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. on February 7, 1985 in room 526-S of the Capitol.

All members were present except:
Representative Darrell Webb

Committee staff present:

All present.

Conferees appearing before the committee:

Mr. Richard Funk, KS Assoc. of School Boards
Dr. Mike Harder, Sec'y of Administration
Mr. Arthur Griggs, Chief Council to Dept of Admin.

Mr. Richard Funk was the first speaker to testify on H.B. 2013. See attachment #1. The next speaker was Dr. Harder, see attachment #2.

Mr. Griggs then answered questions of the committee.

Meeting adjourned at 9:55 a.m.

# Labor & Industry

2-7-85

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|---|---|---|
| Harry D. Nelson | Topeka | AFL-CIO |
| Wayne Maichel | " | " |
| Ralph McGee | " | " |
| Melodee A. Rein | " | City of Topeka Personnel |
| Nickie Stein | " | KS State Nurses' A. |
| Richard Funk | Topeka | KASB |
| Bob Wootton | " | Law Office |
| Kay Coles | " | K-NEA |
| Craig Grant | Lawrence | K-NEA |
| Jim Kaup | Topeka | League of Municipalities |
| Wayne K Wisniecki | " | AFSCME Council 65 |
| John Juliano | K.C. | DOL |
| Spud Kent | Topeka | DA/DPS |
| Darrell Hoffman | Topeka | Dog A/DPS |
| Charles Dodson | TOPEKA | KAPE |
| Skip Herd | " | DHR |
| Jerry Powell | " | " |
| WILLIAM HUTCHINSON | " | " |
| B. Mariani | Topeka | DPS |
| Clifford S. Griffin | Lawrence | KU-NEA |
| Jim Marshella | Topeka | K-NEA |
| Jean Hagan | Topeka | Bd. of Regents |
| Art Griggs | " | Dept. of Ed. |
| Mike Hinson | " | " |
| Jerry Ainsworth | Winfield | USWEA |

| | | |
|---|---|---|
| Dennis Carter | Augusta | ANEA |
| Joan [illegible] | [illegible] | [illegible] |
| Tom Scates | Winfield | W- NEA |
| Paul Gantzer | Hillsboro | USD 410 Tch Ass'n |
| Bob Thomson | Arkansas City | ACTA - K-NEA |
| Pete Lawlor | Augusta | K-NEA Bd of Directors |

KANSAS ASSOCIATION OF SCHOOL BOARDS

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

2-7-85 Att. #1

Testimony on H.B. 2013

by

Richard Funk, Assistant Executive Director
Kansas Association of School Boards

Mr. Chairman and members of the committee:

Thank you for allowing me to speak to you today, not as an opponent or proponent to H.B. 2013, but rather to make some comments relative to the past two days of briefings by representatives of the Department of Human Resources.

It was a decision on the part of my association that we would take a "wait-and-see" attitude regarding the dispute between Pittsburg State University and the Kansas National Education Association. Only three of our members are involved in collective negotiations under provisions of the Public Employer-Employee Relations Act (PEERA). So we do have an interest in the eventual outcome of H.B. 2013.

My primary concern centers around the statement that "for all practical purposes the PEER Act and the Professional Negotiations Act (PNA) are identical." To be sure, each Act provides for:

meeting in good faith
an impasse procedure
mediation
fact-finding
provision for binding agreements
unilateral actions

These are, however, surface similarities and I would not want members of this committee going away with the idea that the two Acts are synonymous

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and each could be substituted for the other. There are differences between the Acts, some of which are subtle and others of large impact.

PNA vests a great amount of authority with the secretary of human resources. PEERA creates a five person public employee relations board (PERB) that has more authority than the secretary in such matters as determination of prohibited practices and arbitration rules and procedures. PERB has quite a bit of decision making authority under PEERA.

Probably the most dramatic difference between PEERA and PNA is found in Kansas Statutes Annotated § 75-4321, (under PEERA). This statute maintains that the provisions of PEERA are not compulsory upon an employer, except for the state and it's agencies. An employer, by majority vote, can elect to come under the provisions of PEERA; to come under PEERA but develop alternative procedures; or to stay out altogether. On the other hand, PNA is compulsory upon a board of education, offering the board no alternatives.

Other subtle differences exist. For example: the costs of mediation and fact-finding under PEERA are borne by the secretary. The mediation and fact-finding costs under PNA are borne equally by the board and the professional employees organization. Mediators under PEERA are assigned by the secretary, under PNA, mediators come from the federal mediation and conciliation service.

A contract under PEERA can contain mutually agreed upon conditions and procedures when impasse exists that both parties follow. When there

is no agreed to procedures and impasse exits, either side may ask PERB for assistance or PERB may render assistance under its' own motion. Under PNA, the secretary is responsible for impasse procedures.

Clearly, PEERA and PNA are more different than "just some minor differences in the time frames found in the Acts." they are two Acts, definitely established for two different groups of public employees and cannot be simply interchanged with one another.

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AH. #2

A Statement to the House
Labor and Industry Committee

Revision of the PERB Law

At the end of the 1984 Session of the Legislature, I urged the Speaker of the House and the President of the Senate to authorize an interim committee for the purpose of reviewing the PERB law to determine whether the implementation of that law and court interpretations of it were consistent with legislative intent.

