

KANSAS PROFESSIONAL NEGOTIATIONS ACT

Chapter 72.--SCHOOLS

Article 54.--TEACHERS' CONTRACTS

72-5413. Definitions. As used in this act and in acts amendatory thereof or supplemental thereto:

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

(b) "Board of education" means the board of education of any school district, the board of control of any area vocational-technical school, and the board of trustees of any community college.

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

(d) "Administrative employee" means, in the case of a school district, any person who is employed by a board of education in an administrative capacity and who is fulfilling duties for which an administrator's certificate is required under K.S.A. 72-7513, and amendments thereto; and, in the case of an area vocational-technical school or community college, any person who is employed by the board of control or the board of trustees in an administrative capacity and who is acting in that capacity and who has authority, in the interest of the board of control or the board of trustees, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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

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

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

(h) "Mediation" means the effort through interpretation and advice by an impartial third party to assist in reconciling a dispute concerning terms and conditions of professional service

which arose in the course of professional negotiation between a board of education or its representatives and representatives of the recognized professional employees' organization.

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

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

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

(l) (1) "Terms and conditions of professional service" means (A) salaries and wages, including pay for duties under supplemental contracts; hours and amounts of work; vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance procedure; including binding arbitration of grievances; disciplinary procedure; resignations; termination and nonrenewal of contracts; reemployment of professional employees; terms and form of the individual professional employee contract; probationary period; professional employee appraisal procedures; each of the foregoing being a term and condition of professional service, regardless of its impact on the employee or on the operation of the educational system; (B) matters which relate to privileges to be granted the recognized professional employees' organization including, but not limited to, voluntary payroll deductions; use of school or college facilities for meetings; dissemination of information regarding the professional negotiation process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit, the use of bulletin boards on or about the facility, and the use of the school or college mail system to the extent permitted by law; reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiation and partaking of instructional programs properly related to the representation of the bargaining unit; any of the foregoing privileges which are granted the recognized professional employees' organization through the professional negotiation process shall not be granted to any other professional employees' organization; and (C) such other matters as the parties mutually agree upon as properly related to professional service including, but not limited to, employment incentive or retention bonuses authorized under K.S.A. 72-8246 and amendments thereto.

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

(3) Matters which relate to the duration of the school term, and specifically to consideration and determination by a board of education of the question of the development and adoption of a policy to provide for a school term consisting of school hours, are not included within the meaning of terms and conditions of professional service and are not subject to professional negotiation.

(m) "Secretary" means the secretary of labor or a designee thereof.

(n) "Statutory declaration of impasse date" means June 1 in the current school year.

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

History: L. 1970, ch. 284, § 1; L. 1976, ch. 314, § 1; L. 1977, ch. 248, § 1; L. 1979, ch. 226, § 1; L. 1980, ch. 220, § 1; L. 1989, ch. 216, § 1; L. 1990, ch. 255, § 1; L. 2002, ch. 167, § 4; L. 2004, ch. 179, § 94; L. 2006, ch. 143, § 4; July 1.

PROFESSIONAL NEGOTIATIONS

Cross References to Related Sections:

General public employee negotiations, see 75-4321 et seq.

Law Review and Bar Journal References:

"Some Thoughts on Labor Unions and Public Employees in Kansas," Richard R. Rock, 39 J.B.A.K. 119, 203 (1970).

"Impasse in Wonderland: Some Ramifications of the 1977 Amendments to the Kansas Collective Negotiations Act," Mary Kathleen Babcock and William R. Kauffman, 18 W.L.J. 11 (1978).

"Survey of Kansas Law: Contracts," Mary Kathleen Babcock, 27 K.L.R. 215, 223 (1979).

"Survey of Kansas Law: Municipal Corporations," Richard H. Seaton, 27 K.L.R. 269, 272 (1979).

"Labor Law--Mandatory Subjects of Bargaining Under the Kansas Public Employer-Employee Relations Act--Kansas Board of Regents v. Pittsburg State University Chapter of Kansas-National Education Association," Diana Dietrich, 32 K.L.R. 697 (1984).

Attorney General's Opinions:

Teachers' contracts; professional negotiations; agreements; ratification; election; amendment. 92-105.

Law Review and Bar Journal References:

Kansas public employer-employee relations law, W. Stanley Churchill, 41 J.B.A.K. 13, 15 (1972).

New statutory enactments modifying common law and statutory contract principles discussed in survey of Kansas contract law, 21 K.L.R. 137, 155 (1972).

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 467, 469 (1976).

"Survey of Kansas Law: Civil Procedure," Jerry G. Elliott, 27 K.L.R. 185, 193 (1979).

"The Kansas Public Employer-Employee Relations Law," Raymond Goetz, 28 K.L.R. 243, 245, 246 (1980).

"Labor Law--Mandatory Subjects of Bargaining Under the Kansas Public Employer-Employee Relations Act--Kansas Board of Regents v. Pittsburg State University Chapter of Kansas-National Education Association," Diana Dietrich, 32 K.L.R. 697 (1984).

Attorney General's Opinions:

Teachers' contracts; negotiable items; unilateral changes by board not authorized. 84-67.

Kansas state school for the deaf and Kansas state school for the visually handicapped; employees. 85-12.

Due process procedure; notice to discontinue contract; negotiability of date. 86-44.

Early retirement incentive programs; incentive payments exceeding one year. 89-18.

Policy of evaluation of certificated school personnel; legislative intent. 90-133.

CASE ANNOTATIONS

1. Act construed; recognition dispute; duty of board to negotiate with recognized representative; no termination of agreement. *Liberal-NEA v. Board of Education*, 211 K. 219, 225, 227, 228, 229, 505 P.2d 651.

2. Action involving teachers' association and school board; act requires good faith effort to negotiate. *National Education Association v. Board of Education*, 212 K. 741, 743, 747, 748, 512 P.2d 426.

3. No assistance under act to professional employees who strike. *Seaman Dist. Teachers' Ass'n v. Board of Education*, 217 K. 233, 234, 236, 237, 243, 246, 535 P.2d 889.

4. Professional employees' organization authorized to sue and be sued in name of organization. *Seaman Dist. Teachers' Ass'n v. Board of Education*, 217 K. 233, 234, 236, 237, 243, 246, 535 P.2d 889.

5. Order declaring impasse under this Act not subject to appeal. *In re NEA-Topeka, Inc.*, 224 K. 291, 292, 579 P.2d 1216. Opinion supplemented, 224 K. 582, 583, 584, 581 P.2d 1187.

6. Judge directed to order commencement of impasse resolution procedures. *Garden City Educators' Ass'n v. Vance*, 224 K. 732, 734, 735, 737, 739, 743, 585 P.2d 1057.

7. Mentioned in applying professional negotiations law to community junior colleges; agreement binding as to contract of teacher. *Boatright v. Board of Trustees of Butler Co. Jr. College*, 225 K. 327, 330, 590 P.2d 1032.

8. Mentioned in holding professional employees' association was acting as agent for teachers in negotiations with board. *Riley County Education Ass'n v. U.S.D. No. 378*, 225 K. 385, 389, 391, 392, 592 P.2d 87.

9. Held as not inconsistent with continuing contract law; upon failure of negotiation, teachers may accept unilateral contract or proceed under continuing contract law. *NEA-Wichita v. Board of Education of U.S.D. No. 259*, 225 K. 395, 400, 592 P.2d 80.

10. Construed as to scope of professional negotiations, determination of mandatorily negotiable items within phrase "terms and conditions of professional service." *NEA-Topeka, Inc. v. U.S.D. No. 501*, 225 K. 445, 446, 448, 449, 451, 453, 455, 592 P.2d 93.

11. Section cited; discussion of rules for determining the scope of mandatory negotiations. *Chee-Craw Teachers Association v. U.S.D. No. 247*, 225 K. 561, 564, 565, 566, 568, 569, 571, 593 P.2d 406.

