

Agency 84

Public Employee Relations Board

Articles

- 84-1. GENERAL PROVISIONS.
- 84-2. PROCEDURE.
- 84-3. PROHIBITED PRACTICES.
- 84-4. LOCAL GOVERNMENT PROCEDURES.
- 84-5. IMPASSE.

Article 1.—GENERAL PROVISIONS

84-1-1. Definitions. “Act” means the public employer-employee relations act K.S.A. 75-4321 et seq. and amendments thereto. Terms used in these rules shall have the same meaning as defined in the act unless their context clearly indicates otherwise.

(b) “Party” means any public employee, employee organization, or public employer filing a complaint, petition, or application under the act or these rules; any public employee, employee organization or public employer named as a party in a complaint or petition filed under the act or these rules; any person, organization or public employer whose timely motion to intervene in a proceeding has been granted who has been permitted to intervene in a proceeding under the act or these rules; or any person, employee organization or public employer that has been joined as a necessary party in a complaint or petition filed under the act or these rules by order of the board or presiding officer.

(c) Pleading—For purposes of these rules and regulations, pleadings shall include any petition, complaint, answer, motion, application, or notice. (Authorized by and implementing K.S.A. 75-4323(d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-1-2. Scope. (a) Purpose. These rules and regulations are intended as aids to promote the efficient operation of the board and the orderly administration of the act, and to provide meaningful avenues for realizing and for enforcing the statutory rights and obligations of public employ-

ees, public employee organizations, and public employers of this state under the act.

(b) Interpretation. These rules shall be liberally construed to effectuate the purposes and provisions of the act.

(c) Waiver. In the event that the application of these rules would not be feasible or would work an injustice, the rules may be waived or suspended by the board at any time or in any proceeding unless such action would deprive a party of substantial rights.

(d) Separability. If any provisions of these rules be held invalid, it shall not be construed to invalidate any of the other provisions of these rules. (Authorized by and implementing K.S.A. 75-4323 (d), 75-4330 (b), 75-4334 (a), 75-4336, 75-4337; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-1-3. Computation of time. Whenever the time limited in these rules for any act is seven days or more, Saturdays, Sundays and legal holidays shall be included in making the computation. Whenever the time so limited is less than seven days, Saturdays, Sundays and legal holidays shall be excluded. Whenever the last day of any such period shall fall on a Saturday, Sunday or legal holiday, such day shall be omitted from computation. Any time prescribed in these rules may be extended by the board, its designee or the presiding officer for good cause shown. Computation of time shall commence upon service to a party. (Authorized by and implementing K.S.A. 75-4323(d); effective July 30, 1990.)

84-1-4. Registration and reports. (a) Filing annual report. Each employee organization

shall file with the board a copy of the annual report required by K.S.A. 75-4337 and amendments thereto.

(b) Proof of employee organization Kansas license registration. Each person who desires to act as a business agent of any public employee organization shall register with the Kansas secretary of state pursuant to K.S.A. 75-4336 and shall show proof of such registration to the board before that person may participate in any proceedings under the public employer-employee relations act, K.S.A. 1988 Supp. K.S.A. 75-4337. (Authorized by and implementing K.S.A. 75-4336, 75-4337; effective July 30, 1990.)

Article 2.—PROCEDURE

84-2-1. Service of pleadings. (a) Method; proof; complaints; orders; and other processes and papers of the board—Service of pleadings and orders shall be conducted in accordance with K.S.A. 77-531. Complaints, decisions, orders, other processes and papers of the board may be served personally, by certified mail, by telegraph or by leaving a copy thereof in the proper office or place of business of persons to be served. The return by the individual so serving the same, setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt, when certified and mailed or telegraphed as aforesaid, shall be proof of service of the same.

(b) Service by a party. The moving party and respondent in any action shall be required to file the original and five copies of any pleadings with the board or its designee either in person or by certified mail. The moving party shall also cause a copy of the pleading to be served, by regular mail or in person, upon all other parties of record with a statement of certification of service appearing upon the pleading.

(c) Service upon attorney. If a party appears by the party's attorney, all papers other than the complaint, notice of original hearings, and decisions and orders may be served as hereinafter provided, upon such attorney with the same force and effect as though served upon the party.

