

KANSAS PUBLIC EMPLOYER-EMPLOYEE RELATIONS ACT

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 43.--PUBLIC OFFICERS AND EMPLOYEES

75-4321. Declaration of policy and objectives; election by public employer to be bound by act; termination. (a) The legislature hereby finds and declares that:

(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

(2) the denial by some public employers of the right of public employees to organize and the refusal by some to accept the principle and procedure of full communication between public employers and public employee organizations can lead to various forms of strife and unrest;

(3) the state has a basic obligation to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government;

(4) there neither is, nor can be, an analogy of statuses between public employees and private employees, in fact or law, because of inherent differences in the employment relationship arising out of the unique fact that the public employer was established by and is run for the benefit of all the people and its authority derives not from contract nor the profit motive inherent in the principle of free private enterprise, but from the constitution, statutes, civil service rules, regulations and resolutions; and

(5) the difference between public and private employment is further reflected in the constraints that bar any abdication or bargaining away by public employers of their continuing legislative discretion and in the fact that constitutional provisions as to contract, property, and due process do not apply to the public employer and employee relationship.

(b) Subject to the provisions of subsection (c), it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the state and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies.

(c) The governing body of any public employer, other than the state and its agencies, by a majority vote of all the members may elect to bring such public employer under the provisions of this act, and upon such election the public employer and its employees shall be bound by its provisions from the date of such election. Once an election has been made to bring the public employer under the provisions of this act it continues in effect unless rescinded by a majority vote of all members of the governing body. No vote to rescind shall take effect until the termination of the next complete budget year following such vote.

History: L. 1971, ch. 264, § 1; March 1, 1972.

PUBLIC EMPLOYER-EMPLOYEE RELATIONS

Attorney General's Opinions:

County attorney's assistants and employees; participation in KAPE. 93-59.

Research and Practice Aids:

Labor Relations (West Key) 41 et seq.

C.J.S. Labor Relations § 20.

Law Review and Bar Journal References:

"The New Kansas Public Employer-Employee Law," W. Stanley Churchill, 41 J.B.A.K. 13 (1972).

Collective Negotiations Act, 18 W.L.J. 11, 12 (1978).

"The Kansas Public Employer-Employee Relations Law," Raymond Goetz, 28 K.L.R. 243, 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:

Kansas city board of public utilities; protection afforded fire district employees. 81-93.

Public employer-employee relations; collective bargaining with sheriff's employees. 81-276.

Agreement between employee organization and city; implementation. 82-211.

State provided housing, food service or other employee maintenance. 87-36.

County commissioners; employment termination of county employees. 88-11.

CASE ANNOTATIONS

1. Act discussed in determining school board required to negotiate with previously recognized representative under 72-5413 et seq. *Liberal NEA v. Board of Education*, 211 K. 219, 225, 228, 505 P.2d 651.

2. District court order setting aside board's order substantively arbitrary and capricious. *Coggins v. Public Employee Relations Board*, 2 K.A.2d 416, 421, 581 P.2d 817.

3. Cited in determining that employees' due process rights can be waived by memorandum of agreement if the agreement provides for protection and enforcement of employees' rights. *Gorham v. City of Kansas City*, 225 K. 369, 370, 376, 590 P.2d 1051.

4. Act cited in upholding the limited scope of district court review provided for in 75-4334. *Behrmann v. Public Employee Relations Board*, 225 K. 435, 437, 591 P.2d 173.

5. Purpose of act considered; parties required to meet and to confer and negotiate in good faith, with affirmative willingness to resolve differences and reach agreement. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 667 P.2d 306 (1983).

6. Public employers failing to come under PERA are subject to anti-injunction provisions of 60-904(c). *City of Kansas City v. Carpenters Dist. Council of Kansas City*, 237 K. 295, 301, 699 P.2d 493 (1985).

7. No positive obligation on city to refrain from discharging without cause; ordinance requiring city residence not contrary to act. *Kansas City, Kan. Frat. v. City of Kansas City*, 620 F.Supp. 752, 759, 760 (1984).

8. Cited; effect of memorandum of understanding and remedies therein regarding meal periods and work schedules of sheriff's deputies examined. *Atteberry v. Ritchie*, 243 K. 277, 284, 756 P.2d 424 (1988).

9. Judicial branch employees are not covered by PEERA. *Kansas Ass'n of Public Employees v. Public Employees Relations Bd.*, 13 K.A.2d 657, 778 P.2d 377 (1989).

10. Agreement with fire fighters' union resulting from city resolution opting out from KPEERA determined as binding contract. *International Ass'n of Firefighters v. City of Lawrence*, 14 K.A.2d 788, 790, 798 P.2d 960 (1990).

11. Court not precluded in hearing challenge to provision of Kansas public employer-employee relations act based on unconstitutionality of statute. *Slifer v. Public Employee Relations Bd.*, 737 F.Supp. 1149, 1150 (1990).

12. Neither PERB nor employees' union subject to limitations of open records act (45-215 et seq.) when acting under sanctioned activities of PEERA. *State Dept. of SRS v. Public Employee Relations Board*, 249 K. 163, 169, 170, 815 P.2d 66 (1991).

13. Whether PEERA (75-4321 et seq.) agreements covering conditions of employment take precedence over conflicting civil service regulations examined. *State Dept. of Administration v. Public Employees Relations Bd.*, 257 K. 275, 292, 894 P.2d 777 (1995).

14. Under facts, city exerted sufficient control over airport employees to be considered their employer for PEERA purposes. *City of Wichita v. Public Employee Relations Bd.*, 259 K. 628, 633, 913 P.2d 137 (1995).