12. Subsection (l) cited in appeal of determinations of whether numerous bargaining proposals mandatorily negotiable. *NEA-Parsons v. U.S.D. No. 503*, 225 K. 581, 582, 583, 585, 587, 593 P.2d 414.

13. Authority granted secretary of human resources under act does not violate Kansas constitution. *NEA-Fort Scott v. U.S.D. No. 234*, 225 K. 607, 592 P.2d 463.

14. Injunction brought by professional employees' organization; determination of negotiability of proposed items; duty of trial court to determine mandatory subjects. *Tri-County Educators' Association v. Tri-County Special Education Cooperative*, 225 K. 781, 783, 784, 786, 594 P.2d 207.

15. Subsection (l) cited in action determining whether certain items of negotiation are mandatory. *NEA-Kansas City v. U.S.D. No. 500*, 227 K. 541, 542, 543, 545, 608 P.2d 415.

16. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n. v. U.S.D. No. 369*, 4 K.A.2d 141, 142, 143, 145, 604 P.2d 57.

17. Cited; choice of exclusive representative of professional employees does not negate right of district to make payroll deductions of dues for a different professional employees' organization upon proper authorization. *NEA-Wichita v. U.S.D. No. 259*, 4 K.A.2d 443, 446, 608 P.2d 1367.

18. Trial court correctly found school board's notice of termination was timely given. *Gragg v. U.S.D. No. 287*, 6 K.A.2d 152, 154, 627 P.2d 335.

19. Board cannot change items "mandatorily negotiable" not covered or discussed under negotiated agreement while in force. *Dodge City Nat'l Education Ass'n v. U.S.D. No. 443*, 6 K.A.2d 810, 811, 635 P.2d 1263 (1981).

20. Considered in construing public employer-employee relations act (75-4321 et seq.). *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 817, 818, 822, 667 P.2d 306 (1983).

21. Board may not, while agreement in force, unilaterally change mandatorily negotiable items. *NEA-Wichita v. U.S.D. No. 259*, 234 K. 512, 521, 674 P.2d 478 (1983).

22. Mechanics of staff reduction, employee files and student teacher programs all mandatorily negotiable; subsection (l) interpreted. *U.S.D. No. 501 v. Secretary of Kansas Dept. of Human Resources*, 235 K. 968, 685 P.2d 874 (1984).

23. Supplemental contracts not subject to due process; terminable by either party. *Swager v. Board of Education*, U.S.D. No. 412, 9 K.A.2d 648, 652, 657, 688 P.2d 270 (1984).

24. Divisible surplus accumulated under health insurance policy purchased by board pursuant to agreement not subject to negotiation. *U.S.D. No. 259 v. Kansas--National Education Ass'n*, 239 K. 76, 79, 716 P.2d 571 (1986).

25. Cited; negotiated agreement permitting unilateral termination or nonrenewal for refusing supplemental duties conflicts with statutory scheme. *U.S.D. No. 241 v. Swanson*, 11 K.A.2d 171, 172, 717 P.2d 526 (1986).

26. Cited; absence of legislative intent authorizing school districts to contract away two-year employment provisions of 72-5445 examined. *Miller v. U.S.D. No. 470*, 12 K.A.2d 368, 369, 744 P.2d 865 (1987).

27. Cited; nonrenewal of nontenured teacher, inapplicability of master agreement provision on evaluation examined. *Miller v. U.S.D. No. 470*, 242 K. 817, 818, 752 P.2d 113 (1988).

28. Cited; rebuttable presumption of qualification represented by teaching certificate, tenured teacher's rights in reduction of force situation examined. *Bauer v. U.S.D. No. 452*, 244 K. 6, 15, 765 P.2d 1129 (1988).

29. Noon-recess duty and noon-hallway duty not within definition of supplemental contracts as set out herein. NEA-Goodland v. U.S.D. No. 352, 13 K.A.2d 558, 559, 775 P.2d 675 (1989).

30. Evaluation procedures are mandatorily negotiable; evaluation criteria are not. U.S.D. No. 352 v. NEA-Goodland, 246 K. 137, 144, 785 P.2d 993 (1990).

31. Timeliness of prohibited practice complaints, unilateral contracts altering and adding terms and conditions, charging board's negotiation expenses to teachers' salaries, secretary's authority examined. U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources, 14 K.A.2d 248; affirmed in part, reversed in part, 247 K. 519, 802 P.2d 516 (1990).

32. Cited in review of authority of Board of Healing Arts to regulate the practice of medicine. Vakas v. Kansas Bd. of Healing Arts, 248 K. 589, 598, 808 P.2d 1355 (1991).

33. Unilaterally imposing liquidated damages on resigning teachers found not to be a prohibited practice. Garden City Educators' Ass'n v. U.S.D. No. 457, 15 K.A.2d 187, 190, 805 P.2d 511 (1991).

34. Application of section considered in determining rights of teacher laid off due to reduction in staff. Thompson v. U.S.D. No. 259, 16 K.A.2d 42, 46, 47, 819 P.2d 1236 (1991).

35. School board's refusal to negotiate evaluation procedures for implementing new teacher evaluation criteria determined a prohibited practice under 72-5430(b)(5). U.S.D. No. 314 v. Kansas Dept. of Human Resources, 18 K.A.2d 596, 598, 856 P.2d 1343 (1993).

36. Decision concerning negotiability of contract provision under PNA (72-5413 et seq.) determined by secretary of human resources, not declaratory judgment action. Junction City Education Ass'n v. U.S.D. No. 475, 264 K. 212, 220, 955 P.2d 1266 (1998).

37. Noncertified professional employees' organization not entitled to use school district's internal mail system. U.S.D. No. 233 v. Kansas Ass'n of American Educators, 275 K. 313, 64 P.3d 372 (2003).

72-5414. Professional employees' rights; representation of employees and school boards; negotiations. Professional employees shall have the right to form, join or assist professional employees' organizations, to participate in professional negotiation with boards of education through representatives of their own choosing for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service. Professional employees shall also have the right to refrain from any or all of the foregoing activities. In professional negotiations under this act the board of education may be represented by an agent or committee designated by it.

History: L. 1970, ch. 284, § 2; July 1.

Research and Practice Aids:

Labor Relations (West Key) 88.

C.J.S. Labor Relations § 52.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460 (1976).

Attorney General's Opinions:

Due process procedure; notice to discontinue contract; negotiability of date. 86-44.

CASE ANNOTATIONS

1. Applied; recognition dispute; local board required to negotiate with recognized representative until controversy determined. *Liberal-NEA v. Board of Education*, 211 K. 219, 225, 230, 505 P.2d 651.

2. Mentioned in action involving collective negotiations of teachers' association with school board. *National Education Association v. Board of Education*, 212 K. 741, 747, 512 P.2d 426.

3. Professional employees organizations authorized to sue and be sued in association's name. *Seaman Dist. Teachers' Ass'n v. Board of Education*, 217 K. 233, 244, 535 P.2d 889.

4. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n. v. U.S.D. No. 369*, 4 K.A.2d 141, 143, 604 P.2d 57.

5. Negotiability of evaluation criteria and evaluation procedures examined. *U.S.D. No. 352 v. NEA-Goodland*, 246 K. 137, 141, 785 P.2d 993 (1990).

6. Unilateral contracts after impasse altering and adding terms and conditions, reduction of teachers' salaries by board's negotiation expenses examined. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 14 K.A.2d 248, 257; affirmed in part, reversed in part, 247 K. 519, 526, 802 P.2d 516 (1990).

7. Plaintiff's failure to invoke mandatory contractual grievance procedure prevents judicial interpretation of contract. *NEA-Topeka v. U.S.D. No. 501*, 269 K. 534, 7 P.3d. 1174 (2000).

72-5415. Exclusive representation of negotiating units; any employee or group may present its position or proposal. (a) When a representative is designated or selected for the purposes of professional negotiation by the majority of the professional employees in an appropriate negotiating unit, such representative shall be the exclusive representative of all the professional employees in the unit for such purpose.

