

HOUSE BILL No. 2327

By Committee on Commerce and Labor

2-12

AN ACT concerning public officers and employees; relating to findings of fact by fact-finding board; amending K.S.A. 75-4332 and repealing the existing section.

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

Section 1. K.S.A. 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 human resources, 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

1 in the proceeding has a privilege in any action to refuse to disclose, and
2 to prevent a witness from disclosing, any communication made in the
3 course of the proceeding. The privilege may be claimed by the party or
4 anyone the party authorizes to claim the privilege.

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

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

11 (2) any information that the mediator is required to report under
12 K.S.A. 38-1522 and amendments thereto;

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

17 (4) any information that the mediator is required to report or com-
18 municate under the specific provisions of any statute or in order to comply
19 with orders of the court.

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

32 (f) If the parties have not resolved the impasse by the end of a forty-
33 day period, commencing with the appointment of the fact-finding board,
34 or by a date not later than 14 days prior to the budget submission date,
35 whichever date occurs first: (1) The representative of the public employer
36 involved shall submit to the governing body of the public employer in-
37 volved a copy of the findings of fact and recommendations of the fact-
38 finding board, together with the representative's recommendations for
39 settling the dispute; (2) the employee organization may submit to such
40 governing body its recommendations for settling the dispute; (3) the gov-
41 erning body or a duly authorized committee thereof shall forthwith con-
42 duct a hearing at which the parties shall be required to explain their
43 positions; and (4) thereafter, the governing body shall take such action as

1 it deems to be in the public interest, including the interest of the public
2 employees involved. The provisions of this subsection shall not be appli-
3 cable to the state and its agencies and employees.

4 *(g) Following the completion of fact-finding by the fact-finding board*
5 *and upon a finding of bad faith on the part of either party by the public*
6 *employee relations board or a court of competent jurisdiction, the fact-*
7 *finders recommendations shall become binding on the parties.*

8 ~~(g)~~ (h) The cost for the mediation and fact-finding services provided
9 by the secretary of human resources upon request of the board shall be
10 borne by the secretary of human resources. All other costs, including that
11 of a neutral arbitrator, shall be borne equally by the parties to a dispute.

12 Sec. 2. K.S.A. 75-4332 is hereby repealed.

13 Sec. 3. This act shall take effect and be in force from and after its
14 publication in the statute book.

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