

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 31, 1985 in room 526-S of the Capitol.

All members were present except:

Committee staff present:
All present.

Conferees appearing before the committee:

Mr. Jerry Powell, Dept. of Human Resources

Chairman Douville called Mr. Powell to the speakers stand. Mr. Powell gave testimony on the Public Employer Employee Relations Act. See attachment number 1. A question and answer period followed.

The meeting was adjourned at 9:55 a.m.

Labor + Industry

1-31-85

Bob Hagen

KCCI

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Good Morning, Mr. Chairman and members of the Committee. I am pleased to be here this morning to offer an explanation of the PEERA. I have prepared charts with which I hope to clarify questions relating to jurisdiction, appropriate units of employees, impasse procedures and prohibited practices including negotiability of subjects.

The first chart I want to utilize in my presentation is an organizational chart of our section within the Department of Human Resources. I know you many times hear references to Jerry Powell, Larry Wolgast, Secretary of the Department of Human Resources, PERB and probably names of various other individuals somehow connected with the administration of the PEERA. Hopefully, this chart will assist you in understanding how and where we all fit and the statutory authority of each.

The Department of Human Resources as a department of state government is headed by Secretary Wolgast who has the statutory responsibility for staff action, budget and various other responsibilities under the provisions of the PEERA. Larry has designated me to perform the various functions assigned to him by statute. While we are in close contact regarding various procedures, the day to day administration is handled by me or my staff. You will note that the Department of Human Resources is then broken down into three divisions:

- 1) Div. of Employment & Training - Steve Goodman
- 2) Division of Employment - A. J. Kotich
- 3) Labor Management Relations & Employment Standards - Jerry Abbott

The Division of Labor Management Relations & Employment Standards is further broken down into five (5) sections:

- 1) Workers Compensation
- 2) Mexican American Affairs
- 3) Veterans Commission
- 4) Industrial Safety
- 5) Labor Relations (Employment Standards)

The Labor Relations Section is the section I head and is further broken down into three functions:

- 1) Labor Relations
- 2) Employment Standards
- 3) Apprenticeship

All functions involving the PEERA are then a labor relations staff function or final actions by the PERB. Our labor relations functions are all budgeted separate and apart from other functions and our fiscal 1985 budget was \$174,578.00.

Att. #1
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Att. #1

We are budgeted for five (5) full time positions consisting of three (3) administrative positions and two (2) clerical positions.

The five ad hoc PERB members are appointed by the Governor with the advice and consent of the Senate. All final orders relating to PEERA action are approved and signed by the PERB members. Therefore, the PERB staff and the Secretary can only make recommendations to the PERB. The current PERB consists of the following individuals:

- 1) Jim Mangan, Attorney, Dodge City (Chairman)
- 2) Lee Ruggles, Director of Employee Relations, Kansas State University (representative public employers)
- 3) Art Veach, Service Employees Union Local 513, Wichita (representing labor)
- 4) Bob Kennedy, Attorney, Kansas City, KS (at large member)
- 5) Louisa Fletcher, retired, Bonner Springs (at large member)

Perhaps we should next take a brief look at the types of public employees and employers before we discuss requirements to bargain under the PEERA and the proposed bill.

You will note that there are five (5) types of public employers in the State of Kansas:

- 1) State of Kansas
 - 2) Municipalities
 - 3) Counties
 - 4) School Districts
 - 5) Special Boards
- examples:
- (a) Board of Public Utilities of Kansas City
 - (b) Fire Districts (county)
 - (c) Public Hospital Boards
 - (d) Joint City/County Boards
 - (e) Airport Authorities

I want to point out that the PEERA provides at K.S.A. 75-4321(c) that all public employers except the state must elect coverage of the PEERA before any of the provisions of the law are applicable to them. At the present time 13 cities, 8 counties, 1 special board and 3 school districts have elected coverage of the Act. Additionally, I need to quickly point out that there are two (2) public sector labor relations laws in Kansas. The PEERA and the PNA are similar statutes but govern the collective bargaining process for different type employees. The PNA is applicable to school teachers, (K through 12 and Jr. Colleges)

and other employees of school districts who perform duties of educational or instructional nature; i.e., nurses, counselors, librarians, etc. The PEERA applies to all other public employees in Kansas. Thus the bus drivers, cooks, clerks and janitors of schools organize and bargain under the PEERA.