(b) Nothing in this act or in acts amendatory thereof or supplemental thereto shall be construed to prevent professional employees, individually or collectively, from presenting or making known their positions or proposals or both to a board of education, a superintendent of schools or other chief executive officer employed by a board of education.

History: L. 1970, ch. 284, § 3; L. 1977, ch. 248, § 2; L. 1980, ch. 220, § 2; July 1.

Research and Practice Aids:

Labor Relations (West Key) 193.

C.J.S. Labor Relations § 164.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 459, 460 (1976).

CASE ANNOTATIONS

1. Discussed in construing act; duty of local board to negotiate with recognized representative until controversy determined. *Liberal-NEA v. Board of Education*, 211 K. 219, 220, 225, 230, 505 P.2d 651.

2. Mentioned in action involving collective negotiations of teachers' association with school board. *National Education Association v. Board of Education*, 212 K. 741, 747, 512 P.2d 426.

3. Professional employees organizations authorized to sue and be sued in association's name. *Seaman Dist. Teachers' Ass'n v. Board of Education*, 217 K. 233, 243, 535 P.2d 889.

4. Construed to permit individual teachers to make their positions on proposals under negotiation known to board. NEA-Topeka, Inc. v. U.S.D. No. 501, 225 K. 445, 452, 592 P.2d 93.

5. Exclusivity of representation not a subject for mandatory negotiation; preempted by statute. NEA-Kansas City v. U.S.D. No. 500, 227 K. 541, 545, 608 P.2d 415.

6. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. Burrton Education Ass'n v. U.S.D. No. 369, 4 K.A.2d 141, 143, 604 P.2d 57.

7. Choice of exclusive representative of professional employees does not negate right of district to make payroll deductions of dues for a different professional employees' organization upon proper authorization. NEA-Wichita v. U.S.D. No. 259, 4 K.A.2d 443, 444, 445, 608 P.2d 1367.

8. Unilateral contracts containing items not noticed for negotiation following impasse examined. U.S.D. No. 279 v. Secretary of Kansas Dept of Human Resources, 14 K.A.2d 248, 257, 788 P.2d 867 (1990).

72-5416. Recognition of employees' organization as representative; exceptions to required recognition. (a) If professional employees of a board of education are not represented by a professional employees' organization for the purpose of professional negotiation, any professional employees' organization may file a request with the board of education alleging that a majority of the professional employees in an appropriate negotiating unit wish to be represented for such purpose by such organization and asking the board of education to recognize it as the exclusive representative under K.S.A. 72-5415. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support through verified membership lists. Notice of such request shall immediately be posted by the board of education on a bulletin board at each school or other facility in which members of the unit claimed to be appropriate are employed.

(b) A request for recognition under subsection (a) shall be granted by the board of education unless:

(1) The board of education has a good faith doubt as to the accuracy or validity of the evidence demonstrating majority support; or

(2) another professional employees' organization files with the board of education within ten (10) calendar days after the posting of notice of the original request a competing request alleging majority support and asking the board of education to recognize it as the exclusive representative; or

(3) one or more of the professional employees included in the unit claimed to be appropriate files with the board of education within ten (10) calendar days after the posting of notice of the original request a competing request alleging majority support and asking the board of education to deny the request for recognition; or

(4) the board of education, within the previous twelve (12) months, has lawfully denied or withdrawn the recognition of a professional employees' organization as the exclusive representative of the professional employees included in the unit claimed to be appropriate; or

(5) the secretary, within the previous twelve (12) months, has conducted a secret ballot election under the provisions of this act, or the act of which this section is amendatory, and the election resulted in a majority vote for no representation.

History: L. 1970, ch. 284, § 4; L. 1980, ch. 220, § 3; July 1.

Research and Practice Aids:

Labor Relations (West Key) 199.

C.J.S. Labor Relations § 170.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460 (1976).

CASE ANNOTATIONS

1. Applied; act construed; local board required to negotiate with recognized representative until controversy determined. *Liberal-NEA v. Board of Education*, 211 K. 219, 220, 225, 226, 227, 229, 230, 505 P.2d 651.

2. Mentioned in action involving collective negotiations of teachers' association with school board. *National Education Association v. Board of Education*, 212 K. 741, 747, 512 P.2d 426.

3. Professional employees organizations authorized to sue and be sued in association's name. *Seaman Dist. Teachers' Ass'n v. Board of Education*, 217 K. 233, 234, 244, 247, 535 P.2d 889.

4. Mentioned in breach of employment contract action by teacher against community junior college board. *Boatright v. Board of Trustees of Butler Co. Jr. College*, 225 K. 327, 330, 590 P.2d 1032.

5. Exclusivity of representation not a subject for mandatory negotiation; preempted by statute. *NEA-Kansas City v. U.S.D. No. 500*, 227 K. 541, 545, 608 P.2d 415.

6. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D. No. 369*, 4 K.A.2d 141, 143, 604 P.2d 57.

72-5417. Same; determination by secretary of human resources upon petition. (a) A petition may be filed with the secretary, asking the secretary to investigate and decide the question of whether (1) professional employees in an appropriate negotiating unit have designated a professional employees' organization for recognition as an exclusive representative for purposes of K.S.A. 72-5415; (2) a professional employees' organization which is the recognized exclusive representative should be replaced by another professional employees' organization; (3) recognition of a professional employees' organization as the exclusive representative should be withdrawn.

(b) A petition under subsection (a) may be filed by:

(1) A board of education alleging that it has received a request for exclusive recognition from a professional employees' organization and has a good faith doubt as to the accuracy or validity of the claims made in the request; or

(2) a professional employees' organization; or

(3) one or more professional employees seeking withdrawal of recognition of a professional employees' organization as the exclusive representative.

History: L. 1970, ch. 284, § 5; L. 1977, ch. 248, § 3; L. 1980, ch. 220, § 4; July 1.

Research and Practice Aids:

Labor Relations (West Key) 216.

C.J.S. Labor Relations § 210.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460, 464 (1976).

CASE ANNOTATIONS

1. Duty to negotiate with previously recognized representative until controversy determined; act construed. Liberal-NEA v. Board of Education, 211 K. 219, 224, 225, 227, 230, 231, 232, 233, 505 P.2d 651.

2. Mentioned in action involving collective negotiations of teachers' association with school board. National Education Association v. Board of Education, 212 K. 741, 747, 512 P.2d 426.

3. Authority granted secretary of human resources under act does not violate Kansas constitution. NEA-Fort Scott v. U.S.D. No. 234, 225 K. 607, 608, 612, 592 P.2d 463.

4. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. Burrton Education Ass'n v. U.S.D. No. 369, 4 K.A.2d 141, 143, 604 P.2d 57.

72-5418. Same; election; summary dismissal of petition, when. (a) Upon receipt of a petition under K.S.A. 72-5417 and except as provided in subsection (b), the secretary or a person or persons designated by the secretary may direct and conduct a secret ballot election in order to decide the questions raised by the petition.

(b) The secretary shall dismiss, without determining the questions raised therein, any petition filed under K.S.A. 72-5417, if:

(1) The petition is filed by a professional employees' organization and is not supported by credible evidence that at least thirty percent (30%) of the professional employees in the appropriate unit are members of the professional employees' organization filing the petition; or

(2) the petition is filed by one or more professional employees, asks the secretary to determine the question of whether recognition of a professional employees' organization should be withdrawn, and is not supported by credible evidence that at least thirty percent (30%) of the professional employees in the appropriate unit support the request; or

(3) the board of education, within the previous twelve (12) months, has lawfully recognized a professional employees' organization other than the petitioner as the exclusive representative of any professional employees included in the unit described in the petition; or

(4) the board of education, within the previous twelve (12) months, has lawfully denied or withdrawn the recognition of a professional employees' organization as the exclusive representative of the professional employees included in the unit described in the petition; or

(5) the secretary, within the previous twelve (12) months, has conducted and certified the result of a secret ballot election under the provisions of this act, or the act of which this section is amendatory.