(d) Service by the board. Once a party has been permitted to intervene in a pending action, upon request of the intervening party the other parties shall be ordered by the board, its designee or the presiding officer to serve upon the intervening party copies of all their pleadings filed with the

board prior to the date of intervention. (Authorized by and implementing K.S.A. 75-4323 (d) (3) (4), 75-4327 (c) (d) (e), 75-4332 (b) (c) (d) (e) and 75-4334 (a) (b); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-2. Hearings. (a) General provisions. (1) Hearings may be conducted by the board, or any member or members thereof, or any member of its staff or other individual designated by the board.

(2) The hearing shall be limited to pertinent matters necessary to determine questions relating to the immediate controversy.

(b) Notice of hearing. (1) Following the filing of a petition, if it appears to the board or its designee that further proceedings are warranted, a notice of hearing, at a place fixed therein, shall be issued and served upon each of the parties and upon any known individuals or employee organizations claiming to represent any employees directly affected, and, except by agreement of the parties or in unusual circumstances, at a time not less than ten days after the service of such notice.

(2) Any such notice of hearing may be withdrawn or amended prior to the hearing by the presiding officer upon reasonable notice to the parties.

(c) Conduct of hearings. (1) It shall be the duty of the presiding officer to inquire fully into all matters at issue and to obtain a full and complete record.

(2) The presiding officer may continue the hearing from day to day or adjourn it to a later date or another place, by announcement thereof at the hearing or by other appropriate notice.

(d) Motions. (1) All motions made during a hearing shall be made part of the record of the proceedings.

(2) All motions and answers other than those made during a hearing shall be made in writing to the board, or its designee, pursuant to the provisions of 84-2-1 (b), and shall briefly state the relief sought. Answers, if any, shall be filed with the board or its designee within seven days after service of the pleading, unless the board or its designee directs otherwise. Motions shall be ruled upon by the board, its designee or the presiding officer who may decide to hear oral argument or testimony relating to the motion. The parties shall be notified of the purpose of the hearing and of the time and place of oral argument or the taking

of testimony. Rulings and orders determinative of all matters presented at the hearing shall be issued by the presiding officer. All such motions and rulings shall be part of the record of the case.

(e) An objection not made before the presiding officer shall be deemed waived unless the failure to make such objection shall be excused by the presiding officer because of extraordinary circumstances.

(f) Introduction of evidence; the rights of parties at hearings. (1) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the presiding officer shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. A party shall, upon offering an exhibit into evidence at a hearing, simultaneously furnish copies to all other parties, unless otherwise ordered by the presiding officer. Witnesses shall be examined orally under oath. Compliance with the technical rules of evidence shall not be required. Stipulations of fact may be introduced in evidence with respect to any issue.

(2) The refusal of a witness at any hearing to answer any question which has been ruled proper by the hearing officer shall be noted in the record. Such refusal shall go to the weight of previous testimony, but shall not be grounds for striking all previous testimony of the particular witness.

(3) Misconduct at any hearing before the board or presiding officer shall be grounds for summary exclusion from the hearing. As used herein, "misconduct" means conduct which disrupts or interferes with the orderly administration of proceedings under the act, or conduct which evinces refusal to obey or disregard a lawful order or ruling of the hearing officer. Misconduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the board or its designee. Such suspension or disbarment shall be ordered only after the board, presiding officer or another party in the proceedings files a complaint in writing with the board alleging the acts of misconduct committed by the attorney or other representative of a party, the attorney or other representative of a party has been given thirty days notice of the charges, and the attorney or other representative of a party is given an evidentiary hearing before the entire board.

(g) Upon appointment by the board of a pre-

siding officer to perform any of its functions, the parties must file within three days any objection to the person appointed. The objection must contain a statement setting forth the reasons for the party's position.

(h) Findings of fact; conclusions of law; initial order. No later than 30 days after the conclusion of the hearing, the presiding officer shall issue findings of fact, conclusions of law, and an initial order unless the 30 day period is waived or extended with the written consent of all parties, or for good cause shown. Such findings of fact, conclusions of law, and initial order shall be in writing and shall contain, but need not be limited to a statement of the case findings of fact, and conclusions of law and initial order to the board. All parties and members of the board shall be served with the presiding officer's decision and initial order.

