

Approved February 16, 1988  
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at  
Chairperson

1:30 ~~xxx~~/p.m. on February 15, 1988 in room 531N of the Capitol.

All members were present except:

Senator Winter

Committee staff present:

Julian Efird - Research  
Jill Wolters - Revisor

Conferees appearing before the committee:

Art Griggs - General Counsel, Department of Administration  
Brad Avery - General Counsel for the Kansas Association of Public  
Employees

The Chairman called the meeting to order and introduced Art Griggs who presented legislation relating to employees of State Board of Indigents' Defense Services, Division of Architectual Services and Division of Printing. A bill draft was distributed which addressed these three groups of state employees and the Committee was requested to introduce this legislation. A motion to this effect was made by Senator Hoferer and seconded by Senator Frey. Motion carried. (Exhibit A)

The Chairman asked the Committee to consider the sunset legislation on the office of Secretary of Social and Rehabilitation Services and the Department of Social and Rehabilitation Services. A motion to introduce this legislation was made by Senator Johnston. It was seconded by Senator Gaines and the motion carried. (Exhibit B)

A motion was made by Senator Gaines to introduce legislation concerning the Kansas Public Broadcasting Commission. This was seconded by Senator Strick and the motion carried. (Exhibit C)

Brad Avery was then introduced and he addressed the committee on SB 562 which concerns the Kansas Civil Service Act. He discussed 5 proposed changes in this law and gave an explanation of each amendment. Considerable time was given to the subject of "job stacking" and the proper rate of pay for this type of work. It was pointed out that sometimes employees receive a greater work load along with a pay cut and/or demotion when a position in an office is vacated. There was considerable discussion on this subject and Art Griggs addressed the committee with his views. It was pointed out that demotions and pay cuts can be appealed but there was concern that parts of this bill would remove some incentives for efficiency. It was also pointed out that in the reinstatement section the agency has to rehire a laid off employee before someone else can be considered for the position. (Exhibits D and E)

A motion to approve the minutes of the January 25 and February 1 minutes was made by Senator Gaines and seconded by Senator Francisco. Motion carried.

The meeting was then adjourned at 2:30 p.m. by the Chairman.

GUEST LIST

COMMITTEE: Senate Governmental Organization DATE: February 15, 1988

NAME	ADDRESS	COMPANY/ORGANIZATION
Sgt Bob Affin	TOPEKA, KS	KANSAS HIGHWAY PATROL
Art Grepps	Topoka	Dept. of Adm.
SUSAN IRZA	Topoka	Division of PERSONNEL
Barbara Bischo	Topoka	" " "
Donald S. Kurt	Topoka	" "
Dolores Amador	Topoka	K. C. C.
Blair Welch	TOPEKA	KAPE
Charles Dalton	TOPEKA	KAPE
John Conard	Topoka	Governor
Ed A. Preece	Topoka	Dept. of Human Resources



## DEPARTMENT OF ADMINISTRATION

State Capitol  
Topeka 66612-1572  
(913) 296-3011

H. Edward Flentje, *Secretary*

MEMORANDUM

TO: Senator Ben Vidricksen, Chairman  
Senate Governmental Organization Committee

FROM: H. Edward Flentje  
Secretary of Administration *H. Edward Flentje*

DATE: February 11, 1988

SUBJECT: Legislation relating to employees of state board of indigents' defense services, division of architectural services and division of printing

Attached is a copy of a bill draft addressing three groups of state employees. Our department respectfully requests the introduction of this bill by your committee. The groups and proposed action contained in the bill are as follows:

1. Division of Architectural Services (section 1 and 2). The bill proposes to return the architects and engineers in this division to the classified service. Architects and engineers for other state agencies are currently in the classified service.

This bill would reverse legislative action taken in 1978, when the architects and engineers in this division were taken out of the classified service in order to give the secretary of administration a free hand in terminating unsatisfactory employees. The director, assistant director, attorneys and space management personnel would remain in the unclassified service.

