*
5 *its designated representatives as required in K.S.A. 72-5423, and*
6 *amendments thereto;*

7 *(4) refuse to participate in good faith in the mediation as provided*
8 *in K.S.A. 72-5427 or fact-finding efforts as provided in K.S.A. 72-5428,*
9 *and amendments thereto, or arbitration pursuant to an agreement*
10 *entered into pursuant to K.S.A. 72-5424, and amendments thereto; or*

11 *(5) authorize, instigate, aid or engage in a strike or in picketing of*
12 *any facility under the jurisdiction and control of the board of*
13 *education.}*

14 *Sec. ~~3~~. {6.} K.S.A. {72-5422,} 72-5423, 72-5428, 72-5429 and 72-*
15 *5430} and K.S.A. 2014 Supp. 72-5413 are hereby repealed.*

16 *Sec. ~~4~~. {7.} This act shall take effect and be in force from and after its*
17 *publication in the statute book.*