

HOUSE BILL No. 2083

AN ACT concerning the public employee relations board; amending K.S.A. 75-4327 and K.S.A. 2012 Supp. 75-4332 and repealing the existing sections.

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

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

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

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

(d) Following determination of the appropriate unit of employees, the public employee relations board, at the request of the public employer or on petition of employees, shall investigate questions and certify to the parties in writing, the names of the representatives that have been designated for an appropriate unit. The filing of a petition for the investigation or certification of a representative of employees shall show the names of not less than 30% of the employees within an appropriate unit. In any such investigation, the board may provide for an appropriate hearing, shall determine voting eligibility and shall take a secret ballot of employees in the appropriate unit involved to ascertain such representatives for the purpose of formal recognition. Recognition shall be granted only to an employee organization that has been selected as a representative of an appropriate unit, in a secret ballot election, by a majority of the employees in an appropriate unit who voted at such election. Each employee eligible to vote shall be provided the opportunity to choose the employee organization such employee wishes to represent such employee, from among those on the ballot, or to choose "no representation." When an election in which the ballot provided for three or more choices between representatives and no representation resulted in no choice receiving a majority of the valid votes cast, the board shall conduct a run-off election by secret ballot. The ballot in a run-off election shall only provide for a selection between the two choices receiving the largest and second largest number of votes in the original election. The board is authorized to hold elections to determine whether: (1) An employee organization should be recognized as the formal representative of employees in a unit; (2) an employee organization should replace another employee organization as the formal representative of employees in a unit; (3) a recognized employee organization should be decertified.

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

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

(e) Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition

and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (1) The principle of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 75-4325, and amendments thereto; and (7) the recommendations of the parties involved.

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

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

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

(i) *The board shall assess the reasonable costs for conducting a secret ballot of the employees against the party seeking the election. For the purposes of this subsection, the term "costs" shall include amounts expended by the board for printing of ballots and necessary postage.*

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

(b) In the absence of such memorandum of procedures, or upon the failure of such procedures resulting in an impasse, either party may request the assistance of the public employee relations board, or the board may render such assistance on its own motion. In either event, if the board determines an impasse exists in meet and confer proceedings between a public employer and a recognized employee organization, the board shall aid the parties in effecting a voluntary resolution of the dispute, and request the appointment of a mediator or mediators, representative of the public, from a list of qualified persons maintained by the secretary of labor, and such appointment of a mediator or mediators shall be made forthwith by the secretary.

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

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

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

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

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

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

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

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

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

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

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

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.