Legislative Research Department September 3, 1975

SPECIAL COMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

August 13-14, 1975

Members Present

Senator Wayne Zimmerman, Chairman
Representative Bill Morris, Vice-Chairman
Senator Frank Gaines
Senator Wes Sowers
Representative Albert Campbell
Representative Victor Kearns, Jr.
Representative Pete Loux

Staff Present

Mike Heim, Legislative Research Department
Ramon Powers, Legislative Research Department
Ben Barrett, Legislative Research Department
Bob Alderson, Revisor of Statutes' Office

Conferees

Fred Rausch, Kansas Association of School Boards
Jerry Schreiner, United School Administrators
Bob Wootton, K-NEA
Bill Moore, Wichita NEA
Evelyn Whitcomb, Former President of Wichita USD 259
Jerry Powell, Public Employee Relations Board
Tom Pitner, Chief Attorney, Secretary of Administration
Darrell Hoffman, Personnel Division
Max Bickford, Board of Regents
John K. Evans, Graphic Arts and International Union
R.A. Caraway, AFSCME
Terry Watson, AFSCME
Francis Jacobs, Public Service Employees Union
Art Veach, Service Employees Union
Paul Banzet, Council of Kansas Government Engineers and Scientists
Frank R. Davis, National Association of Government Employees
Lawrence Williams, Kansas Association of Public Employees
Victor Salem, Kansas Higher Education Association
Lois Smith, Teacher, USD 501

Morning Session

The meeting was called to order by the Chairman, Senator Zimmerman shortly after 10:00 a.m. He explained to the Committee that a number of persons had been invited to explain their views on the weaknesses on the Professional Negotiations Act and the Public Employer-Employee Relations Act as well as on the question of whether these two laws should be combined.

Bob Alderson of the Revisor of Statutes' Office explained a memorandum which provides a glossary of selected terms applicable to the subject of employer-employee relations. A copy of this memorandum is in the Committee notebooks.

Mr. Ben Barrett and Mr. Ramon Powers then explained a memorandum comparing similar features of the Public Employer-Employee Relations Act and the Professional Negotiations Act. A copy of this memorandum also is in the Committee notebooks.

Mr. Fred Rausch of the Kansas Association of School Boards submitted a prepared statement to the Committee. (Attachment No. I). Mr. Rausch indicated that KASB could probably support S.B. 571 and the impasse procedure contained in that bill. In response to a question concerning the open meetings law, Mr. Rausch said negotiations are more free in closed sessions, at least the districts should have an option in this matter. He indicated he was not in favor of citizen referendums as a part of an impasse procedure. Mr. Rausch said there is a hidden issue of "control". There is an effort by teacher leadership to gain control of the school districts.

Mr. Jerry Schreiner, United School Administrators, presented a statement to the Committee. (Attachment No. II). The question was asked whether administrators should be excluded from bargaining with school teachers. He said his association had no specific position on this matter.

In response to the question, he said individual administrators are responsible for paying their own dues to support the United School Administrators Association. He said in a majority of instances dues are paid by the individual, not by the school district.

Mr. Bob Wootton, K-NEA, submitted a statement to the Committee. (Attachment No. III). In response to a question, Mr. Wootton confirmed that the National Education Association supports H.R. 77 which would place all public employees under the National Labor Relations Act.

In response to a question Mr. Wootton indicated that he felt teachers should have the right to strike. He stated that annual certification of employee organizations would cause problems.

He indicated the scope of the negotiations should include such things as pupil-teacher ratio and suggested that the

PER Board be required to provide arbitration, mediation and fact-finding services. He stated, however, that he was not in favor of placing school districts under the Public Employer-Employee Relations Act.

Bill Moore, of NEA Wichita, submitted a statement to the Committee. (Attachment No. IV). He indicated that his association represents approximately 2,600 professional employees of USD 259 and of this number about 2,100 are members of the association. In response to a question concerning open meetings for negotiation sessions, he indicated he thought the negotiation sessions required some kind of privacy. On the issue of length of contracts he said he felt there would be more two or three year contracts if they could be reopened on economic issues.

Mrs. Evelyn Whitcomb, former president of Wichita USD 259 submitted a statement to the Committee. (Attachment No. V). She indicated that the last contract that was negotiated with the school districts she was involved in took 350 hours. It was noted that final resolution of the contract occurred in the District Court chambers.

Afternoon Session

Mr. Jerry Powell, Public Employee Relations Board, submitted two statements. The first statement explained a chart which he prepared which showed the units that had been designated for the State of Kansas to date. A copy is in the Committee notebooks. The second statement explains some proposed amendments to the Public Employer-Employee Relations Act. (Attachment No. VI). He indicated that he felt the scope of negotiations is something that will have to evolve through the courts. He stated that he felt school districts should be under the Public Employer-Employee Relations Act. He said that there are currently two school districts where non-professionals have organized under the Public Employer-Employee Relations Act.

Mr. Darrell Hoffman of the Personnel Division submitted a statement to the Committee for Mr. Lowell Long (Attachment No. VII). In response to a question, he indicated that he felt that S.B. 61 was a step in the right direction, however, there was too much detail in the bill.

Mr. Tom Pitner, Chief Attorney for the Secretary of Administration said that he felt Mr. Hoffman's suggestions are basic for a workable law. He said that it was the Secretary of Administration's position that the state does have a meet and confer act. He said that the legislature would probably have to meet with each unit to actually have a collective bargaining act. He said as far as that scope of agreements is concerned there are only two issues that don't have economic impact. These are grievance procedures and wearing apparel. He asked that the law be clarified so the union representatives will know the limitations on negotiations which are faced by the Secretary of Administration and the other state agencies. He said that he felt S.B. 61 was a good place to start from. He indicated that amendments prepared for S.B. 61 during the last legislative session were different from Mr. Powell's suggested amendments. He said he

thought the state was fortunate in that it had not gone too far in liberalizing the law and making it unworkable. He thought that a genuine impasse procedure would be unconstitutional because this would be an unlawful delegation of legislative authority. He said the Governor had appointed a four-man committee composed of himself, Mr. Bibb, the Budget Division Director, Mr. Bickford, the Executive Secretary of the Board of Regents, Mr. Weltmer, the Secretary of Administration to study the issues and make recommendations for improvements in the current law.

Mr. Max Bickford submitted a statement to the Committee. (Attachment No. VIII). He favored a summary dismissal procedure in the act for dismissal of unfair labor practice charges by the PER Board. He said as it stands now in the current act there must be a hearing. On the issue of appropriate units, he noted that the Regents had asked for statewide units.

Mr. Powell was asked a question concerning teacher impasses and if this would cost the state extra money if the PER Board provided personnel to assist in impasse procedures. He indicated he thought the state would eventually have to have a full-time staff of mediators and suggested that the state develop a bureau of mediation now.

The Committee then adjourned.

August 14, 1975

Morning Session

The meeting was called to order by the Chairman, Senator Zimmerman, shortly after 9:00 a.m. After some discussion, the minutes were adopted with an amendment on page 9, "not considered" was replaced by "not adopted".

Mr. R.A. Caraway of the American Federation of State, County and Municipal Employees, indicated that they would not address themselves to the issue of combining the two acts since they do not represent teachers. He said that the AFSCME was the largest public employee union in the country representing approximately 1¼ million people. They are certified to represent approximately 3,000 public employees in state and city government in Kansas. AFSCME represents units at the Kansas Soldiers Home, Osawatomie State Hospital, Emporia State College, Larned State Hospital, and the State Highway Division No. 1, No. 3 and No. 6. He said they have card petitions filed to represent units in the Topeka District Office of SRS and the State Highway Division No. 2. He introduced Mr. Terry Watson, Attorney for AFSCME. Mr. Watson said thought should be given to the rights of public employees.

He said the purpose of the act was to provide a forum for human beings to have input into their employment and to provide an objective resolution of conflicts.

Mr. Watson gave a lengthy example of a 4½ year effort of a group in the Social and Rehabilitative Services offices in Topeka to organize. He said they are still dealing with the appropriate unit question on this particular issue. He stated there are a number of problems including the process of unit determination and the Public Employee Relations Board. The PER Board is authorized five members and only three are currently appointed to it which creates problems obtaining a quorum. He noted there are problems concerning the process of approving agreements also. Representatives of the state agencies refuse to negotiate on items that are covered by regulation, rule or by statute. He said he realized that a state agency could not approve an agreement which would require a rule or law change but they could at least present them to the Finance Council which they were refusing to do.

He said he was opposed to deleting "traditional work practice" from the definition of "grievance". He said the state should either improve the law or replace it.

Mr. Watson suggested that a three member fulltime PER Board be established and additional staff be hired. He urged the state to adopt the model AFSCME Act. He said the AFSCME would submit further amendments in the near future. When asked what the national policy of the AFSCME was, he indicated that it was to support a bill similar to 1974 H.R. 8677 which would establish a Public National Labor Relations Commission.

In response to a question concerning why public employees join the unions, Mr. Watson said it was basically to get some strength to iron out problems with the boss. The question was asked if there was a need to have the right to strike. He said the model AFSCME law does imply that in certain situations strikes would be authorized. He said the way to avoid a strike is to have a workable process for solving disputes.

Mr. Art Veach, representing the Service Employees Union, suggested the deletion of the provision of the law which allows local governing bodies to elect to come under the provisions of the Public Employer-Employee Relations Act. He said he was in favor of changing the membership of the PER Board to three members and making it a fulltime board. He said public employees need either the right to strike or they need binding arbitration. He was in favor of establishing penalties against either party that commits unfair labor practices. He was in favor of specifically defining what items are negotiable. He urged clarification of the negotiation process in regard to classified and unclassified employees. He said the Finance Council should have the responsibility of accepting or rejecting proposals and that not to take any action at all was unworkable. He suggested some type of time limit should be required for Finance Council actions.

In response to a question of whether he was in favor of the model law proposed by the AFSCME, he indicated he felt many provisions of that law were workable. In response to a question, he said that he does know of local governments which have not opted to come within provisions of the act even though a majority

of the employees want to be recognized. He said he was not in favor of compulsory arbitration, but if it was voluntary then it should be made binding. On the issue of open or closed negotiation sessions, he said he thought a better exchange would be had in closed sessions.

Paul Banzet, Council of Kansas Government Engineers and Scientists, submitted a statement to the Committee (Attachment No. IX). In response to a question, he indicated that all members of his association were classified employees and that they were not operating under an agreement at the present time. He explained that the association represents 400 employees in 19 different state agencies.

Mr. Frank R. Davis, National Association of Government Employees submitted a statement to the Committee (Attachment No. X). He indicated that he was in favor of combining the two acts into one act. When asked if he had estimated the cost it would take for employee organizations to pay for the administrative costs of dues deduction, he said he was not sure what this would cost, but if it was reasonable, unions would be willing to pay for it.

Staff pointed out to the Committee that several fiscal notes had been prepared a year ago by the Accounts and Reports Division. Staff agreed to make copies of these fiscal notes available to the Committee. It was pointed out that the original fiscal note was considerably higher than a second fiscal note that was prepared. In response to a question whether the checkoff system would promote union membership, Mr. Davis indicated he felt that it would.

Mr. Lawrence Williams, of the Kansas Association of Public Employees, stated that his association was in favor of combining the two laws and strengthening the PER Board and giving it more staff. He supported binding arbitration and suggested that a member of the Finance Council set in on negotiation sessions. Mr. Williams opposed opening the negotiation sessions to the public. He said KAPE was in favor of a contract bar provision which would assure that if union representation changed that the agreement would still remain in effect unless changed by future negotiations. He said KAPE favored a longer authorization period for contracts subject to a wage reopener. KAPE, he said was in favor of dues deduction and would be willing to pay for the administrative costs. He indicated he was not in favor of the right to strike for employees. In response to questions, he said that in some cases dues deductions are made differently than on a monthly basis. He said, for example, school teachers only work nine months, and therefore they might pay union dues five times a year rather than monthly. He indicated that the association represents approximately 4,000 employees in various government agencies in Kansas.