(i) Appeal Procedure. (1) Review of initial orders shall be initiated pursuant to and controlled by K.S.A. 77-527 through K.S.A. 77-529.

(2) If the board grants review of an initial order, and unless otherwise extended by the board, the appellant shall have 30 days from the date of service of the board's order setting forth the issues to be reviewed to file its brief with the board. Appellee shall have thirty (30) days from the date of service of appellant's brief in which to file its response brief. No reply briefs will be allowed. Oral arguments will be allowed at the next regularly scheduled board meeting after service of appellee's brief. Briefs shall specifically set forth the issues to be reviewed and transcript references must be cited in the brief where a transcript is available. (Authorized by and implementing K.S.A. 75-4323 (c) (d) (4), 75-4327 (c) (d) (e), 75-4332 (b) (c) (d) (e); and 75-4334 (a); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-3. Intervention and joinder. Any third party having a legitimate interest in any proceedings may file a petition of intervention setting forth facts sufficient to establish such interest and requesting that the board resolve contested factual matters in its favor. In the alternative any third party may be joined upon a motion by the board, its designee or the presiding officer. Any organization which has a signed, valid memorandum of agreement encompassing the proposed unit or any portion thereof shall be considered to have a legitimate interest in any proceedings upon

presentation of same. If the intervention is pursuant to K.A.R. 84-2-11(e) the petition must be accompanied with a 30% showing of interest in accordance with K.S.A. 75-4327 (d). (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4324, 75-4327 (a) (b) (c) (d) and 75-4328; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-4. Authorization cards; acceptability. Evidence of representation or legitimate interest may be either individual authorization cards, or by petition. In either case, the petition or card must show address of, and be signed and dated by, the employee expressing an intent to be represented by a specific employee organization. A card or petition signed and dated by a public employee less than one year prior to the date on which the petition for certification was filed shall constitute prime facie evidence of continuation of such authorization. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4324, 75-4327 (a) (b) (c) (d) and 75-4328; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-5. Validity of showing of interest. (a) The proof of interest when submitted becomes the property of the board and shall not be furnished to any of the parties. The adequacy of the showing of interest shall be determined by the board or its designee and such decision shall not be subject to collateral attack at a hearing before the board. Proof of interest shall not be required until after unit determination has been made by the board.

(b) Each public employer shall be required to furnish the board with an alphabetical listing of all employees within the appropriate unit including their work site and home addresses as expeditiously as possible, not to exceed 30 days after the filing of a petition for a certification election following unit determination, unless otherwise directed by the board or its designee. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4324, 75-4327 (a) (b) (c) (d) and 75-4328; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-6. Units. (a) Determining appropriate unit. (1) Any unit may consist of all of the employees of the public employer, or any depart-

ment, division, section or area, or party or combination thereof, if found to be appropriate by the board, except as otherwise provided in the act or these rules.

(2) In considering whether a unit is appropriate, the provisions of K.S.A. 75-4327 (e) and whether the proposed unit of the public employees is a distinct and homogeneous group, with significant problems which can be adjusted without regard to the other public employees of the public employer shall be considered by the board or presiding officer, and the relationship of the proposed unit to the total organizational pattern of the public employer may be considered by the board or presiding officer. Neither the extent to which public employees have been organized by an employee organization nor the desires of a particular group of public employees to be represented separately or by a particular employee organization shall be controlling on the question of whether a proposed unit is appropriate. (Authorized by and implementing K.S.A. 75-4323 (d) (4) and 75-4327 (b) (c); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-7. Petition for unit determination, unit clarification and investigation or certification or decertification of employee organization; of petition. A petition, form to be provided by the board, may be filed with the board by an employee organization or group of public employees or public employer. The original of the petition shall be signed by the petitioner or his authorized representative and the original and five copies thereof shall be filed with the board. (Authorized by and implementing K.S.A. 75-4323 (d) (4) and 75-4327 (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-8. (Authorized by K.S.A. 75-4323 (d)(4), 75-4327 (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; revoked May 1, 1975.)

84-2-9. Procedure following filing of petitions. (a) Petition; amendment or withdrawal. Any petition may be amended, in whole or in part, or withdrawn by the petitioner at any time prior to the filing of an answer by an interested party. A petition may be amended or withdrawn by the petitioner after the filing of an answer by any party or after the board has acted thereon, only with the approval of the board, its designee or the presid-

ing officer and upon such conditions as the board, its designee or the presiding officer may deem proper and just.

