Approved _____
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry.

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:00 a.m./~~p.m.~~ on January 23, 1985, 1985 in room 526-S of the Capitol.

All members were present except: Rep. Hensley, excused.

Committee staff present:
All present.

Conferees appearing before the committee:

Ben Barrett, Research Dept.
Dr. Larry Wolgast, Dept. of Human Resources

Chairman Douville introduced the new members of the committee.

Chairman Douville said that this year, more then ever, the committee has a number of problems that will require considerable study. The first problem is the Public Employees Relations Act. The second problem is employment security, so called voluntary quits. The third problem is worker's compensation. In the last 10 years a tremendous number of changes have been made, however, in the last 2 years a number of things have happened that will require the committee to take another look at workmen's compensation.

Chairman Douville then asked Ben Barrett to take the speakers stand and give the committee an overview of the Public Employer Employee Relations Act and also cover the recommendations of the interim committee. Attachment #1 was handed out to the committee. A short question and answer period followed.

Dr. Larry Wolgast then took the speakers stand and continued his explanation of attachment #1 from 1/22/85. He also handed out attachment #2 to the committee.

A tour of the Department of Human Resources was planned for a later date, along with lunch at the Labor Kitchen.

Chairman Douville adjourned the meeting at 9:55 p.m.

1-23-85 #1

COMMITTEE REPORT

TO: Legislative Coordinating Council

FROM: Special Committee on Labor and Industry

RE: PROPOSAL NO. 30 — EMPLOYER-EMPLOYEE RELATIONS ACT*

The Committee was charged with reviewing the Public Employer-Employee Relations Act (PEER) as it relates to the operation of state government, including the impact on that law of the 1983 Kansas Supreme Court opinion in Kansas Board of Regents v. Pittsburg State University Chap. of K-NEA (233 Kan. 801). (Hereinafter, the case is referred to as Regents v. PSU—K-NEA).

During the course of the consideration of the proposal, the Committee reviewed the law, reviewed the Regents v. PSU—K-NEA opinion, and held hearings focused on the issue of the PEER Act as it relates to state government.

Background

In 1971, the Legislature enacted the PEER law. It was based on a model bill of the Advisory Commission on Intergovernmental Relations (ACIR).

The Act applies to the state and to governmental subdivisions. It excludes supervisory employees, professional

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* H. Bill 2013 accompanies this report.

Att. 1, 1/23/85

employees of school districts (those persons covered by the Professional Negotiations Act), and elected and management officials and confidential employees. The law applies to public employers other than the state when a majority of the governing body of the governmental subdivision opts for coverage.

Prior to this year, the law has been the subject of interim legislative study three times — in 1971, 1974, and 1975. In the most recent interim report (1975), the Special Committee on Public Employer-Employee Relations concluded that the PEER Act was confusing and that it had created expectations of collective bargaining in the minds of some. That Committee stated that such expectations exceeded the original intent of the Legislature to provide a meet and confer process for public employees to discuss problems and issues with the employer. That Committee proposed a number of amendments of the PEER Act, several of which were designed to insure that the law was limited to meet and confer procedures. The proposed legislation was not enacted.

The impetus for the 1984 interim study came from concerns expressed by the Secretary of Administration and by the State Board of Regents about the philosophy contained in the law, especially in view of the interpretation given it by the Kansas Supreme Court in the 1983 case of Regents v. PSU—K-NEA.

Regents v. PSU—K-NEA. The case dealt with a continuing controversy between the PSU chapter of the Kansas-National Education Association and the State Board of Regents with regard to efforts to negotiate an agreement between the faculty at PSU and the Regents under the PEER Act. PSU is the only Regents' institution that is organized for purposes of negotiations under the PEER law. Negotiations between the Regents and the PSU faculty had been underway

since about January of 1975. During that time, few agreements were reached and a considerable amount of litigation occurred. An agreement was reached subsequent to the 1983 Kansas Supreme Court opinion. In that opinion, the Court provided some clarification of the substance of the PEER law. The Court's most significant determinations were:

1. The PEER Act is not a meet and confer act as the State Board of Regents had contended. It is a hybrid type of law which contains some elements of meet and confer and some of collective bargaining. It imposes on both the employer and employee representatives the obligation to meet, confer, and negotiate in good faith with affirmative willingness to resolve grievances and disputes, and to endeavor to reach agreement on conditions of employment.

