

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION

The meeting was called to order by Representative Don Crumbaker at  
Chairperson

3:30 ~~am~~/p.m. on January 30, 1984 in room 519-S of the Capitol.

All members were present except: Representative Laird.

Committee staff present:

Avis Swartzman, Revisor of Statutes' Office  
Ben Barrett, Legislative Research  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Craig Grant, Kansas-National Education Association  
Patricia Baker, Kansas Association of School Boards  
Jerry Schreiner, United School Administrators of Kansas  
Jim Yonally, Shawnee Mission Board of Education

The minutes of January 24 and January 25 were approved as written.

The Chairman opened hearings for HB 2729 affecting termination or nonrenewal of teacher contracts proposing that the final decision of the hearing committee be binding on the board and the teacher.

Craig Grant, K-NEA testified in support of HB 2729. (ATTACHMENT I)

Patricia Baker, Senior Legal Counsel for Kansas Association of School Boards, testified in opposition to HB 2729. (ATTACHMENT II) She stated their position is that the present procedure is fair, equitable and most likely to result in positive educational decisions.

Jerry Schreiner, Executive Director of United School Administrators, testified in opposition to HB 2729. (ATTACHMENT III) He stated that their position was an echo of KASB testimony.

Jim Yonally, Shawnee Mission Board of Education, testified in opposition to both bills to be heard today, HB 2729 and HB 2738. He stated that if there is a problem, the Board of Education is responsible for the quality. Therefore, it is not reasonable for someone else to decide what is appropriate action.

This ended the hearings on HB 2729. The Chairman opened hearings for HB 2738 which is similar to HB 2729 by making arbitration binding on all parties with the exception that the decision must be unanimous.

Ben Barrett, Legislative Research Department, stated that HB 2738 differed from HB 2729 only by making the decision binding when the decision is unanimous.

Craig Grant, K-NEA, testified in support of HB 2738. (ATTACHMENT I) He stated K-NEA prefers HB 2729 over this bill.

During questions and discussion, it was pointed out that HB 2738 is very similar to the bill amended and passed favorably out of committee last year. That bill was withdrawn from the calendar.

Pat Baker, KASB, testified in opposition to HB 2738 by echoing her previous statements. (ATTACHMENT II)

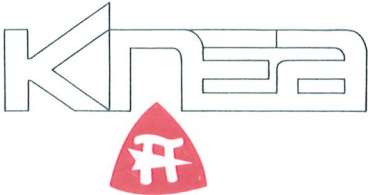
Jerry Schreiner, USA echoed his testimony in opposition to HB 2738. (ATTACHMENT III)

The hearings were then closed as no other conferees appeared.

The meeting was adjourned by the Chairman at 4:19 p.m.

The next meeting of the committee will be January 31, 1984 at 3:30 p.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.



Craig Grant Testimony Before  
House Education Committee  
January 30, 1984

Thank you Mr. Chairman. Members of the committee, my name is Craig Grant and I represent Kansas-NEA. I appreciate the opportunity to speak to both HB 2729 and HB 2738.

Last year I stood before this committee with major changes in the due process statute. This year our requests are few, but still significant. Our goal is to have the decision of the hearing panel final and binding upon both parties. The two bills before you today are similar in nature. Kansas-NEA commends Representative Rolfs for his introduction of HB 2738. We, however, would prefer HB 2729 as introduced by the committee.

Representative Rolfs and others have been members of due process hearing panels and have first hand knowledge of the process. These people know how seriously the panel members take these proceedings. The panel listens intently and studies the evidence at length before reaching a decision. It must be extremely disconcerting for the panel to devote so much energy to the process only to have a board of education arbitrarily reverse its decision. The statistics would show that it must be most difficult for a board of education, once it has already voted to non-renew or terminate an employee, to look objectively at a report from a panel of interested, but non-emotional, citizens. In 1982-83 there were 34 due process hearings in this state. In 19 of them, the panel ruled in favor of the teacher. Out of the 19, only four teachers were reinstated by their Board of Education. Many of the other 15 were forced to go to court in order to preserve their job and professional reputation. As a K-NEA field staff member for 12 years, I represented many teachers in due process hearings. I will guarantee that this was the most difficult part of my job--dealing with the future employment of someone. It is something not to be dealt with lightly.