15. Court must affirm an arbitration award as long as arbitrator is acting within scope of authority. *City of Coffeyville v. IBEW Local No. 1523*, 270 K. 322, 14 P.3d 1 (2000).

Attorney General's Opinions:

Sheriff has power to hire and fire sheriff's employees; not bound by memorandum of agreement executed by board of county commissioners. 2004-13.

CASE ANNOTATIONS

75-4322. Definitions. As used in this act:

(a) "Public employee" means any person employed by any public agency, except those persons classed as supervisory employees, professional employees of school districts, as defined by subsection (c) of K.S.A. 72-5413, elected and management officials, and confidential employees.

(b) "Supervisory employee" means any individual who normally performs different work from his subordinates, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, 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. A memorandum of agreement may provide for a definition of "supervisory employees" as an alternative to the definition herein.

(c) "Confidential employee" means any employee whose unrestricted access to confidential personnel files or other information concerning the administrative operations of a public agency, or whose functional responsibilities or knowledge in connection with the issues involved in the meet and confer process would make his membership in the same employee organization as other employees incompatible with his official duties.

(d) "Professional employee" includes any employee: (1) Whose work is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; involves the consistent exercise of discretion and judgment; requires

knowledge of an advanced type in a field of science or learning customarily acquired by prolonged study in an institution of higher learning; or (2) who has completed courses of prolonged study as described in paragraph (1) of this subsection, and is performing related work under the supervision of a professional person in order to qualify as a professional employee as defined in paragraph (1) of this subsection; or (3) attorneys-at-law or any other person who is registered as a qualified professional by a board of registration or other public body established for such purposes under the laws of this state.

(e) "Elected and management officials" means any elective official and any appointed officer charged by law with major administrative and management responsibilities.

(f) "Public agency" or "public employer" means every governmental subdivision, including any county, township, city, school district, special district, board, commission, or instrumentality or other similar unit whose governing body exercises similar governmental powers, and the state of Kansas and its state agencies.

(g) "Governing body" means the legislative body, policy board or other authority of the public employer possessing legislative or policymaking responsibilities pursuant to the constitution or laws of this state.

(h) "Representative of the public agency" means the chief executive officer of the public employer or his or her designee, except when the governing body provides otherwise, and except in the case of the state of Kansas and its state agencies. Such chief executive shall be for counties, the chairman of the board of county commissioners; for cities, the mayor, city manager or city superintendent; for school districts, the president of the board of education; and for other local units, such similar elected or appointed officer. In the case of the state of Kansas and its state agencies, "representative of the public employer" means a team of persons, the head of which shall be a person designated by the secretary of administration and the heads of the state agency or state agencies involved or one person designated by each such state agency head.

(i) "Employee organization" means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in dealings with that public agency over conditions of employment and grievances.

(j) "Recognized employee organization" means an employee organization which has been formally acknowledged by the public agency or certified as representing a majority of the employees of an appropriate unit.

(k) "Business agent" means any authorized person who is a full-time official of an employee organization and whose principal duties are to act or to attempt to act for an employee organization (1) in proceedings to meet and confer and other proceedings involving a memorandum of agreement, (2) in servicing existing memorandums of agreement, or (3) in organizing employees into employee organizations.

(l) "Board" means the public employee relations board established pursuant to this act.

(m) "Meet and confer in good faith" is the process whereby the representative of a public agency and representatives of recognized employee organizations have the mutual obligation personally to meet and confer in order to exchange freely information, opinions and proposals to endeavor to reach agreement on conditions of employment.

(n) "Memorandum of agreement" means a written memorandum of understanding arrived at by the representatives of the public agency and a recognized employee organization which may be presented to the governing body of a public employer or its statutory representative and to the membership of such organization for appropriate action.

(o) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding conditions of employment between representatives of the public agency and recognized employee organizations through interpretation and advice.

(p) "Fact-finding" means investigation of such a dispute by an individual, panel, or board with the fact-finder submitting a report to the parties describing the issues involved; the report shall contain recommendations for settlement and may be made public.

(q) "Arbitration" means interpretation of the terms of an existing or a new memorandum of agreement or investigation of disputes by an impartial third party whose decision may or may not be final and binding. Arbitration is advisory when the results are not binding upon the parties; it is final and binding when both parties, of their own volition, agree to submit a dispute to, and to abide by the decision of, the impartial third party.

(r) "Strike" means an action taken for the purpose of coercing a change in the conditions, rights, privileges or obligations of employment through the failure by concerted action with others to report for duty or to work at usual capability in the performance of the normal duties of employment.

(s) "Lockout" means action taken by the public employer to provoke interruptions of or prevent the continuity of work normally and usually performed by the employees for the purpose of coercing the employees into relinquishing rights guaranteed by this act.

(t) "Conditions of employment" means salaries, wages, hours of work, vacation allowances, sick and injury leave, number of holidays, retirement benefits, insurance benefits, prepaid legal service benefits, wearing apparel, premium pay for overtime, shift differential pay, jury duty and grievance procedures, but nothing in this act shall authorize the adjustment or change of such matters which have been fixed by statute or by the constitution of this state.

(u) "Grievance" means a statement of dissatisfaction by a public employee, supervisory employee, employee organization or public employer concerning interpretation of a memorandum of agreement or traditional work practice.

(v) "Budget submission date" means (1) for any public employers subject to the budget law in K.S.A. 79-2925 *et seq.* the date of July 1, and (2) for any other public employer the date fixed by law. "Budget submission date" means, in the case of the state and its state agencies, the date of September 15.