The Committee adjourned for lunch.

Afternoon Session

Mr. Victor Salem, of the Kansas Higher Education Association, which is a branch of K-NEA, indicated his association was involved with all 46 higher education institutions in Kansas. He said a question asked concerning why people join unions was a basic question. He noted that educational employees join unions to protect their families and to provide job security for themselves. He said that everybody has one small job to do and this means either success or disaster in their own lives. He indicated that the spirit of the law is for the employee and not the state agency. He said he agreed that the state should either have a good law or no law at all. He indicated that his association is currently involved in membership drives at Emporia, KU, and Ft. Hays. As far as specific recommendations, he recommended that the two laws be kept separate. He was in favor of binding arbitration and in favor of removing the local government option to come within provisions of the act. He objected to provisions of S.B. 61, saying it was unworkable. He was in favor of individual units on the university level rather than statewide units. He said that even though five people can call for a unit determination hearing, this is just the tip of the iceberg since many people are afraid to put the name on the line.

On the issue of whether 51% of the people within a unit should be in support of the unit, he said the traditional voting philosophy in America was that the majority of those voting decided an issue in an election.

Mr. Francis Jacobs, of the Public Service Employees Union, said there was a problem with the definition of "conditions of employment" if only wearing apparel and grievance procedures were things that were not regulated by rules and regulations or by statute. He noted that a state negotiation representative had refused to submit to the Finance Council any items that were covered by rules and regulations. He said that a number of problems at the K.U. Medical Center about a year ago were caused by the refusal by the Board of Regents and later by the Personnel Division to submit certain items to the Finance Council on wages. He said his association realized that these state agencies could not bind the state to an agreement, but they had refused even to submit the issue to the Finance Council.

Ms. Lois Smith, teacher, USD 501, said she thought teachers had more responsibility than the Board of Education even for the quality of education. She asked the Committee not to limit the scope of negotiations and favored establishment of impasse procedures in the Professional Negotiations Act.

Mr. Tom Pitner discussed some of the procedures followed by the Finance Council in approving agreements. He said approximately 10 to 12 agreements have been submitted since 1973. He said one of the issues the Finance Council had to deal with concerned whether all of the agreement had to be approved. He noted that

Mr. John Martin of the Attorney General's Office in an informal opinion, indicated that the Finance Council has approval authority only for those parts requiring rules and regulation changes. A second issue the Finance Council has to face concerns agreements involving the Board of Regents. He indicated that six or seven agreements were pending that would require change of rules and regulations or state law. A subcommittee has recommended that all these be disapproved but has recommended that the actual rules and regulations be changed.

Another point raised concerned the time frame for Finance Council approval. He indicated that no direction had been given thus far to the state agencies that parts of agreements that don't need Finance Council approval are effective after the agreement is reached. When asked who determines what required Finance Council approval, he said the team of negotiators for the state determines this. In response to a question he indicated that it was the tactic on the part of the state to refuse to negotiate on items that would require a change in rules and regulations for state law. Without this tactic, he said, the negotiating team would in essence be relinquishing their responsibility and would be letting either the Finance Council or the legislature decide the issue. Mr. Pitner agreed to provide a representative memorandum of agreement to the Committee for their review. Staff also agreed to submit a copy of the Finance Council subcommittee report to the Committee.

After some discussion, the Committee made preliminary decisions on keeping the Professional Negotiations Act and the Public Employer-Employee Relations Acts separate. It was also their consensus to try and preserve the Civil Service system.

Agenda items agreed to for the September meeting included:

1. A presentation of a memorandum summarizing testimony and positions taken by the various conferees at the August meeting, and a memorandum which would compare the Kansas law with the laws of the surrounding states and several other acts.

2. An explanation of the Civil Service system.

3. An explanation by Mr. Powell of his proposed amendments of changes in the current Public Employer-Employee Relations Act.

4. An explanation by Mr. Pitner of amendments to S.B. 61.

5. An explanation by Mr. Bickford of the Board of Regents suggested amendments.

There was then some discussion about improving Committee attendance. The Chairman indicated that he would make an effort to insure that more Committee members attended the next meeting on September 10 and 11.

The Committee then adjourned.

Prepared by Mike Heim

Approved by Committee on:

September 10, 1975
(Date)

Attachment 1

PRESENTATION TO THE SPECIAL COMMITTEE ON
PUBLIC EMPLOYER-EMPLOYEE RELATIONS

Ed Rausch

By The Kansas Association of School Boards

I

ANALYSIS OF PROFESSIONAL NEGOTIATIONS ACT

Since its enactment five years ago, it has become apparent to the school boards across the state that the Professional Negotiations Act needs to be either amended or repealed. The KASB Legislative Committee is studying the premise that teachers should be treated in the same manner as other public employees and given the right to meet and confer with their employers under the Kansas Public Employer-Employee Relations Act. This matter will be considered by the KASB Delegate Assembly in November. If the Professional Negotiations Act is not repealed and teachers placed under the Public Employer-Employee Relations Act, then the P. N. Act should be amended.

Some of the problems and weaknesses in the present Professional Negotiations Act include the following:

(1) What is and is not negotiable should be clearly defined by statute. Teachers and teacher associations have taken the position that anything and everything is negotiable. Boards of Education, on the other hand, believe that only those items directly related to the terms and conditions of a teacher's employment should be negotiable. The negotiable items enumerated in the Public Employer-Employee Relations Act should be incorporated into the Professional Negotiations Law. This would result in all public employees being able to meet with their public employers about the same terms and conditions of their employment.

#1

(2) In many school districts in the state the Professional Negotiations Act has been converted into a collective bargaining act. This has come about mainly because of the attitude of teacher associations and teacher unions which are unwilling to "meet and confer" with Boards of Education, but instead insist upon hard-core collective bargaining type negotiations. The law should be amended to carry out the original intent of the act which was to give teachers the opportunity of presenting to Boards of Education their concerns and their desires.

The present law has created a great deal of friction, hard feelings and even animosity between Boards of Education and teachers. Many teachers ask why can't we go back to the old system? Boards of Education

would very much like to do this, but we are met with opposition from teacher associations and leadership. Such leadership apparently believes it has to follow the tactics of militant labor organizations and unions to obtain from Boards of Education those things they believe the teachers need and deserve. Such is not the case. History has shown that Boards of Education will react more favorable to teacher needs and requests if they are presented in a quite, rational, non-crisis manner. The name-calling and other belligerent tactics adopted by many teacher associations have had an adverse affect and caused Boards to react in a manner less favorable to teachers than if a softer, more conciliatory approach has been used.

(3) The Act should be amended so that it applies only to employees, i.e. teachers primarily. This would mean removing administrators (middle management) from the act. This would be in conformity with all other labor relations laws which apply only to employees and not to management.

(4) The recognition standards established are not clear and should be made more definite and certain. Additionally, a decertification or derecognition procedure should be added to the Act. Whenever a Board of Education is of the opinion that the association recognized for bargaining purposes represents less than half of the members of the bargaining unit, the Board should have the authority to call in the State Board of Education to conduct an election to determine the desires of the members of the bargaining unit. An alternative amendment would be one which would require a recognition election at the beginning of each school year. This provision would have merit in that it would give the teachers new to the school system an opportunity to select the bargaining unit to represent them and would give other teachers an opportunity to change the bargaining unit if they so desire.

(5) If administrators are left under the Act, the Act should be amended so that it clearly provides for only two bargaining units -- one for all non-administrative professional employees and the other for administrators exclusively. The Act should further provide that teachers could not represent administrators and that administrators could not represent teachers at the bargaining table.

(6) Our Kansas Supreme Court has indicated that the Act prohibits strikes, but unfortunately the Act does not describe or define a strike. The definition of a strike and the anti-strike provisions of the Public Employer-Employee Relations Act should be made a part of the Professional

Negotiations Act.

(7) The law should be amended to prohibit certain speced unfair labor practices by both labor and management.

(8) The Act should be amended to provide a termination date for negotiations. This year it became obvious that many teachers' associations throughout the state were stalling and no serious attempts to reach agreement with Boards of Education were being made. In several school districts, the teachers didn't even present their salary demands to the Boards until after May 1. In other school districts, teachers refused to meet when the Board offered to meet with them and refused even to discuss furure meeting dates. This, in our opinion, was an attempt by the teachers to create a "crisis" situation to attempt to demonstrate to the legislature a need for some type of impasse procedure. It is our position that no impasse procedure is needed. There has been very little litigation involving this Act since it was enacted, and that which has come about would not have been prevented had there been a mandatory impasse procedure. The law in its present form is good in that it only requires the two sides to attempt to reach an agreement. The impasse procedure is a method by which the teachers hope to make the Act provide that an agreement must be reached. We again submit that the teachers have presented no valid evidence of any need for any form of impasse procedure. We would point out to the committee that the Act presently provides for an impasse procedure if both sides so desire and this has been successfully accomplished in several school districts, including the Topeka School District.

Boards of Education and their administrative staffs need to know as early as possible which teachers are going to be coming back the following year. They need to know how much to budget for salaries and fringe benefits, therefore, it is important that negotiations end as early as possible in order that Boards of Education and their professional staffs may adequately prepare for the succeeding school year. We would therefore strongly recommend that the Act provide that all negotiations commence by February 1 and cease by May 1 and that if no agreement has been reached by that time, the board shall be free to act in a manner which best serves the interests of the students, patrons and teachers of the school district.

II

COMBINING THE TWO LAWS

Valid agrument can be made that one act can adequately provide for com-

munications between all public employees and their various public employers. Many people contend there is no need for two separate acts -- one for teachers and one for all other public employees. It can be argued that teachers and the teaching profession are not so unique, different or unusual that a special law needs to be provided separately for their needs and desires. Certainly other states have found that one law can satisfactorily cover all public employees.

It would be a very simple procedure to combine the two laws. The procedure would be to repeal the Professional Negotiations Act and add a simple amendment to the Public Employer-Employee Relations Act to provide that it also covers all non-administrative professional employees of school districts and community junior colleges. In many respects the Public Employer-Employee Relations Act is easier to follow than the so-called Professional Negotiations Law in that it is very clear in the area of negotiation of bargaining units, what is and what is not negotiable, what acts are considered to be unfair labor practices, how disputes are to be resolved, what is a strike, etc.

The present Professional Negotiations Law is costing school boards and taxpayers thousands of dollars each year that could otherwise be put into salary improvement of school district employees, additional educational programs, better maintenance of school facilities, more equipment for the students, etc. It would appear to be much more economical for school districts to operate under the Public Employer-Employee Relations Act for all of its employees than it is to presently operate under the two existing statutes. KASB's Legislative Committee is giving serious consideration to recommend the placing of all public employees under the same law. The Public Employer-Employee Relations Act, in its present form, is one that Boards of Education throughout the state can support and can adapt to with little or no difficulty.

We therefore advocate substantially amending the present Professional Negotiations Act. By November, we should have a definite position on the question of repealing said Act and placing all public employees, except administrators, under the Public Employer-Employee Relations Act.