History: L. 1970, ch. 284, § 6; L. 1977, ch. 248, § 4; L. 1980, ch. 220, § 5; July 1.

Research and Practice Aids:

Labor Relations (West Key) 210 et seq.

C.J.S. Labor Relations § 195 et seq.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460 (1976).

CASE ANNOTATIONS

1. Local board has duty to negotiate with recognized representative until controversy determined. *Liberal-NEA v. Board of Education*, 211 K. 219, 220, 225, 227, 229, 231, 505 P.2d 651.

2. Mentioned in action involving collective negotiations of teachers' association with school board. *National Education Association v. Board of Education*, 212 K. 741, 747, 512 P.2d 426.

3. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D. No. 369*, 4 K.A.2d 141, 143, 604 P.2d 57.

72-5419. Same; conduct of election for determination; conditions; run-off election. If the secretary does not dismiss a petition filed under K.S.A. 72-5417 and determines that it is necessary to direct and conduct a secret ballot election in order to resolve the questions raised by the petition, the secretary shall order the election held and shall determine the eligibility of professional employees to vote at the election. The secretary shall base his or her determination of the questions raised by the petition upon the result favored by the majority of the professional employees who vote at the election if at least a majority of the eligible professional employees vote. If less than a majority of the eligible professional employees vote at any election conducted under this section, the status of the professional employees with regard to representation prior to the election is maintained. The name of a professional employees' organization shall not appear on the ballot unless (a) the professional employees' organization has submitted to the secretary satisfactory evidence demonstrating that at least thirty percent (30%) of the professional employees in the appropriate unit are members in good standing of such organization, or (b) the professional employees' organization is the currently recognized exclusive representative. In addition to the name of any professional employees' organization entitled to be contained thereon, the ballot in the election shall contain the choice of "no representation." When an election in which the ballot contains three (3) or more choices results in no choice receiving a majority of the votes cast, the secretary 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 secretary shall certify the result of the election to the parties involved therein.

History: L. 1970, ch. 284, § 7; L. 1977, ch. 248, § 5; L. 1980, ch. 220, § 6; July 1.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460 (1976).

CASE ANNOTATIONS

1. Mentioned in action involving collective negotiations of teachers' association with school board. *National Education Association v. Board of Education*, 212 K. 741, 747, 512 P.2d 426.

2. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. Burrton Education Ass'n v. U.S.D. No. 369, 4 K.A.2d 141, 143, 604 P.2d 57.

72-5420. Criteria for determining appropriate unit of employees' organization. In each case where the question is in issue, the secretary shall decide, on the basis of the community of interest between and among the professional employees of the board of education, the wishes of the professional employees and/or the established practices among the professional employees including, among other things, the extent to which such professional employees have joined a professional employees' organization, whether the unit appropriate for the purposes of professional negotiation shall consist of all persons employed by the board of education who are engaged in teaching or performing other duties of an educational nature, or some subdivision thereof, except that a unit including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education.

History: L. 1970, ch. 284, § 8; L. 1977, ch. 248, § 6; July 1.

Research and Practice Aids:

Labor Relations (West Key) 203.

C.J.S. Labor Relations § 174 et seq.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460 (1976).

CASE ANNOTATIONS

1. Mentioned in action involving collective negotiations of teachers' association with school board. National Education Association v. Board of Education, 212 K. 741, 747, 512 P.2d 426.

2. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. Burrton Education Ass'n v. U.S.D. No. 369, 4 K.A.2d 141, 143, 604 P.2d 57.

72-5421. Agreements; ratification; election; absentee ballots. (a) A board of education and an exclusive representative selected or designated under the provisions of this act, or the act of which this section is amendatory, may enter into an agreement covering terms and conditions of professional service. The agreement becomes binding when ratified by a majority of the members of the board of education and a majority of the professional employees in the applicable negotiating unit who vote on the question of ratification of the agreement at an election conducted by the exclusive representative if at least a majority of the professional employees in the negotiating unit vote. If less than a majority of the professional employees vote on the question of ratification, the election is void.

(b) Every professional employee in the applicable negotiating unit who is to be absent from the place and at the time of the election may vote an absentee ballot on the question of ratification of the agreement. Upon written application by a professional employee for an absentee ballot, the exclusive representative shall transmit to the professional employee, in person or by mail to the address provided by the professional employee in the application, a ballot, an unmarked envelope, a larger envelope containing a space for the professional employee's signature and addressed to the exclusive representative, and instructions to the

professional employee for casting the ballot. On receipt of an application under this subsection, the exclusive representative shall prepare and maintain a list of the names of professional employees who have applied for absentee ballots. The returned envelopes shall be checked against the list of names of applicants and the unmarked envelopes containing the ballots shall be extracted. The unmarked ballot envelopes shall be opened and the absentee ballots shall be counted in the same manner as ballots cast at the election.

History: L. 1970, ch. 284, § 9; L. 1980, ch. 220, § 7; July 1.

Research and Practice Aids:

Labor Relations (West Key) 246.

C.J.S. Labor Relations § 222.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460 (1976).

CASE ANNOTATIONS

1. Mentioned in action involving collective negotiations of teachers' association with school board. National Education Association v. Board of Education, 212 K. 741, 747, 748, 749, 512 P.2d 426.

2. Professional employees organizations authorized to sue and be sued in association's name. Seaman Dist. Teachers' Ass'n v. Board of Education, 217 K. 233, 244, 535 P.2d 889.

3. Act construed and applied; judge directed to order commencement of impasse resolution procedures. Garden City Educators' Ass'n v. Vance, 224 K. 732, 733, 585 P.2d 1057.

4. Terms and conditions of agreement hereunder binding on all parties ratified by board and teachers. Boatright v. Board of Trustees of Butler Co. Jr. College, 225 K. 327, 330, 590 P.2d 1032.

5. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. Burrton Education Ass'n v. U.S.D. No. 369, 4 K.A.2d 141, 144, 604 P.2d 57.

72-5422. Savings clause for existing agreements. Except as otherwise expressly provided herein, this act shall not operate so as to annul, modify or preclude the renewal or continuation of any lawful agreement heretofore entered into between a board of education and a professional employees' organization covering terms and conditions of professional service.

History: L. 1970, ch. 284, § 10; July 1.

CASE ANNOTATIONS

1. Mentioned in action involving collective negotiations of teachers' association with school board. National Education Association v. Board of Education, 212 K. 741, 747, 512 P.2d 426.

2. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. Burrton Education Ass'n v. U.S.D. No. 369, 4 K.A.2d 141, 144, 604 P.2d 57.

72-5423. Rights and duties of boards of education reserved; recognition and negotiation required; applicability of open meetings law, exceptions; strikes not authorized; adoption of agreements by reference. (a) Nothing in this act, or the act of which this section is amendatory, shall be construed to change or affect any right or duty conferred or imposed by law upon any board of education, except that boards of education are required to comply with this act, and the act of which this section is amendatory, in recognizing professional employees' organizations, and when such an organization is recognized, the board of education and the professional employees' organization shall enter into professional negotiations on request of either party at any time during the school year prior to issuance or renewal of the annual teachers' contracts. Notices to negotiate on new items or to amend an existing contract must be filed on or before February 1 in any school year by either party, such notices shall be in writing and delivered to the chief administrative officer of the board of education or to the representative of the bargaining unit and shall contain in reasonable and understandable detail the purpose of the new or amended items desired.

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

(c) Nothing in this act, or the act of which this section is amendatory, shall be construed to authorize a strike by professional employees.

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

History: L. 1970, ch. 284, § 11; L. 1977, ch. 248, § 12; L. 1980, ch. 220, § 8; L. 1986, ch. 269, § 1; July 1.