2. The listing of conditions of employment found in K.S.A. 75-4322(t) is not literal or exclusive. Items that relate to the enumerated subjects must be negotiated upon request. The Public Employer Relations Board (PERB) considers, on an individual basis, each proposed item submitted to it. PERB uses a balancing test for this purpose. If any item is significantly related to an express condition of employment and if negotiating the item will not unduly interfere with management rights reserved to the employer, then the item is mandatorily negotiable. The Supreme Court confirmed PERB's judgment regarding the negotiability of eight specific items. In this regard, the Court noted that the legal interpretation of a statute by an administrative agency charged

with its enforcement is entitled to a great deal of judicial deference; further, agency rulings on questions of law carry a strong presumption of correctness, especially when the agency is one of special competence and experience.

3. The State Board of Regents is the "public employer" under the PEER Act for the teaching faculty at the institutions of higher learning under the Board's jurisdiction.

Fundamental Issue. Ever since enactment of the PEER law, there has been a continuing difference of opinion among persons interested in the law over the fundamental issue of whether it is a meet and confer or a collective bargaining approach to public sector employer-employee relations. If the PEER Act were a simple meet and confer law, there would be little obligation on the part of the employer except to meet with the representatives of the employees and confer in order to freely exchange information, opinions, and proposals on conditions of employment. The PEER Act utilizes the term "meet and confer," but as the Court decision explains, the law contains additional elements that are viewed as imposing a greater burden on the employer and the employee to reach agreement on terms and conditions of service.

Collective Bargaining Aspects of the PEER Act. In spite of the meet and confer terminology found throughout the Act, provisions that place additional burdens and responsibilities on the employer and employees to reach agreement cause the law to lose a meet and confer character and assume collective bargaining features. For example, as the Court notes, the Act's purpose is to obligate public agencies, public employees, and their representatives to enter into discussions with

"affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of the law" and "to exchange freely information, opinions, and proposals to endeavor to reach agreement on conditions of employment." Further, the Act contains impasse procedures which include the steps of mediation and fact-finding, as well as a series of prohibited employer and employee practices which include refusing to meet and confer in good faith with one another. Additionally, the law identifies and protects several management rights and creates a role for the Public Employee Relations Board, both of which probably are more extensive than would be necessary if only a limited meet and confer process had been enacted.

In Regents v. PSU—K-NEA, the Court resolved the meet and confer versus collective bargaining issue. Even though the Court noted that the Act is a hybrid containing some characteristics of both meet and confer and collective bargaining, it clearly adopted a collective bargaining position. The Court observed that meet and confer acts basically give the public employee organization the right to make unilateral recommendations to the employer, but they give the employer a free hand in making the ultimate decision recommending such proposals. The Court said that the PEER Act imposes a mutual obligation to negotiate in good faith with an affirmative willingness to resolve grievances and disputes and to promote the improvement of public employer-employee relations. The PEER Act does protect the employer's right to make unilateral decisions regarding conditions of employment after all the procedures under the law have been faithfully observed but have failed to result in negotiated agreement. In the intervening period, however, there is a heavy obligation on the part of the employer and employee to reach a negotiated agreement. It is just such an obligation that is the heart of the collective bargaining process.

Hearings

Committee hearings provided all interested parties the opportunity to present testimony concerning this study topic. Following is a summary of the principal recommendations of the conferees.

Secretary of Administration. The Secretary of Administration's view is that if there is to be a PEER Act, it should be a meet and confer model. The present law is a charade. The institutionalized processes of decision making in state government make collective bargaining an ineffective model for the resolution of employee concerns. For one thing, on any major issue, there is no single administrator who has the authority to make commitments. The Legislature controls the purse strings. Even if asked by the employees only to advocate what they want, this requires the Secretary to compromise his role as policy advisor to the Governor, a concession the present Secretary is unwilling to make. The Secretary believes that union employees are not served well unless their representatives are able to lobby in the political process. At the state level, it is through lobbying, not collective bargaining, that unions may hope to have their grievances remedied. Furthermore, the present law invites litigation and involvement of courts in a policy area that properly belongs to the Legislature.