2. Division of Printing (section 3). Although employees in the Division of Printing have been in the classified service since the elected state printer

Senator Ben Vidricksen  
February 11, 1988  
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position was abolished and the division of printing was established in 1976, the printing trades employees were never put on pay ranges and steps of the pay matrix for classified employees. As a carry over from the elected state printer days, these employees have a normal work week of 37.5 hours and have been paid hourly rates that are negotiated annually with employees bargaining groups at the printing plant. There are three different bargaining groups involved which represent a total of fifty-seven employees. This negotiation procedure results in a very time consuming process.

The bill proposes to put these employees on a 40 hour work week and place them on the pay matrix applicable to all other classified employees. Existing employees are guaranteed that their current hourly non-overtime pay will not be reduced.

3. State Board of Indigents' Defense Services (section 4). Currently, all personnel in this agency are in the unclassified service. The bill proposes to put all employees in the classified service, except attorneys and the director. There does not appear to be good rationale for having investigative and clerical personnel unclassified.

Please advise if you have any questions or comments.

AHG:dp  
5094A

cc: Susan Irza  
Ed DeVilbiss  
Dale Smith  
Ron Miles

PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT relating to certain state officers and employees; concerning personnel of the state board of indigents' defense services, the division of printing and the division of architectural services; amending K.S.A. 75-1017, 75-1202a and 75-1202d and K.S.A. 1987 Supp. 22-4524 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 75-1202a is hereby amended to read as follows: 75-1202a. (a) There is hereby established, within and as a part of the department of administration, a division of architectural services, the head of which shall be the director of architectural services. Under the supervision of the secretary of administration, the director of architectural services shall administer the division of architectural services. The director of architectural services shall be in the unclassified service under the Kansas civil service act and shall be appointed by the secretary of administration, with the advice of the state building advisory commission. Attorneys and space-management officers of the division of architectural services shall be in the unclassified service under the Kansas civil service act. The director of architectural services may appoint an assistant director of architectural services who shall be in the unclassified service under the Kansas civil service act.

(b) The director of architectural services shall have appropriate administrative and managerial experience and abilities commensurate with and necessary for the performance of the responsibilities of the office of director of architectural services.

Sec. 2. K.S.A. 75-1202d is hereby amended to read as

follows: 75-1202d. (a) The director of architectural services shall attend all meetings of the state building advisory commission and keep a full and correct record of its proceedings which when approved by the commission and signed by the chairperson shall be the official record. The director of architectural services shall have such powers and duties as may be prescribed or imposed by the secretary of administration or by law.

(b) Subject to approval by the secretary of administration and in accordance with appropriation acts, the director of architectural services shall appoint the professional, technical, administrative, clerical and other personnel of the division of architectural services. Except as provided in K.S.A. 75-1202a and 75-2935 and amendments thereto, all professional--and administrative positions of the division of architectural services shall be in the unclassified classified service under the Kansas civil service act. On-and-after-the-effective-date--of this--act,--all--technical,--clerical--and--other--nonprofessional positions--of--the--division--of--architectural--services--shall--be--in the--classified--service--under--the--Kansas--civil--service--act.--Each person--performing--services--for--the--division--of--architectural services--in--any--such--nonprofessional--position--immediately--prior to--the--effective--date--of--this--act--shall--continue--in--such--position and--shall--attain--permanent--status--in--the--classified--position without--examination--and--without--a--probationary--period.--Such person--shall--retain--all--retirement--benefits--earned--prior--to--the effective--date--of--this--act--and--such--person's--service--shall--be deemed--to--have--been--continuous. Each person employed on the day preceding the effective date of this act in a professional or administrative position in the division of architectural services, which is placed in the classified service under the Kansas civil service act by this act, shall continue in such position and shall attain permanent status in that classified position without examination and without a probationary period. Such person shall retain all retirement benefits earned prior to

the effective date of this act and such person's service shall be deemed to have been continuous.

Sec. 3. K.S.A. 75-1017 is hereby amended to read as follows: 75-1017. ~~The compensation to be paid employees of the division of printing shall be no greater than that paid by other printing and binding offices employing the same class of labor.~~

(a) Except as otherwise prescribed by law, all employees in the division of printing shall be in the classified service under the Kansas civil service act. Subject to, and in accordance with this section and K.S.A. 75-2938, and amendments thereto, on July 1, 1988, all positions in the division of printing in the classified service shall be assigned to job classes and pay ranges.

