

The Professional Negotiations Act

The Professional Negotiations Act (PNA), K.S.A. 72-5413, et seq. governs the interaction between boards of education and professional employees (teachers) when negotiating terms and conditions of employment. The PNA applies only to “professional employees,” which includes “any person employed by a board of education in a position which requires a license issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity,” but excludes administrative employees. The PNA is administered by the secretary of human resources, who is responsible for unit determination elections, impasse procedures and prohibited practice adjudications.

Permissive and Non-Negotiable Items

Permissibly Negotiable Items

Topics which do not fall within the statutory or case law definition of “terms and conditions of employment” may or may not be negotiated, depending upon the parties. The parties may mutually agree to negotiate a matter which is not mandatorily negotiable, but either party may refuse. Permissibly negotiable items include:

- academic and personal freedom;
- assignment and transfer of teachers;
- professional employee evaluation criteria;
- class size;
- grade card frequency;
- school library hours;
- special resource personnel;
- classroom management including funds for instructional materials, types of instructional materials, the establishment of an instructional materials center and training center;
- copyrighting teachers' works;
- facilities and equipment, materials and supplies;
- safety of personnel and students;
- substitute teachers (orientation, preparation, pay qualifications, coverage); and
- teacher aides.

Non-Negotiable Items

In addition to mandatorily negotiable and permissibly negotiable topics, some topics cannot be negotiated even if the parties mutually desire to address the issue. Occasionally, a party will notice for negotiations or submit a proposal on a matter which is controlled by state or federal law. Naturally, the parties are prohibited from usurping the law. Contractual provisions which conflict with the law will not be upheld. Topics which are controlled by law are typically referred to as “nonnegotiable topics.”

Prohibited Practices

It is a prohibited practice for a board of education to:

- Interfere with, restrain or coerce professional employees in the exercise of rights granted in the PNA act;
- Dominate, interfere or assist in the formation, existence, or administration of any professional employees' organization (PEO);
- Discriminate in regard to hiring or any term or condition of employment to encourage or discourage membership in any PEO;
- Discharge or discriminate against any professional employee because such professional employee has filed any affidavit, petition or complaint or because such professional employee has formed, joined or chosen to be represented by any PEO;
- Refuse to negotiate in good faith with representatives of recognized PEOs;
- Deny the rights accompanying recognition of a PEO which are granted in K.S.A. 72-5415;
- Refuse to participate in good faith in mediation or fact-finding efforts or arbitration pursuant to an agreement to arbitrate disputes; or
- Institute or attempt to institute a lockout.

It is a prohibited practice for professional employees to:

- Interfere with, restrain or coerce professional employees in the exercise of rights granted under the PNA act;
- Interfere with, restrain or coerce a board of education with respect to rights or duties which are reserved to it under the PNA act, or with respect to selecting a representative for negotiating or for adjusting grievances;
- Refuse to negotiate in good faith with the board of education or its designated representatives ;
- Refuse to participate in good faith in the mediation or fact-finding efforts or arbitration pursuant to an agreement to arbitrate disputes (if applicable); or
- Authorize, instigate, aid or engage in a strike or in picketing of any facility under the jurisdiction and control of the board of education.

Mandatory Topics of Bargaining

The PNA mandates negotiation of properly noticed topics which fall within the statutory definition of “terms and conditions of professional service.” The following is a list of mandatorily negotiable topics:

- (1) Salary
- (2) Wages
- (3) Pay Under Supplemental Contract
- (4) Hours of Work
- (5) Amounts of Work
- (6) Vacation Allowance
- (7) Holiday Leave
- (8) Sick Leave
- (9) Extended Leave
- (10) Sabbatical Leave
- (11) "Other" Leave
- (12) Number of Holidays
- (13) Retirement
- (14) Insurance Benefits
- (15) Wearing Apparel
- (16) Pay for Overtime
- (17) Jury Duty
- (18) Grievance Procedure
- (19) Binding Arbitration of Grievances
- (20) Disciplinary Procedure
- (21) Resignation
- (22) Termination of Contract
- (23) Nonrenewal of Contracts
- (24) Reemployment of Professional Employees
- (25) Terms of the Individual Contract
- (26) Form of the Individual Contract
- (27) Probationary Period
- (28) Professional Employee Evaluation Procedures
- (29) Reduction in Force Procedures
- (30) Access to Teacher Files
- (31) Association Privileges:
 - voluntary payroll deductions;
 - use of school facilities for meetings;
 - dissemination of negotiations information through direct contact;
 - use of bulletin boards;
 - use of school mail system; and
 - leaves of absence for members of the unit to take part in union activities.