The law you are now considering to amend applies to all public employees except teachers, librarians, counselors, etc.

I read a few years ago that there were some 300,000 public employees in Kansas. I do not know if that was an accurate approximation nor whether it is close today. I have records of the number of employees who are represented in various bargaining units around the state. I do not have that number today but I could, with some research, determine a very close approximation of the number.

I now want to spend just a few brief minutes talking about "appropriate bargaining units" in city, county and state government. I will not explain how these units came about but will give you examples of units. Unit determination will be explained under the bargaining process.

Most cities and counties have or deal with at least three appropriate units of employees within a city or county. Some cities and counties further break down units of employees on a departmental basis. In order to demonstrate the difference in city and county government by comparing the units of employees in Wichita and Topeka.

In the City of Wichita there is:

- 1) a firemen unit
- 2) a police unit
- 3) one other unit for all city units.

In the City of Topeka there is:

- 1) a unit of firemen
- 2) a unit of police
- 3) a unit for street department employees
- 4) a unit for water department employees
- 5) a unit for parks and recreations
- 6) a communication unit

The number of units in city and county government depend mainly on the desires of the governmental entity. I will go into more detail regarding the process called unit determination later in this presentation.

Turning now to units of state government our chart lists units that have been determined and units which now have a certified representative.

A quick background explanation of the genesis of these state units is in order. You will recall that the PEERA became effective in March of 1982. Shortly, thereafter numerous requests for unit determinations and elections were made of the PERB by unions. Some of these requests were for units of state employees. It became obvious to the PERB that to continue to make unit determinations of classified state employees on a piecemeal basis could result in numerous small units in numerous small units which would certainly be detrimental to the efficient operation of government. Therefore, the PERB requested that the Department of Administration file petitions for unit placement of all classified state employees. The Department of Administration complied with the request and several months of hearings were commenced in the early fall of 1973. A final administrative order was issued by the PERB in June of 1974 which created numerous state wide units of state employees.

Basically each state institution of higher education now has at least two appropriate units of employees which have been determined by agreement of the parties or by order of the PERB. Those units are as follows:

KU	Unit of unclassified "professors"	(unorganized)
	Unit of service and maintenance	(organized)
KU Medical Center	Unit of service and maintenance	(organized)
PSU (Pittsburg)	Unit of unclassified "professors"	(organized)
	Unit of service and maintenance	(unorganized)
	Unit of clerical	(unorganized)
WSU (Wichita)	Unit of unclassified "professors"	(unorganized)
	Unit of service and maintenance	(organized)
ESU (Emporia)	Unit of unclassified "professors"	(unorganized)
	Unit of service and maintenance	(organized)
FHSU (Fort Hays)	Unit of service and maintenance	(organized)

Other state units are as follows:

Non-professional units at state agencies

Topeka State Hospital	(organized)
Larned State Hospital	(organized)
Neurological Institute - Topeka	(unorganized)
Norton State Hospital	(organized)
Osawatomie State Hospital	(organized)
Parsons State Hospital	(unorganized)
Winfield State Hospital	(organized)

Fort Dodge Soldiers Home	(organized)
Youth Center unit (Topeka-Beloit)	(organized)
Penal - Non Guard	(unorganized)
Inspection and Regulation	
Technical	(organized)
Social Support Services 6 geographically located units	(1 organized - 5 unorganized)
KDOT 6 geographically located units	(all organized)
Security Services 4 units	
Highway Patrol	(organized)
Correctional Officer	(unorganized)
KBI Special Agent	(unorganized)
Security Officer	(unorganized)
Administrative Services	(unorganized)
Operational Services	(unorganized)
<u>Professional Employees State</u>	
Fiscal and Staff	(unorganized)
Legal	(unorganized)
Physical and Natural Sciences	(organized)
Special Services SRS	(unorganized)
Patient care	(unorganized)
Social Worker/Income Maintenance Worker	(unorganized)

The above listed units of employees are, to this point, the units of state employees as determined by the PERB.

Now let us turn to the types of "laws" that might govern organizational activities and/or the meet and confer/collective bargaining process.

First, let us quickly review Mr. Ben Barrett's analysis for his impression, which concurs with mine, of the necessary ingredient of a collective bargaining law.

