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KANSAS POLICE & NON-POLICE COLLECTIVE BARGAINING FACT SHEET

The Kansas system of public sector collective bargaining grants very limited rights to bargaining to both police and non-police units. In particular, the Kansas Public Employer Employee Relations Act (PEERA) sets the scope of bargaining very narrowly, and Kansas Public Employee Relations Board (PERB) construes its own authority to order bargaining even more narrowly. For those reasons, there are very few PERB decisions and even fewer that deal with the scope of bargaining. Of the bargaining decisions that exist, most are in the police or firefighter context, which may be an indication that the Board is more likely to order bargaining in those contexts.

STATUTORY AUTHORITY FOR COLLECTIVE BARGAINING

Coverage.

Kansas has one public sector collective bargaining statute, which covers all public employees defined as “any person employed by any public agency.”¹ A public agency includes all state and local governmental bodies.² Importantly, however, to be covered by the act every locality covered by the act must “opt in,” affirmatively selecting to be governed by the law,³ and localities are permitted to establish their own systems of bargaining through ordinance.⁴ This has prompted some localities to set up their own systems of collective bargaining.⁵

To the extent that the statute applies to a particular locality, police employees are covered with the only limitation that police may not be in the same bargaining unit as non-police.⁶

Scope of Bargaining.

The statute protects the right of public employees “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 . . . conditions of employment.”⁷ The statute requires an employer to “meet and confer in good faith with such employee organization in the determination of conditions of employment of the public employees

¹ KAN. STAT. ANN. § 75-4322(a) (West 2024).

² KAN. STAT. ANN. § 75-4322 (West 2024) (“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”).

³ KAN. STAT. ANN. § 75-4321 (West 2024) (“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.”); see also *Griggs v. City of Park City, Kan.*, Nos. 75-CAE-4-2006 & 75-CAE-5-2006, 2006 WL 6167042 (Kan. PERB June 12, 2006) (declining jurisdiction over a refusal-to-meet-and-confer complaint because the local government had voted not to opt into PEERA coverage).

⁴ KAN. STAT. ANN. § 75-4335 (West 2024).

⁵ See LAWRENCE, KAN., Resolution 6817 (2009) (establishing the city’s policy regarding employee organizations).

⁶ KAN. STAT. ANN. § 75-4327(f) (West 2024).

⁷ KAN. STAT. ANN. § 75-4324 (West 2024).

as provided in this act, and may enter into a memorandum of agreement with such recognized employee organization.”⁸ The Act further makes the willful failure to do so a prohibited practice, which may be remedied by the Kansas Public Employment Relations Board.⁹

“Conditions of employment” are defined by the statute to include “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”¹⁰ However, the statute also provides certain subjects over which the statute does not limit the employer’s ability to act, including directing employee work, hiring, termination, other discipline, maintaining efficiency, and taking actions necessary to carry out the agency’s mission.¹¹ This creates an obvious conflict, which the PERB has resolved by finding that, to prove that a subject is within the employer’s bargaining duty it must “intimately and directly affects the work and welfare of public employees” and does not unduly interfere with the employer’s rights.¹²

Impasse Procedure.

The statute sets out a process for resolving bargaining impasses, though it begins by allowing the parties to agree to their own process.¹³ Thus, if a police union and police department wanted to agree to interest arbitration, they may do so in their bargaining agreement. In absence of such agreement, either party may request a mediator.¹⁴ If the parties remain at impasse seven days after the appointment of a mediator, the board can convene a fact-finding body to make a recommendation as to resolution.¹⁵ If impasse persists 40 days after the issuance of the decision, the agency “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.”¹⁶ The union may also submit additional information, and the governing body then decides on the terms of the agreement.¹⁷

Unfair Labor Practices

The Kansas Public Employee Relations Board (PERB) is charged with the responsibility, among other things, for determining charges of prohibited practices.¹⁸ PERB is empowered to conduct hearings, but in the case of a failure to bargain in good faith, “the board shall provide only for the

⁸ KAN. STAT. ANN. § 75-4327(b) (West 2024).