Although these are the only association rights specifically listed in the statutes, other similar association rights are probably mandatorily negotiable.

Good faith bargaining requires parties to honestly consider proposals and explain why they are unacceptable.

Negotiations Timelines

Statutory Deadlines

There are two key statutory dates that apply to the negotiations process.

February 1	Written Notice. Either party seeking to negotiate new items or amend existing contract provisions must notify the other party in writing of these items. K.S.A. 72-5423. Deliver notice letter to association by this date. (NOTE: If February 1 falls on a weekend, deliver notice letter the preceding Friday.)
June 1	Statutory Impasse Date. The parties are at statutory impasse if they have not reached an agreement by June 1. K.S.A 72-5426(d). The secretary of human resources does not strictly adhere to this date. Parties may file a request for extension and continue negotiating or file a joint or single declaration of impasse.
All other time frames in which the negotiation process occurs are very flexible. The following will provide some general guidelines:	
On-going Basis	Share budget/financial information (perhaps monthly) with association.
October-December	Administrators review negotiated agreement to identify problem areas.
November-December	Board reviews negotiated agreement and discusses issues noted by the administration. Board selects negotiating team members. Board discusses negotiations priorities.
December-January	Finalize review of negotiated agreement. Set negotiation priorities and provide negotiation parameters for the negotiating team. Develop notice letter.
February	Review the association's notice letter and discuss it with the board. Board should set negotiation parameters for team regarding association items. Develop necessary data to support board positions and address association positions. Draft board proposals. Negotiate at mutually agreeable times and places. (NOTE: Actual negotiation sessions may start as early as March; however, it is not uncommon to start as late as May.)
May	Parties will receive letter from Kansas Department of Human Resources regarding June 1 impasse date and whether the parties need additional time to negotiate. If negotiations are not completed on June 1, the parties may file a request for extension.

THEORY AND PRACTICE OF IMPASSE

How Do You Get To Impasse

If the parties have not reached agreement by June 1, they are statutorily at impasse. However, the secretary will grant additional time for negotiations at the request of the parties. Prior to June 1 there may be a hearing before the Secretary of Human Resources to determine if impasse exists.

The parties may also agree that impasse has occurred, and file a declaration of impasse with the Secretary. Declaration of impasse can be filed either jointly or separately. The parties may continue to voluntarily engage in negotiations after impasse is declared.

The Impasse Procedures

Once impasse is declared, the law provides two mechanisms to help the parties reach agreement: mediation and factfinding. Mediation and factfinding sessions can be closed to the public, sometimes making movement easier. These procedures also allow for recommendations from impartial individuals outside the negotiations process.

Mediation

At mediation, the parties continue to try to reach agreement on the issues with the help of an impartial third party, the mediator. Mediation is handled by professional mediators with the Federal Mediation and Conciliation Service, at no cost to the parties. Mediators schedule mediation at the parties' mutual convenience.

During mediation, the mediator usually meets with the parties jointly and separately to explore possible movement on the issues at impasse. The mediator's sole purpose is to help the parties reach agreement, not necessarily a good agreement.

If an agreement is reached in mediation, the parties should meet and go over in detail all agreements and all previous tentative agreements to avoid misunderstandings. The agreement should be reduced to writing. If no agreement is reached, then seven days after the first meeting with the mediator either party may, within the next 10 days, request the Secretary to appoint a factfinder.

Factfinding

The Secretary maintains a list of trained factfinders. In most cases the parties request a list of five factfinders and, upon receipt of the list, alternately strike names until only one remains. That individual serves as the factfinder. The parties share the cost of the factfinder.

Within three days after the request for factfinder, each party must prepare a written memorandum describing the issues on which they disagree and their final position(s) on the issue(s).

The factfinder schedules the factfinding hearing at the mutual convenience of the parties. At the hearing, the board team presents testimony and documents to show the reasonableness of the board's position the unreasonableness of the association's position on the issues at impasse.

From the evidence presented by both parties at the hearing, within 10 days of the hearing, the factfinder must provide a written report, containing findings of fact recommendations for resolution of the impasse to each party. Within 10 days thereafter, the parties must meet at least once in an effort to reach an agreement.

Unilateral Contracts

If agreement is not reached following factfinding, negotiations are concluded and the board may issue a unilateral contract. In this process the board must "take such action as it deems in the public interest including the interest of the teachers and make such action public." Unilateral contracts can include any issue and the board has the right to change items not previously noticed for negotiations. Upon issuance of a unilateral contract, teachers may resign (within 15 days after the unilateral contract is issued), accept the unilateral contract or elect to continue under the previous year's contract.