Some opponents of this change will talk about the age old question of local control. Kansas-NEA believes that the state legislature has the responsibility to attempt to guarantee that no professional employee is treated in an arbitrary or capricious manner. The choice is an administrative hearing, such as we propose, or extensive use of the court system. K-NEA believes that the administrative hearing is the best method.

Kansas-NEA is not proposing a method of insuring permanent employment for teachers not doing a good job. If one reads the entire law, one finds that what K-NEA is asking for is that boards of education provide reasons for firing teachers and that these reasons are not arbitrary ones. Certainly the reasons should be able to stand before a committee of three, one of which is appointed by the Board.

Kansas-NEA urges the House Education Committee to pass favorably on the concepts included in HB 2729.

Thank you, Mr. Chairman and members of the committee, for listening to the concerns of teachers.



KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606  
913-273-3600

Testimony before the  
House Education Committee on  
House Bills 2729 and 2738

by

Patricia Baker, Senior Legal Counsel  
Kansas Association of School Boards

January 30, 1984

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear before you on behalf of our 300 member school boards. The issue before you today involves important considerations for all boards in their attempts to provide the best quality education for all students in the state's public schools.

Each board of education must annually make decisions regarding teaching staff. Those decisions occasionally involve nonrenewal of teacher contracts. The reasons for nonrenewal are varied. When the contract of a tenured teacher is terminated or nonrenewed, Kansas law provides a procedure by which the teacher may seek a hearing by an independent committee on the reasons for such termination or nonrenewal. The position of KASB and its member boards is that the present procedure is fair, equitable and most likely to result in positive educational decisions.

The rationale behind this bill indicates that there is a belief that boards of education are rampantly disregarding the rights of teachers and reversing hearing committee decisions when those decisions are in favor of the

ATTACHMENT II

(1-30-84)  
HOUSE EDUCATION

teacher. An analysis of the actual statistics shows that this is not the case. While I realize that representatives have a great deal of material to read and digest during the session, I strongly urge that you read the Research Bulletin before you which was prepared by Gordon Nelson, KASB Research Director. It summarizes the outcome of nonrenewal of tenured teachers.

At a time when the public is demanding improvement in educational results, it is vitally important that boards of education remain able to select and retain the best teachers available. Enactment of H.B. 2729 or H.B. 2738 would seriously dilute that ability.

For several years the legislature has given consideration to various proposals to deal with the low pupil teacher ratio in many Kansas schools. Many individual districts have undergone a reduction in force during the past few years. It is safe to say that many more districts will experience this same phenomenon in the years to come. Under the provisions of either of the bills before you, the decision to reduce staff by the nonrenewal of tenured teachers could well result in a binding decision by a lay panel that such a reduction is not necessary or that some other teacher should have been nonrenewed first. This kind of potential decision making threatens to undermine the duties and responsibilities of an elected body.

The present process provides that a teacher who feels that they have been treated unfairly will have an opportunity to respond to that action and to have a fair hearing on the merits. If the board of education does not uphold the hearing committee's recommendation, the teacher has further redress through the court system.