(b) Answers. Each party shall file an answer to the petition within 20 days after receipt thereof. The time for filing an answer may be extended by the board, its designee or the presiding officer upon showing of good cause. Failure to answer within 20 days will be deemed as an admission by said party to all allegations in the petition.

(c) Investigation. The parties shall be notified by the board or its designee of the name of the person assigned to investigate the allegations contained in the petition. That person shall direct an investigation of all questions concerning representation, including, if applicable, whether the proof of interest requirement, as set forth in the rules, has been met; whether more than one employee organization seeks to represent some or all of the employees in the allegedly appropriate unit; and whether there is agreement among the parties as to the appropriateness of the alleged unit.

(d) Hearings. The presiding officer may direct a hearing, pursuant to 84-2-2(b), in which event the presiding officer shall prepare and cause to be served upon the parties a notice of hearing before the presiding officer at a time and place fixed therein. (Authorized by and implementing K.S.A. 75-4323 (d) (4) and 75-4327 (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-10. (Authorized by K.S.A. 75-4323 (d)(4), 75-4327 (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; revoked May 1, 1975.)

84-2-11. Elections; eligibility and conditions. (a) When an employee organization files a petition for certification a determination shall be made by the board or its designee as to whether a sufficient showing of interest has been filed by said employee organization. If a sufficient showing of interest exists, an order shall be entered by the board or its designee directing an election be conducted by such persons as may be appointed by the board or its designee.

(b) All elections shall be held not later than 30 days from date of validation of the first submitted proof of interest or such other date as the board or its designee may specify, at such times and places and upon such terms or conditions as the board or its designee may specify.

(c) The employees eligible to vote shall be those on the payroll on the date of the validation

of proof of interest and who remain on the payroll on the date of the election.

(d) A list of names and work site and home addresses of all eligible employees in the appropriate unit shall be furnished by the board or its designee to all employee organizations submitting proof of interest immediately upon validation of said proof of interest.

(e) A motion for intervention for purpose of representation on an election ballot at a certification election will not be entertained during the 15 days immediately preceding said election.

(f) A notice of election and sample ballot shall be posted not less than seven days prior to the election in conspicuous areas where employees in the affected unit assemble. Orders to cause such posting shall be issued by the board or its designee. (Authorized by and implementing K.S.A. 75-4323 (d) (4) and 75-4327 (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-12. Elections; procedure. (a) All elections shall be by secret ballot, at times, places, and in such manner as the board or its designee may direct, and shall be conducted by a designee of the board, whose determination of all questions arising shall be final, subject, however, to review by the board.

(b) Ballots shall be prepared and issued by the board or its designee. Ballots shall contain the name of each representative and a choice of "no representative." The place of priority on the ballot shall be determined by the chronological filing or appearance on the dockets of the board but with the petitioner taking first priority. In a run-off election, the place of priority shall be determined by the sequence appearing on the ballot at the prior inclusive election.

(c) Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place. Observers shall be employees eligible to vote, or in the case of employer's observers, shall be non-supervisory personnel, unless otherwise agreed to by all parties.

(d) Prior to the commencement of the election, the designee of the board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election.

(e) Any prospective voter may be challenged for cause.

(f) All employees whose names do not appear upon the list certified by the board as being a complete list of the employees within the defined appropriate unit shall be challenged by the designee of the board.

(g) A challenged voter shall be permitted to vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the board and then inserted in a special identifiable form envelope provided by the board for that purpose and returned to the board.

(h) In all elections a majority of the valid votes cast shall determine the employee representative designated or selected by the employees in the defined appropriate unit or the determination that no representative has been designated. A tally of ballots shall be made by the board agent immediately following the closing of the polls and a tally sheet shall be furnished to all parties to the election.

(i) Each party to the election shall be permitted to observe the count of the ballots.

(j) All objections to a party's conduct or third person's conduct to the election shall be, by a charge of unfair practice, filed with the board within five days of the holding of the election and such order as required to effectuate the purposes of the act shall be immediately issued by the board or its designee.