(w) "Legislature" means the legislature of the state of Kansas.

(x) "State agency" means the same as is ascribed thereto in K.S.A. 75-3701.

History: L. 1971, ch. 264, § 2; L. 1972, ch. 340, § 1; L. 1973, ch. 363, § 1; L. 1974, ch. 207, § 6; L. 1977, ch. 302, § 1; July 1.

Law Review and Bar Journal References:

Collective Negotiations Act, 18 W.L.J. 11, 14 (1978).

Attorney General's Opinions:

State employer's liability for FICA contributions. 80-195.

Kansas city board of public utilities; protection afforded fire district employees. 81-93.

Public employer-employee relations; collective bargaining with sheriff's employees. 81-276.

Agreement between employee organization and city; implementation. 82-211.

Public employee organizations; uniformed members of highway patrol may join KAPE. 85-101.

State provided housing, food service or other employee maintenance. 87-36.

Qualification of member of public employee relations board; determination by senate confirmation. 96-25.

CASE ANNOTATIONS

1. Compared with 72-5413 et seq. in action involving negotiation between teachers' association and school board. *National Education Association v. Board of Education*, 212 K. 741, 749, 751, 754, 512 P.2d 416.

2. Board of Regents is an employer; conditions of employment construed in determining subjects which are mandatorily negotiable; test applied. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 811, 814, 815, 816, 817, 818, 819, 667 P.2d 306 (1983).

3. Staff doctors of state institutions are employees rather than officers; no immunity from civil liability in 1974 for negligent acts. *Durflinger v. Artiles*, 234 K. 484, 505, 506, 673 P.2d 86 (1983).

4. Staff doctors of state institution not immune from civil liability for negligent release of patient prior to tort claims act. *Durflinger v. Artiles*, 727 F.2d 888, 911 (1984).

5. No positive obligation on city to refrain from discharging without cause; ordinance requiring city residence not contrary to act. *Kansas City, Kan. Frat. v. City of Kansas City*, 620 F.Supp. 752, 759, 760 (1984).

6. Judicial branch employees are not covered by PEERA. *Kansas Ass'n of Public Employees v. Public Employees Relations Bd.*, 13 K.A.2d 657, 658, 778 P.2d 377 (1989).

7. Nature of one's duties not job title is determinative of one's status as a supervisor. *Kansas Univ. Police Officers Ass'n v. Public Employee Relations Bd.*, 16 K.A.2d 438, 439, 828 P.2d 369 (1992).

8. Whether PEERA (75-4321 et seq.) agreements covering conditions of employment take precedence over conflicting civil service regulations examined. *State Dept. of Administration v. Public Employees Relations Bd.*, 257 K. 275, 284, 290, 894 P.2d 777 (1995).

9. Under facts, city exerted sufficient control over airport employees to be considered their employer for PEERA purposes. *City of Wichita v. Public Employee Relations Bd.*, 259 K. 628, 629, 913 P.2d 137 (1995).

Attorney General's Opinions:

Sheriff has power to hire and fire sheriff's employees; not bound by memorandum of agreement executed by board of county commissioners. 2004-13.

75-4323. Public employee relations board; membership; qualifications; terms; compensation and expenses; powers and duties; mediation, arbitration and fact-finding; appointment of personnel or contracts for; rules and regulations. (a) There is hereby created the public employee relations board, which shall consist of five members appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board shall exercise any power, duty or function as a member of the board until confirmed by the senate. One member shall be representative of public employers; one member shall be representative of public employees; and three members shall be representative of the public at large and hold no other public office or public employment. Of

the three members representing the public, one shall be selected by the board as chairperson thereof. Not more than three members of the board shall be members of the same political party. Except as provided by subsection (b), each member shall be appointed for a term of four years and until a successor is appointed and confirmed. The governor shall appoint qualified successors to fill vacancies occurring by reason of the expiration of the terms. In case of any other vacancy on the board, the governor shall appoint a qualified successor for the unexpired term.

(b) The terms of members who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed.

(c) Members of the public employee relations board attending meetings of the board, or attending a subcommittee meeting thereof authorized by the board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto. The secretary of labor shall provide office space and such clerical and other staff assistance as necessary to assist the board in carrying out the provisions of this act.

(d) The secretary of labor may establish, after consulting with representatives of employee organizations and of public agencies, panels of qualified persons, broadly representative of the public, to be available to serve as mediators, arbitrators or members of fact-finding boards and may appoint or may contract with such persons as necessary for the performance of the board's functions, including, but not limited to, mediators, members of fact-finding boards and representatives of employee organizations and public employers to serve as technical advisors to fact-finding boards. Such persons shall perform the duties and exercise the powers prescribed by the secretary, by the board or by law. The secretary shall fix the compensation of such persons and shall provide for reimbursement of their expenses within the amounts made available therefor by the legislature.

(e) In addition to the authority provided in other sections, the board may:

(1) Establish procedures for the prevention of improper public employer and employee organization practices as provided in K.S.A. 75-4333, and amendments thereto, except that the board shall provide only for the entering of an order directing the public agency or employee organization to meet and confer in good faith in the case of a claimed violation of subsection (b)(5) or (c)(3) of K.S.A. 75-4333 and amendments thereto. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to K.S.A. 75-4327, and amendments thereto, or with meeting and conferring.

(2) Hold such hearings and make such inquiries as it considers necessary to carry out properly its functions and powers. For the purpose of such hearings and inquiries, the board may 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. Any of these powers may be delegated to any member of the board or to any person appointed by the secretary of labor to perform the functions of the board. The subpoenas shall be regulated and enforced in the same manner as provided for the secretary of labor under the provisions of K.S.A. 44-611 and amendments thereto.