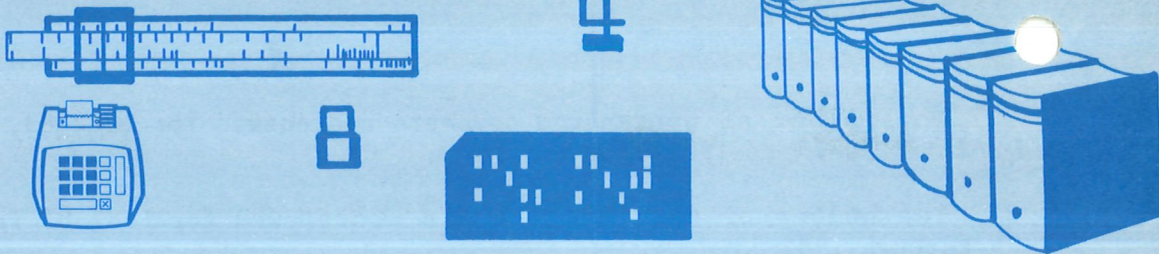
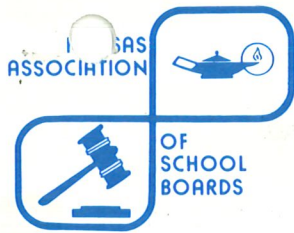
The final decision for retaining public school teachers should rest with locally elected boards of education. There is not sufficient evidence to indicate that they act arbitrarily or capriciously in their actions. In those

instances where the board has been found to have violated a teacher's right to continued employment, the courts have acted in the teacher's interest.

We respectfully request that you reject the concepts in House Bills 2729 and 2738.

Thank you.





5401 S. W. 7TH AVENUE  
TOPEKA, KANSAS 66606

November, 1983

# RESEARCH BULLETIN

Number 5

## ANNUAL SURVEY ON TEACHER EMPLOYMENT RELATIONS

by

Gordon Nelson, Director of Research

### SUMMARY AND GENERAL CONCLUSIONS FOR DATA FROM USD's

	1978 1979	1979 1980	1980 1981	1981 1982	1982 1983	1983 1984
1. VERIFIED TEACHER TERMINATIONS	15	10	8	5	8	
2. NONTENURED TEACHERS NONRENEWED	199	185	162	177	135	
3. TENURED TEACHERS NONRENEWED	58	35	37	43	55	
4. TEACHER RESIGNATIONS IN FACE OF NONRENEWAL	nr	nr	193	157	197	
5. TEACHERS REQUESTING CONTRACT RELEASE	843	614	614	376	255	319
6. WRITTEN BOARD POLICY ON RELEASE	151	186	198	203	213	233

nr - Not Reported

From statistics on teacher employment relations for a period of years, a Kansas school district can expect, as a rough estimate, a teacher dismissal every 38 years, a nonrenewal of a probationary teacher every three years; a nonrenewal of a tenured teacher every six to seven years; a resignation in the face of a possible nonrenewal or termination every two years; requests from two teachers for release from their signed contracts every year, and an appearance in court or before a state commission once in every 17 years to discuss the merits of some teacher employment practice in the district.

The statistics show a marked reduction in adversative positions in employment relations, especially in the number of challenged board decisions and appeals to the courts. A statistical comparison of three items for 1978-79 through 1982-83, of two items for 1978-79 through 1983-84, and one item for 1980-81 through 1983-84 shows the following trends.

1. The eight teachers terminated in 1982-83 contract year is about average for six years, this data is corroborated by using a telephone inquiry to those USD's reporting terminations. It was found after the high of 53 in 1976-77 that most of these were not solely termination actions by the board, but included resignations by teachers facing the possibility of termination. Subsequent yearly surveys have attempted to limit this question to actual terminations by board action.

2. The number of nontenured teachers nonrenewed for 1982-83, 135 teachers, is below average for 1974-75 to 1982-83.

3. The number of tenured teachers nonrenewed for 1982-83 is 55, above average for 1974-75 through 1982-83.

4. The survey for the third year requested data on the number of teachers resigning when informed of the possibility of a nonrenewal. The 1982-83 figure of 197 is the highest of the three year period.

5. The number of teachers requesting release from a signed contract is still below the average for the five-year period. In all probability, the lateness of contract agreements brought on by tardy decisions on school finance in state government is a factor.

6. The number of local boards of education having written board policy on teacher requests for release from signed contracts is 233, continuing the dramatic increase from 68 for 1977-78, an increase of 243%.