⁹ KAN. STAT. ANN. § 75-4333(b)(5) (West 2024).

¹⁰ Kan. Stat. Ann. § 75-4322(t) (West 2024).

¹¹ KAN. STAT. ANN. §75-4326 (West 2024).

¹² *Pub. Serv. Emps. Union Local 1123 v. Unified Gov’t of Wyandotte County/Kansas City*, No. 75-CAE-7-2003, 2004 WL 5657454, at *14 (Kan. PERB Dec. 20, 2004).

¹³ KAN. STAT. ANN. §75-4332(a) (West 2024).

¹⁴ KAN. STAT. ANN. §75-4332(b) (West 2024).

¹⁵ KAN. STAT. ANN. §75-4332(e) (West 2024).

¹⁶ KAN. STAT. ANN. §75-4332(f) (West 2024).

¹⁷ KAN. STAT. ANN. §75-4332(f) (West 2024).

¹⁸ KAN. STAT. ANN. §75-4323(e) (West 2024).

entering of an order directing the public agency or employee organization to meet and confer in good faith.”¹⁹ Thus, PERB does not have the authority to award any monetary damages.²⁰

PERB is comprised of five members, one representing public employers, one representing public employees, and three members at large and hold no other public office or employment.²¹ These members are appointed by the Governor for five-year terms.

Law Enforcement Officer Bill of Rights

Kansas does not have a LEOBOR statute.

AGENCIES

Commonwealth Employment Relations Commission (CERB)

- **Statute:** Kan. Stat. Ann. §75-4323
- **Website:** <https://www.dol.ks.gov/labor-relations/overview>

Board Members:

- Joni J. Franklin, Chair since 2020. Lawyer representing employees in workers compensation appeals.²²
- Jonathan Gilbert, Member, County Administrator, Ford County.²³
- Rick Wiley, member²⁴
- Keely J. Schneider, member, Executive Director of Workforce Partnership Kansas²⁵
- William Pat Young, member²⁶

COMMON LAW OF MANDATORY SUBJECTS

In General

Kansas, a so-called “right-to-work” state,²⁷ allows for public sector unions, but it does not have robust protections for the duty to bargain for either police or non-police unions. More often, PERB will decline jurisdiction to issue a decision based on the contents of the parties collective

¹⁹ *Id.*

²⁰ *Fort Hays St. Univ. v. Fort Hays St. Univ. Chapter, Am. Assoc. of Univ. Professors*, 290 Kan. 446, 463, 228 P.3d 403 (2010) (holding “we find no support within PEERA’s statutory framework to hold PERB has the power to impose monetary damages for a prohibited practices violation.”)

²¹ *Id.*

²² <https://www.linkedin.com/in/joni-franklin-06511630/>

²³ <https://www.linkedin.com/in/jonathan-gilbert-bs-mba-82a64433/>

²⁴ No information available

²⁵ <https://www.linkedin.com/in/keely-schneider-b5568ab/>

²⁶ No information available.

²⁷ KAN. CONST. art. XV, § 12.

bargaining agreement (in Kansas, known as a “Memorandum of Agreement” (MOA)).²⁸ Though there are—as described above—fourteen enumerated “mandatory subjects,” the employer is not required to bargain over these subjects if doing so would interfere with the enumerated managerial rights.²⁹ Thus, in order to determine whether an item that is not listed is a mandatory subject, PERB finds a subject to be bargainable only if three conditions are met:

- The subject directly and intimately affects the work/welfare of public employees,
- The subject is not completely preempted by statute or constitution, and
- The subject does not unduly interfere w/ ER rights reserved³⁰

PERB is hostile to claims that employer decisions are subject to bargaining.

The scope of negotiations in the public sector is more limited than in the private sector because the employer in the public sector is government, which has special responsibilities to the public not shared by private employers The role of the Board in a scope of negotiations dispute is to determine, in light of the competing interests of the state and its public employees, whether an issue is appropriately decided by the political process or by meet and confer.³¹

In any case, PERB emphasizes that the ultimate decision as to any term of employment “is reserved to the employer by law”³² Because of this exquisitely narrow standard, the fact that PERB will defer to arbitration liberally, and the city opt-in requirement, there are very few Kansas PERB cases regarding mandatory subjects of bargaining.