(3) Make, amend and rescind such rules and regulations, and exercise such other powers, as appropriate to effectuate the purposes and provisions of this act.

(f) The board shall intervene in the public employer-public employee relations of political subdivisions to the minimum extent possible to secure the objectives expressed in K.S.A. 75-4321 and amendments thereto.

History: L. 1971, ch. 264, § 3; L. 1973, ch. 363, § 2; L. 1974, ch. 348, § 95; L. 1976, ch. 370, § 100; L. 1982, ch. 347, § 58; L. 1995, ch. 241, § 23; L. 2004, ch. 179, § 119; July 1.

Revisor's Note:

The public employee relations board was attached to and made a part of the department of human resources in 1976, and certain powers, duties and functions of the board were transferred to the secretary of human resources, see ch. 75, art. 57. (L. 1976, ch. 354.)

Research and Practice Aids:

Labor Relations (West Key) 501 *et seq.*
C.J.S. Labor Relations §§ 501, 502.

Law Review and Bar Journal References:

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

Attorney General's Opinions:

Qualification of member of public employee relations board; determination by senate confirmation. 96-25.

CASE ANNOTATIONS

1. In apprising itself of evidence, board not precluded from obtaining aid of assistants; duties of board. *Coggins v. Public Employee Relations Board*, 2 K.A.2d 416, 421, 422, 581 P.2d 817.

2. Three of the five members of public employee relations board may lawfully conduct business of board. *Coggins v. Public Employee Relations Board*, 2 K.A.2d 416, 421, 581 P.2d 817.

3. Powers of board considered; judicial review of actions of board. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 815, 818, 667 P.2d 306 (1983).

4. Whether contract provision was mandatory subject of bargaining between employer and state employees examined. *State Dept. of Administration v. Public Employees Relations Bd.*, 257 K. 275, 281, 894 P.2d 777 (1995).

75-4324. Employees' right to form, join and participate in employee organizations.

Public employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing, for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations.

History: L. 1971, ch. 264, § 4; March 1, 1972.

Research and Practice Aids:

Labor Relations (West Key) 88.
C.J.S. Labor Relations § 52.

CASE ANNOTATIONS

1. Prohibited practice charged under 75-4333(c)(1) in contest of representation election; misconduct found not to have substantially interfered with election. *Kansas Ass'n of Public Employees v. Public Service Employees Union*, 218 K. 509, 510, 544 P.2d 1389.

75-4325. Supervisory employee not prohibited from membership in employee organization. Nothing herein shall prohibit any individual employed as a supervisory employee from becoming or remaining a member of an employee organization, but no public employer subject to this act shall be compelled to deem individuals defined herein as supervisory employees as public employees for the purposes of this act.

History: L. 1971, ch. 264, § 5; March 1, 1972.

Research and Practice Aids:

Labor Relations (West Key) 206.

C.J.S. Labor Relations § 182.

CASE ANNOTATIONS

1. Allegation of activity contravening right to belong to union is matter of public concern for first amendment purposes. *Wulf v. City of Wichita*, 883 F.2d 842, 857, 858 (1989).

75-4326. Existing rights of public employer not affected. Nothing in this act is intended to circumscribe or modify the existing right of a public employer to:

- (a) Direct the work of its employees;
- (b) Hire, promote, demote, transfer, assign and retain employees in positions within the public agency;
- (c) Suspend or discharge employees for proper cause;
- (d) Maintain the efficiency of governmental operation;
- (e) Relieve employees from duties because of lack of work or for other legitimate reasons;
- (f) Take actions as may be necessary to carry out the mission of the agency in emergencies; and
- (g) Determine the methods, means and personnel by which operations are to be carried on.

History: L. 1971, ch. 264, § 6; March 1, 1972.

Law Review and Bar Journal References:

"Rights of Kansas Non-Union Employees Against Unjust Termination--Where Are We Now?" William C. Nulton, 54 J.K.B.A. 237, 238 (1985).

Attorney General's Opinions:

County commissioners; employment termination of county employees. 88-11.

District attorney and assistants' private law practice prohibited; conservatorship; support staff participation in public employer-employee relations act contracts. 93-16.

CASE ANNOTATIONS

1. Rights of employer considered in construing conditions of employment which are mandatorily negotiable; test applied. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 814, 815, 826, 667 P.2d 306 (1983).

2. No positive obligation on city to refrain from discharging without cause; ordinance requiring city residence not contrary to act. *Kansas City, Kan. Frat. v. City of Kansas City*, 620 F.Supp. 752, 760 (1984).

3. Cited by dissent; majority holding judicial branch employees not covered by PEERA. *Kansas Ass'n of Public Employees v. Public Employees Relations Bd.*, 13 K.A.2d 657, 669, 778 P.2d 377 (1989).

75-4327. Public employee organizations; recognition and certification; membership; meet and confer; determination and certification of appropriate unit; rules and regulations. (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.

History: L. 1971, ch. 264, § 7; L. 1972, ch. 340, § 3; L. 1973, ch. 363, § 5; L. 1981, ch. 345, § 1; L. 1988, ch. 356, § 304; July 1, 1989.

Research and Practice Aids:

Labor Relations (West Key) 191 et seq.
C.J.S. Labor Relations § 162.

Law Review and Bar Journal References:

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

Attorney General's Opinions:

Public employees organizations; recognition and certification. 80-51.