(k) All objections to the board's conduct of an election must be filed within five days of the holding of the same and such order as required to effectuate the purposes of the act shall be immediately issued by the board or its designee.

(l) The board shall conduct a runoff election when an election in which the ballot provides for not less than three choices, at least two employee organizations and "no representation," results in none of the choices receiving a majority of the valid ballots cast.

(m) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(n) Runoff elections shall be conducted by the board or its designee as expeditiously as possible not to exceed 30 days following the first election unless otherwise ordered by the board or its designee. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4327 (d); effective, E-72-29,

Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-13. Certification of election results. (a) Certification—If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, a certification of the results of the election, including certification of representative, where appropriate shall forthwith be issued to the parties by the board or its designee. All employee organizations shall be certified as of the last day of election.

(b) Pre-existing contracts. When a governmental sub-division elects to come under the provisions of K.S.A. 75-4321 et seq. and at the time of such election there are formal written agreements between that governmental sub-division and a recognized employee organization representing one or more employee units entered into prior to the election to come under K.S.A. 75-4321 et seq. and those agreements continue and are in force at the time of such election, either the employer or the recognized employee organization may petition the board to certify the recognized employee organization as the exclusive representative of the employees within the unit. After a determination by the board or its designee that the petitioned for employee unit is not in violation of the act notice of the intent to certify the previously recognized employee organization shall be ordered by the board posted in locations conspicuous to all employees within the proposed employee unit not less than 10 days prior to making a final determination. If no protest or counter petition is filed, the board shall certify the employee organization as petitioned. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4327 (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-14. Mediation and fact-finding. (a) Mediator. (1) Any information disclosed to the mediator in the performance of his duties shall not be divulged unless approved by all parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. Such matters shall not be disclosed to anyone without the prior consent of the board and all parties involved.

(2) The mediator shall not produce any confi-

dential records or testimony with regard to any mediation conducted by the mediator on behalf of the party to any case pending in any proceeding before any court, board, investigatory body, arbitrator, or fact-finder without the written consent of the board and the party furnishing such information.

(b) Mediation meetings. (1) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall not be open to the public. Such meetings shall be conducted at such times and places agreed to by the mediator and the parties.

(2) The mediator shall, either orally or in writing, report the status of his mediation efforts.

(3) The mediator shall report in writing the final settlement of the dispute to the board.

(c) Fact-finding. (1) Any person, broadly representative of the public, who has been selected by the board or its designee for listing on a register of fact-finders, may act as a fact-finder.

(2) The public employers and employee organizations may submit in writing, from time to time, the names of their proposed fact-finders to the board or its designee. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4327 (c), (d), (e); 75-4332 (b), (c), (d), (e); 75-4334 (a); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-2-15. Arbitration. (a) General provisions. This section governs the general procedure relating to the arbitration proceedings and designation of arbitrators, pursuant to K.S.A. 75-4330(b). The policy of the state primarily is to promote the prompt, peaceful and just settlement of labor disputes arising from the interpretation or application of a memorandum of agreement affecting terms and conditions of employment. Final determination of such disputes may be made by the board or the arbitrators appointed by the board.

(b) Request to initiate arbitration. (1) A request that the board initiate arbitration shall be in writing and signed by the party or parties filing the request. If not a joint request, the party filing same, at the same time, shall cause a copy thereof to be sent to the other party.

(2) Contents of the request should include: (A) If a joint request, a statement as to the issue or issues in dispute, or if a request by only one of the parties, a statement as to the alleged issue or issues in dispute.

(B) A copy of the memorandum of agreement in effect.

(C) A request that the board either act as an arbitration board, or appoint either one of its members or staff members or an individual not in the employ of the board, for their consideration in the selection of an arbitrator or board of arbitration.

(D) The names, addresses and phone numbers of the principal representatives of the parties involved.

(E) Suggested dates, time and place for the conduct of the hearing, if the board is requested to appoint one of its members or staff members as the arbitrator.

(F) If a joint request, it shall contain a statement as to whether request is for advisory or binding arbitration.

(c) Board action. (1) If the request to initiate arbitration is filed by only one party, the other party to the dispute shall immediately be contacted by the board or its designee to inquire as to its acquiescence to arbitration. If the latter opposes the right of the initiating party to proceed to arbitration, the initiating party shall be so advised by the board and no further action taken on the request.