Discipline and Oversight.

All of the PERB cases dealing with changes to disciplinary procedures arise in either police or firefighter bargaining units.³³ In additional related case, PERB found that changes to the employer’s

²⁸ See, e.g., *Public Service Emp. Union Local 1132 v. Unified Gov’t of Wyandotte County/Kansas City*, No. 75-CAE-7-2003, 2004 WL 5657454 (Kan. PERB Dec. 20, 2004) (ultimately declining jurisdiction because union first attempted to pursue grievance procedures and were thereafter precluded from filing a complaint with PERB, per the choice-of-remedy provision in the MOA); *Fraternal Order of Police Lodge No. 40 v. Unified Gov’t of Wyandotte County/Kansas City, Kan. And Wyandotte County Sheriff’s Dep’t*, Nos. 75-CAE-3-2006 and 75-CAE-10-2006, 2009 WL 9139888, at *4–6 (Kan. PERB Nov. 18, 2009) (declining jurisdiction for the same reason).

²⁹ *Kan. Bd. of Regents v. Pittsburg St. Univ. Chapter of Kan.-Nat’l Educ. Ass’n*, 233 Kan. 801, 816 (1983).

³⁰ *Fraternal Order of Police, Lodge #37 v. The Univ. of Kan. Med. Ctr.*, No. 75-CAE-8-2013, 2013 WL 9776151, at *6 (Kan. PERB Jan. 1, 2013).

³¹ *Int’l Ass’n of Firefighters Local 179 v. City of Hutchinson, Kan.-Fire Dep’t*, No. 75-CAE-1-2011, 2012 WL 6811408, at *9 (Kan. PERB May 4, 2012).

³² *Fraternal Order of Police, Lodge #37 v. The Univ. of Kan. Med. Ctr.*, No. 75-CAE-8-2013, 2013 WL 9776151, at *5 (Kan. PERB Jan. 1, 2013).

³³ See, e.g., *Id.* (finding no duty to provide employer evaluations to an employee in a disciplinary challenge because evaluations are strictly a management prerogative); *City of Junction City and Junction City Police Officers Association*, No. 75-CAEO-2-1992, 1992 WL 12602058 (Kan. PERB July 31, 1992) (finding the grievance process for challenging discipline must be bargained); *Fraternal Order of Police Lodge No. 40 v. Unified Gov’t of Wyandotte County/Kansas City, Kan. And Wyandotte County Sheriff’s Dep’t*, Nos. 75-CAE-3-2006 and 75-CAE-10-2006, 2009 WL 9139888 (Kan. PERB Nov. 18, 2009) (declining to accept jurisdiction over a challenge to termination because it could be challenged under the memorandum of agreement).

fitness for duty requirements for firefighters was a prohibited practice.³⁴ The absence of cases makes it difficult to compare other than by pointing out that it is possible that no non-police cases have been brought because the chances of success are vanishingly small; whereas in one of the two police cases, PERB found a bargainable subject.

Reassignment and Skimming.

In the one case about reassignment, PERB demonstrated its unwillingness to decide these cases in the non-police context. There, the employer changed the title of a bargaining unit position from “Grounds Specialist” to “Groundskeeper II”, and it moved the duties outside the bargaining unit.³⁵ PERB recognized the change to a bargainable subject but required the parties to submit the issue to the contractual grievance process.³⁶

Subcontracting.

There are no subcontracting cases.

Duties

There are no cases related to changes to duties, other than the case discussed above.

³⁴ *See generally*, Int’l Ass’n of Firefighters Local 179 v. City of Hutchinson, Kan. Fire Dept., No. 75-CAE-1-2011, 2012 WL 6811408 (Kan. PERB May 4, 2012).

³⁵ *See generally*, Public Service Emp. Union Local 1132 v. Unified Gov’t of Wyandotte County/Kansas City, No. 75-CAE-7-2003, 2004 WL 5657454 (Kan. PERB Dec. 20, 2004)

³⁶ *Id.*