Public employer-employee relations; collective bargaining with sheriff's employees. 81-276.

Public employee organizations; uniformed members of highway patrol may join KAPE. 85-101.

CASE ANNOTATIONS

1. Act discussed in determining school board required to negotiate with previously recognized representative under 72-5413 et seq. Liberal-NEA v. Board of Education, 211 K. 219, 225, 228, 505 P.2d 651.

2. District court order setting aside board's order substantively arbitrary and capricious. Coggins v. Public Employee Relations Board, 2 K.A.2d 416, 417, 421, 581 P.2d 817.

3. Cited in determining that employees' due process rights can be waived by memorandum of agreement if the agreement provides for protection and enforcement of employees' rights. Gorham v. City of Kansas City, 225 K. 369, 370, 376, 590 P.2d 1051.

4. Parties required to meet, and to confer and negotiate in good faith; employee organization entitled to input before time of budget preparation. Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA, 233 K. 801, 804, 806, 826, 667 P.2d 306 (1983).

5. No positive obligation on city to refrain from discharging without cause; ordinance requiring city residence not contrary to act. Kansas City, Kan. Frat. v. City of Kansas City, 620 F.Supp. 752, 759, 760 (1984).

6. Cited by dissent; majority holding judicial branch employees not covered by PEERA. Kansas Ass'n of Public Employees v. Public Employees Relations Bd., 13 K.A.2d 657, 663, 778 P.2d 377 (1989).

7. Whether contract provision was mandatory subject of bargaining between employer and state employees examined. State Dept. of Administration v. Public Employees Relations Bd., 257 K. 275, 287, 894 P.2d 777 (1995).

75-4328. Recognition of right of employee organization to represent employees. (a) A public employer shall extend to a certified or formally recognized employee organization the right to represent the employees of the appropriate unit involved in meet and confer proceedings and in the settlement of grievances, and also shall extend the right to unchallenged representation status, consistent with subsection (d) of K.S.A. 75-4327, during the twelve (12) months following the date of certification or formal recognition.

History: L. 1971, ch. 264, § 8; March 1, 1972.

Research and Practice Aids:

Labor Relations (West Key) 192.

C.J.S. Labor Relations § 163.

Law Review and Bar Journal References:

"The Kansas Public Employer-Employee Relations Law," Raymond Goetz, 28 K.L.R. 243, 273 (1980).

CASE ANNOTATIONS

1. Cited in determining that employees' due process rights can be waived by memorandum of agreement if the agreement provides for protection and enforcement of employees' rights. *Gorham v. City of Kansas City*, 225 K. 369, 370, 376, 590 P.2d 1051.

75-4329. Disputes concerning recognition of employee organization; procedure for resolving. Every public agency, other than the state, acting through its governing body, may establish procedures, not inconsistent with the provisions of K.S.A. 75-4327 and 75-4328 and, after consultation with interested employee organizations and employer representatives, may resolve disputes concerning the recognition status of employee organizations composed of employees of such agency. In the absence of such procedures, such disputes shall be submitted to the public employee relations board in accordance with K.S.A. 75-4327.

History: L. 1971, ch. 264, § 9; March 1, 1972.

Attorney General's Opinions:

Public employer-employee relations; collective bargaining with sheriff's employees. 81-276.

75-4330. Memorandum agreements, limitations; grievance procedures; arbitration; judicial review. (a) The scope of a memorandum of agreement may extend to all matters relating to conditions of employment, except proposals relating to (1) any subject preempted by federal or state law or by a municipal ordinance passed under the provisions of section 5 of article 12 of the Kansas constitution; (2) public employee rights defined in K.S.A. 75-4324 and amendments thereto; (3) public employer rights defined in K.S.A. 75-4326 and amendments thereto; or (4) the authority and power of any civil service commission, personnel board, personnel agency or its agents established by statute, ordinance or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence, from which appointments or promotions may be made to positions in the competitive division of the classified service of the public employer served by such civil service commission or personnel board. Any memorandum of agreement relating to conditions of employment entered into may be executed for a maximum period of three years, notwithstanding the provisions of the cash-basis law contained in K.S.A. 10-1102 *et seq.*, and amendments thereto, and the budget law contained in K.S.A. 79-2925 *et seq.*, and amendments thereto.

(b) Such memorandum agreement may contain a grievance procedure and may provide for the impartial arbitration of any disputes that arise on the interpretation of the memorandum agreement. Such arbitration shall be advisory or final and binding, as determined by the agreement, and may provide for the use of a fact-finding board. The public employee relations board is authorized to establish rules for procedure of arbitration in the event the agreement has not established such rules. In the absence of arbitrary and capricious rulings by the fact-finding board during arbitration, the decision of that board shall be final. Judicial review shall be in accordance with the act for judicial review and civil enforcement of agency actions.

(c) Notwithstanding the other provisions of this section and the act of which this section is a part, when a memorandum of agreement applies to the state or to any state agency, the memorandum of agreement shall not be effective as to any matter requiring passage of legislation or state finance council approval, until approved as provided in this subsection. When executed, each memorandum of agreement shall be submitted to the state finance council. Any part or parts of a memorandum of agreement which relate to a matter which can

be implemented by amendment of rules and regulations of the secretary of administration or by amendment of the pay plan and pay schedules of the state may be approved or rejected by the state finance council, and if approved, shall thereupon be implemented by it to become effective at such time or times as it specifies. Any part or parts of a memorandum of agreement which require passage of legislation for the implementation thereof shall be submitted to the legislature at its next regular session, and if approved by the legislature shall become effective on a date specified by the legislature.