Kansas State Board of Regents. The Regents' belief is that the PEER Act should be made a meet and confer model as, in the Regents' view, it initially was intended to be. Meet and confer concepts that the Regents support were contained in 1984 S.B. 833 (which did not pass). The purpose of that bill was to remove faculty at Regents' institutions from the PEER Act and to place them under a separate law.

AFL-CIO. The AFL-CIO proposed two specific improvements in the PEER Act — to amend the law to apply the prohibited practices section to all political subdivisions, even those which have not opted for coverage under the law, and to make the recommendations of the fact-finding board, when such recommendations are unanimous, binding on the employer.

C. A. Menghini. Mr. Menghini formerly served as an attorney for the PSU—K-NEA. His position is that no particular changes in the current PEER law are needed. The law provides a workable structure for communication between employers and employees and it provides some protection for workers. There is no usurpation of the authority of the public employer because at the end of the negotiations process, absent a negotiated agreement, the power of the employer to make the final decision is retained. Mr. Menghini opposes enactment of a separate law applicable to the faculty at the Regents' institutions such as was proposed by 1984 S.B. 833. It is viewed as detrimental because it would deny faculty the rights that classified workers have and it would insulate the Regents from the rigors of the present law.

Ed Galloway. Dr. Galloway, past president of PSU—K-NEA, speaking on behalf of the PSU faculty stated that the PEER Act is generally sound in philosophy and operation. Currently, it is working well at PSU. He opposes enactment of new legislation applicable to the Regents' institutions. He said that, no doubt, both professional employees and the Regents would wish to amend certain provisions of the current law.

Kansas Conference of American Association of University Professors (Kansas-AAUP). Kansas-AAUP believes that it is not presently desirable to make changes in the PEER Act as it relates to the faculty of the Regents' institutions. In this regard, that organization believes that 1984 S.B. 833 is

particularly undesirable because it is harsh and punitive to faculty members. It is unfair to place faculty in a separate category from all other state employees with regard to collective bargaining rights, and it is an unwise precedent to pass separate legislation for each group of public employees. This would only lead to greater administrative complexity.

Department of Human Resources. The Employment Relations Administrator of the Department of Human Resources did not make recommendations relative to any changes that need to be made in the PEER Act. However, he did emphasize the fact that the PEER Act is a collective bargaining law and not a meet and confer act. He said that if the Committee desires that the law be viewed as a meet and confer procedure, then several significant changes in language need to be made.

It was pointed out that even though the charge to the Committee was to address the law as it relates to the operation of state government, amendments to it might also affect city and county employees. Presently, about 35 units of state employees have organized and are bargaining with state officials. Some 15 cities and eight counties also have opted for coverage under the law. Each city or county bargains with a minimum of three employee units, and some, such as Topeka, bargain with five or six units. An estimate is that more city and county employees than state employees are organized and are bargaining under provisions of the law.

The Employment Relations Administrator said that employer and employee differences do arise under the law, and that they are resolved in accord with the law's provisions. There appear to be no insurmountable problems in applying the law.

Conclusions and Recommendations

While a great many questions can be raised about specific provisions of the PEER Act and how such provisions are to be applied in individual circumstances, there is one issue above all others the Committee felt obligated to address in order to carry out its study directive. That issue is whether the PEER Act, at least as it relates to the state, should be a meet and confer or a collective bargaining law.

The Committee believes it was the intention of the 1971 Legislature to enact a meet and confer and not a collective bargaining law. The Committee agrees with the conclusion of the 1975 interim study committee that the PEER Act is confusing "in that it has created the expectations of collective bargaining in the minds of some." The "confusion" referred to by that study committee has since been resolved — by PERB's interpretations of the law and by the Kansas Supreme Court's ratification of those interpretations — in favor of a collective bargaining obligation.