- 1) Process for selecting representative
- 2) Requirement to meet and confer with a good faith effort to reach agreement.
- 3) Procedures for resolving a dispute over terms and conditions of employment.
- 4) Unfair labor practice or prohibited practice which apply when one fails to meet and confer in good faith.

Please note that we have not included within those ingredients a final closure mechanism to resolve disputes over terms and conditions of employment such as wages - hours, etc. Many people believe that the terms

"collective bargaining" and "arbitration" or the "right to strike" are synonymous. They are not!! A requirement to bargain is a requirement to bargain regardless of whether an impasse or disagreement over amount of pay is resolved by unilateral action by the employer or by an award from an arbitrator. Many states in this country have collective bargaining statutes exactly like the Kansas statute. That is an employer, after a good faith effort to reach agreement, may decide how much his/her employees are going to be paid. Many public employers in this state, operating under both the PNA and PEERA, after a good faith effort to reach agreement, issue unilateral contracts. Unfortunately, a few employers issue unilateral contracts after a bad faith effort or no effort to reach agreement. These employers are a small minority of Kansas public employers.

Turning now to our chart on types of laws we find three headings:

- 1) Meet and Confer.
- 2) Open ended Collective Bargaining Laws.
- 3) Closed end Collective Bargaining Laws.

You will note that the process under a pure meet and confer law is considerable shorter than the process under a collective bargaining law. The explanation for this short process is quite simple. After an employer meets with his/her employees and listens to their desires, the employer may simply dismiss the employees and do as he/she pleases.

I might point out that House Bill 2013 does not specifically set any time frame for the "meet and confer" process. I would guess, therefore, that an employer could, in the absence of any prohibited practice reference to the process refuse to "meet and confer" with his/her employees if he/she so desired. Additionally, the bill provides that the purpose of the Act is to provide a procedure which public employers may utilize in order to meet and confer. Another section of the bill provides that a public employer shall meet and confer but no reference is made as to when such meet and confer shall take place. These examples are cited in an effort to point out the obligations under a pure meet and confer statute as contrasted with the provisions of a collective bargaining law.

Moving now to the two types of collective bargaining laws you will note a similarity with meet and confer up to the point where bargaining takes place. Under the bargaining laws there exists an opportunity for

an impasse or dispute over terms and conditions of employment. That simply means that agreement has not been reached.

Most collective bargaining laws then provide procedures for resolving these impasses. Those procedures normally prescribe some combination of:

- 1) Mediation
- 2) Fact-Finding
- 3) Unilateral action by employer
- 4) Arbitration
- 5) Right to strike

The procedures prescribed then dictate the type of collective bargaining law under which the parties are operating. An open end collective bargaining law usually culminates with unilateral action by the employer. A closed end collective bargaining law provides for arbitration or the right to strike. Both our Kansas laws, the PNA and the PEERA end with unilateral action by the employer. Thus both laws are open end laws even though they are collective bargaining laws.

The next area I am going to talk about is the procedures, set by Kansas statutes, governing a formalized labor relationship. Obviously, we need not consider an informal labor relationship since under this type of relationship an employer may treat his/her employees in any manner he/she so desires. Of course, there are wage and hour laws and civil right laws which an employer must consider. But those aside an employer may in an informal relationship do just about as he/she pleases. Recourse for an employee for "unfair treatment" in an informal relationship is to quit his/her job.

I will first review the organizational process for Kansas public employees. In the beginning there is an employer and a group of employees. This relationship is an informal labor relationship. Then the employees decide they want to have some input into their working conditions (wages - hours - parking - etc.). These employees must first ascertain the appropriate unit of employees which best suits the purposes for which they desire to organize. That is, shall we organize by craft or plant. Under most bargaining laws currently in effect in this country there is created an agency to assist employers and employees in making such determinations. Additionally, there are statutory guidelines listing criteria upon which such determinations are to be based. The Kansas PEERA designates the PERB to resolve unit disputes and lists the following criteria upon which determinations are to be made:

- 1) The principle of efficient administration of government
- 2) The existence of a community of interest among employees
- 3) The history and extent of employee organization
- 4) Geographical location
- 5) The effects of overfragmentation and the splintering of a work organization
- 6) The provisions of K.S.A. 75-4325
- 7) The recommendations of the parties involved.