(2) If arbitration has been jointly initiated or acquiesced in, the board shall, as requested or agreed either appoint the arbitrator or arbitrators, or submit to the parties a panel of individuals for their consideration in the selection of an arbitrator or board of arbitration.

(3) A written agreement of the parties as to whether the arbitration shall be binding or advisory shall be obtained by the board or its designee.

(d) Arbitrators; who may act. (1) The board of arbitration may be composed of the full board or one of the board members or board staff members appointed by the board. When so acting, neither any member of the board nor any member of the staff shall receive any compensation from the parties in the performance of such function.

(2) Only competent, impartial and disinterested persons shall be appointed by the board to act as arbitrators or to be included in a panel of arbitrators. Such persons, when acting as arbitrators, shall be compensated by the parties, for fees and expenses, at such sum mutually agreed upon by the parties and the arbitrator or arbitrators.

(e) Procedures of the arbitrator. Procedures of the arbitrator shall be as deemed appropriate by the arbitrator subject to review by the board.

(f) Award and report. The arbitrator appointed by the board or selected by the parties from a panel designated by the board shall at the time of serving copies of the award on the parties, file a copy thereof with the board, as well as a report reflecting a breakdown of the arbitrator's fees and expenses, if any.

(g) Registry. The public employers and employee organizations, from time to time, submit in writing the names of their proposed arbitrators to the board. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4330 (b); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

Article 3.—PROHIBITED PRACTICES

84-3-1. Complaints. (a) Who may file. A complaint that any public employee, employee organization or public employer has engaged in or is engaging in any prohibited practice under the act may be filed by a public employee, a group of public employees, an employee organization or a public employer, any of whom may hereafter be referred to as the party filing the complaint.

(b) Form and filing. Complaint forms shall be provided by the board. The original and file copies of the complaint shall be filed with the board or its designee pursuant to 84-2-1(b).

(c) Answer to complaint; contents. The answer shall contain the following: (1) A specific admission, denial, or explanation of each allegation of the complaint, or if the filing party is without knowledge thereof, a statement to that effect, such statement operating as a denial. Admissions or denials may be to all or part of an allegation but shall fairly meet the substance of the allegation.

(2) A specific detailed statement of any affirmative defense.

(3) A clear and concise statement of the facts and matters of law relied upon. Any allegation in the complaint not specifically denied in the answer, unless the respondent shall state in the answer that the respondent is without knowledge, and the reasons the respondent is without knowledge, shall be deemed admitted to be true and may be so found by the board.

(d) Answer to the complaint. The party named in the complaint shall file, pursuant to 84-2-1(b), a written answer within seven days after service of the complaint.

(e) Amendment to complaint. Any complaint

may be amended, in whole or in part, by the complainant at any time prior to the filing of an answer by the respondent. After an answer has been filed by the respondent, a complaint may be amended by the complainant with approval of the board or its designee at any time before the presiding officer's initial order is served.

(f) Amendment of answer; following amendment of complaint. In any case where a complaint has been amended, the respondent shall have an opportunity to amend the respondent's answer within such period as may be fixed by the presiding officer.

(g) Withdrawal of complaint. Through written notice served on the board, a complaint or any part thereof may be withdrawn at any time. (Authorized by and implementing K.S.A. 75-4323 (d) (4); 75-4334 (b), (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-3-2. Hearing notice. After a complaint has been filed, if it appears to the board, or its designee, that formal proceedings in respect thereto should be instituted, a notice of hearing pursuant to K.A.R. 84-2-2b shall be served on each party by the board or its designee. (Authorized by and implementing K.S.A. 75-4323 (d) (4); 75-4334 (b), (d); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-3-3. Record of proceedings before the board; prohibited practice cases. (a) The record of the proceedings before the presiding officer in prohibited practice cases shall consist of the complaint or amended complaint, any other pleadings, notices of hearings, motions, orders, stenographic report, exhibits, depositions, proposed and final findings of fact and conclusions of law, initial order, final order or order on reconsideration, and staff memoranda or data.

(b) If a prohibited practice proceeding is predicated in whole or in part upon a prior representation proceeding, the record of such prior representation proceeding shall be deemed a part of the record in the prohibited practice proceeding for all purposes. (Authorized by and implementing K.S.A. 75-4323, 75-4334; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended July 30, 1990.)