Respectfully Submitted,

KANSAS ASSOCIATION OF SCHOOL BOARDS

no position on combining

Attachment 11

UNITED SCHOOL ADMINISTRATORS OF KANSAS

2825 CALIFORNIA AVE. TOPEKA, KANSAS 66605 913-267-1471

August 13, 1975

JERRY O. SCHREINER
EXECUTIVE DIRECTOR

PRESENTATION TO THE SPECIAL COMMITTEE

ON PUBLIC EMPLOYER - EMPLOYEE RELATIONS

The basic position concerning professional negotiations of the United School Administrators is to support legislation which improves professional negotiations so long as such legislation does not further limit the authority of local boards of education.

We feel that "professional negotiations" has progressed in good faith under present statutes in the majority of school districts in Kansas.

However, we feel that certain weaknesses still exist in the professional negotiations act.

1. The scope of negotiations is too broad. We encourage the legislature to assist in expediting the process of negotiations by specifying terms and conditions of professional service.

2. Clarification is needed in present statutes regarding the submission of items for negotiations. All items to be negotiated must be submitted to the parties involved in complete and full detail by December 1st. Any items submitted by December 1st that are not in complete and full detail should not be considered for negotiations.

3. Present statutes do not specify any deadline for concluding negotiations. This creates problems for employers and boards when negotiations are not concluded by April 15th, the date when employees must notify boards of their intentions to continue or terminate contracts.

As a result of our efforts to gain information, we have concerns about the desirability of combining the Kansas Public Employer - Employee Relations Act and the Professional Negotiations Act.

1. The combination could require boards of education to negotiate with all employee groups and at this time with separate legislation, boards are required to negotiate only with teachers and may elect to negotiate with other employee groups. Forcing boards to negotiate with all employee groups may not be necessary in all districts.

2. It appears there have been fewer problems in interpeting the Professional Negotiations Act than in interpeting the Kansas Public Employer - Employee Act. To combine these at this time could lead to more confusion in relations between boards and teachers.

3. It is our understanding that the present Public Employee Relations Board meets only a few hours per month with delays in handling cases. To increase their case load would necessitate that this board conduct many more hearings involving additional hours, thus adding to state costs.

A board of education in Kansas is more than an employer; it is a legislative body held accountable to the will of the people. A board of education should not be forced to give up its responsibility to the public. A local teachers association with full collective bargaining powers such as those possessed by labor unions can encumber the board's freedom to act in the best interests of students and community. The United School Administrators do not believe that the legislature of Kansas wants any special interest group rather than elected boards of education to control our public schools. Thus we encourage you to make the Professional Negotiations Act a more workable vehicle in seeking solutions to employment concerns.

Bob Setter

Attachment III

POSITION PAPER

From: Kansas-NEA

To: Special Committee on Public Employer-Employee Relations

Re: Proposal No. 45 - Professional Negotiations - School Districts and Community Junior Colleges

When it first met on July 9, 1975, the Special Committee on Public Employer-Employee Relations received a background briefing document which served as the basis for discussion.

During the course of the meeting the suggestion was made and approved that Kansas-NEA submit a written reaction to the paper and set out our current position regarding changes in the present law covering teachers. We believe that by addressing the ten questions which were the focal point of the 1973 Interim Study that we may best serve the Committee's needs. Any unanswered questions the Committee may have can then be answered directly at its next meeting.

The ten questions and our position on those questions follow:

1. Should an impasse procedure be prescribed by law?

Yes. The major fault in the present law is the lack of such a procedure. We believed from the beginning that negotiations in most instances would progress smoothly and that a majority of boards and associations could consumate contracts without any intervention.

At the same time, we felt sure that there would be instances when agreement could not be reached. It was for that reason that we maintained from the outset that impasse procedures should be written into the law. Three Supreme Court and many lower court cases later, we are convinced of the justification of our initial position.

As you know, it is difficult, once negotiations begin, for either side to back away from a position advocated by the groups represented by each side. Negotiations must often begin in an atmosphere where cool tempers prevail. As time goes on and positions solidify, external factors such as pride, stubbornness, and "face" become involved. It is in these instances that mediators or factfinders, trained, skilled and cool, provide their best service.

We desire to have written into the present law an impasse provision in the language of 1975 SB 344, or 1975 SB 571. Either provision would provide the necessary alternative to the difficulty and unpleasantness that result from impasse.

2. Should statutes more clearly specify the meaning of the phrase "terms and conditions of professional service"?

We are willing and eager that time be spent negotiating rather than in trying to determine what is negotiable. We do not believe, however, that the imposition of an arbitrary list is an appropriate solution.

The Shawnee Mission Supreme Court documents provide an alternative to a list in their articulation of our fundamental premise, i.e., that any issue which more directly affects the well-being of an individual teacher, as opposed to its impact on the operation of the school district as a whole falls within the realm of negotiability. We believe that the agency responsible for administering the law could make a determination on a case by case basis.

3. Should a specific percentage of membership be required for an exclusive representative organization in order for it to maintain recognition?

No. We believe that the present law provides ample opportunity for challenge by any prospective competing organization through an election process. The Liberal Supreme Court decision establishes this position.

4. Should a school board be permitted to withdraw recognition of a professional employees' organization for reasons not now specified in the law?

No. Our position is the same as for the previous question. If, after the recognition of an appropriate unit the unit does not meet with the satisfaction of the employees, the election process to replace the recognized unit is available.

5. Should there be a requirement that agreement be reached as a result of negotiations?

No. there should merely be a continuation of the requirement that a good faith effort be made to attempt to reach agreement. If either of the two impasse procedures previously mentioned were written into the present law, agreement would be reached in the vast majority of cases.

6. Should a specific statutory date for the conclusion of negotiations be established?

No. While we recognize that boards of education have a legal requirement to prepare and submit a budget for public hearing by mid-August before submission to the State Board in late August, history has established that boards have negotiated into the summer and have still had ample time to meet the requirements of law. History has also established that many boards do not desire to negotiate and will take any opportunity afforded not to do so. We believe that any such date written into law would provide not only the opportunity but an invitation to refrain from negotiating. This would increase, not diminish, the problems with the law.

The committee is aware that even after a budget is submitted and approved there is still some flexibility in the movement of money within the budget from line to line. Negotiations could continue beyond the time when the budget is approved and submitted to the State Board without encroachment upon the local board's prerogatives.

If the addition of a date for termination must be inserted in the law, July 1, the date specified as the latest date for conclusion of negotiations in the Shawnee Mission decision, would be the earliest termination acceptable, in our view. The July 1 date is also the outside date in the present employer-employee statute.

7. Should the law specifically authorize or prohibit strikes?

We see no justification for changing the language of the present statute. There has, in Kansas, been a dramatic absence of teacher strikes. In the six years the PN law has been operative, approximately 1,000 agreements have been reached. Only one strike has occurred. The test of any statutory language is whether or not it works. The present language, which neither authorizes nor prohibits strikes, works.

8. Should statewide agreements be developed on such matters as salaries and related income items?

No. Boards and teachers best know the prevailing needs in the wide variety of communities in our state. The problems pendant in such a proposal far outweigh the benefits. We say this with certainty for the teachers, and we believe it to be true for boards of education.

9. Should professional employees of schools be included within the scope of the general collective negotiations law?

No. The employer-employee relationship between boards and teachers is unique as it is contrasted with the relationship between other public employees and the agencies which employ them. All local boards of education in Kansas are the same size; each is selected in the same basic way - through election; the source of their funding is uniform under a body of law specifically designed for schools; jurisdictional decisions follow a prescribed course for all boards. Teachers, because of their goals, have a thrust and direction which does not vary markedly from one school district to another.

Contrast that description with the multitude of other governance agencies which vary in size, selection, responsibility, funding and in most other ways. The people they employ have associations, goals, and aspirations which, while not lessening the validity of their desires, increase the problem of writing one law which covers them all.

Why muddy an already difficult to legislate area by throwing in yet another diverse element?

The PN law, properly amended, can serve boards and teachers well.

10. Should the law contain a listing of certain unfair employee or employer practices?

Yes. These prohibited practices are the groundrules which are necessary for a law to function efficiently since they deal with the day-to-day problems which arise as boards and teachers use the law. Absence of these groundrules provides an open invitation for boards or teachers to place their own interpretations on the law. Any time spent in resolving these varying interpretations is time taken away from negotiations. Inclusion of prohibited practices would expedite the process of reaching agreement under stipulated rules of behavior understood from the outset by both parties.

This would be especially true if, as we believe should be the case, the agency responsible for administering the law were given latitude in making determinations

concerning prohibited practices not actually listed in the law.

If you have questions concerning these or other positions, representatives of Kansas-NEA will be present at the August meeting of your committee to answer those questions.

Attachment IC

NEA-WICHITA • NEA-WICHITA • NEA-WICHITA • NEA-WICHITA

PHONE 685-2397

906 George Washington Drive
Wichita, Kansas 67211

President - CLAUDIA M. JIMENEZ
Executive Director - WILLARD MOORE
Assistant Executive Director - TASH SOGG
Financial Secretary - MAXINE HILTON

NEA-WICHITA

LEGISLATIVE INTERIM COMMITTEE
Proposal #45 Professional Negotiations

NEA-Wichita, the duly authorized representative for 2600+ professional employees of USD 259 for the purposes of negotiations, appreciate the opportunity to appear before this committee to make our concerns known. This is the third interim legislative study conducted on proposals for changes in the law enacted in 1970 and perhaps the events of the past five years, and the preceeding legislative studies will provide adequate information, data and awareness to enable passage of legislation which will more clearly define negotiations.

Should an impasse procedure be prescribed by law? The 1971 and 1973 studies among other things reflected a need for resolution of impasse, scope of negotiations clarification, strike status, mandatory reaching of agreement, recognition, and listing of employee and/or employer unfair practices. It appears to NEA-Wichita that an impasse procedure incorporating Mediation and Fact Finding could very well solve the problem of reaching agreement. As the situation presently exists neither side can declare an impasse and seek any rational relief through a third party. However, the Board of Education can issue contracts unilaterally, which in effect declares an impasse, but does not provide any vehicle for resolution, it becomes a take it or leave it action by the Board of Education.

Let me review some of the facts associated with the NEA-Wichita, USD 259, negotiations this past year.

1. The Board on May 20, 1975 adopted a salary schedule.
2. On May 20, 1975 only teachers returning contracts by June 13, 1975 would be covered by the adopted salary schedule.
3. On that same date the Board adopted all of the 1973-75 Teacher Employment Agreement with changes in Disability Income Protection which eliminated a maternity exemption, group life insurance increase, $5.00 per month toward payment of Blue Cross/Blue Shield, increased temporary accumulative leave days (sick leave), increased allowance for damage to an instructors' clothing or personal effects, adopted a school calendar, and changes all 1973-75 contract references to 1975-76.

In that unilateral issuance of contracts the Board failed to recognize and adopt twelve (12) tentatively agreed to revised articles and one new article.

On June 2, 1975 the Board of Education adopted a new resolution including these thirteen (13) tentatively agreed to articles. In that resolution the Board specifically used the term "impasse". The Board President issued a statement which said, "teachers must sign and return contracts by June 13 to be eligible for the benefits of the new salary schedule or new contract." In addition, the President of the Board said, "Tonight's action of the Board will send its Team back to the negotiating table after June 13 to consider only -- and I repeat only -- the incorporation of those articles which had been tentatively agreed upon by both teams. The articles which were tentatively agreed to will be included in the contract only if the negotiating teams reach agreement by June 20 and only if ratified by the teacher unit by July 7."

The reason for this brief statement concerning the recent negotiations between teachers and the Board of Education of Wichita (USD 259) is to demonstrate the

need for an impasse procedure within the negotiations law. NEA-Wichita sought mandamus relief but were able to resolve the differences with the Board of Education in judges chambers.