Research and Practice Aids:

Labor Relations (West Key) 171 et seq.
C.J.S. Labor Relations § 148.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460 (1976).

"Survey of Kansas Law: Municipal Corporations," Richard H. Seaton, 27 K.L.R. 269, 272, (1979).

Attorney General's Opinions:

Early retirement incentive programs; incentive payments exceeding one year. 89-18.
Teachers' contracts; professional negotiations; open meetings law; executive sessions. 92-51.

CASE ANNOTATIONS

1. Local board has duty to negotiate with recognized representative until controversy determined. *Liberal-NEA v. Board of Education*, 211 K. 219, 220, 222, 223, 224, 226, 229, 232, 505 P.2d 651.

2. Statute requires school board to put in writing and to be bound by mutually agreed provisions. *National Education Association v. Board of Education*, 212 K. 741, 743, 747, 748, 749, 512 P.2d 426.

3. Paragraph (b) applied; no court assistance to professional employees who strike. *Seaman Dist. Teachers' Ass'n v. Board of Education*, 217 K. 233, 237, 246, 535 P.2d 889.

4. After termination of unsuccessful negotiation, boards may issue unilateral contracts containing items not noticed or negotiated. *Riley County Education Ass'n v. U.S.D. No. 378*, 225 K. 385, 386, 387, 388, 389, 390, 391, 392, 592 P.2d 87.

5. Mentioned in determination of items which are mandatorily negotiable under collective negotiations law. *NEA-Topeka, Inc. v. U.S.D. No. 501*, 225 K. 445, 446, 592 P.2d 93.

6. Section cited; discussion of rules for determining the scope of mandatory negotiations. *Chee-Craw Teachers Association v. U.S.D. No. 247*, 225 K. 561, 571, 593 P.2d 406.

7. Subsection (d) cited; teachers continuing employment under continuing contract law not entitled to pay increases under expired negotiated agreement. *NEA-Goodland v. U.S.D. No. 352*, 225 K. 596, 597, 598, 592 P.2d 907.

8. Cited in action determining whether certain items of negotiation are mandatory. *NEA-Kansas City v. U.S.D. No. 500*, 227 K. 541, 542, 545, 608 P.2d 415.

9. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D. No. 369*, 4 K.A.2d 141, 142, 144, 604 P.2d 57.

10. Choice of exclusive representative of professional employees does not negate right of district to make payroll deductions of dues for a different professional employees' organization upon proper authorization; prior right not changed by collective negotiations statutes. *NEA-Wichita v. U.S.D. No. 259*, 4 K.A.2d 443, 446, 608 P.2d 1367.

11. Trial court correctly found school board's notice of termination was timely given. *Gragg v. U.S.D. No. 287*, 6 K.A.2d 152, 154, 627 P.2d 335.

12. Notice required for board to change "mandatorily negotiable" items while negotiated agreement in effect. *Dodge City Nat'l Education Ass'n v. U.S.D. No. 443*, 6 K.A.2d 810, 811, 812, 635 P.2d 1263 (1981).

13. Notice provision herein mandatory; intent to negotiate must contain in reasonable and understandable detail purpose of new or amended items desired. *U.S.D. No. 252 v. South Lyon County Teachers Ass'n*, 11 K.A.2d 295, 297, 720 P.2d 1119 (1986).

14. Procedure for review of decision on negotiability of evaluation criteria and evaluation procedures examined. *U.S.D. No. 352 v. NEA-Goodland*, 246 K. 137, 144, 785 P.2d 993 (1990).

15. Unilateral contracts after impasse altering and adding terms and conditions, reduction of teachers' salaries by board's negotiation expenses examined. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 14 K.A.2d 248, 257; affirmed in part, reversed in part, 247 K. 519, 521, 802 P.2d 516 (1990).

72-5424. Agreements may provide for arbitration of disputes; enforcement of arbitration agreements. (a) A board of education and a professional employees' organization who enter into an agreement covering terms and conditions of professional service may include in such agreement procedures for final and binding arbitration of such disputes as may arise involving the interpretation, application or violation of such agreement.

(b) Where a party to such agreement is aggrieved by the failure, neglect or refusal of the other party to proceed to arbitration in the manner provided for in such agreement, such aggrieved party may file a complaint in court for a summary action without jury seeking an order directing that the arbitration proceed in the manner provided for in such agreement.

History: L. 1970, ch. 284, § 12; July 1.

Research and Practice Aids:

Labor Relations (West Key) 431 et seq.

C.J.S. Labor Relations § 424.

Law Review and Bar Journal References:

"Teachers and the School Board--Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 460, 462 (1976).

CASE ANNOTATIONS

1. Mentioned in action involving collective negotiations of teachers' association with school board. National Education Association v. Board of Education, 212 K. 741, 747, 748, 512 P.2d 426.

2. Professional employees organizations authorized to sue and be sued in association's name. Seaman Dist. Teachers' Ass'n v. Board of Education, 217 K. 233, 244, 535 P.2d 889.

3. Binding arbitration of grievances not mandatorily negotiable but may be negotiated by mutual agreement. Chee-Craw Teachers Association v. U.S.D. No. 247, 225 K. 561, 569, 593 P.2d 406.

4. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. Burrton Education Ass'n v. U.S.D. No. 369, 4 K.A.2d 141, 143, 604 P.2d 57.

5. Trial court order granting motion to compel arbitration is interlocutory rendering motion unappealable. NEA-Topeka v. U.S.D. No. 501, 260 K. 838, 839, 925 P.2d 835 (1996).

6. Trial court holding that plaintiffs did not have to exhaust administrative remedies when remedy was inadequate upheld. NEA-Coffeyville v. U.S.D. No. 445, 268 K. 384, 388, 397, 996 P.2d 821 (2000).

7. Plaintiff's failure to invoke mandatory contractual grievance procedure prevents judicial interpretation of contract. NEA-Topeka v. U.S.D. No. 501, 269 K. 534, 7 P.3d 1174 (2000).

72-5425. Severability. If any provision of this act shall be held invalid, other provisions of this act shall not be affected thereby.

History: L. 1970, ch. 284, § 14; July 1.

CASE ANNOTATIONS

1. Mentioned in action involving collective negotiations of teachers' association with school board. *National Education Association v. Board of Education*, 212 K. 741, 748, 512 P.2d 426.

2. Mentioned in holding continuing contract law and collective negotiation law not inconsistent with each other. *NEA-Wichita v. Board of Education of U.S.D. No. 259*, 225 K. 395, 400, 592 P.2d 80.

3. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D. No. 369*, 4 K.A.2d 141, 144, 604 P.2d 57.

72-5426. Impasse during negotiation; determination of existence; statutory declaration date, joint notice; negotiation during impasse resolution proceedings. (a) If in the course of professional negotiation either the board of education or the recognized professional employees' organization, or both, believe that an impasse exists therein, either party individually or both parties together may file a petition with the secretary, asking the secretary to investigate and determine the question of whether an impasse exists in professional negotiation and, if a finding that an impasse exists is made, to begin impasse resolution procedures as provided in K.S.A. 72-5427 and 72-5428, and amendments thereto. Within the five days immediately following the date of filing, excluding Saturdays, Sundays and legal holidays, the secretary shall begin investigation of the question raised by the petition and in order to determine the question may meet with the parties or their representatives or both, either jointly or separately, and may hold such conferences, consultations and discussions therewith as the secretary deems necessary. If the secretary decides on the basis of the investigation that a hearing is necessary to determine the question, the secretary shall conduct the hearing immediately in accordance with the provisions of the Kansas administrative procedure act.

(b) If the secretary finds that no impasse exists in professional negotiation between the parties, the secretary shall order the parties to continue professional negotiation.

(c) If the secretary finds that an impasse exists in professional negotiation between the parties, the secretary shall begin impasse resolution procedures in accordance with K.S.A. 72-5427 and 72-5428, and amendments thereto.