84-3-4. Joinder of parties. All persons alleged to have engaged in any unfair practices may

be joined as parties, whether jointly, severally, or in the alternative, and a decision may be rendered against one or more of them upon all of the evidence, without regard to the party by or against whom such evidence has been introduced. No proceedings will be dismissed because of nonjoinder or misjoinder of parties. Upon motion of any party or upon motion of the board, its designee or the presiding officer parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as may be deemed as just and proper. Such motions may be made at or prior to the first hearing in any such proceeding unless good and sufficient cause is shown why it could not have been made at such time. Failure to so move shall be deemed a waiver of all objections to a nonjoinder or misjoinder. (Authorized by and implementing K.S.A. 75-4323, 75-4327, 75-4332, 75-4334; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-3-5. Findings of fact; conclusions of law; recommendation. Findings of fact, conclusions of law, and initial orders shall be issued pursuant to K.S.A. 77-526(c). (Authorized by and implementing K.S.A. 75-4323 (d), (4); 75-4327 (c) (d), (e); 75-4332 (b), (c), (d), (e); 75-4334 (a), (b); effective, E. 72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-3-6. Strikes or lockouts. In the case of an alleged violation of K.S.A. 75-4333 (c) (5), the case may be handled in accordance with K.S.A. 77-536 by the board or its designee disregarding normal time limitations. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4334 (a); effective E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

Article 4.—LOCAL GOVERNMENT PROCEDURES

84-4-1. Application for approval. (a) Filing. An application may be submitted by a local government which, acting through its legislative body, has adopted or amended by ordinance or resolution its own provisions and procedures, for a determination by the board that such provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules. Applications under this section shall

be in writing and signed by the governing body, or its authorized representative. Such an application may be filed at any time after the applicant has given public notice of its intention to so file and may be withdrawn by the applicant at any time before disposition of it by the board and after giving public notice of such withdrawal. Such public notice shall consist of posting in a conspicuous place at suitable offices of the applicant for not less than five working days and inclusion in a public advertisement in a newspaper of general circulation in the area of the applicant for not less than one day.

(b) Contents of application. An application for determination that local provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules shall contain the following: (1) Name and address of the applicant.

(2) A copy of the local law, ordinance or resolution adopted or amended by the legislative body of the applicant.

(3) If an amendment, a statement as to whether the ordinance or resolution to be amended has been determined to be substantially equivalent to the provisions and procedures set forth in the act and these rules, and if so, whether the board has determined that the continuing implementation of such ordinance or resolution was not substantially equivalent to such provisions and procedures.

(4) A copy of the public notice announcing the application and a description of the manner and date of its publication.

(5) The names and addresses of any employee organizations which have been certified or recognized to represent any public employees of the applicant.

(6) The names and addresses of any other employee organizations which claim to represent any public employees of the applicant. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-4-2. Objections. Within 15 working days after receipt of the application by the board, any public employee or employee organization may file an objection to the granting of the application. The late filing of an objection may be excused by the board or its designee for extraordinary circumstances. (Authorized by and imple-

menting K.S.A. 75-4323 (d) (4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-4-3. Investigation and hearing. (a) The applicant and any interested party shall be notified by the board or its designee of the name of the person assigned to investigate the allegations contained in the application. That person shall direct an investigation of any questions raised by the application and such objections to the application as may be filed with the board or its designee. In conducting such an investigation, the presiding officer may require affidavits or direct a hearing. If a hearing is directed, the presiding officer shall prepare and cause to be served upon the applicant and any interested party a notice of hearing before the presiding officer at a time and place fixed therein.

(b) In the event a hearing is directed, the provisions of section 84-2-2 of these rules shall govern. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-4-4. Determination by the presiding officer. No later than 30 days after the conclusion of the hearing or after submission of proposed findings of fact, conclusions of law and briefs, the presiding officer shall issue findings of fact, conclusions of law and an initial order, unless the 30 day period is waived or extended with the written consent of all parties or for good cause shown. All parties shall be served with the presiding officer's decision and initial order. (Authorized by and implementing K.S.A. 75-4323, 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended July 30, 1990.)