History: L. 1971, ch. 264, § 10; L. 1972, ch. 340, § 2; L. 1986, ch. 318, § 138; July 1.

Research and Practice Aids:

Labor Relations (West Key) 241 et seq.

C.J.S. Labor Relations § 217.

Law Review and Bar Journal References:

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

Attorney General's Opinions:

Public employer-employee relations; collective bargaining with sheriff's employees. 81-276.

State provided housing, food service or other employee maintenance. 87-36.

District attorney and assistants' private law practice prohibited; conservatorship; support staff participation in public employer-employee relations act contracts. 93-16.

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, 749, 512 P.2d 426.

2. Memorandum of agreement can waive due process rights of employees if it provides for protection and enforcement of employees' rights; absent evidence of partiality or unfairness, grievance board not partial or unfair due to method of selection. *Gorham v. City of Kansas City*, 225 K. 369, 376, 590 P.2d 1051.

3. Scope of agreement considered in determining conditions of employment which are mandatorily negotiable; test applied. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 815, 818, 667 P.2d 306 (1983).

4. Cited; effect of memorandum of understanding and remedies therein regarding meal periods and work schedules of sheriff's deputies examined. *Atteberry v. Ritchie*, 243 K. 277, 284, 756 P.2d 424 (1988).

5. Whether PEERA (75-4321 et seq.) agreements covering conditions of employment take precedence over conflicting civil service regulations examined. *State Dept. of Administration v. Public Employees Relations Bd.*, 257 K. 275, 284, 290, 894 P.2d 777 (1995).

75-4330.

CASE ANNOTATIONS

6. Neither state nor federal law preempts subject of ownership of intellectual property from being subject of negotiations in meet and confer proceedings. *Pittsburg State Univ. v. Kansas Bd. of Regents*, 280 K. 408, 122 P.3d 336 (2005).

75-4331. Memorandum of understanding; financial report; consideration and action; rejection. If agreement is reached by the representatives of the public agency and the

recognized employee organization, they jointly shall prepare a memorandum of understanding and, within fourteen (14) days, present it to the appropriate governing body or authority for determination. The governing body or authority, as soon as practicable after receiving a report from the chief financial officer for the agency of the fiscal effect the terms of such memorandum will have upon the agency, shall consider the memorandum and take appropriate action. If the public employer is a taxing subdivision subject to the provisions of K.S.A. 79-4401, *et seq.*, such financial report shall also include information as to the impact of such memorandum on the subdivision's aggregate tax levy and operating expense limitations. If a settlement is reached with an employee organization and the governing body or authority, the governing body or authority shall implement the settlement in the form of a law, ordinance, resolution, executive order, rule or regulation. If the governing body or authority rejects a proposed memorandum, the matter shall be returned to the parties for further deliberation.

History: L. 1971, ch. 264, § 11; March 1, 1972.

Attorney General's Opinions:

Public employer-employee relations; collective bargaining with sheriff's employees. 81-276.

Agreement between employee organization and city; implementation. 82-211.

Public employer-employee relations act; application to judiciary and legislature. 87-181.

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, 749, 512 P.2d 426.

2. Board of regents is an employer under public employer-employee relations act. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 812, 667 P.2d 306 (1983).

3. Cited; effect of memorandum of understanding and remedies therein regarding meal periods and work schedules of sheriff's deputies examined. *Atteberry v. Ritchie*, 243 K. 277, 278, 756 P.2d 424 (1988).

75-4332. Memoranda of agreement; procedure in case of impasse; fact-finding board; hearing; costs; confidentiality. (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. 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.

(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, shall be borne equally by the parties to a dispute.

History: L. 1971, ch. 264, § 12; L. 1976, ch. 370, § 101; L. 1996, ch. 129, § 7; L. 2004, ch. 179, § 120; L. 2006, ch. 200, § 116; Jan. 1, 2007.

Law Review and Bar Journal References:

Collective Negotiations Act, 18 W.L.J. 11, 14, 17 (1978).

"Open Meetings Profile: The Prosecutor's View," Bradley J. Smoot and Louis M. Clothier, 20 W.L.J. 241, 254 (1981).

Attorney General's Opinions:

Public employer-employee relations act; application to judiciary and legislature. 87-181.

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, 749, 512 P.2d 426.

2. Whether contract provision was mandatory subject of bargaining between employer and state employees examined. State Dept. of Administration v. Public Employees Relations Bd., 257 K. 275, 287, 894 P.2d 777 (1995).

75-4333. 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 meet and confer proceedings.

(b) It shall be a prohibited practice for a public employer or its designated representative willfully to:

(1) Interfere, restrain or coerce public employees in the exercise of rights granted in K.S.A. 75-4324;

(2) Dominate, interfere or assist in the formation, existence, or administration of any employee organization;

(3) Encourage or discourage membership in any employee organization, committee, association or representation plan by discrimination in hiring, tenure or other conditions of employment, or by blacklisting;

(4) Discharge or discriminate against an employee because he or she has filed any affidavit, petition or complaint or given any information or testimony under this act, or because he or she has formed, joined or chosen to be represented by any employee organization;

(5) Refuse to meet and confer in good faith with representatives of recognized employee organizations as required in K.S.A. 75-4327;

(6) Deny the rights accompanying certification or formal recognition granted in K.S.A. 75-4328;

(7) Deliberately and intentionally avoid mediation, fact-finding, and arbitration endeavors as provided in K.S.A. 75-4332; or

(8) Institute or attempt to institute a lockout.