We (NEA-Wichita) submit the provisions of resolving impasse contained in S.B. 344 is appropriate.
(Attach Wichita documents used as reference)

We submit the April 15 date may be too early for automatic declaration of impasse. Since the Legislature determines the budget authority of school districts there will be times when that budget authority determination will come very late in a legislative session leaving about two weeks for determination of economic items subject to negotiations. Since many proposals will be in the economic domain and many modifications of proposals may be caused by school district budget authority it appears the April 15 date should be extended. Such an extension would not place the impasse mechanism time constraints beyond a reasonable date.

Should statutes more clearly specify the meaning of the phrase "terms and conditions of professional services?

The major concerns of NEA-Wichita in this area are:

1. Maintenance of existing negotiated agreement provisions, and
2. Need for flexibility within the scope of negotiations because of the the continual changing education program.

Law should not strike provisions from an existing contract between teachers and Boards of Education. Many of the provisions of the Wichita Teachers' Employment Agreement were reached prior to the present negotiations law. Such agreements were reached because of a mutual concern and respect for the relationships between the parties. In the present law there is a savings clause. In the proposed 1975

legislation there is a complete absence of such reference. I would suggest a review of the contents of existing agreements between teachers and boards of education be carefully examined prior to any limitation on the definition or specification of the meaning of "terms and conditions of professional services". Such research could be beyond the boarders of this state, but most include any existing agreements within the boundaries of this state.

There is a need for great flexibility in the scope of negotiations. Local educational programs curriculum, student population, federal programs, alternative programs and pressure for change from citizens and parents create a constant change in the demands made upon a teacher and employment conditions. We would concur the key, "is how direct the impact of an issue is on the well-being of the teacher as opposed to the effect on the operation of the district as a whole". This is a hard line to draw but the uniqueness of each issue and the hard data surrounding each issue should prevail over a long run period of time. The inclusion of an impasse procedure in the law should also provide an avenue by which facts and data can be weighed to make such decisions.

Unfair employee or employer practices.

It is unfortunate there is not a better term than "unfair" to be used in this area, but a basic understanding of tactics which can interfer with a negotiations procedure, require that some rules be established. The intent of such rules should be to preserve the integrity of the process and provision should be made to identify and list such "unfairness" as the process continues from year to year.

Administratively, it is possible to provide for identifying and cataloging such practices. NEA-Wichita urges the legislature to make such provisions in the

law or by administrative application in order that the process can continue without the delays such unfair practices can create.

We have attempted to stay within the conceptual domain of what we perceive to be needed as modifications to the present law. We appreciate the opportunity to make our concerns known and urge this committee to make recommendations and propose legislation which will insure the negotiations process and maintain the dignity of all parties to the procedure.

Respectfully submitted:

Bill Moore, Executive Director)
Claudia M. Jimenez, President) NEA-Wichita

Attachment C

Remarks made to the Special Committee on S.B. 571

August 13, 1975

by Evelyn Whitcomb, Past Pres. USD 259

Gentlemen: I appreciate your invitation to come here today to share with you some thoughts I have on Senate Bill 571- Professional Negotiations Act. I come as a layman having just completed sixteen years on a Board of Education. I am not anti-teacher; I was a teacher and loved it. But I must agree with another teacher, who served on our Board who said,"I never realized how unreasonable teacher leadership could be. When I refer to "teachers" I do not mean those in the classroom doing a great job; I mean Teacher Organization paid leadership. I am not a lobbist, nor president of an organization, but one who has watched the changes in our American Way of managing Schools-- namely the Board of Education. This Board is elected by the people,; it is responsible to the people and can be removed by the people. It is a democratic way, by which the taxpayers, parents, citizens of each community can exercise some control over their public education.

Through the years I have noticed a growing movement, among teachers' organizations to get a third party or parties into the decision making. These persons come from out of the community; they return to their own home towns; they are not responsible to the citizens in the community and so do not have to answer in anyway for their decisions. So my first plea is to renounce any plan which allows the decisions of any third party from outside to make the final decision. Your Boards of Education must make final decisions and be responsible for them to the community.

Secondly, I would urge you to confine the scope of bargaining (negotiations) to a very limited number of subjects. Lines 14-21 of the Bill 571 limit negotiations. I would urge you to limit the list to those items found there. I want to suggest some items that would not be negotiable. (1) Class size (this determines the tax levy) (2) Policy making power of the B.O.E. (3) Job descriptions (made by BOE and Administration) (4) Teacher assignments as to location etc. (5) School Calendar (when school beginsand ends)

(6) School-day times. (7) Rights of management to run the school. Thes e just some of the items which must be left to the Board of Education and Administration.

Gentlemen, as the fifth speaker, I do not want to repeat what has been said. I honestly believe that every move toward mediation (third party) or fact-finding(outside party) as honorable as they sound in conversation, is a weakening of our American Board of Education system. Some authorities have warned us for the past 10 years that Boards are slowly and surely losing their effectiveness and their power, by the inroads of these outside forces. It is easy to see how busy people, serving for free on Boards in their communities, could tire quickly of the bickering, the arguing, the hours of stalling and yelling and confusion often carefully planned to frustrate, and say, "Oh let the mediator or the fact-finders come in and settle it for us. In Pennsylvania, they have mediation and fact-finding, and the first year $\frac{1}{2}$ of the schools let them settle the problems. But who is gaining power and who is losing effectiveness? Teachers' organizations are gaining and the Boards are losing. To be sure to always leave the final vote to the Boards will help some--where Boards are informed and strong enough to hold out. I would like to see you cut out lines 25-26, which would permit tired Boards to give in to the binding recommendations of an outside party or parties.

Fact-finding sounds very fair. Everyone wants the facts. But fact-finding is not often the issue. Both sides agree pretty much as to what the facts are. Denver has a fact-finding law. Their negotiator told us last year that when the fact-finder reported in favor of the BOE, the teachers would not accept the results. The real nitty-gritty comes in determining the priorities for spending the money available. Shall the lion's share go to salaries? How much shall we allow for program and for materials--for needs beyond the teacher, and the Administration --- to the Child. I sincerely believe that mediation and fact-finding are simply ways to get the "foot in the door" on the part of Teacher Organizations so that gradually the Boards will be so ineffective that the teachers will be

running the entire Educational System in each Community. I beg you to remember that any time you allow someone else, other than the local Board of Education, to make the final decision, you are departing from the democratic way, the American Way of running our schools.

There is a strong movement on now in Washington D.C. to get the teachers placed under the National Labor Relations Board. Frank Thompson, of New Jersey, a Congressman very dependent upon Unions of his state, for his election, introduced this House Bill No. 77. Last February, as a member of the National Legislative Network, I heard him tell why he had introduced the Bill. He said, "teachers are becoming so militant, so demanding, we might as well let them run things their way and have some peace." Then Senator Ashworth, who opposed the Bill explained what would happen if Collective Bargaining as the NLRB sees it, takes over in our schools. He warned that every time we take authority away from local Boards we are paving the way for this kind of Collective Bargaining, which would increase strikes and allow negotiations on subjects which are now the responsibility of School Boards.

As elected officials, you know how important it is to keep power and responsibility in the hands of those who must be accountable to the people. Thank you for your patient attention! Let's keep Boards of Education in the saddle of authority.

(Given to Mike in Topeka Aug. 13, '75)

Attachment VI

STATE OF KANSAS

Public Employee Relations Board

701 JACKSON—OFFICES 202-204
TOPEKA, KANSAS 66603

ROBERT F. BENNETT
GOVERNOR

WILLIAM B. McCORMICK
NATHAN W. THATCHER
PHYLLIS BURGESS

JERRY POWELL
Executive Director

August 12, 1975

Mr. Michael Heim
Legislative Research Department
5th Floor, State Capitol Building
Topeka, Kansas 66612

Dear Mr. Heim:

This is in response to your letter dated July 16, 1975, inviting my comments on the various problems of the Public Employer-Employee Relations Act.

As you will note in the attached proposal, we have attempted to clarify numerous areas he Act. However, this letter will discuss only those substantial changes that we are recommending.

We are submitting one proposal which will cover all public employees in Kansas. There are truly few differences between the Professional Negotiations Act and the Public Employer-Employee Relations Act. We see no difficulty in drawing one comprehensive "meet and confer" act containing impasse procedures and prohibited practice clauses. In order to place professional school district employees under the provisions of K.S.A. 75-4321 et. seq., two simple amendments are required: first, we must remove the statement, "professional employees of school districts as defined by subsection (c) of K.S.A. 72-5413" from K.S.A. 75-4322 (A) and subsection (E) of K.S.A. 75-4327 must be amended to include the last paragraph of K.S.A. 72-5420.

Here follows a listing of those changes we have made in the Act.

1. K.S.A. 75-4321 (C)

   This section allows local governmental subdivisions to either elect or not elect to bring their employees under the provisions of the

Public Employer-Employee Relations Act. The section is in direct conflict with subsection (A-2) of section 75-4321 which states..... "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;".... We are convinced that some employees will be forced to take drastic action, such as work slowdowns or strikes, in order to have the right to organize which is guaranteed to other public employees. The only election which should be conducted to determine whether employees organize or not is the certification election conducted by the Board for the employees.

2. K.S.A. 75-4322 - This section requires the following changes:

(A) Public Employees - This definition needs to reflect the inclusion of professional school district employees.

(b) The parties of a memorandum of agreement should not be allowed to provide for a definition of supervisory employees. The Public Employee Relations Board devotes considerable time in determining appropriate units and under this provision, the parties can completely redesign a unit. The meet and confer process could become completely unworkable, i.e., impasses could result because of this issue.

(H) Representative of the public agency - This definition has been rewritten to comply with the concept of coalition meet and confer as set forth in section K.S.A. 75-4330. By rewriting we preserve civil service rules and regulations and the statewide pay plan. We have suggested that the Secretary of Administration be designated "representative of the public agency" for all classified employees.

In doing this, we centralize the authority for meet and confer and provide uniformity of conditions of employment. Also, many employee units cut across agency lines, thus precluding any one agency head from setting conditions of employment for all employees within the statewide unit.

We provide for the appropriate "representative of the public agency" for unclassified employees also. The State Board of Regents unclassified positions are governed by the State Department of Administration and are only accountable to the Legislature on budget matters. Likewise, other employers of unclassified personnel, such as the Attorney General, the Secretary of State, etc., are covered in our proposal.

(J) 'recognized employee organization' has been deleted from the entire act since the Board has found it impossible to consider employee problems unless the formal process of certification has been utilized.

(N) Memorandum of Agreement - This term has been redefined to indicate that no agreement is binding upon the parties until all requirements of K.S.A. 75-4330 have been fulfilled.

(U) Grievance - This has been amended to exclude the filing of a grievance by a supervisory employee, inasmuch as supervisory employees have no other status under the Act. Further, we have suggested that a "traditional work practice" be removed as a grievable item unless some definition of "traditional work practice" is incorporated into the Act.

(X) State Agency - We have removed this term since state agencies have no individual standing under the new concept of representative of the public agency.

3. K.S.A. 75-4323

(B) Any reference to the Department of Administration providing assistance to the Public Employee Relations Board has been removed because the Public Employee Relations Board is not a part of the Department of Administration, but a separate agency. The Public Employee Relations Board is serving in the role of third party - neutral - and, therefore, should not be dependent upon labor or management.

4. K.S.A. 75-4324

(B) We have included a provision for dues check-off which will make this matter a subject for meet and confer. We have also added a provision which requires an employee organization to pay all costs incurred by the public employer for deduction of dues. Dues deduction can become a valuable tool for management during the meet and confer process.