(b) No employee who is employed in the division of printing immediately prior to the implementation date for the assignment of job positions and pay ranges pursuant to subsection (a) shall receive, as a result of such implementation, a rate of compensation for nonovertime work which, when equated to an hourly rate, is less than the hourly rate such employee was receiving for nonovertime work on June 30, 1988.

(c) The standard workweek for classified employees of the division of printing shall be a 40-hour workweek, and such employees shall be assigned to a range on the pay plan based upon a 40-hour workweek. Payment of overtime pay to employees of the division of printing shall be in accordance with regulations adopted pursuant to K.S.A. 75-3747, and amendments thereto.

(d) Implementation of the provisions of this section shall not be deemed a violation of K.S.A. 75-4333, and amendments thereto.

(e) For the purpose of paying compensation to officers and employees of the division of printing, unless biweekly payroll periods are established under K.S.A. 75-5501a, and amendments thereto, which apply to such officers and employees, the director of printing shall file a semimonthly payroll with the director of accounts and reports which shall cover a work period from the

first to the fifteenth, and the sixteenth to the close of the month. If biweekly payroll periods are so established which apply to such officers and employees, the director of printing shall file biweekly payrolls with the director of accounts and reports therefor. The compensation for semimonthly payrolls shall be paid to the officers and employees semimonthly on the fifth day following the end of the preceding semimonthly work period, and the biweekly earnings shall be paid to officers and employees on the twelfth calendar day following the end of the biweekly work period.

Sec. 4. K.S.A. 1987 Supp. 22-4524 is hereby amended to read as follows: 22-4524. (a) There is hereby created the position of state director of indigents' defense services. The director shall be in the unclassified service under the Kansas civil service act, shall be appointed by the state board of indigents' defense services and shall devote full time to the performance of the duties of the office of director.

(b) The state director of indigents' defense services and ~~all other officers and employees~~ attorneys appointed or employed by the state board of indigents' defense services shall be in the unclassified service under the Kansas civil service act. All other officers and employees of the board shall be in the classified service.

Sec. 5. K.S.A. 75-1017, 75-1202a and 75-1202d and K.S.A. 1987 Supp. 22-4524 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.



SENATE BILL NO. \_\_\_\_\_

By Committee on Governmental Organization

AN ACT concerning the Kansas sunset law; continuing in existence the office of secretary of social and rehabilitation services and the department of social and rehabilitation services; amending K.S.A. 74-7252 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 74-7252 is hereby amended to read as follows: 74-7252. Except as provided in K.S.A. 74-7246, and amendments thereto, the office of secretary of social and rehabilitation services and the department of social and rehabilitation services, created by K.S.A. 75-5301, and amendments thereto, shall be and are hereby are abolished on July 1, ~~1988~~ 1996.

Sec. 2. K.S.A. 74-7252 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. \_\_\_\_\_

By \_\_\_\_\_

AN ACT concerning the Kansas public broadcasting commission; relating to the powers, duties and functions thereof; amending K.S.A. 1987 Supp. 75-4907 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1987 Supp. 75-4907 is hereby amended to read as follows: 75-4907 . The commission shall administer this act and shall have and may exercise the following powers, duties and functions: (a) provide coordination and information on matters relating to public television and radio broadcasting among-state-agencies,--all-facets-of-Kansas-public-education,--and individuals,--associations,--and--institutions--working--in--such fields-both-within-and-without-the-state stations;

(b) establish statewide equipment compatibility policies and determine methods of interconnection between public broadcast stations to be employed within the state;

(c) make to the governor and the legislature such recommendations as deemed necessary with regard to appropriations relative to public television and radio broadcasting station operations and facilities consistent with furthering the purposes of this act;

(d) determine those educational agencies or institutions, nonprofit corporations, and public television and radio stations which qualify for state financial assistance provided for by this act;