#### THE REPORT

In September, 1983, KASB mailed to the chief school administrators the survey questionnaire regarding teacher employment relations: terminations during and nonrenewals at the end of the 1982-83 school year, resignations, requests for release from 1983-84 contracts, and written board policy on release. The survey data are summarized below:

Type of School	USD's	Inter- Locals	Community Colleges
Number Reporting	305	12	5
Percent Reporting	100%	67%	26%

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1. NUMBER OF TEACHERS TERMINATED (discharged during the term of contract) DURING THE 1982-83 SCHOOL YEAR	8		
2. NUMBER OF NONTENURED (probationary) TEACHERS NONRENEWED FOR 1983-84 DURING 1982-83	135	11	1
3. NUMBER OF TENURED TEACHERS NONRENEWED FOR 1983-84 DURING 1982-83	55	2	2
4. NUMBER OF TEACHERS RESIGNED DURING 1982-83 WHEN INFORMED OF THE POSSIBILITY OF NONRENEWAL	197	8	1
5. NUMBER OF TEACHERS SIGNING 1983-84 CONTRACTS AND SUBSEQUENTLY ASKING FOR A RELEASE FROM CONTRACT	319	17	2
6. NUMBER OF BOARDS WITH WRITTEN POLICY ON RELEASE FROM A SIGNED CONTRACT	233	8	2

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The above table reports the survey data from all USD's and from 11 interlocal cooperatives and five community colleges. This is the second year that a sufficient number of interlocals and community colleges have reported to warrant tabulation and discussion here. It is, perhaps, indicative of the general interest and concern about these topics. This report will first discuss the data for USD's and later give a brief summary of the interlocals.



1. The number of teachers terminated during the term of their contracts for 1982-83 was eight. Seven districts were involved in the eight terminations. Teachers who were not actually terminated, but who chose to resign rather than face termination action by the board are not included here. Those statistics are reported in section #5.

Only two of these terminations proceeded to a court status. One court case was noticed for withdrawal by the teacher's attorney, but that withdrawal was never presented to the district. The other case was settled out of court.

2. The 135 nontenured (probationary) teachers nonrenewed for 1983-84 during the 1982-83 school year represented 87 school districts. Thirty school districts reported nonrenewal of more than one such teacher; the range for this group ran from two to 13 such teachers in a single school district. Three nontenured teachers requested hearings, alleging a violation of constitutional rights, the only statutory hearing basis for nontenured teachers. Only two, in the same district, are continuing to the hearing process. In the other case, the board denied the request, and no further development is anticipated.

3. The 55 tenured (continuing contract) teachers nonrenewed for 1983-84 during the 1982-83 school year represent 39 school districts. Fifteen districts reported nonrenewal of two, and in one case three, such teachers. Nineteen teachers requested hearings, but only 12 continued that process. Four committees recommended nonrenewal, and the boards confirmed those recommendations. One committee recommended retention, but the board rejected the recommendation. Five hearings have yet to file reports. Four court cases already stem from these instances, one against a board reversal of the committee and three against a committee recommendation for nonrenewal. One court case was initiated by the board; district court held that notice was defective. Two hearing cases are bound for court because the teacher is not certified now for the position. One hearing case ended in a year's leave of absence. Two hearing cases have multiple appeals, in district court and before the Kansas Civil Rights Commission, a kind of double jeopardy for the board. All court cases are pending. There is one renewal case still pending in court from previous years.

4. The survey also requested data on resignations of teachers who are faced with the possibility of a termination or nonrenewal. The data show a total of 197 such resignations in a total of 121 districts. Of the total resignations, 140 (71%) involved a nontenured teacher; 50 (25%) a tenured teacher. Ninety-four districts (78%) were involved in the nontenured teacher resignations; 38 (31%) in the tenured teacher resignations.

5. The number of teachers who signed 1983-84 contracts and subsequently asked for release totaled 319. The instances involved about 37% of the public school districts in Kansas. One superintendent termed this problem the most crucial problem facing public education. This practice makes teacher contracting a one-way street in employment relations since the board's refusal to grant a release results either in having an unhappy employee for the length of the contract or in having a contract broken by the teacher. The possibility of having a teaching certificate revoked as a penalty for breaching a contract does not become a factor in cases of a teacher's leaving elementary and secondary school employment, taking college or university employment, a husband's employment move, or in some cases moving to teacher employment in another state.