(d) Notwithstanding the foregoing provisions of this section, an impasse is deemed to exist if the board of education and the recognized professional employees' organization have not reached agreement with respect to the terms and conditions of professional service by the statutory declaration of impasse date and, on such date, the parties shall jointly file a notice of the existence of impasse with the secretary. Upon receipt of such joint notice, the secretary shall begin impasse resolution procedures in accordance with K.S.A. 72-5427 and 72-5428, and amendments thereto.

(e) Nothing in this act, or in the act of which this section is amendatory, shall be construed or applied in any manner so as to prevent the parties from voluntarily engaging in professional negotiation during the course, or at the conclusion, of impasse resolution proceedings.

History: L. 1977, ch. 248, § 7; L. 1979, ch. 226, § 2; L. 1980, ch. 220, § 9; L. 1988, ch. 356, § 278; July 1, 1989.

Research and Practice Aids:

Labor Relations (West Key) 179.

C.J.S. Labor Relations § 156 et seq.

Law Review and Bar Journal References:

"Survey of Kansas Law: Civil Procedure," Jerry G. Elliott, 27 K.L.R. 185, 193 (1979).

"Survey of Kansas Law: Municipal Corporations," Richard H. Seaton, 27 K.L.R. 269, 272 (1979).

"The Kansas Public Employer-Employee Relations Law," Raymond Goetz, 28 K.L.R. 243, 246 (1980).

CASE ANNOTATIONS

1. Act construed and applied; judge directed to order commencement of impasse resolution procedures. *Garden City Educators' Ass'n v. Vance*, 224 K. 732, 733, 735, 739, 740, 743, 585 P.2d 1057.

2. Provision mandatory; when impasse declared, resolution procedures must commence; judge directed to order commencement. *Garden City Educators' Ass'n v. Vance*, 224 K. 732, 585 P.2d 1057.

3. Mentioned as not being in effect during negotiations unsuccessfully terminated. *Riley County Education Ass'n v. U.S.D. No. 378*, 225 K. 385, 388, 592 P.2d 87.

4. Noted as not being in effect during time of negotiation which was subject of declaratory judgment action. *NEA-Wichita v. Board of Education of U.S.D. No. 259*, 225 K. 395, 397, 592 P.2d 80.

5. Summary hearing hereunder also applicable in disputes as to whether specific proposals are mandatorily negotiable. *Chee-Craw Teachers Association v. U.S.D. No. 247*, 225 K. 561, 565, 566, 567, 593 P.2d 406.

6. Order declaring impasse hereunder not subject to appeal. *In re NEA-Topeka, Inc.*, 224 K. 291, 292, 579 P.2d 1216. Opinion supplemented, 224 K. 582, 583, 585, 581 P.2d 1187.

7. Constitutionality of act upheld in action seeking declaration of impasse and temporary restraining order hereunder. *NEA-Fort Scott v. U.S.D. No. 234*, 225 K. 607, 592 P.2d 463.

8. Appeal dismissed; parties entered into a negotiated contract between time appeal was taken and hearing thereon. *NEA-Topeka, Inc. v. U.S.D. No. 501*, 227 K. 290, 291, 607 P.2d 40.

9. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D. No. 369*, 4 K.A.2d 141, 142, 144, 604 P.2d 57.

10. Secretary's broad grant of power examined; quasi-judicial functions as constitutionally permissible determined. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 14 K.A.2d 248, 257; affirmed in part, reversed in part, 247 K. 519, 534, 802 P.2d 516 (1990).

11. Decision concerning negotiability of contract provision under PNA (72-5413 et seq.) determined by secretary of human resources, not declaratory judgment action. *Junction City Education Ass'n v. U.S.D. No. 475*, 264 K. 212, 214, 216, 955 P.2d 1266 (1998).

72-5427. Mediation; request for appointment of fact-finding board; time limitations; memorandum describing issues and final position of parties; confidentiality. (a) Upon finding that an impasse exists in professional negotiation or upon receipt of a joint notice of the existence of impasse filed by the parties under subsection (d) of K.S.A. 72-5426 and amendments thereto, the secretary shall appoint a mediator to assist in resolving the impasse,

from a list maintained by the secretary of qualified and impartial individuals who are representative of the public. To the extent practicable, the secretary shall utilize the services of the federal mediation and conciliation service for mediation under this section.

(b) The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such other steps as appropriate in order to assist the parties to resolve the impasse and to proceed with professional negotiation.

(c) If either party determines, after the seven-day period immediately succeeding the appointment of the mediator, that mediation has failed to resolve the impasse, such party may within 10 days after the unsuccessful conclusion of mediation file a written request with the secretary to appoint a fact-finding board to assist in resolving the impasse and the secretary shall immediately notify the other party of the request. Within three days thereafter, each of the parties shall prepare and submit to the secretary a written memorandum containing a description of the issues upon which the impasse exists and shall include therein a specific description of the final position of the party on each issue.

(d) 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.

(e) 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. 2007 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.

History: L. 1977, ch. 248, § 8; L. 1979, ch. 226, § 3; L. 1980, ch. 220, § 10; L. 1996, ch. 129, § 5; L. 2006, ch. 200, § 115; Jan. 1, 2007.

Research and Practice Aids:

Labor Relations (West Key) 415.

C.J.S. Labor Relations § 407.

Law Review and Bar Journal References:

"Survey of Kansas Law: Civil Procedures," Jerry G. Elliott, 27 K.L.R. 185, 193 (1979).

CASE ANNOTATIONS

1. Mentioned; order declaring impasse not subject to appeal. In re NEA-Topeka, Inc., 224 K. 291, 292, 579 P.2d 1216. Opinion supplemented, 224 K. 582, 583, 581 P.2d 1187.

2. Act construed and applied; judge directed to order commencement of impasse resolution procedures. Garden City Educators' Ass'n v. Vance, 224 K. 732, 733, 734, 735, 743, 585 P.2d 1057.

3. Section cited; discussion of rules for determining the scope of mandatory negotiations. Chee-Craw Teachers Association v. U.S.D. No. 247, 225 K. 561, 567, 593 P.2d 406.

4. Authority granted secretary of human resources under act does not violate Kansas constitution. NEA-Fort Scott v. U.S.D. No. 234, 225 K. 607, 608, 592 P.2d 463.

5. Appeal dismissed; parties entered into a negotiated contract between time appeal was taken and hearing thereon. NEA-Topeka, Inc. v. U.S.D. No. 501, 227 K. 290, 291, 607 P.2d 40.

6. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. Burrton Education Ass'n v. U.S.D. No. 369, 4 K.A.2d 141, 142, 144, 604 P.2d 57.

7. Unilateral contracts after impasse altering and adding terms and conditions, reduction of teachers' salaries by board's negotiation expenses examined. U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources, 14 K.A.2d 248, 249; affirmed in part, reversed in part, 247 K. 519, 521, 802 P.2d 516 (1990).

72-5428. Fact finding; report of findings and recommendations of board; meeting required after report; report to be made public, exceptions; final action by board of education.

(a) Upon receipt of a written request filed by either party under K.S.A. 72-5427 and upon notification of the other party of the request, the secretary shall appoint forthwith a fact-finding board of not more than three (3) members and shall notify the parties of the appointment. Members of the fact-finding board shall be appointed from a list maintained by the secretary of qualified and impartial individuals who are representative of the public. The individual who was appointed as the mediator under K.S.A. 72-5427 to assist in resolving the impasse, shall not be appointed to the fact-finding board for such impasse.

(b) Upon appointment of the fact-finding board and prior to any meeting of the board with the parties, the secretary shall submit the memorandum required to be prepared and submitted by each party under K.S.A. 72-5427 to the other party and to the fact-finding board. The fact-finding board shall meet with the parties or their representatives, or both, either jointly or separately, and may make such inquiries and investigations and hold such hearings on the issues upon which the impasse exists, as the fact-finding board may deem appropriate.