5. K.S.A. 75-4327

This entire section has been rewritten and is in chronological order. This is the process by which public employees may petition the Board for unit determination and then bring about the certification election. The provision which requires an employee showing of interest of thirty (30) percent in an appropriate unit is retained as is the requirement of having "No representation" as an alternative in all elections except a runoff election.

We have added a provision which limits the time in which a question can be raised relating to certification. In the event there is an existing memorandum of agreement with a term of more than one (1) year, no question relating to certification can be raised until just prior to the expiration date of the memorandum of agreement.

6. K.S.A. 75-4328

This section has been incorporated with K.S.A. 75-4327.

7. K.S.A. 75-4329

This section has been eliminated.

8. K.S.A. 75-4330

This section has been rewritten to reflect various procedures utilized by public employees-employers in the meet and confer process.

Section A reflects the procedures for meet and confer and ratification of memorandum of agreement.

Subsection 1 of A refers to the procedures utilized by counties, cities, and school districts (both professional and non-professional employees)

Subsection 2 of A refers to the procedure utilized by all state classified employees (for subjects affecting civil service rules and regulations and the state-wide pay plan, and subjects which do not affect civil service rules and regulations.

Subsection 3 of A refers to procedures utilized by unclassified employees under the State Board of Regents.

Subsection 4 of A refers to the procedures utilized by all other unclassified Kansas employees.

This section has received considerable attention due to the many problems which were discussed by the 1974 Legislature interim study committee. Further, there is increasing pressure by state employees to set a procedure for ratification of memorandums of agreement by the State of Kansas. We have used the concept as proposed in Senate Bill 61. However, we have refined the process to eliminate unnecessary delay in arriving at a memorandum of agreement.

9. K.S.A. 75-4331

This section has been incorporated with K.S.A. 75-4330.

10. K.S.A. 75-4332

This section in its original form is unworkable because of the time limitations involved. An impasse should be deemed to exist at least forty-five (45) days prior to budget submission date. This would afford the impasse procedure of mediation and fact-finding adequate time to resolve the dispute prior to the budget submission date. We have also recommended more reasonable time limitations in each step of the impasse procedure.

11. K.S.A. 75-4338

We have recommended a new section which is simply a savings clause for existing memorandums of agreement.

Changes less significant than these just outlined have been made in the entire Act. wever, the eleven (11) above are significant and important changes which we feel are imperative in bringing the Act to a meaningful and workable form for all parties. Thank you for allowing me the opportunity of enumerating the changes in the Public Employer-Employee Relations Act.

If you have any questions, please contact me.

Sincerely,

Jerry

Jerry Powell
Executive Director

JP:cm

Enclosure: Two charts
Proposal

Attachment VII

STATE OF KANSAS

Department of Administration

DIVISION OF PERSONNEL

801 HARRISON ST.—TOPEKA 66612

August 13, 1975

Special Committee on Public Employer-Employee Relations
State Capitol Building
Topeka, Kansas 66612

Gentlemen:

We appreciate your invitation to appear before the Special Committee concerning problems experienced with administration of the Public Employee Relations Act over the past two and one-half years. These problems relate to certain areas of the act which appear to require clarification.

1. We have considered, in our administration of K.S.A 75-4321, that the State of Kansas, not the individual agency, was the "public employer" for employees of the State of Kansas. Accordingly, we have viewed that the "representative of the public employer" was the team of persons specified in 75-4322(h). We have also considered that the Secretary of Administration or his designee was the "head of the team". We have viewed the team as having the authority to execute memorandums of agreement on behalf of the public employer and we have considered such memorandums of agreement to be effective upon the signature of the parties involved, except for those items in the memorandum of agreement which may require specific approval of the State Finance Council and/or the Legislature (75-4330(c)). I refer here to questions principally of pay and/or maintenance of rules and regulations. In reference to classified employees, the question and identity of the public employer has caused the state the problem of employee organizations dealing with or attempting to deal with individual agencies directly on conditions of employment. This problem exists because the language of the statute is neither clear nor uniform on this matter. We would ask that the law be amended to make absolutely clear that the State of Kansas, not a particular individual agency, is the public employer, especially if the scope of meet and confer is to continue to be those conditions of employment identified in K.S.A. 75-4322(t).

There is a special problem that exists for unclassified personnel under the authority of the Board of Regents, particularly the faculty at state colleges and universities. Although the Department of Administration through the Division of Budget has a very vital interest in the meet and confer process with faculty members, neither the Department of Administration nor the State Finance Council have had any direct responsibility or control over the personnel management policies and practices among faculty personnel. We think the law ought to recognize this difference and in some manner respond to the meet and confer process with faculty differently than with classified employees.

2. Section 75-4322(m) and (t) - Our conduct of meet and confer meetings has been carried on with the basic legislative intent in mind that the Public Employees Relations Act is a "meet and confer" act as distinguished from a "collective bargaining" act, and that after good faith meet and confer discussions are completed, the public employer retains unilateral final decision-making authority. Employee organizations have pursued a collective bargaining approach desiring to negotiate changes on the conditions of employment which are fixed by statute and regulations having the force and effect of law. This causes endless debate and confusion at meet and confer meetings. We recommend to the Committee that the act be amended to make it abundantly clear that the act is in fact a "meet and confer" program and that in all events the public employer retains unilateral decision-making authority. Additionally, we recommend that the act be amended to more clearly indicate that "conditions of employment" which are fixed by statute or rules and regulations having full force and effect of law are not subject to negotiation.

3. K.S.A. 75-4322(u) defines a grievance, included in which is the term "or traditional work practice". This term does not lend itself to definition and should be stricken from the definition of grievance. Without this phrase the language is a standard grievance definition and should be eminently satisfactory. With this phrase, the state is exposed to serious and substantial potential difficulty every time an existing practice or activity is changed in any agency having an appropriate unit. Even if the term is excluded in the memorandums of agreement, and we have so excluded it, the phrase still remains

in the law and there is the continuing possibility of its application. In the employees view, it gives them a vested interest in the continuation of current or past practices that the state may wish to change at future dates and we feel it is contradictory to the management rights provision of the law (75-4326, and particularly sub-section (g)). We recommend to the Committee that the act be amended to eliminate the phrase "or traditional work practice".

4. Section 75-4322(q) and 75-4330(b) of the Act indicates that the decision of an impartial arbitrator may be final and binding. This poses the problem of subjecting statutory matters which may be contained in a memorandum of agreement to interpretation and binding decision of an outside arbitrator. We refer here specifically to the fact that if a memorandum of agreement is silent on the grievance procedure, then the Public Employee Relations Board is authorized to establish a grievance arbitration procedure and to make the arbitrator's decision under those circumstances final and binding. In order to escape the implementation of this section, we have seen to it that the memorandums of agreement did contain a grievance procedure, as in fact they should, but in the event the parties don't agree on a grievance procedure, then we do not believe that this section should automatically come into effect, especially the binding arbitration. The provision has the effect of penalizing the parties for failure or inability to resolve a grievance administration article and places the state in the position of having binding arbitration thrust upon it, when such a provision would otherwise normally be objectionable. Since the memorandums of agreement frequently include copies of the Department of Administration Rules and Regulations, the effect of this section could be that an arbitrator would be required to arbitrate a rule or regulation that has the force and effect of law. We recommend to the Committee that the act be amended to reflect clearly a statement to the effect that the decision by an arbitrator may in no event vary the terms and conditions of express statutes or rules and regulations adopted as having full force and effect of law.

5. Section 75-4327(c) and (d) - Although the law repeatedly refers to employee organizations representing "a majority of employees in an appropriate unit", the process spelled out in the law does not necessarily assure that this will be the case. The law

requires thirty percent show of interest on the part of employees in the unit to establish a basis for an election and then the law provides that a representative of the employees shall be chosen on the basis of the majority of those who vote in the election. It is quite possible that an employee organization can receive certification and representation status without ever demonstrating that it is representative of a majority of the employees in the unit. We note that in K.S.A. 72-5413 et. seq., the thirty percent of the appropriate unit requirement also requires employees signing the petitions to be bona fide members of an organization seeking representation status, and we would suggest that the Committee consider amending this law to either reflect a similar requirement or to require that an employee organization receive a majority vote of the employees in the unit before receiving formal certification.

6. Section 75-4327(e) provides guidelines for unit determination. A year ago the Public Employee Relations Board held hearings for the determination of appropriate units. At that time there existed the potential of hundreds of units covering state employees. During the hearings the state proposed fourteen broad statewide units, encompassing all classifications of state employees. This proposal was made so that conditions of employment as enumerated in the act, which are for the most part subjects of statewide significance, could be discussed in a meaningful manner at meet and confer sessions. The result of the hearings was a board order determining fifty-one units. Since that time, three additional units have been determined. Fifty-four individual units still present a problem in holding meaningful discussion on the conditions of employment with statewide application. There remains potential for more units of unclassified employees and/or further breakdown of classified employees in the existing fifty-four units. At present, slightly less than half of the fifty-four units have been organized. If in the future further organization occurs, it may be necessary to recommend to the Committee that the act be amended to provide for a coalition-type meet and confer process. For the present, we recommend to the Committee that the act be amended to limit appropriate units to a number at or near the present level.

7. We do not feel it appropriate for the Professional Negotiations Act of teachers and the public employer-employee relations act of other employees be combined.

   1. The Professional Negotiations Act is strictly local, relating to a narrow group of employees operating within special provisions relative to that type of arrangement. The Professional Negotiations Act also operates under the constitutional constraint that the local control of school districts is vested in the locally elected board.

   2. Neither law has operated for a long period of time, limiting experience with the laws.

   3. There is undoubtedly a substantial cost involved in any such merger.

   4. The increased workload could have a significant impact on the ability of the part-time Public Employee Relations Board to adequately serve all parties.

   In view of the above, we recommend that the two acts not be merged.

Lowell Long dh
Lowell Long
State Director of Personnel

attachment VIII

STATEMENT OF

MAX BICKFORD
EXECUTIVE OFFICER
KANSAS STATE BOARD OF REGENTS

MERCHANTS NATIONAL BANK
SUITE 1416
TOPEKA, KANSAS 66612

PHONE: 913-296-3421

BEFORE THE

1975 INTERIM SPECIAL COMMITTEE ON
PUBLIC EMPLOYER-EMPLOYEE RELATIONS

WEDNESDAY, AUGUST 13, 1975

CHAIRMAN ZIMMERMAN, MEMBERS OF THE COMMITTEE:

I WANT TO THANK YOU FOR YOUR INVITATION TO APPEAR BEFORE THIS COMMITTEE AND FOR THE OPPORTUNITY TO EXPRESS OUR VIEWS ON THE PROBLEMS AND WEAKNESSES OF THE CURRENT PUBLIC EMPLOYER-EMPLOYEE RELATIONS ACT AS THESE PROBLEMS AFFECT THE BOARD OF REGENTS. IN ACCEPTING THIS INVITATION TO APPEAR, I HAVE DONE SO WITH A SINCERE GOAL OF NOT BEING NEGATIVE IN OUR COMMENTS, BUT INSTEAD, TO BE CONSTRUCTIVE WITH SOME POSITIVE RECOMMENDATIONS THAT WE BELIEVE WILL CORRECT SOME OF THE PROBLEMS AND WEAKNESSES THAT THE REGENTS HAVE ENCOUNTERED SINCE THIS ACT BECAME EFFECTIVE.