Of the 319 requests for release from signed contracts, 96% were granted by the boards of education; 2.8% were denied; and 1.3% were dropped after being made. The number of cases in which the school board granted the release without the assessment of liquidated damages indicates that boards of education exhibit a rather magnanimous attitude toward the teacher requesting a release from a signed and legal contract.

In the process of granting release from a signed contract, boards of education found suitable replacements for 236 teachers (74%); made no assessment of liquidated damages, even without a suitable replacement, for 42 teachers (13%); and assessed liquidated damages in granting the release to 32 teachers (10%).

Of nine instances in which boards denied the requests, four teachers remained with the school districts and five teachers left the districts breaching the contract. To date, no districts have filed an action to cancel the certification of a teacher who breached a signed contract with the district.

6. Two hundred and thirty-three local boards of education (76%) have written policy on requests for release from signed contracts. Seventy-one USD's have no such written policy; only 16% also include it in the teacher's contract, 84% do not; 28% have it in a negotiated agreement, 72% do not; and 69% require a suitable replacement before considering the release.

Twenty-nine boards in the state have written policies which set a flat amount for liquidated damages. That amount ranges from \$50.00 to \$500.00 with the median (the midpoint of the range) being \$300.00. Seventy-one boards have policy which schedules amounts of liquidated damages increasing as they approach the beginning of the school year. The dollar amounts in these schedules start with \$50.00 in late May and reach a high of \$1,200.00 in early September. No model for dates and amounts can be determined, but the list of some 60 patterns is available on request to the KASB Research Department. Fourteen boards assess liquidated damages in the amount of the actual cost of a replacement. One board uses a 10% of the value of the contract as liquidated damages, and four have increasing schedules of percentages instead of dollars.

KAR 91-22-7 provides that a complaint against a teacher for breaching a contract may be filed with the State Board of Education and referred to the Professional Practices Commission. It should be noted here that this regulation contains this language:

If the investigation reveals a settlement provision or liquidation damage (sic) clause in local board policy or in the contract of the employee, so that the employee could make a financial settlement to the local district governing authority or be relieved of contractual commitment by other agreed means, the commission shall dismiss the case.

This language was amended into KAR 91-22-7 on May 1, 1979, and was opposed by the KASB, but to no avail. KASB has some doubts that this provision is within the statutory rights of the Professional Practices Commission, but that will have to be decided in the legislature or in the courts.

Already determined by the courts is the validity and enforceability of liquidated damages in contract employment relations. In USD 315 (Colby, KS) vs. DeWerff, 6 Kan App 77, April 24, 1981, the Appellate Court said, "Liquidated damages provisions, if otherwise valid, are generally enforceable for the employee's wrongful termination of employment." The case involved the negotiated agreement of a penalty for breach of contract. The agreement was upheld in the district court when the word "penalty" actually meant liquidated damages.

There was one other legal action on liquidated damages in Kansas USD's. The court action involved a \$1,000.00 provision of liquidated damages at the time of breach of contract, but it was settled out of court for \$750.00.

Boards without policy have indicated that they largely review each case on its own merits; that they regularly grant a release when requested; that they don't allow releases

unless replacements are found; that they approve all such requests on the theory "If you don't want to be here, we don't want you here."; that it isn't educationally sound policy to attempt to enforce a contract and that they seek cancelation of the certificate if a teacher leaves without board approval. The indications are listed in order of frequency of response.

Seventy-four percent of the boards with policy for the assessment of liquidated damages do not have policy language which automatically grants release from contract on payment of liquidated damages; 26% do. Such release should be subject to board approval regardless of the presence of a liquidated damages clause.

#### PROBLEMS RELATING TO EMPLOYMENT

Problems listed by superintendents responding to the questionnaire are largely local in nature, but several problems are worthy of note.

1. The nonrenewal process does not work for eliminating below average teachers. It only works for those that are totally unsatisfactory.