(c) For the purpose of conducting inquiries, investigations and hearings, the fact-finding board shall have the power to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence and compel attendance of witnesses and the production of documents by the issuance of subpoenas. In the event of refusal to obey a subpoena on the part of any person or persons, the fact-finding board shall have authority to bring an action to enforce the subpoena in a court of competent jurisdiction.

(d) On the basis of the inquiries, investigations and hearings, the fact-finding board shall determine the issues upon which the impasse exists, make findings of fact regarding the issues and shall make recommendations for resolution of the impasse. Within ten (10) days after its appointment, the fact-finding board shall submit privately and on the same date to the secretary and to each of the parties, the written report of the fact-finding board containing the

findings of fact and the recommendation of the fact-finding board, except that such ten-day period may be extended by agreement of the parties not to exceed a maximum of seven (7) additional days. The recommendation of the fact-finding board shall not be binding on either the board of education or the recognized professional employees' organization.

(e) Within the ten (10) days immediately after receipt of the report of the fact-finding board, the parties shall meet at least once in an effort to reach agreement for resolution of the impasse. Either the board of education or the professional employees' organization may make public the report of the fact-finding board. The secretary shall make the report public ten (10) days after receipt of the report unless (1) the board of education and the recognized professional employees' organization agree to an extension of the ten-day period and give notice of such agreement to the secretary in which case, subject to provision (2), the report shall be made public by the secretary upon the expiration of such extended period of days, except that such ten-day period shall not be extended by the parties beyond a maximum of seven (7) additional days; or (2) the board of education and the recognized professional employees' organization notify the secretary at any time prior to the expiration of the applicable period of days that agreement for resolution of the impasse has been reached.

(f) When the report of the fact-finding board is made public, if the board of education and the recognized professional employees' organization do not resolve the impasse and reach an agreement, the board of education shall take such action as it deems in the public interest, including the interest of the professional employees involved, and shall make such action public.

History: L. 1977, ch. 248, § 9; L. 1980, ch. 220, § 11; July 1.

Research and Practice Aids:

Labor Relations (West Key) 458.

C.J.S. Labor Relations § 474.

Law Review and Bar Journal References:

"Survey of Kansas Law: Civil Procedure," Jerry G. Elliott, 27 K.L.R. 185, 193 (1979).

CASE ANNOTATIONS

1. Mentioned; order declaring impasse not subject to appeal. In re NEA-Topeka, Inc., 224 K. 291, 292, 579 P.2d 1216. Opinion supplemented, 224 K. 582, 583, 581 P.2d 1187.

2. Act construed and applied; judge directed to order commencement of impasse resolution procedures. Garden City Educators' Ass'n v. Vance, 224 K. 732, 733, 735, 738, 743, 585 P.2d 1057.

3. Construed as empowering boards to include unnegotiated items in teacher contracts after utilization of impasse procedures. Riley County Education Ass'n v. U.S.D. No. 378, 225 K. 385, 391, 592 P.2d 87.

4. Authority granted secretary of human resources under act does not violate Kansas constitution. NEA-Fort Scott v. U.S.D. No. 234, 225 K. 607, 608, 592 P.2d 463.

5. Appeal dismissed; parties entered into a negotiated contract between time appeal was taken and hearing thereon. NEA-Topeka, Inc. v. U.S.D. No. 501, 227 K. 290, 292, 607 P.2d 40.

6. Appeal from trial court's finding of occurrence of prohibited practices during negotiations dismissed; moot. NEA-Topeka, Inc. v. U.S.D. No. 501, 227 K. 529, 530, 531, 608 P.2d 920.

7. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D.* No. 369, 4 K.A.2d 141, 143, 144, 145, 146, 147, 148, 604 P.2d 57.

8. Legislature intended to grant school boards complete freedom where impasse procedures fail, subject to the public interest. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 14 K.A.2d 248, 249; affirmed in part, reversed in part, 247 K. 519, 521, 527, 802 P.2d 516 (1990).

72-5428a. Unilateral contracts prohibited prior to completion of negotiation. No board of education, which engages in professional negotiation with representatives of a recognized professional employees' organization, is permitted to issue a unilateral contract until the negotiations process as described in the Kansas professional negotiation law is fully completed.

History: L. 1980, ch. 220, § 15; July 1.

CASE ANNOTATIONS

1. While public and professional employees' interests must be considered, unilateral contracts after impasse need not contain exact terms previously negotiated. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 247 K. 519, 526, 527, 802 P.2d 516 (1990).

72-5429. Costs for mediation and fact-finding. All of the costs incurred for mediation under K.S.A. 72-5427 and for fact-finding under K.S.A. 72-5428, shall be borne equally by the board of education and the professional employees' organization involved therein. The payment of such costs shall be at such time and in such manner as is determined by the secretary.

History: L. 1977, ch. 248, § 10; July 1.

CASE ANNOTATIONS

1. Act construed and applied; judge directed to order commencement of impasse resolution procedures. *Garden City Educators' Ass'n v. Vance*, 224 K. 732, 733, 735, 585 P.2d 1057.

2. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D.* No. 369, 4 K.A.2d 141, 145, 604 P.2d 57.

3. School board's reduction of teachers' salaries by board's attorney fees and other negotiation and mediation expenses prohibited. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 14 K.A.2d 248, 257; affirmed in part, reversed in part, 247 K. 519, 521, 529, 802 P.2d 516 (1990).

72-5430. Prohibited practices; evidence of bad faith. (a) The commission of any prohibited practice, as defined in this section, among other actions, shall constitute evidence of bad faith in professional negotiation.

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

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

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

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

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

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

(6) deny the rights accompanying recognition of a professional employees' organization which are granted in K.S.A. 72-5415;

(7) refuse to participate in good faith in the mediation as provided in K.S.A. 72-5427 or fact-finding efforts as provided in K.S.A. 72-5428 or arbitration pursuant to an agreement entered into pursuant to K.S.A. 72-5424; or

(8) institute or attempt to institute a lockout.

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

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

(2) interfere with, restrain or coerce a board of education with respect to rights or duties which are reserved thereto under K.S.A. 72-5423 and amendments thereto, or with respect to selecting a representative for the purpose of professional negotiation or the adjustment of grievances;

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

(4) refuse to participate in good faith in the mediation as provided in K.S.A. 72-5427 or fact-finding efforts as provided in K.S.A. 72-5428 or arbitration pursuant to an agreement entered into pursuant to K.S.A. 72-5424; or

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

History: L. 1977, ch. 248, § 11; L. 1980, ch. 220, § 12; July 1.

Research and Practice Aids:

Labor Relations (West Key) 361 et seq.

C.J.S. Labor Relations § 328.

Law Review and Bar Journal References:

"The Kansas Public Employer-Employee Relations Law," Raymond Goetz, 28 K.L.R. 243, 246 (1980).

CASE ANNOTATIONS

1. Act construed and applied; judge directed to order commencement of impasse resolution procedures. Garden City Educators' Ass'n v. Vance, 224 K. 732, 735, 743, 585 P.2d 1057.

2. Items relating to transaction of professional association business are negotiable and not a prohibited practice hereunder. *NEA-Topeka, Inc. v. U.S.D.* No. 501, 225 K. 445, 451, 455, 592 P.2d 93.

3. Proposal relating to nondiscrimination not mandatorily negotiable; subsection (b)(3) and (b)(4) applicable. *Chee-Craw Teachers Association v. U.S.D.* No. 247, 225 K. 561, 567, 569, 593 P.2d 406.

4. Determination of whether numerous bargaining proposals mandatorily negotiable and whether prohibited practices committed in action for relief hereunder reviewed. *NEA-Parsons v. U.S.D.* No. 503, 225 K. 581, 582, 593 P.2d 414.

5. Appeal from trial court's finding of occurrence of prohibited practices during negotiations dismissed; moot. *NEA-Topeka, Inc. v. U.S.D.* No. 501, 227 K. 529, 530, 608 P.2d 920.

6. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D.* No. 369, 4 K.A.2d 141, 145, 604 P.2d 57.

7. Choice of exclusive representative of professional employees does not negate right of district to make payroll deductions of dues for a different professional employees' organization upon proper authorization; not a prohibited practice under (b)(2). *NEA-Wichita v. U.S.D.* No. 259, 4 K.A.2d 443, 444, 445, 446, 608 P.2d 1367.

8. Due process procedure; contract termination good cause for nonrenewal of tenured teacher contract not included in new interlocal cooperative agreement. *Sells v. U.S.D.* No. 429, 6 K.A.2d 968, 970, 971, 637 P.2d 422 (1981).

9. District court judgment set aside because remedies provided by statute not exhausted. *U.S.D. No. 251 v. Secretary of Kansas Dept. of Human Resources*, 233 K. 436, 437, 661 P.2d 1248 (1983).

10. Method of interpreting terms and conditions of professional service under 72-5413(l) approved. *U.S.D. No. 501 v. Secretary of Kansas Dept. of Human Resources*, 235 K. 968, 685 P.2d 874 (1984).

11. Negotiability of evaluation criteria and evaluation procedures examined. *U.S.D. No. 352 v. NEA-Goodland*, 246 K. 137, 144, 785 P.2d 993 (1990).

12. Unilateral contracts after impasse altering and adding terms and conditions permitted; reducing teachers' salaries by board's negotiation expenses prohibited. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 14 K.A.2d 248, 257; affirmed in part, reversed in part, 247 K. 519, 526, 529, 802 P.2d 516 (1990).

13. Unilaterally imposing liquidated damages on resigning teachers found not to be a prohibited practice. *Garden City Educators' Ass'n v. U.S.D.* No. 457, 15 K.A.2d 187, 190, 805 P.2d 511 (1991).

14. School board's refusal to negotiate evaluation procedures for implementing new teacher evaluation criteria amounted to prohibited practice. *U.S.D. No. 314 v. Kansas Dept. of Human Resources*, 18 K.A.2d 596, 601, 856 P.2d 1343 (1993).

15. Decision concerning negotiability of contract provision under PNA (72-5413 et seq.) determined by secretary of human resources, not declaratory judgment action. *Junction City Education Ass'n v. U.S.D.* No. 475, 264 K. 212, 217, 219, 955 P.2d 1266 (1998).

16. By contract terms, union may not file grievances for members but remanded to determine whether school district had waived issue of standing to file grievance. *312 Education Ass'n v. U.S.D.* 312, 273 K. 875, 47 P.3d 383 (2002).

72-5430a. Prohibited practices, determination of existence; procedure; hearing. (a) Any controversy concerning prohibited practices may be submitted to the secretary. Proceedings against the party alleged to have committed a prohibited practice shall be commenced within six months of the date of the alleged practice by service upon it by the secretary of a written notice, together with a copy of the charges. The accused party shall have 20 days within which to serve a written answer to the charges, unless the secretary determines an emergency exists and requires the accused party to serve a written answer to the charges within 24 hours of receipt. Hearings on prohibited practices shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If the board determines an emergency exists, the board shall follow the procedures contained in K.S.A. 77-536 and amendments thereto. A strike or lockout shall be construed to be an emergency.

(b) The secretary shall either dismiss the complaint or determine that a prohibited practice has been or is being committed, and shall enter a final order granting or denying in whole or in part the relief sought. Any action of the secretary pursuant to this subsection is subject to review and enforcement in accordance with the act for judicial review and civil enforcement of agency actions. Venue of the action for review is the judicial district where the principal offices of the pertinent board of education are located.

The action for review shall be by trial *de novo* with or without a jury in accordance with the provisions of K.S.A. 60-238 and amendments thereto, and the court may, in its discretion, permit any party or the secretary to submit additional evidence on any issue. The action for review shall be heard and determined by the court as expeditiously as possible.

(c) If there is an alleged violation of either subsection (b)(8) or (c)(5) of K.S.A. 72-5430 and amendments thereto, the aggrieved party or the secretary is authorized to seek relief in district court.

History: L. 1980, ch. 220, § 13; L. 1986, ch. 318, § 130; L. 1988, ch. 356, § 279; July 1, 1989.

Research and Practice Aids:

Labor Relations (West Key) 501 et seq.

C.J.S. Labor Relations §§ 501, 502.

CASE ANNOTATIONS

1. District court judgment set aside because remedies provided by statute not exhausted. U.S.D. No. 251 v. Secretary of Kansas Dept. of Human Resources, 233 K. 436, 437, 661 P.2d 1248 (1983).

2. Procedure for review of decision on negotiability of evaluation criteria and evaluation procedures examined. U.S.D. No. 352 v. NEA-Goodland, 246 K. 137, 139, 785 P.2d 993 (1990).

3. No provision of act limits time to file prohibited practice complaint to period of negotiations; secretary's authority examined. U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources, 14 K.A.2d 248, 249; affirmed in part, reversed in part, 247 K. 519, 525, 530, 802 P.2d 516 (1990).

4. Cited in review of authority of Board of Healing Arts to regulate the practice of medicine. *Vakas v. Kansas Bd. of Healing Arts*, 248 K. 589, 598, 808 P.2d 1355 (1991).

5. Review is decision of KDHR secretary in a prohibited practices case by trial de novo. *Garden City Educators' Ass'n v. U.S.D. No. 457*, 15 K.A.2d 187, 192, 805 P.2d 511 (1991).

6. School board's refusal to negotiate evaluation procedures for implementing new teacher evaluation criteria determined a prohibited practice under 72-5430(b)(5). *U.S.D. No. 314 v. Kansas Dept. of Human Resources*, 18 K.A.2d 596, 598, 856 P.2d 1343 (1993).

72-5431. Savings clause for existing agreements; administrative employees exempted.

(a) Except as otherwise expressly provided in this act, nothing in this act shall operate so as to annul or modify any existing agreement between a board of education and a professional employees' organization under the law in effect on the day immediately preceding the effective date of this act.

(b) From and after the effective date of this act, no administrative employee, as defined in K.S.A. 72-5413, shall be subject to the provisions of this act or the act of which this act is amendatory.

History: L. 1977, ch. 248, § 13; July 1.

CASE ANNOTATIONS

1. Applied; school board precluded from rescinding its decision until individual teachers had reasonable time to accept or reject. *Burrton Education Ass'n v. U.S.D. No. 369*, 4 K.A.2d 141, 145, 604 P.2d 57.

72-5432. Secretary of labor; rules and regulations; subpoena power. (a) The secretary of labor may adopt such rules and regulations as are necessary to implement and administer the provisions of K.S.A. 72-5413 through 72-5431, and amendments thereto, which place specific duties and responsibilities upon the secretary.

(b) Any rules and regulations adopted by the secretary of labor prior to the effective date of this act to implement and administer the provisions of K.S.A. 72-5413 through 72-5431, and amendments thereto, shall remain in full force and effect until amended, modified, suspended, revoked or nullified pursuant to law.

(c) The secretary of labor has the power to issue subpoenas requiring the attendance of any witnesses and the production of any records, books, papers and documents that the secretary considers necessary to implement and administer the provisions of K.S.A. 72-5413 through 72-5431, and amendments thereto, which place specific duties and responsibilities upon the secretary. In the event of refusal to obey a subpoena on the part of any person or persons, the secretary shall have the authority to bring an action to enforce the subpoena in a court of competent jurisdiction.

History: L. 1979, ch. 274, § 1; L. 1986, ch. 270, § 1; L. 2004, ch. 179, § 95; July 1.

CASE ANNOTATIONS

1. Filing of prohibited practice complaint as not limited to period of negotiations determined. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 14 K.A.2d 248, 257; affirmed in part, reversed in part, 247 K. 519, 802 P.2d 516 (1990).