The Committee is totally committed to providing a mechanism which promotes communications regarding working conditions between the public employer and public employees. However, that procedure should not serve to burden management of governmental entities to the point that the efficiency of the governmental enterprise is sacrificed and the capacity of the public sector managers to make and implement critical decisions in a timely manner is impaired. It has become increasingly clear under the PEER Act, as it has evolved, that just such a result has been effectuated.

It is of interest to recall that the League of Kansas Municipalities was instrumental in securing the initial passage of the PEER Act. The League's view consistently has been that the legislation was a meet and confer proposal. The

League still regards it as such. However, the Executive Director of the League has expressed his concern to the Committee that he tends to read the Regents v. PSU—K-NEA decision as "a part of a continual erosion" of the concept of a meet and confer law. Thus, the suggestion was made that the Committee recommend amendments to clarify that the existing law is a meet and confer act.

The Committee was charged with studying the PEER Act as it relates to the operation of state government. This the Committee has done. Inasmuch as the law also applies to local units of government (except school districts, community colleges, and area vocational-technical schools) which opt for participation, the Committee also was compelled to consider the impact any proposed changes would have on those units. The decision of the Committee to recommend restoration of the meet and confer character of the law appears to be in harmony with the original purpose for such a law as expressed by the League of Kansas Municipalities.

The Committee's recommendations will be viewed by some as an effort to diminish the voice of public employees in their dialogue with the public employer concerning working conditions. The Committee believes that such a conclusion is unwarranted. For one thing, the Committee is convinced that PEER Act interpretations have caused the law to evolve into a far more burdensome and restrictive process than ever was envisioned. The Committee's amendments merely restore the employer and employee roles to those which the Committee believes originally were intended. The Committee believes that the ultimate effectiveness of such a law depends upon the good intentions of the parties involved. It is the Committee's perception that public sector employers and employees earnestly desire to nurture open and harmonious relationships and that the present law, as a result of interpretations that have been applied to it, must now be viewed as an obstacle to such

relationships. This result, even though unintended, is nevertheless real.

The meet and confer machinery of the law provides a basis for discussions between the parties and for the ongoing exchange of proposals and other information pertaining to the working condition of employees. Elimination of some of the burdensome procedural requirements of the present law should result in the demise of both the practice of "posturing" by the parties, which impedes rather than encourages progress in employer-employee relations, and the adversarial climate between the public sector employers and employees which is fostered and fueled by the cumbersome and time-consuming procedural steps that experience has shown to be inherent in the present law, as interpreted by PERB and the Kansas Supreme Court.

The Committee's bill proposes amendments which remove from the law certain language relied upon by the Kansas Supreme Court and related provisions of the current law which impose collective bargaining procedural burdens on the parties and leave intact the mechanics of a meet and confer process. Thus, the major amendments: delete language in the law which, according to the Court, requires the parties to negotiate in good faith with affirmative willingness to resolve grievances and disputes; eliminate the prohibited practices of refusing to engage in good faith negotiations and of deliberately avoiding mediation, factfinding, and arbitration of grievances (as required in K.S.A. 75-4332); and make the impasse procedure optional, based on the joint agreement of the parties.

The Committee amendments do nothing to place any new restrictions on scope, i.e., the issues that are regarded as being within the meaning of conditions of employment under the law, nor does it eliminate the impasse steps, as might be

done under a pure meet and confer approach. It does make the use of these steps contingent upon the mutual agreement of the parties. The Committee's view is that this latter change will cause the parties to resort to the impasse procedure out of a sincere desire to reach agreements in the process of developing a memorandum of agreement. As a result, the impasse procedure will cease to be viewed simply as a delaying mechanism and as a tool for executing the bargaining strategy of one party or the other.

The Committee reiterates that its proposal would remove burdens from the statutory scheme which, despite good intentions to the contrary, have proved to be counterproductive to free and unrestrained dialogue between the public sector employer and employees and which have placed a yoke of inefficiency on the management of the public business. The Committee's amendments will contribute much to realizing the goal of a positive context for the conduct of communications between public sector employers and employees.