(e) cooperate and coordinate with federal agencies for the purpose of obtaining matching and other federal funds for providing public television and radio broadcasting service throughout the state, and make such reports as may be required of

the state to such federal agencies;

(f) allocate and distribute state funds to those noncommercial public television and radio stations serving Kansas in amounts to each such station as specified by appropriations acts of the legislature to sustain the operation of such stations;

(g) receive and administer aid or contributions from any source, public or private, of money, property, labor, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(h) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

(i) employ consulting engineers, attorneys, accountants, construction, electronic and financial experts as may be necessary in its judgment;

(j) appoint advisory committees of any nature;

(k) do all acts and things necessary and convenient to carry out the powers expressly granted in this act.

Sec. 2. K.S.A. 1987 Supp. 75-4907 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. \_\_\_\_\_

By \_\_\_\_\_

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the state to such federal agencies;

(f) allocate and distribute state funds to those noncommercial public television and radio stations serving Kansas in amounts to each such station as specified by appropriations acts of the legislature to sustain the operation of such stations;

(g) receive and administer aid or contributions from any source, public or private, of money, property, labor, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(h) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

(i) employ consulting engineers, attorneys, accountants, construction, electronic and financial experts as may be necessary in its judgment;

(j) appoint advisory committees of any nature;

(k) do all acts and things necessary and convenient to carry out the powers expressly granted in this act.

Sec. 2. K.S.A. 1987 Supp. 75-4907 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

2/4/88

Senator .  
State Capitol  
Room  
Topeka, Ks. 66612

Dear Senator

Re: Senate Bill 562

I am writing to provide an explanation of Senate Bill 562 which was voted to be introduced by the Senate Government Organization Committee on February 1.

The bill is not a particularly complex piece of legislation, but it is relatively lengthy and does make several changes in the Civil Service Act. Therefore, I hope this explanation might answer some preliminary questions and perhaps save your time during the hearing process.

Sections one and two are designed to rectify a problem I have labeled "job stacking." KAPE has been besieged by calls in the last six months by state employees who have been compelled to take on additional duties without being paid for them. Some examples:

- 1) Social workers whose case loads have tripled and their professional integrity jeopardized because of it.
- 2) SRS Home Maintenance Program supervisors whose area of responsibility has nearly quadrupled and who have taken a cut in pay.
- 3) An administrative officer whose job was combined with another and took a cut in pay.
- 4) Clerical personnel who have been given whole new areas of responsibility in addition to their old ones without additional compensation.

The employees involved were all excellent workers and normally a little extra work wouldn't be a cause of concern. However, they haven't been asked to temporarily fill-in for someone or do an occasional extra duty but rather take-on whole new jobs in addition to the ones they had been performing without additional compensation.

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This is obviously unfair, and sections one and two of the bill attempt to deal with the problem by requiring additional pay when permanent extra duties are assigned.

Section three corrects an inequity in the manner by which state employees are laid-off. Currently, if a lay-off occurs, the employee is eligible to be placed on a priority reemployment list. However, this list is limited to the (job) "class in which a layoff was made."

The need for change in this statute was brought to KAPE's attention by the plight of a divorced mother of two children whose job was abolished because of agency reorganization. She had been with her agency since 1974, was well educated and very qualified for openings outside of the job class in which she had worked.

However, this employee could not receive any priority consideration because she was a mid-range supervisor and by regulation (K.A.R. 1-6-23 (c)), reemployment list placement is given only to the members of the class in which the lay-off occurred or where the employee had held a position previously. Those alternatives were not available and she was left without a job. Section three of the bill remedies that situation by expanding the scope of the reemployment list to include any vacancy the agency has for which the laid off employee has the minimum qualifications.

Section four corrects current imbalance and inconsistencies in the burden of proof now operating at disciplinary hearings. It is a fundamental precept of American jurisprudence that those who accuse another of a criminal or civil misdeed bear the burden of proof of demonstrating it. Current civil service law reverses this position and places the burden on the accused employee.