(c) It shall be a prohibited practice for public employees or employee organizations willfully to:

(1) Interfere with, restrain or coerce public employees in the exercise of rights granted in K.S.A. 75-4324;

(2) Interfere with, restrain or coerce a public employer with respect to management rights granted in K.S.A. 75-4326, or with respect to selecting a representative for the purposes of meeting and conferring or the adjustment of grievances;

(3) Refuse to meet and confer in good faith with a public employer as required in K.S.A. 75-4327;

(4) Deliberately and intentionally avoid mediation, fact-finding and arbitration efforts as provided in K.S.A. 75-4332; or

(5) Engage in a strike.

(d) It shall be a prohibited practice for a public employee organization to endorse candidates, spend any of its income, directly or indirectly, for partisan or political purposes or engage in any kind of activity advocating or opposing the election of candidates for any public office.

(e) In the application and construction of this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment shall be regarded as binding or controlling precedent.

History: L. 1971, ch. 264, § 13; March 1, 1972.

Research and Practice Aids:

Labor Relations (West Key) 361 et seq.

C.J.S. Labor Relations § 328.

Law Review and Bar Journal References:

"Teachers and the School Board-Negotiations in Kansas," Janet Chubb and David Gray, 15 W.L.J. 457, 466 (1976).

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

"Rights of Kansas Non-Union Employees Against Unjust Termination--Where Are We Now?" William C. Nulton, 54 J.K.B.A. 237, 238 (1985).

Attorney General's Opinions:

Kansas city board of public utilities; protection afforded fire district employees. 81-93.

State payroll accounting system; payroll deductions for membership dues. 92-117.

Qualification of member of public employee relations board; determination by senate confirmation. 96-25.

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, 749, 512 P.2d 426.

2. Prohibited practice charged under subsection (c)(1) in contest of representation election; misconduct found not to have substantially interfered with election. *Kansas Ass'n of Public Employees v. Public Service Employees Union*, 218 K. 509, 510, 544 P.2d 1389.

3. Subsection (e) discussed in contest of representation election; federal rule cited with approval but found inapplicable to facts. *Kansas Ass'n of Public Employees v. Public Service Employees Union*, 218 K. 509, 517, 544 P.2d 1389.

4. Section cited; city found to have engaged in prohibited practice; employee reinstated without back pay. *Behrmann v. Public Employee Relations Board*, 225 K. 435, 436, 591 P.2d 173.

5. Charges hereunder considered in determination of conditions of employment which are mandatorily negotiable; test applied. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 804, 806, 807, 808, 667 P.2d 306 (1983).

6. No positive obligation on city to refrain from discharging without cause; ordinance requiring city residence not contrary to act. *Kansas City, Kan. Frat. v. City of Kansas City*, 620 F.Supp. 752, 760 (1984).

7. Whether PEERA (75-4321 et seq.) agreements covering conditions of employment take precedence over conflicting civil service regulations examined. *State Dept. of Administration v. Public Employees Relations Bd.*, 257 K. 275, 288, 894 P.2d 777 (1995).

75-4334. Same; proceedings for determination in accordance with Kansas administrative procedure act; judicial review; action in district court in proceeding involving alleged strike or lockout. (a) Any controversy concerning prohibited practices may be submitted to the board. Proceedings against the party alleged to have committed a prohibited practice shall be commenced within six months of the date of such alleged practice by service upon the accused party by the board of a written notice, together with a copy of the charges. The accused party shall have seven days within which to serve a written answer to such charges, unless the board determines an emergency exists and requires the accused party to serve a written answer to such charges within 24 hours of their 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 may use emergency adjudicative proceedings as provided in K.S.A. 77-536 and amendments thereto. A strike or lockout shall be construed to be an emergency. The board may use its rulemaking power, as provided in K.S.A. 75-4323 and amendments thereto, to make any other procedural rules it deems necessary to carry on this function.

(b) The board shall either dismiss the complaint or determine that a prohibited practice has been or is being committed. If the board finds that the party accused has committed or is committing a prohibited practice, the board shall make findings as authorized by this act and shall file them in the proceedings.

(c) Any action of the board pursuant to subsection (b) is subject to review and enforcement in accordance with the act for judicial review and civil enforcement of agency actions. The procedures for obtaining injunction and allied remedies shall be as set forth in the code of civil procedure, except that the provisions of K.S.A. 60-904 and amendments thereto shall not control injunction actions arising out of public employer-employee relations under this act.

(d) If there is an alleged violation of either subsection (b)(8) or (c)(5) of K.S.A. 75-4333 and amendments thereto, the aggrieved party is authorized to seek relief in district court in the manner provided for the board in subsection (c) while proceedings on such prohibited practices are pending before the board. Any ruling of the district court shall remain in effect until set aside by the court on motion of the parties or of the board or upon review of the board's order as provided by subsection (c).

History: L. 1971, ch. 264, § 14; L. 1973, ch. 363, § 6; L. 1986, ch. 318, § 139; L. 1988, ch. 356, § 305; July 1, 1989.

Research and Practice Aids:

Labor Relations (West Key) 501 et seq.
C.J.S. Labor Relations §§ 501, 502.

Law Review and Bar Journal References:

"Rethinking Kansas Administrative Procedure," Marilyn V. Ainsworth and Sidney A. Shapiro, 28 K.L.R. 419, 435, 436 (1980).

Attorney General's Opinions:

Qualification of member of public employee relations board; determination by senate confirmation. 96-25.

CASE ANNOTATIONS

1. Prohibited practice charged under 75-4333 (c)(1); misconduct found not to have substantially interfered with representation election; scope of judicial review stated. *Kansas Ass'n of Public Employees v. Public Service Employees Union*, 218 K. 509, 510, 511, 544 P.2d 1389.