AS SEVERAL MEMBERS OF THIS COMMITTEE MAY BE AWARE, THE REGENTS HAVE HAD CONSIDERABLE EXPERIENCE WITH OUR PRESENT PUBLIC EMPLOYER-EMPLOYEE RELATIONS ACT OVER THE PAST THREE YEARS. TO ILLUSTRATE THIS, LET ME POINT OUT THAT PERB ORDER #1 APPROVED THE FIRST UNIT OF STATE EMPLOYEES AT FORT HAYS KANSAS STATE COLLEGE IN THE FALL OF 1972. SINCE THEN, WE HAVE HAD AT LEAST ONE UNIT APPROVED AT EACH OF OUR SEVEN REGENTS' INSTITUTIONS WITH OTHER PETITIONS NOW

PENDING BEFORE THE PERB. AT LAST COUNT, APPROXIMATELY HALF THE TOTAL NUMBER OF MEMORANDUMS OF AGREEMENT NEGOTIATED WITH STATE EMPLOYEES WERE WITH REGENTS' INSTITUTIONS. I BRING THESE FACTS TO YOUR ATTENTION TO ILLUSTRATE THE CONSIDERABLE EXPERIENCE AND FAMILIARITY OF THE REGENTS WITH OUR PRESENT ACT AND OUR FIRST HAND KNOWLEDGE OF SOME OF ITS SHORTCOMINGS AND WEAKNESSES.

OVERALL, OUR CURRENT KANSAS ACT HAS A FAIRLY SOUND BASIS SINCE IT WAS PATTERNED ON THE COMPREHENSIVE MODEL STATE EMPLOYER-EMPLOYEE RELATIONS BILL DRAFTED IN MAY 1970 BY THE NATIONAL ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS (ACIR). DESPITE THIS SOUND BASIS, OUR EXPERIENCE WITH THIS ACT HAS SHOWN THAT IT NEEDS FURTHER MODIFICATIONS AND REFINEMENTS TO MEET OUR NEEDS IN KANSAS. TO BE MORE SPECIFIC, I WILL FIRST CITE THREE AREAS OF MAJOR CONCERN TO THE REGENTS AND THEN I WILL DISCUSS EACH IN MORE DETAIL. FIRST, THERE IS A LACK OF ADEQUATE STATUTORY PROVISIONS IN THE CURRENT ACT TO COPE WITH THE SIGNIFICANT DIFFERENCES BETWEEN STATE CLASSIFIED EMPLOYEES AND UNCLASSIFIED EMPLOYEES AT REGENTS' INSTITUTIONS--WHICH DIFFERENCES ARE THEMSELVES STATUTORY. SECOND, THERE ARE WEAKNESSES OR OMISSIONS IN SEVERAL OF THE VITAL DEFINITIONS IN THIS PRESENT ACT. THIRD, THERE IS NO REQUIREMENT FOR SUBMISSIVE EVIDENCE OF A SUBSTANTIAL INTEREST IN REPRESENTATIVES BY THE MEMBERSHIP OF THE PROPOSED UNIT BEFORE THE STATE INCURS THE TIME AND EXPENSE OF A UNIT DETERMINATION HEARING.

ON THE FIRST ISSUE, NAMELY STATUTORY CONFLICTS, K.S.A. 76-711 ET. SEQ. PROVIDES THAT THE STATE BOARD OF REGENTS AND THE CHIEF EXECUTIVE OFFICER OF THE REGENTS' INSTITUTIONS HAVE AUTHORITY OVER CONDITIONS OF EMPLOYMENT FOR UNCLASSIFIED EMPLOYEES OF REGENTS'

INSTITUTIONS. OUR PRESENT ACT DOES NOT PROVIDE FOR THIS SITUATION. A SIMILAR STATUTORY PROBLEM EXISTS FOR THE DEPARTMENT OF ADMINISTRATION. KANSAS STATUTES ESTABLISHED AND PROVIDE FOR A STATE CIVIL SERVICE SYSTEM WHICH ENCOMPASSES MOST CONDITIONS OF EMPLOYMENT. OUR CURRENT PUBLIC EMPLOYER-EMPLOYEE RELATIONS ACT ALSO ENCOMPASSES MANY OF THE SAME CONDITIONS OF EMPLOYMENT, HENCE THE PROBLEM OF WHICH STATUTORY PROVISIONS SHOULD PREVAIL IN CASE OF CONFLICT. TO SOLVE THESE STATUTORY CONFLICTS FOR THE REGENTS, I AM HEREBY SUBMITTING, FOR THIS COMMITTEE'S CONSIDERATION, SOME SUGGESTED AMENDMENTS THAT WOULD ELIMINATE THESE STATUTORY CONFLICTS FOR THE REGENTS. (SEE ATTACHMENT #1).

IN SUBMITTING THESE RECOMMENDATIONS, I FEEL THEY ALREADY HAVE THE ENDORSEMENT OF MANY OF THE INTERESTED PARTIES INCLUDING THE UNIONS INVOLVED. THE WAY THIS CAME ABOUT, EARLY LAST SPRING AT THE SUGGESTION OF SENATOR DOYEN AND SENATOR SOWERS, ALL INTERESTED PARTIES INCLUDING THE STATE PERSONNEL DIVISION, MY OFFICE AND THE UNIONS INVOLVED WERE REQUESTED TO MEET WITH THE PERB EXECUTIVE OFFICER TO ATTEMPT TO WORK OUT STATUTORY LANGUAGE THAT WOULD BE ACCEPTABLE TO ALL AND THAT COULD THEN BE SUBMITTED TO SENATOR SOWER'S COMMITTEE FOR CONSIDERATION. ALL PARTIES PARTICIPATING IN THIS PERB CONDUCTED MEETING DID AGREE TO THE LANGUAGE THAT I HAVE SUBMITTED IN OUR ATTACHMENT #1.

TURNING TO THE SECOND ISSUE, K.S.A. 75-4322, DEFINITIONS, HAS SEVERAL VITAL DEFINITIONS THAT ARE WEAK OR HAVE OMISSIONS AND THEREFORE NEED AMENDMENT. THEY ARE AS FOLLOWS:

"(A) 'PUBLIC EMPLOYEE' MEANS ANY PERSON PERMANENTLY EMPLOYED BY ANY PUBLIC AGENCY, ETC."

TO THE ABOVE DEFINITION, I HAVE PROPOSED ADDING THE WORD

PERMANENTLY BEFORE THE WORD "EMPLOYED" TO EXCLUDE STUDENTS FROM THE PROVISIONS OF THIS ACT. PERSONS RECOGNIZED AS STUDENTS ACCORDING TO REGENTS' POLICY SHOULD NOT SIMULTANEOUSLY BE RECOGNIZED AS "PUBLIC EMPLOYEES" UNDER THIS ACT. OTHER STATE AGENCIES MAY ALSO FACE A SIMILAR PROBLEM IN CASE OF STUDENTS WHICH THIS COULD SOLVE.

"(H) 'REPRESENTATIVE OF THE PUBLIC AGENCY'", ADD TO THE END OF THIS DEFINITION THE FOLLOWING:

"PROVIDED, HOWEVER, IN THE CASE OF UNCLASSIFIED PERSONNEL UNDER THE SUPERVISION OF THE STATE BOARD OF REGENTS, 'REPRESENTATIVE OF THE PUBLIC EMPLOYER' MEANS A TEAM OF PERSONS, THE HEAD OF WHICH SHALL BE DESIGNATED BY THE CHIEF EXECUTIVE OFFICERS OF THE REGENT INSTITUTION DIRECTLY INVOLVED AND SUCH OTHER PERSONS AS MAY BE DESIGNATED BY THE CHIEF EXECUTIVE OFFICER."

"(T) 'CONDITIONS OF EMPLOYMENT'". I RECOMMEND DELETION OF THE WORDS "RETIREMENT BENEFITS, INSURANCE BENEFITS," FROM THIS DEFINITION BECAUSE IT REQUIRES STATE AGENCIES TO "NEGOTIATE" ON THESE SUBJECTS OVER WHICH THEY HAVE NO CONTROL. THE CONTROL IS IN HANDS OF THE LEGISLATURE AND THE COMMITTEE ON SURETY BONDS AND INSURANCE.

"(U) 'GRIEVANCE'". I RECOMMEND DELETION OF THE WORDS "OR TRADITIONAL WORK PRACTICE" FROM THE END OF THIS DEFINITION. PAST EXPERIENCE HAS DOCUMENTED THAT THIS PHRASE HAS BEEN THE SOURCE OF CONSIDERABLE TROUBLE BETWEEN THE EMPLOYEES AND THEIR EMPLOYERS AS IT IS VERY DIFFICULT TO DEFINE AND AGREE TO IN ANY BIG ORGANIZATION.

FINALLY, TURNING TO THE THIRD SPECIAL ISSUE OF CONCERN TO THE REGENTS, K.S.A. 75-4327(C) NEEDS STRENGTHENING TO PREVENT A SINGLE UNION ORGANIZER OR FIVE (5) EMPLOYEES SETTING INTO MOTION A VERY EXPENSIVE AND TIME CONSUMING FORMAL UNIT DETERMINATION HEARING WITH

LITTLE EVIDENCE OF ANY SUPPORT OR ENTHUSIASM BY THE EMPLOYEES IN THIS PROPOSED UNIT. AN EXCELLENT EXAMPLE OF COSTLY HEARINGS SET IN MOTION BY ONLY FIVE (5) EMPLOYEES, OR LESS THAN ONE FIFTH OF ONE PERCENT OF THE EMPLOYEES IN THE PROPOSED UNIT, WAS THE FACULTY UNIT DETERMINATION HEARINGS AT THE UNIVERSITY OF KANSAS ON JUNE 30, JULY 1 AND 2, 1975. TO BETTER SAFEGUARD PUBLIC INTEREST AND EXPENDITURES, I RECOMMEND THAT NO PETITION FOR UNIT DETERMINATION BE ELIGIBLE FOR HEARING UNLESS AND UNTIL SATISFACTORY EVIDENCE OF A SUBSTANTIAL INTEREST IN REPRESENTATION IS SUBMITTED BY MEMBERSHIP OF THE PROPOSED UNIT. A MINIMUM SHOWING OF INTEREST SHOULD BE THIRTY PERCENT OF THE EMPLOYEES OF THE PROPOSED UNIT.

THANK YOU FOR INVITING ME TO APPEAR BEFORE THIS COMMITTEE AND FOR THE OPPORTUNITY TO SHARE WITH YOU, OUR EXPERIENCE WITH THE PRESENT ACT.

REGENTS' PROPOSED AMENDMENT TO SEC. 75-4330

(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 charter ordinance passed under the provisions of Section 5 of Article 12 of the Kansas Constitution; (2) public employee rights defined in K.S.A. 1971 Supp. 75-4324; (3) public employer rights defined in K.S.A. 1971 Supp. 75-4326; (4) the authority and power or 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, or (5) the authority and power of the Board of Regents and chief executive officer of each regents' institution to manage and operate the regents institutions as contained in K.S.A. 76-711 et. seq. Any memorandum of agreement relating to conditions of employment entered into may be executed for maximum period of three (3) years, notwithstanding the provisions of the cash basis law as contained in K.S.A. 10-1102 et. seq. and the budget law as contained in K.S.A. 79-2925 et seq.

(b) (Reserved for statutory changes to provide for classified employees with appropriate language to be suggested by the Department of Administration, PERB, unions, etc.)

(c) Upon receipt of the written request to meet and confer from a certified organization representing unclassified employees of a regents institution, the board of regents will respond in writing within thirty (30) days setting forth any subject(s) requested which if contained in a memorandum of agreement would require the amendment of the policies or rules, or regulations of the state board of regents. Upon notification by the board of regents, the chief executive officer of the regent institution directly involved in this request to meet and confer shall select a chairman of his institution team and such other persons for this team as may be required. This institution team and the certified employee organization shall meet and confer at a time and place mutually agreed upon in an attempt to reach a memorandum of agreement.