84-4-5. Termination or amendment of procedures by a local government. (a) To be approved, the provisions and procedures established by a local government pursuant to K.S.A. 75-4335 must provide, inter alia, that termination of such procedures shall become effective no sooner than 60 days after the filing with the board of a duly certified copy of an ordinance or resolution of such local government terminating the applicability of the local provisions and procedures, or on the date specified in the ordinance or resolution, whichever is later. The provisions and procedures must also provide that the local

government will give public notice of the termination of the local procedures at least 45 days prior to the effective date thereof, by posting in a conspicuous place at suitable offices of its own for not less than five working days and inclusion in a public advertisement in a local newspaper of general circulation for not less than one day.

(b) To be approved, the provisions and procedures established by a local government pursuant to K.S.A. 75-4335 must provide, inter alia, that no amendment shall be effective until the board finds that the provisions and procedures as amended, are substantially equivalent to the provisions and procedures set forth in the Act and these rules. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

84-4-6. Local regulations. Upon approval of the provisions and procedures established by a local government pursuant to K.S.A. 75-4335, the local agency shall perform the duties set forth in K.S.A. 75-4327 and K.S.A. 75-4328. Within 45 days from the date of such approval, the local agency must adopt rules of procedure substantially equivalent to K.S.A. 75-4321 *et seq.*, and the regulations adopted by the public employee relations board. (Authorized by K.S.A. 75-4323 (d)(4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975.)

84-4-7. Procedures for the review of implementation of local government procedures pursuant to K.S.A. 75-4335. (a) General provisions. The fact that a local government has not adopted rules and regulations within 45 days after the board has determined that its provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and these rules, shall be prima facie evidence that the local government has not implemented its provisions and procedures in a manner substantially equivalent to the provisions and procedures as set forth in the act and these rules.

(b) Petition; filing. A petition to review the question of whether provisions and procedures of local government are being implemented in a manner substantially equivalent to the provisions and procedures set forth in the act and these rules, hereinafter called a petition for review, may be filed by any public employee or employee organization. Petitions under this section shall be in writing upon forms to be provided by the board.

The original and five copies of the petition shall be filed with the board within 60 days after the act or non-action complained of occurred or failed to occur. Petition forms will be supplied by the board upon request. The petition may be withdrawn any time prior to action by the board, its designee or the presiding officer. Each party shall file an answer to the petition for review within 10 days after receipt thereof.

(c) Time for filing of petitions. A petition for review may be filed at any time.

(d) Contents of petitions for review. A petition for review shall contain the following: (1) The name, affiliation, if any, and address of petitioner.

(2) The name of the local government involved.

(3) The names and addresses of any other employee organizations which claim to represent any public employees under the jurisdiction of the local government involved.

(4) A clear and concise statement of the grounds for alleging that the local government provisions and procedures, as implemented, are not substantially equivalent to the provisions and procedures set forth in the act and these rules.

(e) Intervention. Any public employee, employee organization or public employer may be permitted, in the discretion of the presiding officer, to intervene in a proceeding. The intervenor must make a motion on notice to all parties in the proceeding. Supporting affidavits establishing the basis for the motion may be required by the presiding officer. If intervention is permitted, the public employee, employee organization or public employer becomes a party for all purposes.

(f) Notice of pending petitions. Upon the filing of a petition under this part, notice thereof, including the date when such petition was filed and the name and address of petitioner and the local government involved, shall be posted by the designee of the board on the public docket maintained by the board at its principal office.

(g) Conduct of hearing. The conduct of hearings under this section shall follow the standard hearing procedures as provided in section 84-2-2.

(h) Determination by the presiding officer. No later than 30 days after the conclusion of the hearing or after submission of proposed findings of fact, conclusions of law and briefs, the presiding officer shall issue findings of fact, conclusions of law and an initial order, unless the 30 day period is waived or extended with the written consent of all parties or for good cause shown. All parties shall be served with the presiding officer's decision and initial order. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4335; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)

Article 5.—IMPASSE

84-5-1. Impasse; petition; filing. In the event of an impasse, a request for assistance of the board, may be filed with the board or its designee by an employee organization or public employer organization or public employer, showing whether a joint or single party request is being made. (Authorized by and implementing K.S.A. 75-4323 (d) (4), 75-4332(a), (b); effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990.)