This is fundamentally unfair, especially in an administrative setting wherein the agency already has an overwhelming advantage in its ability to access evidence and witnesses. There is very little discovery procedure allowed in civil service litigation and the rules of evidence do not apply. Hence, the employee is left with the task of proving, against tremendous odds, the agency did not have sufficient cause to discipline him/her. The bill rectifies this somewhat by at least placing the burden upon the agency to make their case.

This section also changes the standard of proof the civil service board is required to adhere to in making its decision so that it is consistent with the finding an agency must make before its initial decision to discipline the employee. Current law

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requires the agency to find that its action was for the "good of the service," while the civil service board must only find that the action was "reasonable." "Good of the service" has been interpreted by the Kansas Court of Appeals to require a substantial impact on the operation of the agency. The flaw in current law is that the board may find the action "reasonable" even though it was not for the "good of the service" and be upheld.

A change in this provision does not seriously compromise an agency's ability to terminate those employees it considers incapable of performing. However, it does encourage the use of the evaluation process, by which an employee must have received two unsatisfactory evaluations in a 180-day period, as the mechanism for doing so.

This section also makes clear that the proper use of sick and annual leave is not a cause for discipline. Agencies defending their decision to discipline an individual or show that he or she was an unsatisfactory employee will often use the timing of the use of leave as circumstantial evidence of poor attitude or bad faith. This attempt is made despite the fact there is usually no real evidence of fraudulent or otherwise improper use (as defined by the regulations). In addition, current regulations allow the appointing authority to require proof of the employee that sick leave was used properly. K.A.R. 1-9-5 (d).

Therefore, the practice of some agencies of embellishing their cases or otherwise disciplining employees for the proper use of leave is irresponsible and abusive and should thus be discouraged. The leave benefit is one earned by the employee and the agency's concern should stop with whether the employee complied with the regulations concerning its use.

Finally, section five of the bill is clarifying language concerning the right of the agency to terminate an employee for inadequate performance without two unsatisfactory evaluations. Currently, this can be done if the agency can show the employee was adequately counseled concerning the areas of his/her deficient performance. However, this safeguard is useless unless a requirement also exists that the agency show that the employee continued to be deficient in those areas.

If you have further questions, please do not hesitate to contact me. Thank you for your consideration.

Yours truly,

Brad Avery  
KAPE Counsel



TESTIMONY OF BRAD E. AVERY, KANSAS ASSOCIATION OF PUBLIC EMPLOYEES, BEFORE THE GOVERNMENTAL ORGANIZATION COMMITTEE ON SENATE BILL 562

Thank you, Mr. Chairman. My name is Brad Avery and I am the General Counsel for the Kansas Association of Public Employees.

Senate Bill 562 proposes to make several changes in the Civil Service Law. If passed as written, the bill would:

A) expand the scope of the reemployment list so that in the event of a layoff an employee is eligible for priority consideration in positions outside his or her job class, if qualified. (Section three)

B) prevent the proper use of sick or annual leave from being used as a disciplinary cause. (section four)

C) clarify state policy in regard to terminations when the employee has less than two unsatisfactory evaluations. (Currently, an employee can be terminated if it can be shown counseling occurred with regard to a specific deficiency. The bill would require that the deficiency reoccur after counseling before the state action is valid.) (section five)

D) prevent the practice of "job stacking." (sections one and two)

E) change the burden of proof and standard of proof in civil service hearings. (section four)

It is KAPE's position that items A, B and C on the above list are proposals which clarify or expand the policy behind current law.

Since I have provided each member of the committee with a detailed, written explanation of each amendment, I will spend my time further explaining the proposals listed after D and E.

The "job stacking," to which I have referred in item "D" is the permanent assignment of extra duties without additional pay. It is the

subjects of sections one and two of the bill. Unfortunately, it has become more prevalent, mostly because of attempts to achieve greater efficiency in state government without proper consideration of the cost in terms of employee morale and well being.

To illustrate what I mean by job stacking, some of you on this committee are attorneys in partnership with other attorneys. If one of your firm's two female secretaries quits and all the work of the one who quits is given to the other, I think we can agree that she will eventually begin to feel discouraged and overburdened, especially if you continued to expect double the work for the same rate of pay.