2. Other districts offer contracts to teachers after May 15 and throughout the summer without the courtesy of consulting the district with which the teacher is already under contract to determine what effect the loss of the teacher may cause.

3. Late action on negotiations caused by impasse and/or late state decision on state aid invalidates the effect of a liquidated damages schedule.

4. Legal uncertainties are involved in placing a teacher on probation and/or not granting the expected increment on salary schedule.

5. Process for termination can legally be delayed by teacher and counsel so as to gain the remaining year's pay on suspension until hearing determines outcome. Opportunities for delay are:

- a. Selection of teacher's representative;
- b. Selection of third party representative;
- c. Selection by court of third party representative;
- d. Setting a committee meeting date;
- e. Holding the hearing;
- f. Conveying committee hearing decision to board.

Teacher then waives right to a hearing after collecting the year's salary or suing for the salary that may have been discontinued by the board earlier than the end of the school year.

#### SUMMARY AND CONCLUSIONS FOR DATA FROM INTERLOCALS AND COMMUNITY COLLEGES

The data reported on page two largely reflect that the interlocals and community colleges face a similar situation as do the USD's of the State of Kansas. Only three hearings were requested in all the nonrenewals or dismissals reported by these schools. One hearing did not materialize because a court action was initiated, then dropped, before the hearing could convene. Two court challenges of committee recommendations to nonrenew and board confirmations are expected in one community college.

Eight resignations when faced with board action to nonrenew occurred in the interlocals; only one in community colleges.

Sixteen requests for release from a signed contract were granted by interlocal boards. One other teacher left after being denied release by the board. Of all requests for release, only three involved the payment of assessed liquidated damages.

Slightly over half of these schools have written board policy on releasing a teacher from a signed contract. Most of the schools with written policy require board approval for requests for release. Liquidated damages policy is present in only two interlocals and two colleges. The colleges use a set percentage of the contract, and the two interlocals use a progressive time schedule and a flat dollar amount. All schools without policy tend to handle such requests on an individual basis subject to board approval. One interlocal uses a policy on conflict resolution to solve the problem.

#### A CONCLUDING STATEMENT

The significance of the results of this survey, at least from the school boards' point of view, is that the teacher tenure law is a fairly effective tool for ensuring that those first and second year teachers who should not be in the classroom can be removed. Whether a teacher tenure law is effective in allowing school boards to remove tenured teachers who have proved to be incompetent, ineffective, or of doubtful productivity is yet to be determined. Practice shows it to be a lengthy, expensive, and complicated legal matter.

A section of the survey dealt with the names and occupations of hearing committee members appointed by the boards and by the teachers and the third committee member selected by the board and teacher representatives or by the district court. This information does not readily lend itself to statistical analysis but was requested in order to have it on file and available from the KASB Research Department on request by any local school district.

One final word of caution should be made for those schools with patterns of liquidated damages progressing from a small amount in late May to a large amount in late August. The wording of such policy statements or negotiated agreements may leave isolated days on which no provision applies. For example, the statement may read "\$100.00 before August 1st and \$200.00 after August 1st." August 1st then becomes an open date on which neither provision applies. An examination and redraft of the policy or agreement may prove advantageous to good understanding and employment relations.





# UNITED SCHOOL ADMINISTRATORS OF KANSAS

1906 EAST 29TH

TOPEKA, KANSAS 66605

913-267-1471

**JERRY O. SCHREINER**  
EXECUTIVE DIRECTOR

**M.D. "MAC" McKENNEY**  
ASSOCIATE EXECUTIVE DIRECTOR

TO: House Education Committee  
FROM: Jerry O. Schreiner, Executive Director  
DATE: January 30, 1984  
SUBJECT: HB 2729 and HB 2738, Teacher Due Process

HB 2729 and HB 2738 propose that the final decision of the hearing committee be binding on the board and the teacher.

Although the bills differ in their approach, both seek to place the decision making process with a third party.

For this reason, we encourage you to report HB 2729 and HB 2738 adversely.

dm

ATTACHMENT III

(1-30-84)  
HOUSE EDUCATION