I did so for two reasons: First, the law had been in effect for more than a decade, and I believe that the Legislature ought to review periodically the manner in which a law of that nature has been implemented. Both as a practitioner and as a student of the policymaking process, I am aware of the fact that policymaking does not stop with legislative enactment. Administrators make policy by the way in which they make implementation decisions. Courts make policy in the way they interpret and apply a law. I do not see any reasonable way by which policymaking can be limited to a legislative body. But I strongly believe that sovereignty in policymaking resides in the elected representatives of the citizens. Therefore, if the policy decisions of executive branch agencies and courts appear to have departed from the original intent, to the extent that legislative intent can be determined, the Legislature ought to review such actions.

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Second, I asked for a review of the PERB law because, as the State's chief negotiator, I had become aware of some problems resulting from ambiguities in the law.

I am pleased that an interim committee was appointed and that this committee is now considering proposals to amend the law.

Please understand that I know that this is a difficult issue to address, particularly for legislators whose constituents include members of organized labor. And, in a sense, it is a difficult issue for me as well. I have always considered myself as a friend of organized labor in a state in which labor unions have never been popular with a large segment of the citizenry. Many years ago I was one of a small group of academics who publicly opposed the right to work law.

It is my considered judgment that the PERB law should be amended to return it to what I believe was the Legislature's intention: to establish the right to meet and confer. But I am not going to base my case on the questions of legislative intent. My argument to this committee is that the Legislature should disallow collective bargaining in State Government. I say that without reservations or qualifications. Let me try to persuade you to accept this view:

1. State Government is not analagous to a private sector organization in which the managers who negotiate with employees control the prices the company charges

and in other ways can deliver on whatever commitments they make in the bargaining process. I am a manager, and so is the Governor, but neither of us control the purse strings. That power resides in the Legislature.

2. I would also contend that I am not free to agree in the bargaining process to advocate wage increases. My judgments, and those of the Governor, must be based on our assessment of revenue availability and the whole range of State needs. I cannot know at any point in the negotiating process what those conditions will be at the time when budget decisions are being made by the Governor. I do not like charades, and so I will not pretend to do more than state employee concerns and advocate them if, everything else considered, it makes sense to do so.

3. A third reason why I oppose collective bargaining in State Government is that I believe in treating all employees uniformly in respect to compensation and other benefits. I will not negotiate an agreement with one union in which the items agreed to affect only the members of the union. That has happened in California, as I understand it, with the result that uniformity of treatment of employees has been sacrificed.

4. I regard all unions in State Government as interest groups. As such, they enjoy the constitutional rights to petition government for a redress of grievances. I see no reason why union leaders should expect a treatment different from what is accorded and expected by other interest groups. Let them earn the support of

their members in the same way other interest group leaders earn that support: by lobbying executive branch administrators and legislators.

Yesterday I met with the sub-committee of the House and Senate Ways and Means Committees charged with the responsibility of reviewing the Governor's pay plan proposals. I learned that this sub-committee has scheduled a public hearing. I was pleased because I intended to ask the committee to hear Mr. Dodson, representing KAPE, to state his proposals. Mr. Dodson briefed me last year on his union's interests. He subsequently briefed the Governor's policy staff. Though all of what his union would like is not included in the pay plan proposals, we expect to continue the dialogue with him. Even if the committee does not modify the Governor's pay plan proposals, I would expect some modifications in the future. I cite this case to illustrate what I believe to be an appropriate way for a union representative to pursue his union's interests in this governmental decisionmaking process.

5. All of us in State Government are ultimately accountable to the citizens of this state. The rules of the decisionmaking process were created to insure that accountability. Therefore, we should not be engaged in negotiating agreements which in any way dilute the system of accountability. What we may agree to today may and should be undone if, in the judgment of elected officials, such agreements are contrary to the public interest.

6. State employees are advantaged in comparison with private sector employees in the sense that they are protected by civil service and enjoy job tenure. Therefore, the need for unions in public service is not the same as the need for unions in companies. But I am not opposed to public sector unions provided that union leaders seek their objectives through the institutionalized process of governmental decisionmaking. They should not expect both the advantages of bargaining and the advantages of the civil service system.

During the last few days I have read several articles which address the question of bargaining in the public sector. Nothing I read in any way contradicted the position I have taken today. I will spare you a review of these articles, but one statement effectively expresses the main theme:

> "...on any kind of evaluation, logical or empirical, collective bargaining by public agencies has revealed itself incompatible with ordered, effective representative government; an instrument of chaos and of abuse of the citizenry in the name of whom and for whom government is designed."

Nothing I have said should be interpreted as opposition to the principle of meet and confer. I strongly support that practice.

In conclusion, the members of this committee should be informed that at least one member of the Governor's

group of policy advisors, Bob Wootten, disagrees with my views in some or all respects. Governor Carlin has freed both of us to express our own views and thus, hopefully, contribute to committee deliberations. Governor Carlin reserves his right to make a judgment if and when a bill comes to his desk. I appreciate that latitude because on this general issue of the appropriateness of collective bargaining in State Government I have made up my mind, and I am prepared to live with the consequences of expressing my views.