Respectfully submitted,

Bill Morris

Nov. 29, 1984

Sen. Bill Morris, Chairperson
Special Committee on Labor
and Industry

Rep. Arthur Douville,
Vice-Chairperson
Sen. Bert Chaney
Sen. Norma Daniels
Sen. Dan Thiessen
Sen. Ben Vidricksen

Rep. Kenneth Green
Rep. Anthony Hensley
Rep. Dorothy Nichols
Rep. Lawrence Wilbert

MINORITY REPORT

As the majority has noted, the Public Employer-Employee Relations Act (PEER) has been in effect for more than a decade. During this period, the negotiating relationship between the public sector employer and employees, as articulated in the language of the law, has remained virtually unchanged. There has been a continuing debate as to the nature of the law, i.e., whether it is a simple meet and confer statute or whether it contains elements of collective bargaining. The majority correctly observes that this issue has now been put to rest. In Regents v. PSU—K-NEA, the Kansas Supreme Court adopted a position which reinforces what we believe to be the true nature of the Act. The present law does, in fact, impose a heavy but manifestly reasonable obligation on the part of the public employer and the public employees to engage in good faith in an effort to arrive at a negotiated agreement on working conditions. This obligation distinguishes the law from a meet and confer approach and gives the law its real substance.

The Court's decision came as no surprise to many who have supported the law and who have conscientiously used its provisions in order to persuade public employers to observe the statutory rights afforded to employees under the law. Our belief from the outset has been that the Legislature intended to impose a greater obligation on both the public sector employer and employees than to merely provide a forum for making recommendations and exchanging information and ideas. Otherwise, why would the Legislature have required explicitly that the parties enter into discussions in good faith with an affirmative willingness to resolve grievances and disputes? Why would the Legislature have included an impasse procedure that could be triggered by either party or by the Public Employee Relations Board? Why would the Legislature

have made it a prohibited practice to refuse to meet and confer in good faith or to deliberately avoid the use of the impasse procedures? Even though obligatory procedures were provided by law, the Legislature recognized that agreements would not always be possible; therefore, it carefully protected the prerogative of the public employer to make unilaterial decisions on matters about which agreement could not be reached.

The majority now recommends that the law be amended to strip from it the very provisions that impose a meaningful obligation on the parties to endeavor to reach a mutual agreement. Quite clearly, the purpose is to extricate the public employer from the obligation of leaving no stone unturned in such an effort. The majority would prefer that the employer hold conversations with the employees regarding their concerns and interests, all the while remaining free to implement any proposal the employer determines to be desirable without having to hammer out the particulars through a negotiations process with one or more employee units.

The main point of the testimony of persons who appeared before the Committee speaking on behalf of employees was that the law should not be changed. It was acknowledged that both employers and employees would like to alter some of the law's provisions, but, on the whole, the legislation was regarded as being sound. Its provisions work! We think it is significant that employees exhibit such a high degree of faith in this law. Some of these employees have been involved in a struggle every step of the way with an employer that was reluctant to concede anything — in terms of both the procedures authorized by the law and the topics that could be discussed under it. Over the course of several years, they have been largely responsible for definitive interpretations of what the law means and how it is to be applied. In their struggles, these employees have perservered before PERB and

the courts. They have used the law and they believe in it. Now, with one quick sweep, the majority wants to withdraw some of the most important procedures it has extended to employees. This action is being proposed just as the employees are beginning to assert their rights under the law. We believe the law should be left intact. It provides for dialogue on working conditions between the public sector employer and employees as witnessed by the fact that employees who have used virtually all of its procedures have expressed their faith in it. We should not change a law that is working. We should not change a law which has earned the support of public employees merely for the convenience of the public employer, whose ultimate decision making authority already is amply protected.

