

Approved February 15, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION

The meeting was called to order by Senator Joseph C. Harder at
Chairperson

1:30 ~~xxx~~ p.m. on Thursday, February 11, 1988 in room 313-S of the Capitol.

All members were present except:

Senator Anderson, excused

Committee staff present:

Mr. Ben Barrett, Legislative Research Department

Ms. Avis Swartzman, Legislative Revisor's Office

Mrs. Millie Randell, Secretary

Conferees appearing before the committee:

SB 528 - An act concerning professional negotiation between boards of education and professional employees thereof; relating to certain rights of boards of education. (Education)

Proponents:

Mr. Robert Wright, Deputy Superintendent, USD 259, Wichita

Mr. Norman D. Wilks, Director of Labor Relations, Kansas Association of School Boards

Opponents:

Mr. Craig Grant, Director of Political Action, Kansas-National Education Association

Mr. James E. Copple, Legislative Director, Kansas Federation of Teachers

The Chairman called the meeting to order and welcomed members of the Kansas Association of School Boards who were in town today to attend the KASB Governmental Relations Seminar. He then announced that the Committee would commence its hearing on SB 528, which relates to professional negotiation between boards of education and professional employees. The Chairman called upon the first conferee in support of SB 528, Mr. Robert Wright, Deputy Superintendent, USD 259, Wichita. Mr. Wright's testimony is found in Attachment 1.

Mr. Norman D. Wilks of the Kansas Association of School Boards described SB 528 as a bill which would allow school boards to respond to the issues or problems not included in the district's negotiated agreement. (Attachment 2) In responding to a question, Mr. Wilks replied that a list of the negotiated items between teachers and the boards of education can be found in K.S.A. 72-5413 (L).

Mr. Craig Grant, Kansas-National Education Association, in opposing SB 528, said that "if changes are made unilaterally, even if negotiations follow in a few months, it will be extremely difficult to reverse the change after the fact". (Attachment 3)

The Kansas Federation of Teachers representative, Mr. James E. Copple, stated that passage of SB 528 would represent a major step backwards in the practice and outcome of professional negotiations. (Attachment 4)

Following testimony by Mr. Copple, the Chairman inquired if there were any other persons who would wish to testify on SB 528, but there was no response. The Chairman then announced that the hearing on SB 528 was concluded and that the bill would be taken under consideration.

The Chairman again acknowledged the presence of members of the Kansas Association of School Boards who were in attendance and offered a word of appreciation to them for the services they are performing on behalf of education in Kansas. He then adjourned the meeting.

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 313-S DATE: Thursday, February 11, 1988

GUEST LIST

NAME

ADDRESS

ORGANIZATION

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
GARY C. FULTON	OAKLEY	USD 274
Sheila Frick	Colby	SB of Ed
TERRY SCHMIOT	Moundridge	USD 423
Frank Nichols	MOSCOW	USD 209
Bill Preheim	Moscow	USD 209
Richard W. Brush	McPherson	McPherson Teachers Assn.
Carol R. Swenson	McPherson	McPherson Teachers Assn.
Joyette Anderson	Shellington	School Board
Norman L. Reynolds	Wellington	Superintendent
John E. Bahago	Towanda, Ks	Superintendent
BOB JOHNSON	TOWANDA, KS	USD 375
Tim Clapp	Amover, K.S.	USD 385
Bob Mosier	Greensburg	USD 422
Carol Keithline	Piper	U.S.D. #203 - School Board
Steve Cook	Stockton	USD 271
Chris McDonald	Stockton	USD 271
Margene Norris	Edgerton - Gardner	USD 231
Gary George	" "	" "
Melvin Schasteen	Gardner Edgerton	USD 231
B. H. Norris	Gates Center	USD 366
Craig Chamberlin	Chapman	USD 473
Harold Pitts	Topeka	
Willie Pitts	Sabecha	441

SENATE EDUCATION COMMITTEE

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<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Craig Grant	Topoka	K-NEA
Judy Grant	Lawrence	
Ray Cole	Topoka	K-NEA
Richard Connell	Clafflin 354	Supt.
Sue Hammeke	Clafflin Ks. 354	KASB
Fred Rappaport	2906 Barclay Drive	
Yeh Berkta	308 W. 6th - Ellsworth	KASB
Robert D. Wight	1213 Perry Wichita	USD # 259
Kaylyn Dysol	Wichita	" "
Jim Capple	Wichita	KFT
Chartha Miller	Manhattan USD 383	KASB
Jim Youally	Overland Park	USD # 512
Luth Tauderich	" "	USD # 512
Marlin Starbony	Spawnee Mission	USD # 512
Sam Hochstet	Smith Center	USD # 237
Jim [unclear]	Manhattan	USD 383
Matt Tuttle	Topoka	AP
Evelyn Whitcomb	Wichita	SBOE
Carolyn Lehr	Topoka	KFT
Wanda Sugar	Conway Springs	USD 356
Gary Rieder	Clearwater	USD # 204
Gary [unclear]	Kennington	USD 238
Karen [unclear]	Topoka	USD # 501
John [unclear]	Edwards	USD 330
George [unclear]	Eschwege	USD 330