2. District court order setting aside order of board arbitrary and capricious; authority exceeded by substituting its judgment for that of board. *Coggins v. Public Employee Relations Board*, 2 K.A.2d 416, 418, 419, 581 P.2d 817.

3. Provisions for limited scope of review by district court upheld; no separation of powers violation. *Behrmann v. Public Employee Relations Board*, 225 K. 435, 436, 437, 438, 439, 444, 591 P.2d 173.

4. Upon review, findings of facts conclusive unless not supported by substantial evidence and record. *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 K. 801, 808, 667 P.2d 306 (1983).

5. Absent provisions herein, public employees are included in anti-injunctive ban of 60-904(c). *City of Kansas City v. Carpenters Dist. Council of Kansas City*, 237 K. 295, 301, 699 P.2d 493 (1985).

6. No positive obligation on city to refrain from discharging without cause; ordinance requiring city residence not contrary to act. *Kansas City, Kan. Frat. v. City of Kansas City*, 620 F.Supp. 752, 760 (1984).

7. Whether contract provision was mandatory subject of bargaining between employer and state employees examined. *State Dept. of Administration v. Public Employees Relations Bd.*, 257 K. 275, 280, 894 P.2d 777 (1995).

75-4335. Act inapplicable to public employers, other than state or its agencies, adopting provisions and procedures determined by board to be reasonably equivalent. This act, except for K.S.A. 75-4322, 75-4323, 75-4324, 75-4325, 75-4326, 75-4327, 75-4328, 75-4333 and 75-4334, shall be inapplicable to any public employer, other than the state and its agencies which, acting through its governing body, has adopted by ordinance or resolution its own provisions and procedures which have been submitted to the board by such public employer and as to which there is in effect a determination by the board that such provisions and procedures and the continuing implementation thereof are reasonably equivalent to the provisions and procedures set forth in this act with respect to the state.

History: L. 1971, ch. 264, § 15; March 1, 1972.

75-4336. Registration of business agents for employee organizations; application; certificate; fee; exemption. (a) Every person desiring to act as a business agent for an employee organization shall first obtain a registration certificate from the secretary of state by filing an application therefor and paying a registration fee of \$12.50. No person shall be issued a registration certificate unless: (1) The applicant is a citizen of the United States; (2) the

applicant's name, address and length of residence in Kansas are stated in the application; and (3) the application is accompanied by a statement, signed by the president and secretary of the employee organization, which authorizes the applicant to act as agent for such employee organization.

(b) Unless it has been surrendered, suspended or revoked at an earlier date, the registration certificate shall be valid for the calendar year in which it was obtained and shall expire on December 31 or, for registration certificates obtained after December 31, 1982, each such registration certificate may be valid for the fiscal year of the employee organization represented by the business agent in which the certificate was obtained and shall expire on the last day of such fiscal year.

(c) If a person has obtained a registration certificate as a business agent under the provisions of K.S.A. 44-804 and amendments thereto to act in such capacity for a labor organization thereunder and such labor organization is an employee organization, such registration shall fully satisfy the requirements of this section and no further registration or registration fee shall be required of such person desiring to act as a business agent for such employee organization.

History: L. 1973, ch. 363, § 3; L. 1974, ch. 207, § 7; L. 1982, ch. 363, § 10; July 1.

75-4337. Annual report of employee organizations; contents; fee; alternative filing of federal reports; exemption. (a) Every employee organization operating in the state of Kansas and having 100 or more members shall file an annual report with the secretary of state on or before April 15, showing the financial condition of the employee organization on the December 31 next preceding the date of filing or at the close of business on the last day of the organization's fiscal year next preceding the date of filing. Each annual report filed under this section shall be accompanied by a filing fee of \$5. The secretary of state may upon showing of reasonable cause grant an extension of time for filing of annual report.

(b) The annual report shall be in such form as the board shall prescribe and shall include:

- (1) The name of the employee organization;
- (2) the location and mailing address of its office;
- (3) the name and title of each of its officers and registered business agents, together with the salaries, wages, bonuses and other remuneration paid each, and mailing address of each;
- (4) the date of the regular election of officers of such employee organization;
- (5) the rate of its initiation fees, dues, assessments and any other periodic payments required of its members; and
- (6) an audited statement of the income, expenditures, assets and liabilities of the employee organization.

(c) In lieu of filing an annual report in the form prescribed by the board under subsection (b) of this section, the employee organization may file copies of the reports required to be filed with the United States department of labor by the federal labor management reporting and disclosure act of 1959, 29 U.S.C.A. § 431, *et seq.*, as follows:

(1) By having on file with the secretary of state a copy of the labor organization information report form LM-1 which is currently on file with the United States department of labor; and

(2) by filing annually as required in subsection (a) of this section, a copy of the labor organization annual report form LM-2 or form LM-3 which is filed with the United States department of labor and covers a reporting period specified in subsection (a).

(d) Every employee organization which has filed an annual report as a labor organization under the provisions of K.S.A. 44-806 and amendments thereto shall be deemed to have fully satisfied the requirements of this section and shall not be required to file an annual report under this section.

History: L. 1973, ch. 363, § 4; L. 1974, ch. 207, § 8; L. 1980, ch. 150, § 2; L. 1982, ch. 363, § 11; July 1.

Attorney General's Opinions:

Agreement between employee organization and city; implementation. 82-211.

State payroll accounting system; payroll deductions for membership dues. 92-117.