(1) A written memorandum of agreement may be reached on those conditions of employment which would not require the amendment of the policies or rules, or regulations of the state board of regents as set forth in the regent response to this request for meet and confer. For action on any additional conditions of employment which would require the amendment of the policies or rules, or regulations of the state board of regents, the parties involved may agree to jointly recommend such changes to conditions of employement solely for the institution involved for consideration by the board of regents.

ATTACHMENT 1

(2) Ratification of a memorandum of agreement by a vote of the membership of a certified organization representing unclassified employees of a regents institution within the appropriate unit shall be required as a condition to finalization.

(3) After the memorandum of agreement is signed by the chairman of each team, it shall be submitted to the chief executive officer for approval action and submission to the next regularly scheduled meeting of the board of regents for finalization. If such memorandum is approved by the board of regents it shall be effective on the date of such approval.

(4) In the event any section(s) is either rejected or modified by the board of regents, the entire memorandum of agreement shall be returned once to the parties thereto for further deliberation accompanied by a report stating in detail the reasons for rejection or modification of each section returned. Such further meet and confer proceedings may include all sections returned by the board of regents. If the parties thereto agree in writing to the section(s) as modified by the board of regents such section(s) shall become effective together with the other section(s) previously approved by the board of regents at time of its initial review. If the parties thereto agree to rewrite the section(s) rejected by the board of regents and such rewritten section(s) meets all of the stated reasons for such rejection, such section(s) may be resubmitted for approval by the board of regents within thirty (30) days of parties' receipt of the rejected section(s).

(5) All sections of a memorandum of agreement arrived at by a certified employee organization and the state board of regents, which require new and/or additional funding by the state of Kansas shall become effective only upon approval of the budget submitted by the state board of regents to the legislature of the state of Kansas.

[Renumber present Sec. 75-4330 (b) to (d) and present (c) to (e)]

ATTACHMENT 1

Attachment 18

COUNCIL OF KANSAS
GOVERNMENT ENGINEERS AND SCIENTISTS
4125 Gage Center Drive
Topeka, Kansas 66604

August 13, 1975

Mr. Mike Heim, Research Analyst
Legislative Research Department
Room 551-N, Statehouse
Topeka, Kansas 66612

Dear Mr. Heim:

Thank you for the opportunity to appear before the Special Committee on Public Employer-Employee Relations. The following are our comments concerning problems and weaknesses in the Kansas Public Employer-Employee Relations Act:

1. (75-4322) The definitions of the terms "Supervisory employee", "Confidential employee" and "Elected and management officials" are difficult to apply to employees of the State of Kansas. It is our opinion that the State has attempted to use these definitions to exclude employees (who would have no material conflict of interest) from the provisions of the act.

2. (75-4322) A "Business Agent" need not be "full-time".

3. (75-4330) There is a need for some type of "multi-unit subject - Single-unit subject" concept as contained in last year's Proposal 80. We would suggest that Single-unit subjects be those conditions of employment which can legally be altered, for employees in a given appropriate unit, without affecting employees in other units. Multi-unit subjects would be the opposite. We would suggest that some subjects which may now be Multi-unit should be Single-unit; in other words, the merit system itself may need some changes. For example, our organization has asked for provision of four month educational leave, with full pay, after every ten years of service. It seems to us that the State should be able to provide such a benefit to the engineer and scientist classifications without having to provide it to all other classifications.

We do not belive it desirable to combine the Kansas Public Employer-Employee Relations Act with the Professional Negotiations Act. We feel that there are many inherent differences between the types of employment covered by these acts which make it unfeasible to combine them.

Sincerely,

BRUCE F. McCOLLOM
BUSINESS AGENT

Paul Banzet

PAUL BANZET
PRESIDENT

Attachment K

STATEMENT OF

FRANK R. DAVIS
NATIONAL REPRESENTATIVE
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

2200 GAGE BOULEVARD
TOPEKA, KANSAS 66622

PHONE: 913-272-5494

BEFORE THE
1975 LEGISLATIVE INTERIM SPECIAL COMMITTEE

ON

PUBLIC EMPLOYER-EMPLOYEE RELATIONS

****

SENATOR----------D. WAYNE ZIMMERMAN----------CHAIRMAN

REPRESENTATIVE------BILL MORRIS----------VICE CHAIRMAN

REPRESENTATIVE------HAROLD T. BENINGA----------MEMBER

REPRESENTATIVE------ALBERT D. CAMPBELL----------MEMBER

SENATOR----------JAMES FRANCESCO----------MEMBER

SENATOR----------FRANK D. GAINES----------MEMBER

REPRESENTATIVE------VICTOR W. KEARNS JR.----------MEMBER

REPRESENTATIVE------RICHARD C. LOUX----------MEMBER

SENATOR----------EDWARD F. REILLY----------MEMBER

SENATOR----------W. H. SOWERS ----------MEMBER

REPRESENTATIVE------LYNN W. WHITESIDE----------MEMBER

****

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I WOULD LIKE TO EXPRESS MY THANKS, AND THE THANKS OF THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES (NAGE) FOR BEING GRANTED THE

OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TO BRIEFLY SET FORTH OUR COMMENTS ON "WHATS WRONG WITH THE PRESENT LAW, WHERE IT ISN'T WORKING, AND HOW WE FEEL IT COULD BE IMPROVED".

OUR STAFF'S ANALYSIS OF THE PRESENT LAW DETECTS MUCH AMBIGUITY. HOWEVER, WE FEEL THAT THIS COMMITTEE, WITH IT'S VERY ABLE RESEARCH FACILITIES, IS WELL EQUIPPED TO REMOVE THE AMBIGUITY FROM THE PRESENT ACT.

THE FIRST AREA THAT WE WOULD LIKE TO CALL YOUR ATTENTION TO IS IN SECTION 4322, DEFINITIONS: SUBSECTION (b), SUPERVISORS. WE WOULD SUGGEST THAT THE WORDS "NORMALLY PERFORMS DIFFERENT WORK FROM HIS SUBORDINATES" ARE AMBIGUOUS AND SUPERFLUOUS AND SHOULD BE REMOVED FOR THE FOLLOWING REASONS:

(A). THERE IS AT LEAST ONE STATE AGENCY (T.S.H.) WHICH AFFIRMS THAT ANY EMPLOYEE IN PAY RANGE 18 AND ABOVE IS AUTOMATICALLY A SUPERVISOR, WHETHER OR NOT HE ACTUALLY SUPERVISES ANY EMPLOYEES.

(B). THE WORDING WOULD PREVENT, AS AN EXAMPLE A GROUND MAINTENANCE SUPERVISOR FROM PERFORMING THE SAME WORK AS HIS EMPLOYEES.

(C). IF AN EMPLOYEE HAS SUBORDINATES HE IS, BY DEFINITION, A SUPERVISOR.

(D). IF HE NORMALLY WORKS, DOING THE SAME WORK AS THOSE UNDER HIM, HE VIOLATES THE LAW.

(E). REMOVING THIS PHRASE WOULD ALLOW FOR THE "WORKING SUPERVISOR" CONCEPT.

THE SECOND AREA TO BE BROUGHT TO YOUR ATTENTION IS KSA 75-4327(f) SINCE THERE CAN BE NO STATE-WIDE COMMUNITY OF INTEREST FOR ALL PROFESSIONAL EMPLOYEES, AS REQUIRED BY KSA 75-4327(e), (A REGISTERED NURSE AT OSAWATOMIE STATE HOSPITAL DOES NOT SHARE A COMMUNITY OF INTEREST WITH AN ATTORNEY IN THE DEPARTMENT OF ADMINISTRATION) SECTION 4327(F) SHOULD BE CHANGED TO READ: ~~(f) SHOULD BE CHANGED TO READ:~~ (f) A UNIT MAY NOT BE ESTABLISHED WHICH INCLUDES (1) BOTH PROFESSIONAL AND OTHER EMPLOYEES, UNLESS A MAJORITY OF THE PROFESSIONAL EMPLOYEES VOTE FOR INCLUSION IN THE UNIT...

THE THIRD AREA TO BE BROUGHT TO YOUR ATTENTION IS KSA 75-4322(u).

KSA 75-4330 (b) REQUIRES THAT ONLY "DISPUTES THAT ARISE ON THE INTERPRETATION OF THE MEMORANDUM OF AGREEMENT" MAY BE PRESENTED TO IMPARTIAL ARBITRATION. THEREFORE, KSA 75-4322 (u) SHOULD READ:

(u) GRIEVANCE- MEANS A STATEMENT OF DISSATISFACTION BY AN EMPLOYEE OR GROUP OF EMPLOYEES OVER ANY ASPECT OF HIS EMPLOYMENT, OR WITH A MANAGEMENT DECISION AFFECTING HIM.

THE FOURTH AREA TO BE BROUGHT TO YOUR ATTENTION IS KSA 75-4322(t). FROM A PHILOSOPHICAL STANDPOINT I WOULD LIKE TO PUT FORTH THE FOLLOWING ARGUMENTS IN FAVOR OF ADDING AUTOMATIC DUES DEDUCTION TO THE PRESENT STATUTE:

1. A VIABLE EMPLOYEE ORGANIZATION NEEDS THE SECURITY AFFORDED BY PAYROLL DUES DEDUCTIONS--THERE IS A SUBSTANTIAL OUTLAY OF ASSETS IN ORGANIZING AN EMPLOYEE UNIT, AND THEREAFTER, NEGOTIATING AND ADMINISTERING AN AGREEMENT. THESE EXPENSES ARE ALL FRONT-LOADED AND CAN BE RECOUPED ONLY OVER A RELATIVELY LONG PERIOD OF TIME. ABSENT SOME GUARANTEE OF THE REASONABLY

ANTICIPATED BENEFITS, NO SUBSTANTIAL ORGANIZATION INVESTMENT CAN BE JUSTIFIED.

2. LIKE ANY OTHER BUSINESS ENTERPRISE, AN EMPLOYEE ORGANIZATION MUST HAVE SOME ASSURANCE THAT IT WILL HAVE AVAILABLE MONIES ON HAND TO MEET ITS NORMAL OPERATIONAL EXPENSES (OFFICE, TELEPHONE, POSTAGE, ETC.). ABSENT SOME GUARANTEE OF SYSTEMATIC DUES DEDUCTION, THE REQUISTE CASH FLOW NECESSARY TO CARRY ON ORGANIZATIONAL ACTIVITIES WILL NOT BE FORTHCOMING.

3. THE STATUTORY OBLIGATION OF A DUTY OF FAIR REPRESENTATION OF EMPLOYEE--IT IS AXIOMATIC THAT IF AN EMPLOYEE ORGANIZATION DOES NOT HAVE THE FUNDS NECESSARY TO PROCESS GRIEVANCES, ETC., IT CANNOT ADEQUATELY CARRY OUT ITS STATUTORY OBLIGATIONS TO FAIRLY REPRESENT EMPLOYEES.

FROM A PRACTICAL STANDPOINT, I WOULD OFFER THE FOLLOWING IN SUPPORT OF A SYSTEM OF AUTOMATIC PAYROLL DEDUCTIONS OF UNION DUES.

1. IT BENEFITS THE EMPLOYEES--

A) IT PROVIDES A SYSTEMATIC METHOD OF PAYMENT OF UNION DUES.

B) IF DEDUCTIONS ARE MADE ON A PAY-PERIOD BASIS, THE AMOUNT SO DEDUCTED IS SMALLER IN AMOUNT.

C) IT PROVIDES A WRITTEN RECORD OF AN EMPLOYEE'S UNION DUES, WHICH IS USEFUL FOR TAX DEDUCTION PURPOSES, AS WELL AS AN EMPLOYEE RECORD OF HIS MEMBERSHIP IN GOOD STANDING.