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<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Glenn R. Stollen	Sabetha	USD 441
Kenneth Berndt	Salina, KS	USD 307
William R. Walz	Salina, KS	USD #307
Lou Burgess	Ozawie, KS	USD 340
Robert Stauts	Winchester, KS	USD 339
Noem WILKS	TOWNSHIP KS	KASB
Ralph Bradley	Hanston, KS	USD 228
Dick Jones	Ogden, KS	USD 216
John C. Jones	Sabetha	USD #441
Riley Wentenberger	Sabetha	USD #441
Jerry Hadberg	Copeland	USD #476
W. H. Harris	White City	USD 481
Ray Bialfeld	Hope, KS	USD 481
Phil Woodman	Cheney, KS	USD 268
Thomas W. Vernon	Herington	USD 487
Dave Lloyd	Herington	USD 487
Les Heller	Herington	USD-487
Frank Ongor	Herington	USD 487
Jack Parker	Buhler	USD 313
Virion Baxter	Russell	USD 407
Leber Jagers	Russell	USD 407
Stanford Peterson	Burdick	USD 397
Sharon Cross	Hope, KS	USD 481

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Eldon Riffel	Hope, Ks	U.S.D. 481
Bob McDaniel	Hope, Ks.	USD 481
Bell Muesch	Munecolis, Ks	St Bdz Ed
Brilla Highfill Scott	Topick	UST
Paperman	Ottawa, Ks	KASB
Linda Heiniger	Ottawa, Ks	KASB
Stanley Blattner	Rozel Ks	USD 496 KASB
Ron Pfenniger	Nekoma Ks	USD 496 KASB
Jim Barrett	Rozel, Ks	USD #496
Sam McShadel	Alexander, Ks.	U.S.A. 496 - K.A.S.B. President
Barbara Reece	Burdett, Ks	USD # 496 KASB
Bob Kamin	Bascher, Ks	USD # 458
Wilma Schuler	Bascher, Ks	USD # 458
Len Lewis	Winfield Ks	USD # 465
Martha Butler	Winfield	USD 465
Mike Backus	Burdett, Ks	USD 462
Mauri Selby	Amarcus Ks	USD 251
John Battistoni	Coffeyville, Ks	USD 445
Sharon Jones	Coffeyville, Ks	USD 445
Jim Hamm	" "	" "
Bob Wells	Stockton Ks	USD 271
Bessie Ryan	McCracken, Ks.	USD 395
Randy East	Belleville Ks.	USD 427
Bob Lawton	Belleville Ks	USD 427
Wince Pachta	" "	US 427

Gruck Baker	Fredonia Ks	USD 487
Kuallen Baker	Fredonia, Ks	USD 484
Jim LaDuke	McPherson Ks	USD 418
Dubbe Gantz	McPherson, Ks.	USD 418
Jack Gantz	McPherson Ks	USD 418
Mary Anne Trickle	Salina Ks	NEA-Salina
Deena Horst	Salina, Ks.	NEA-Salina
Jean Bergmann	eward, Ks	2,10 248
Ivan Myers	Lindsborg	USD 400
Mike Philpot	Whitewater	USD 206
Yan King	Kansas City	USD 500
Richard L Reimer	Wichita	USD 266 Maize
Charles Hubbard	Derey	USD 260
Robert Hale	Turner-Kansas City	USD 202
Donna Hill	Whitewater	USD 206
Bill Medley	Winfield	USD 465
Alan E. Drake	Ft. Scott	USD # 234

February 11, 1988

Testimony by Robert D. Wright
Deputy Superintendent of Schools
USD No. 259, Wichita

Concerning SB528

Every labor agreement is silent with respect to some mandatorily negotiable issues. Most labor agreements contain a clause to deal with this fact. There are two basic types of such clauses; a management rights clause or a maintenance of standards clause.

A management rights clause essentially provides that, until the parties negotiate a subject, the management retains the right to manage. If labor doesn't like management's decisions, labor can propose changes for the next agreement.

A maintenance of standards clause essentially provides that, until the parties negotiate a subject, management must continue to follow its past practices. If management wants to make a change in those practices, it must first negotiate the practices with the changes into the next agreement.

It is the position of USD 259 that the management rights approach is vastly superior to that of maintenance of standards because it avoids paralysis, perpetual year-round negotiations, and swollen agreements full of unnecessary verbiage. For these reasons, the Teachers Employment Agreement in Wichita contains a management rights clause and does not contain a maintenance of standards clause.