Additionally, we take note of the fact that the Department of Administration submitted to the Committee several proposed amendments to the PEER Act for consideration at the Committee's final meeting. On balance, these amendments appear to have been designed to unshackle the state employer with respect to a mutual obligation to reach a negotiated agreement on working conditions. Among other things, the amendments would have excluded salary and wage recommendations from a memorandum of agreement (applied to the state only); allowed the employer to make changes at any time in regulations affecting conditions of employment (if not contrary to the specific provisions of a memorandum of agreement) when such regulations were adopted pursuant to the rule and regulation filing act; allowed the employer to make changes in conditions of employment at any stage of proceedings under the law (if not contrary to the specific provisions of a memorandum of agreement); and permitted the employer to discuss any matter pertaining to conditions of employment with any employee or group of employees. These proposals were not adopted by the Committee.

We disagree with the Secretary of Administration's view of the PEER Act (see summary of the Secretary's position in the Committee report) and we are very much disappointed by the "back door" approach contained in the Department of Administration's proposed amendments to the law. Our greatest concern, however, is for maintaining a positive, productive, and trusting relationship between the state employer and state employees and the impossibility of achieving such a relationship when the goal of the employer is to emasculate the law. We believe that the Department of Administration should review and revise its posture with regard to this law.

In summary, we believe that the PEER Act has proved to be an effective device for facilitating communications concerning working conditions between public sector employers and employees. It has not unduly restricted public sector management prerogatives. The processes the law contains, though arduous at times, create an atmosphere in which meaningful negotiations do occur. And perhaps most importantly, the law has earned the confidence of employees. It should not be changed. The majority's recommendations strike out the heart of the negotiation obligations imposed by the law on public sector employers and employees. For these reasons, they should be rejected.

Respectfully submitted,

Sen. Norma Daniels
Rep. Kenneth Green
Rep. Anthony Hensley

MINORITY REPORT

The Public Employer-Employee Relations Act (PEER) has been in effect for more than a decade. During this period, the negotiating relationship between the public sector employer and employees, as articulated in the language of the law, has remained virtually unchanged. There has been a continuing debate as to the nature of the law, i.e., whether it is a simple meet and confer statute or whether it contains elements of collective bargaining. The majority correctly observes that this issue has now been put to rest. In Regents v. PSU—K-NEA, the Kansas Supreme Court adopted a position which reinforces the true nature of the Act. The present law does, in fact, impose a reasonable obligation on the part of the public employer and the public employees to engage in good faith in an effort to arrive at a negotiated agreement on working conditions. This obligation distinguishes the law from a meet and confer approach and gives the law its real substance.

It is my belief the law should be left intact. It provides for dialogue on working conditions between the public sector employer and employees as witnessed by the fact that employees who have used virtually all of its procedures have expressed their faith in it. We should not change a law that is working.

Respectfully submitted,

Rep. Larry Wilbert

1-23-85 Att. #2.

unemployment insurance weekly review

Week Ended January 12, 1985

Item	This Week	Last Week
Regular Program		
Initial Claims.....	7,352	3,653
Continued Claims.....	24,043	19,617
Amount of Payments.....	$3,915,099	$2,577,057
Final Payments.....	571	408
"Trigger" Rate (1-5-85).	2.09%	2.03%
Federal Supplemental Compensation Program	Week 119	
Initial Claims.....	410	164
Continued Claims.....	1,196	1,064
Amount of Payments.....	$195,575	$129,475
Final Payments.....	172	128
U.I. Trust Fund Balance.....	* $229.3M 226.7M - 21 Jan 85	$232.3M

Largest Occupational Groups Represented by Continued Claims

Occupation	Number
Construction Laborers.....	1,220
Metal Unit Assemblers and Adjusters.....	608
Packagers and Material Handlers.....	597
Movers and Storage Handlers.....	456
Truck Drivers, Heavy.....	410
Cashiers and Tellers.....	352
Stenographers, Typists, File Clerks.....	346
Carpenters, Miscellaneous.....	333
Excavators, Graders.....	331
Hospital and Health Related Attendants....	309

Duration of Unemployment

Less than 5 Weeks.....	36.9%
5 - 14 Weeks.....	42.3%
15 Weeks and Over.....	20.8%

Research and Analysis Section
Division of Employment & Training
Kansas Department of Human Resources
January 14, 1985

Atch 2, 1/23/85