

P R E L I M I N A R Y
M I N U T E S

SPECIAL COMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

Room 514 - State House

September 10-11, 1975

Members Present

Senator Wayne Zimmerman, Chairman
Representative Bill Morris, Vice-Chairman
Senator James Francisco
Senator Frank Gaines
Senator Wes Sowers
Representative Harold Beninga
Representative Albert Campbell
Representative Victor Kearns, Jr.
Representative Lynn Whiteside

Staff Present

Mike Heim, Legislative Research Department
Ramon Powers, Legislative Research Department
Ben Barrett, Legislative Research Department
Jim Wilson, Revisor of Statutes Office

Conferees

Jerry Powell, Public Employee Relations Board
Tom Pitner, Chief Attorney, Secretary of Administration
Lowell Long, Personnel Division
Bill Douglas, League of Kansas Municipalities
Bob Wootton, K-NEA
Fred Rausch, KASB

Morning Session

Chairman Zimmerman called the meeting to order and asked for approval and corrections of the minutes of the previous meeting. A motion was adopted unanimously approving the minutes of the August 13 and 14 meeting.

The staff reviewed a memorandum identifying policy questions which were raised at the August meeting. The memorandum indicated the positions taken by the various conferees who appeared at the August meeting, and the range of action possible by the Committee was discussed.

Mr. Wootton was asked to clarify his statement made at the August meeting on the right of teachers to strike. He noted that K-NEA's position paper asked that the law be left as is. His personal opinion was that teachers should have the right to strike under certain specified conditions.

There was discussion of the local option provision in the MC law. Mr. Bill Douglas of the League of Kansas Municipalities advised the Committee that the League would be opposed to removal of the local option provision, noting the cities had been given home rule and should be allowed to make such decisions. Mr. Douglas believed that a city opting not to come under the MC law did not deny an employee his right to negotiate.

Mr. Jerry Powell of the Public Employee Relations Board told the Committee that problems exist in Pittsburg, Lawrence and Western Kansas and stated that city governing boards are denying the right of employees to meet and confer.

Mr. Fred Rausch of the Kansas Association of School Boards told the Committee most school boards have not elected to come under the act for their non-professional employees, as they felt they could better operate with a less structured system. It was believed a more informal meeting caused less tension and did not create an adversary atmosphere. Therefore, Mr. Rausch said the Kansas Association of School Boards would be opposed to elimination of the local optional feature of the law.

Mr. Powell was asked if it would be possible to establish an election procedure to determine whether employees want to come under the act prior to the employer actually coming under the act. Mr. Powell stated that although it would be a costly process, it could be done.

Staff then referred the Committee to a memorandum comparing "model" public employer-employee relations acts with the Kansas law and surrounding states' laws.

A presentation by the Personnel Division followed. Mr. Lowell Long, Director of the Personnel Division, said that his response to the question of whether or not civil service and collective bargaining could be reconciled would be philosophical in nature. He stated that his general answer was "yes" because there are such situations in existence today. Mr. Long noted the past 10 years have been filled with adjustments regarding the traditional conflicts between public personnel management and public employees.

Five points were listed by Mr. Long as being the essential minimums around which the civil service system operates. These included:

The process of open competitive selection for public service;

Provisions for tenure for civil service employees upon completion of a satisfactory probationary period;

A system of discipline including removal limited to cause with an impartial review process;

Promotion or advancement based on merit; and

Public employees being treated with a degree of equality across the board so the system is equitable.

Mr. Long said there were provisions for an agency shop in some states, however, he did not see how this could exist in the civil service system. Upon questioning, Mr. Long said he did not feel it made a difference as to how a division would be established regarding employment, whether economic or geographical. He could not envision a group of employees housed on the fifth floor being governed by a separate set of rules than the sixth floor group. He stated that small units create problems and that is the reason he preferred the establishment of broader units.

In regard to dues check-off, Mr. Long did not believe they could operate under a mandatory procedure. He said if dues check-off is desired by the legislature, then his department urged it to be written in as a permissive item in the meet and confer process. He voiced opposition to proposed drafts mandating dues check-off and removing it from the meet and confer process.

Mr. Long was asked the number of classified and unclassified positions currently filled and the number of employees terminated by the state in the last year. He stated that there are approximately 25,000 classified and 15,000 unclassified positions. He agreed to report to the Committee members later on the number of terminations initiated by the employer during the past year.

Afternoon Session

Mr. Jerry Powell of the Public Employee Relations Board told the Committee his proposed draft was a combination of thoughts by many people. It was noted by Mr. Powell that because of recent unit changes there are presently 51 units in the state rather than 53.

Mr. Powell was asked if he felt the state had enough experience to be making changes in the law, and he replied that in the areas of the proposed changes there has been sufficient experience. He said his proposed draft contains changes included in S.B. 61 as well as additional changes to the present law. He said that approximately 90% of his proposed changes were recommended to the Committee by conferees who previously appeared before this Committee. Mr. Powell then reviewed his proposed bill draft in detail with the Committee. A copy of the bill draft is in the Committee notebooks.

September 11, 1975

Morning Session

Mr. Tom Pitner, Chief Attorney for Secretary of Administration, said although he had previously indicated that the Governor's task force would use S.B. 61 as a vehicle to develop policy in this area, this had been changed and he was therefore, not ready for a presentation before the Committee. The task force's recommendations would be from the original act with a new concept included. This proposal was submitted for the Governor's review on Tuesday and it was Mr. Pitner's hope to have the Governor's recommendations for the Committee's review by the next meeting. Mr. Pitner was reminded by the Chairman of the November 17 reporting deadline.