However, in a series of decisions, the Kansas Supreme Court has judicially imposed a maintenance of standards clause on all teacher agreements in Kansas. The import of this cannot be overstated. There is no state in the nation which has a negotiations statute which legislatively imposes maintenance of standards. And there is no state in the nation, except Kansas, where it has been judicially imposed.

The question is simple: Where the parties have not chosen to negotiate a topic, will the Board of Education have the right to change its practices to adapt to changing circumstances, or must it first enter into negotiations to effect such changes?

The answer to the question makes enormous difference in practice. As an example, if a contract is silent as to what time school begins in the morning (and the vast majority of teacher contracts in Kansas are) and, because of heat

or traffic patterns or snow, the board determines it to be prudent to change, even temporarily, the time to begin school, under the Supreme Court's imposed maintenance of standards the Board must first reopen negotiations, propose the change, gain agreement, and wait for ratification. If impasse is reached, the issue goes to mediation and possibly to factfinding.

If you find this example to be unbelievable in your district, it is probably because your teachers are not yet fully aware of the impact of the Supreme Court decisions. I can assure you that, in Wichita, the example is not hypothetical and that I could cite many additional real examples. This problem is not only an urban problem. The potential is greater the more silent the district's teacher contract is and smaller districts tend to have less comprehensive contracts.

Does it not make much more sense to return the right to manage the school district to the school board? The board would still be required to comply with the teacher agreement and the board would still be required to negotiate the subject prior to the next contract if the teachers so desire.

I would be pleased to respond to any questions you may have.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



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

TESTIMONY ON SENATE BILL NO. 528
BEFORE THE SENATE EDUCATION COMMITTEE

By

NORMAN D. WILKS, DIRECTOR OF LABOR RELATIONS
Kansas Association of School Boards

February 11, 1988

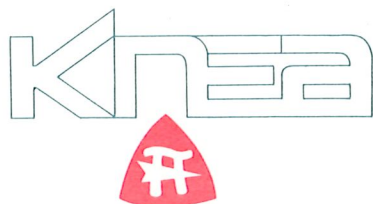
Mr. Chairman and members of the committee, we appreciate the opportunity to appear today on behalf of the 302 members of the Kansas Association of School Boards. KASB supports the provisions found in Senate Bill No. 528.

Passage of Senate Bill 528 will allow school boards to respond to the issues or problems not included in the district's negotiated agreement.

If a district has negotiated a Management's Rights Clause, reserving to the board the authority to unilaterally change items not negotiated or specifically addressed in a negotiated agreement, current law, as interpreted by the Kansas Court of Appeals, makes the provision unenforceable.

Senate Bill 528 as proposed would allow school boards the needed flexibility to respond to changing situations by policy. Professional employees disagreeing with the policy can notice the policy for negotiation, and inclusion in subsequent contracts.

We urge your support and passage of Senate Bill No. 528.



Craig Grant Testimony Before The
Senate Education Committee
Thursday, February 11, 1988

Thank you, Mr. Chairman. Members of the Committee, my name is Craig Grant and I represent Kansas-NEA. I appreciate this chance to visit with the committee about SB 528.

A not so great philosopher once stated that if you sit on the corner long enough you will see the same circus wagon come by again and again. That is somewhat how I feel today. Even though in the explanation of this bill when introduction was requested the rationale was given that the need was because of a new superintendent and changes which he wanted, I can relate to you that this is at least the third time since 1984 that topic has arisen--and from the same source.

A court decision which stemmed from the Wichita school district clearly stated that a board of education could not change an existing term or condition of employment if that term was covered by the professional negotiations act without first noticing the item and talking about it during negotiations. The court said that to do this would negate the concept of past practice. Instead of negotiating the change the Wichita board introduced SB 767 in 1984 and SB 98 in 1985 to reverse the court decision. Now once again, instead of bringing the topic to the negotiating table, we see SB 528, which seeks to accomplish the same thing.

SB 528 basically takes away an extremely important concept in labor relations--the concept of past practice. Past practice indicates how

Attachment 3, 2/11/88

people are dealt with in the normal day to day administration of any business. Arbitrator Arthur Jacobs describes a contract or agreement as "far more than words on paper. It is also all the oral understandings, interpretations, and mutually acceptable habits of action which have grown up around it over the course of time." Kansas-NEA believes that stable and peaceful relations between parties depend on a satisfactory superstructure of understanding as to how people are to be dealt with over the course of a year. That understanding should not have to all be written down in an official contract. In the fifteen years I have negotiated for teachers, I did not bring to negotiations each and every condition of employment open for negotiations. I believed that teachers should bring problems which were of immediate concern to discuss possible solutions. Other items which I felt were working well in the district were left alone.