2. IT BENEFITS THE EMPLOYEE ORGANIZATION--

A) IT AFFORDS THE EMPLOYEE ORGANIZATION THE SYSTEMATIC CASH FLOW TO FUNCTION VIABLY.

B) IT SIMPLIFIES COMPILING THE NUMBEROUS FILING STATEMENTS FOR THE U.S. DEPARTMENT OF LABOR, IRS, ETC.

C) IT PROVIDES A WRITTEN RECORD OF MONIES RECEIVED AND MEMBERS IN GOOD STANDING FOR ORGANIZATIONAL ACTIVITIES.

3. IT BENEFITS THE EMPLOYER--

A) IT ASSURES THE EMPLOYER THAT IT WILL BE DEALING WITH ONLY ONE EMPLOYEE ORGANIZATION REPRESENTING GIVEN EMPLOYEES AT A GIVEN TIME. IT ELIMINATES CLAIMS BY EMPLOYEES THAT THE EMPLOYER HAS RECOGNIZED MORE THAN ONE EXCLUSIVE EMPLOYEE REPRESENTATIVE.

B) IT ASSURES THE EMPLOYER OF A PERMANENT WRITTEN RECORD OF ALL EMPLOYEE DEDUCTIONS FROM SALARIES.

C) IT IS A SIMPLE ADDITION TO AN EXISTING DELIVERY SYSTEM--LITTLE EFFORT IS INVOLVED IN PROGRAMMING A COMPUTER TO MAKE AN ADDITIONAL DEDUCTION.

D) IT IS A PROVEN SYSTEM--THE FEDERAL GOVERNMENT, AS WELL AS MANY OF THE STATES, HAVE ALREADY ENACTED LEGISLATION PROVIDING FOR AUTOMATIC PAYROLL DEDUCTIONS FOR UNION DUES.

E) IT ASSURES THE EMPLOYER OF A RECORD WHEREBY THE STATUTORY REQUIREMENT FOR REPRESENTING THE MAJORITY OF THE MEMBERS IN A GIVEN UNIT CAN BE ENFORCED.

THE GENERAL ARGUMENT IS THAT AN AUTOMATIC PAYROLL DEDUCTION SYSTEM FOR UNION DUES BENEFITS ALL CONCERNED WITHOUT IMPOSING ANY REAL BURDENS (e.g. INDEMNITY CLAUSES CAN BE INCLUDED PROTECTING MANAGEMENT FROM ANY POTENTIAL LIABILITY).

THEREFORE, WE WOULD ASK THIS COMMITTEE TO ADD THE WORDS "AND DUES DEDUCTIONS" TO CONDITIONS OF EMPLOYMENT, KSA 75-4322(t), AND, TO REMOVE ANY AMBIGUITY, THAT THE WORDING IN EXIBIT #1, ATTACHED HERETO, BE INCLUDED IN A SEPARATE SECTION, PERHAPS 75-4338, OF THE STATUTE.

ANOTHER WEAKNESS IN THE PRESENT STATUTE IS THE LACK OF ANY SO CALLED "CONTRACT BAR" PROVISION. ONE OF THE MOST IMPORTANT ELEMENTS OF A SUCCESSFUL EMPLOYER-EMPLOYEE RELATIONS PROGRAM IS "STABILITY". BOTH THE PUBLIC AGENCIES AND THE EMPLOYEE ORGANIZATIONS AND ITS MEMBERS MUST BE ABLE TO HAVE CONFIDENCE THAT, ONCE AN EMPLOYEE ORGANIZATION HAS BEEN CERTIFIED FOR A GIVEN UNIT, A WORKING RELATIONSHIP WITH MANAGEMENT CAN BE DEVELOPED AND BUILT WITHOUT BEING SUBJECTED TO DIVISIVE AND COUNTER-PRODUCTIVE INFLUENCES.

ESSENTIALLY, A CONTRACT BAR CLAUSE PROVIDES THAT A CHALLENGE TO THE CERTIFICATION STATUS OF AN INCUMBENT EMPLOYEE ORGANIZATION WILL NOT BE ENTERTAINED DURING THE LIFE OF THE MEMORANDUM OF AGREEMENT, EXCEPT DURING AN "OPEN PERIOD", WHICH IS USUALLY A 30-DAY PERIOD RUNNING FROM THE 90TH TO THE 60TH DAY PRIOR TO THE ANNIVERSARY DATE OF THE AGREEMENT.

THE PURPOSE OF THIS TYPE OF PROVISION IS SELF-EVIDENT: EMPLOYERS AND EMPLOYEE ORGANIZATIONS ARE ENTITLED TO KNOW THAT ONCE THEY COME

TO AGREEMENT ON CONDITIONS OF EMPLOYMENT, AND THOSE TERMS ARE COMMITTED TO WRITING FOR A SPECIFIED PERIOD OF TIME, THE MEMORANDUM WILL BE IN FORCE FOR THAT PERIOD OF TIME AND NOT SUBJECT TO A SERIES OF CHALLENGES THROUGHOUT ITS LIFE.

FOR EXAMPLE, UNDER THE PRESENT STATUTE, AN EMPLOYEE ORGANIZATION COULD BE ELECTED AND CERTIFIED, PARTICIPATE IN THE "MEET AND CONFER" PROCEEDINGS, AND REALIZE AN APPROVED MEMORANDUM OF AGREEMENT PERHAPS TEN MONTHS LATER. JUST THREE MONTHS AFTER THAT A PETITION OR CHALLENGE BY A RIVAL EMPLOYEE ORGANIZATION COULD BRING ABOUT YET ANOTHER ELECTION, WHICH THE INCUMBENT MIGHT OR MIGHT NOT WIN. WHATEVER THE OUTCOME, THE RESULT IS DISRUPTION AND CHAOS WHICH CAN ONLY WORK TO THE DETRIMENT OF STABLE RELATIONS.

THE NAGE SUGGESTS THAT THIS COMMITTEE AMEND THE PRESENT STATUTE BY INCORPORATING A "MEMORANDUM OF AGREEMENT BAR" AS WORDED IN EXIBIT #2 ATTACHED HERETO.

ANOTHER AREA WE WOULD BRING TO YOUR ATTENTION IS SECTION 75-4330, SUBSECTION (C).

1. WHEN A MEMORANDUM OF AGREEMENT APPLIES TO THE STATE OR ANY AGENCY OF THE STATE- IT CANNOT BE EFFECTIVE AS TO:

(A). ANY MATTER REQUIREING PASSAGE OF LEGISLATION, AND

(B). ANY MATTER REQUIREING STATE FINANCE COUNCIL APPROVAL- UNTIL APPROVED BY THE LEGISLATURE OR FINANCE COUNCIL AS APPROPRIATE.

2. WE WOULD PUT FORTH THE FOLLOWING QUESTIONS:

(A). IF THE FINANCE COUNCIL REJECTS THE MEMORANDUM OF AGREEMENT OR ANY PORTION OF IT, IS THAT FINAL, OR IS IT RETURNED TO THE PARTIES FOR FURTHER DELIBERATION?

(B). DOES THE FINANCE COUNCIL APPROVE OR REJECT THE ENTIRE MEMORANDUM OF AGREEMENT, OR JUST THOSE PORTIONS WHICH RELATE TO AMMENDMENT OF RULES AND REGULATIONS AND/OR PAY PLAN AND PAY SCHEDULES?

(C) IF THE FINANCE COUNCIL APPROVES OR REJECTS ONLY THE PORTIONS ENUMERATED IN (B) ABOVE, WHO IS THE APPROVING AUTHORITY FOR THE REMAINDER OF THE MEMORANDUM?

(D). HOW LONG MAY THE FINANCE COUNCIL "SIT" ON A MEMORANDUM THAT HAS BEEN PROPERLY EXECUTED BY THE PARTIES?

3. ALTHOUGH WE (NAGE) HAVE NO SPECIFIC PROPOSALS RELATIVE TO THIS AREA, WE ARE NOT CERTAIN, AT THIS POINT, IF THE FINANCE COUNCIL CAN LEGALLY ACT, WE WOULD SUGGEST THAT THIS SUBSECTION (C) BE RE-WRITTEN TO ALLOW THE COUNCIL TO ACT, WHICH IS THEIR REASONABLE SERVICE, ON ANY MEMORANDUM OF AGREEMENT, WHICH IS WHAT THE CITIZENS OF THE GREAT STATE OF KANSAS EXPECTS AND RIGHTLY DESERVES.

LASTLY, WE WOULD ASK THAT THIS COMMITTEE GIVE CONSIDERATION TO COMBINNING THE PROFESSIONAL NEGOTATIONS ACT AND THE PUBLIC EMPLOYER-EMPLOYEE RELATIONS ACT INTO ONE COMPREHENSIVE COLLECTIVE BARGAINING STATUTE, WHICH WOULD BE LESS AMBIGUOUS AND EASYER TO UNDERSTAND AND ENFORCE.

THANK YOU.

EXHIBIT # 1

ALLOTMENT OF DUES

75-4338 ALLOTMENT OF DUES

A. WHEN AN EMPLOYEE ORGANIZATION HOLDS EXCLUSIVE RECOGNITION, AND THE PUBLIC EMPLOYER AND THE EMPLOYEE ORGANIZATION AGREE IN WRITING TO THIS COURSE OF ACTION, A PUBLIC EMPLOYER WILL DEDUCT THE REGULAR AND PERIODIC DUES OF THE EMPLOYEE ORGANIZATION FROM THE SALARY WARRANTS OF THE MEMBERS OF THE EMPLOYEE ORGANIZATION IN THE UNIT OF RECOGNITION WHO MAKE A VOLUNTARY ALLOTMENT FOR THAT PURPOSE. SUCH AN ALLOTMENT IS SUBJECT TO THE STATE CIVIL SERVICE COMMISSION REGULATIONS, WHICH SHALL INCLUDE PROVISIONS FOR THE EMPLOYEE TO REVOKE HIS AUTHORIZATION AT STATED SIX MONTH INTERVALS, SUCH AN ALLOTMENT TERMINATES WHEN--

1. THE DUES WITHHOLDING AGREEMENT BETWEEN THE PUBLIC EMPLOYER AND THE EMPLOYEE ORGANIZATION IS TERMINATED OR CEASES TO BE APPLICABLE TO THE EMPLOYEE, OR

2. THE EMPLOYEE HAS BEEN EXPELLED OR SUSPENDED FROM THE EMPLOYEE ORGANIZATION.

B. REASONABLE ADMINISTRATIVE COSTS OF SUCH DUES DEDUCTIONS SHALL BE BORN BY THE EMPLOYEE ORGANIZATION HAVING, AS A MEMBER, THE EMPLOYEE FROM WHOSE SALARY WARRANT THE ALLOTED AMOUNT IS DEDUCTED.

EXHIBIT # 2

(d) IF THE BOARD HAS CERTIFIED A REPRESENTATIVE IN AN APPROPRIATE UNIT, IT SHALL NOT BE REQUIRED TO CONSIDER THE MATTER AGAIN FOR A PERIOD OF ONE (1) YEAR. WHERE THERE IS A MEMORANDUM OF UNDERSTANDING WHICH HAS BEEN SUBMITTED IN ACCORDANCE WITH KSA 75-4331, NO QUESTION CONCERNING CERTIFICATION MAY BE CONSIDERED EXCEPT DURING THE PERIOD NOT MORE THAN 90 NOR LESS THAN 60 DAYS PRIOR TO THE EXPIRATION DATE OF THE MEMORANDUM OF AGREEMENT UNLESS THE BOARD DETERMINES THAT SUFFICIENT REASON EXISTS.