The employer would have unfairly altered the terms of her employment, and she is left with the alternative of quitting or continuing without redress. This type of scenario reoccurs all too often among state employees. I have encountered it among all levels of the hierarchy from secretaries to social workers to top level management. Among those who have been victimized by this practice, one of the more blatant examples was an employee in upper management who had been with the state for over 10 years. He was generally regarded as an excellent employee. However, because of the reorganization of the agency, his job was combined with another and his salary level actually lowered by two ranges. Fortunately, after KAPE pointed out the problem to the Appointing Authority, it was at least partially rectified. However, it should not have happened in the first place and there have

been other cases where we have not been as successful.

There is one thing this proposal won't do: limit the state's flexibility in shifting personnel from a job that is no longer viable to one that is. For example, if secretary "A" is charged with typing forms regarding the taxation of an item the legislature makes exempt, her shift to another job would be unaffected by this proposal because she would not be assuming additional duties.

However, if the forms still had to be typed and Secretary "A" were told that she must continue to do so and also supervise work of five other secretaries, the state is imposing additional duties for which she should be paid.

In regard to item "E", contained in Section four of the bill, we have proposed two changes: 1) reversing the burden of proof in civil service cases and 2) altering the standard of proof by which the employee is judged. Currently, the burden is on the employee to prove that the action the employer took in attempting to discipline an employee was "unreasonable."

One of the problems with this "reasonableness" standard is that it is inconsistent with the finding the appointing authority must make before deciding to take action. That is, whatever measure is being taken is for the "good of the service." Theoretically, the Civil Service Board could find the employer's action was "reasonable" even though it was not for the "good of the service." Therefore, part of KAPE's proposal is to make the two standards the same. Both the Civil Service Board and the appointing authority would have to find the

action taken was for the good of the service.

A disciplinary action is for the "good of the service" when it is taken for "legal cause," i.e. the employee's misdeed had a substantial effect on the operation of the agency. This is the definition rendered by the Kansas Court of Appeals.

It is not the intention of KAPE to make it harder for the state to rid itself of bad employees. Bad employees make our job of winning additional benefits for the 99 percent of our membership that are excellent at what they do much harder.

However, both malevolent and negligent abuses do occur and they hurt good employees. Our national and state constitutions contain checks and balances to guard government from itself. Likewise, the civil service appeal system has been installed to guard state employees from the excesses of its large and powerful employer.

Currently that check is inadequate. The employer accusing an employee doesn't have the burden of proving its case, merely defending it. It is the employee who must prove the boss was wrong in making a decision to terminate, demote or suspend despite the huge advantages the appointing authority has before the Civil Service Board.

What are those advantages? You would have to go through the process to understand the difficulty in dealing with this kind of action. However, as examples, there is virtually no "discovery" process once a civil service appeal has been filed. The employee does not have to be shown the evidence against him nor be told who witnessed the alleged act that led to his discipline. He or she probably cannot afford an attorney,

(5)

especially after being told of a decision to terminate. In addition, there are relatively few provisions for intervention by the board to insure that the prehearing investigation process is being conducted fairly.

Consequently, the employee arrives at the hearing facing the accusations of unseen individuals with no assurances that he or she has had the opportunity to gather all the evidence that may vindicate him. With all of that going against the employee, he or she must then prove the employer was unreasonable in its actions.

Section four of this bill improves the employee's position somewhat by shifting the burden of proof to the complainant (state) and requiring that the employee's discipline be taken for the "good of the service" or legal cause. As I mentioned, legal cause requires that the employee's action have had a substantial effect on the operations of the agency.

In view of the advantage already held by the employer, this is only fair, and it is consistent with a fundamental principle of American jurisprudence, which requires the party bringing the complaint to bear the burden of proving a case.

Unless legal cause exists for termination, it is KAPE's position that the sifting out of bad employees should be conducted through the evaluation process. It is our hope that shifting the burden of proof will at least encourage a movement in that direction and provide a fair chance for the accused employee to put-on a defense.

Thank you, Mr. Chairman.