The mandatory inclusion of local units of government under the act was said to be a concern of the Department of Administration. It is felt the cities should be allowed to exercise home rule, according to Mr. Pitner. The Committee was advised that the task force has tried to clarify and simplify the entire law. The task force appointed by the Governor consists of Mr. Bibb, Mr. Bickford and Mr. Weltmer in addition to Mr. Pitner.

Mr. Pitner said the task force did not believe arbitration should be final and binding but rather used only as a part of a grievance procedure instead of an impasse procedure. On dues check-off, Mr. Pitner stated the task force was opposed to this concept.

The Committee decided to defer action on this proposal with the intent of receiving the Governor's recommendation at the next meeting.

Proposal No. 45 - Professional
Negotiation

The Chairman asked the staff to review the notebook material comparing the bills presented at an earlier meeting.

After this review, the Committee members were asked by the Chairman if there was any objection to keeping the bills separate as tentatively decided at the August meeting. No objections were voiced.

The Committee agreed that the following items be included in a preliminary bill draft:

1. Terms and Conditions of Professional Service

(A) The bill draft will include an itemization of the "terms and conditions of professional service". This itemization will include salaries and wages; hours and amounts of work; vacation allowance; holiday, sick and leave; number of holidays; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance procedures; disciplinary procedure; resignations; termination of contracts; and retirement.

(B) The draft will include language indicating the issues not included in the above listing should be subject to a determination of whether they constitute the basic educational policies of the board or whether they more directly affect the teacher. (Reference regarding the drafting of this language is to the Shawnee Mission case.) Those items determined to most directly affect the teacher also would be considered appropriate subjects for professional negotiations, even though they were not included in the original list of negotiable items in the statutes.

(C) The draft will include alternatives for future Committee consideration as to how the determination of appropriate additional topics for negotiation is to be resolved. Also included will be a phrase stating that nothing in the act, or the act of which this act is amendatory, shall authorize an adjustment or change of such matters which have been fixed by statute or by the constitution of the state.

2. Definitions

Definitions were adopted of the terms "mediation" and "fact-finding" as stated in S.B. 571 (as amended). The definitions are:

1. "Mediation" means efforts by an impartial third party to assist in reconciling a dispute regarding the terms and conditions of professional service between a board of education and representatives of a recognized professional employees organization through interpretation and advise.
2. "Fact-finding" means investigation of such a dispute by an individual, panel, or board with a fact-finder submitting a report to the parties describing the issues involved; the report shall contain recommendations for settlement.

3. Impasse Procedures

The draft will provide:

(A) Either or both parties may file a "petition" with the district court having jurisdiction over the home county of the school district or community junior college asking for a determination of whether an impasse exists.

(B) This matter would be advanced on the docket of the district court. The judge would have three days in which to commence the hearing thereon.

(C) If the judge determines impasse exists, and enters an order to that effect, the clerk of the court notifies the parties and the Commission of Education. If a judge determines impasse does not exist, he so notifies the parties and retains jurisdiction in the matter.

(D) If impasse exists, the Commissioner of Education, upon notification, forthwith appoints a mediator (presumably from the Federal Mediation and Conciliation Service) who attempts to effect resolution of the impasse.

(E) If the mediator fails to effect a resolution, he notifies the parties and the state board of education.

(F) Upon such notification, the State Board of Education forthwith appoints not more than three persons to compose a fact-finding board. These fact-finders would be selected from a list maintained by the State Board of Education. They must be representative of the public and they could not include the same person who served as a mediator.

(G) In the process of a fact-finding board making its studies and determinations, it would receive from each of the parties a statement of the party's position on each issue. The fact-finding board would have such powers and duties as are prescribed in S.B. 571 Sec. 3(b) (as amended). (These pertain to conducting hearings and investigations, administering oaths and affirmations, examining witnesses and documents, taking testimony and receiving evidence, and compelling attendance of witnesses and the production of documents by the issuance of subpoenas.)

(H) The fact-finding board would be obligated to recommend either the position of the employees or the position of the employer on all matters involved in the impasse. Upon completion of its studies, the fact-finding board makes its report to the parties and to the State Board of Education. Either of the parties can make the report public. The State Board of Education would be required to make the report public ten days after submission of the report to the parties, unless the parties have agreed to an extension to

this deadline. Such an extension could not exceed seven days. (In the event of an extension of the ten-day deadline, the State Board of Education would make the report public upon the expiration of such extension.)

(I) If the parties have not reached agreement, after the fact-finding report has been made public, the board of education would be required to take such action as it deemed to be in the public interest, including the interest of the professional employees involved, and must make such action public.

(J) The costs of mediation (if any) and fact-finding would be borne equally by the parties. (Those costs, associated with filing the petition with the district court in order to determine whether impasse exists, would be paid by the filing party.)

Negotiating Parties

Language from S.B. 571 (as amended) will be included in the draft containing the provision that nothing in the law can be construed to prevent professional employees individually or in concert with others from engaging in professional negotiations on their own behalf.

Existing law contains provisions for exclusive representation of a professional employees organization and for an administrative employees unit. The amendment proposes, in addition to exclusive recognition of the above employee organizations, to authorize a limited ability of individuals or groups to negotiate on their behalf with the school board.

Decertification Procedure

An amendment will allow professional employees (teachers) to initiate a decertification procedure which is similar to the procedure presently required for certification.

Exclusion of Administrative Employees

An amendment will be incorporated to exclude administrative employees of a school district or community college from coverage of the Professional Negotiations Act.

Employee-Employer Practices

The bill draft will include the listing of unfair employer-employee practices contained in K.S.A. 1975 Supp. 75-4333.

The Committee agreed to change their next meeting date to October 15 and 16.

The meeting was adjourned.

Prepared by Mike Heim

Approved by Committee:

Oct 15, 1975
(Date)