These criteria are pretty much standard fare for public sector law and have relatively the same interpretation under all laws. Most laws allow the employer and a group of employees to agree to the scope of the appropriate unit. What classifications are in the unit and which are excluded from the appropriate unit. However, in some cases employers and employees can't agree on unit make up thus some neutral agency is directed to resolve this type of dispute. The Kansas Law provides for the PERB to enter a final order resolving unit disputes between public employers and employees. This order of PERB is appealable to district court. The charts delineating the units of various employers were present earlier in this presentation.

Suffice at this point to say that the unit dispute stage has come and been resolved. Now the employees must choose which union or association they desire to have represent them in either meet and confer or collective bargaining. This state is called the certification or election stage. Remembering that a unit has been determined by worker classification it is a simple matter to determine the number of workers within the appropriate unit. The employees or union must present to the PERB a "showing of interest" consisting of membership cards or signed petitions from 30% of the total number of workers within the unit. If for example there are 100 workers in a unit the showing of interest or signed cards must number 30. After performing a "validation" of the showing our office then schedules an election. We travel to the geographical location of the employer and personally hand a ballot to each employee within the unit. Subsequent to the closing of the polls we count the ballots and "certify" the results of the election of the employer directing the employer to "meet and confer" with the union or organization selected by a majority of the employees voting. This directive is issued only when a union or organization is selected otherwise we inform the employer that he/she has no obligation to meet and confer.

There is a provision under the Kansas law for voluntarily recognition of union or associations, but we advise against utilization of the provision and in fact few employers have chosen to make use of it.

Now let us assume that a union has been chosen and meet and confer or collective bargaining is ready to commence. This is the point at which pure meet and confer and collective bargaining no longer resembled each other. The Kansas PEERA provides that a "certified" representative of employees may request to bargain at any time during the year except for a period of 30 days before or 30 days after budget submission date. This provision then in part govern when an employer must go to the table to meet and exchange proposals with a certified union or association. That is, if there is no existing agreement (contract) an employer must, within reason go to the table and bargain upon the request of the certified organization.

The parties agree upon a date to meet and commence bargaining. Each party prepares proposals concerning "issues" or "subjects" which are causing problems in the labor management relationship. These proposals are exchanged and discusses so that each party understands the problems and proposed solutions to the problems. A good faith effort is then expended by both parties and an agreement or contract is reached. Believe it or not, Mr. Chairman and members of the committee, the procedure described above works 90% of the time!! Agreement is reached between the parties without an impasse or dispute arising.

Sometimes, about 10% of the time I estimate, agreement can't be reached on a few of the subjects being negotiated between the parties. It is at this point that an impasse exists and our dispute resolution mechanism kick in. These mechanisms are mediation and fact-finding under our open end law. Neither the mediator nor the fact-finder have any authority to compel the parties to reach agreement. Only the parties can reach an agreement. After these mechanisms are utilized an employer can legally issue a unilateral contract. That is, the employer can set wage rates or dictate policy in a manner he/she sees fit and the process ends.

This procedure is collective bargaining but is synonymous with meet and confer in the minds of some. That is, the employer can do as he/she pleases without fear that the employees will strike or fear that an arbitrator will dictate terms and conditions of employment. These few

know that the only real obligation imposed upon an employer under the PEERA is to meet and confer in a good faith effort to reach agreement.

The area of negotiability or good faith bargaining over mandatorily negotiable subjects is another area we need to discuss.

Just a brief explanation of our procedure of making determinations relating to the requirement to bargain certain "proposals". Please note my use of the work "proposal" rather than the work "subject". The reason for the use of the word proposal is that one must look at proposals rather than subject or topical headings to determine negotiability. For example, a union might hand the employer a proposal entitled, "arbitration". It is easy to see that no such topical heading or subject is defined at K.S.A. 75-4322(t), as a condition of employment. Now one must look at the substance of the proposal in order to determine whether the "subject" is proper for mandatory negotiations. The proposal might state; "Whenever a grievance is not resolved to the satisfaction of the employer and the employee, either party may request arbitration." This proposal obviously relates to "grievance procedure" a subject listed at K.S.A. 75-4322(t), and is therefore proper for mandatory negotiations.

It is virtually impossible for the PERB or this committee to rule a subject mandatorily negotiable without considering the content of the "proposal" put forth on the bargaining table.

Mr. Chairman I hope this very brief explanation has been helpful to you and the committee members. Once again I appreciate the opportunity to appear and will certainly respond to any questions you might have.