SB 528 would allow Boards of Education the opportunity to take away these "customs" or past practices which have worked to both parties advantage unilaterally with no discussions with the teachers until the next round of negotiations. Lines 32 and 33 of the bill which is current state law allows negotiation on the "request of either party at any time during the school year." Boards can, if they really have a serious concern, open discussion with regard to any term and condition of employment at any time. Addendums to contracts have and continue to be added during the term of the agreement. The worst scenario that can and should be pictured is that a Board would have to wait until the next school year to unilaterally change a past practice which has worked. If it had not worked, it would have been discussed in past negotiations. I know of few, if any, teachers' associations who would refuse to reopen a contract if there was a real need which had to be addressed. If changes are made unilaterally, even if negotiations follow in a few months,

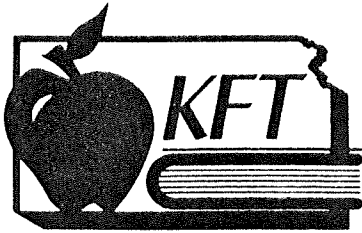
Craig Grant Testimony Before Senate Education Committee, 2/11/88, page three

it will be extremely difficult to reverse the change after the fact. At least in negotiations teachers will learn the rationale for the change and can present ideas as to why the change would or would not be beneficial.

Kansas-NEA believes that the courts in Kansas and elsewhere have rightly upheld the concept of past practice in labor-management relationships. SB 528 would eliminate the stability in those relationships by allowing Boards to change existing terms and conditions of professional service without going through the process which this legislature has established. We have many two and three page agreements in effect in this state. Teachers associations would be forced to notice anything and everything--even though it is working presently--to insure that unilateral changes were not made. That would bog down the process and virtually guarantee more impasse situations in this state--something none of us want.

We were told that the bill was needed because a new superintendent wanted to make some changes. Nothing could prevent those changes as long as they were brought to the table and discussed. What we do not want is that the long standing traditions of past practice be tossed aside each time a new ambitious superintendent or board member comes along. SB 528 would remove that consistency in labor relations which is desirable for both parties.

Kansas-NEA asks that you report SB 528 unfavorably for passage. Thank you for listening to the concerns of teachers.



KANSAS FEDERATION OF TEACHERS
310 West Central/Suite 110 • Wichita, KS 67202 • (316) 262-5171

SENATE TESTIMONY IN OPPOSITION TO SENATE BILL NO. 528

James E. Copple
Kansas Federation of Teachers

February 11, 1988

Mr. Chairman, members of the Senate Education Committee, a favorable reading of Senate Bill No. 528 would represent a major step backwards in the practice and outcome of professional negotiations. The underlying assumption behind this piece of legislation is that professional negotiations is automatically adversarial. School boards, specifically Wichita, would like the legislature to give them statutory authority to avoid what they are expected to do in the normal process of conciliation and negotiation. If public education is to continue to serve the needs of its communities and the children who attend our schools, we must seek to build relationships between boards of education and teachers that are mutually beneficial and positive. Senate Bill No. 528 is not positive - it comes to us under the guise of administrators needing authority to get things done. The Chinese educator and philosopher Confucius gave us the following admonition regarding leadership when he wrote these words: "There are people who seek progress and people who seek to get things done - one must never assume that these two ends are one and the same."

This legislation is not progressive, rather it is potentially oppressive. School boards and teachers must seek through the process of negotiation to find ways to discuss all issues related to the educational outcomes of our children. The Kansas Federation of Teachers and its 2,000 members object to this legislation for these specific reasons:

1. If passed favorably, this legislation could remove board incentive to negotiate items that are truly in the best interest of all school district personnel. They could simply place all "neutral" areas of negotiation under the clause guaranteeing "management rights."

2. This legislation is adversarial and is not consistent with national efforts to make the process of negotiations a process of conciliation, mutual understanding and shared purpose. It runs contrary to reform efforts of teacher empowerment and shared decision making.
3. Given that the Professional Negotiations Act does not currently require boards of education to negotiate items such as assignment, transfer and class size; we dare not support legislation that would automatically violate maintenance of standards when and where the contract is silent. Good boards may do good things with this legislation - bad boards could do bad things.
4. Finally, if there are differences between boards and teachers - let them discuss these differences - let them negotiate in a fair and open manner.

The people of Kansas, if one reads carefully the recently released KATE report from Emporia State University, seek progressive, forward looking proposals in education. Our schools face real problems - we need legislation that would make the process of negotiations an experience which emphasizes our mutual goals and helps us to address these problems together. Senate Bill No. 528 would only serve to alienate teachers from this process. We must find ways to include the professional - not exclude them.