

Approved _____
Date

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business

The meeting was called to order by Alicia L. Salisbury at
Chairperson

1:30 ~~a.m.~~ p.m. on January 30, 1992 in room 254-E of the Capitol.

All members were present except:

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Brad Avery, KAPE
Larry Landwehr, Teamsters, Wichita
Craig Grant, KNEA
Steve Burton, Shawnee Mission School District
Bob Kent, Association of Fire Fighters, Local 1596, Lawrence
Bob Schulte, Vice Mayor of Lawrence
David Stephens, City Councilman, Lenexa
Don Seifert, Assistant Director, Administrative Services, City of Olathe
E. A. Mosher, League of Kansas Municipalities
Capt. Jim Kilpatrick, Wichita Airport Safety Officer

HEARING ON SB 276 - PEER Act, local option provision repealed

Brad Avery, General Counsel for the Kansas Association of Public Employees testified the objective of this legislation is to provide full representation to public employees and their employers under the Public Employer Employee Act. The employer's basic obligations under this act are to recognize the representative of the employees and meet and confer in good faith over the conditions of employment and grievances, see Attachment 1.

Craig Grant, Kansas NEA, stated the Kansas NEA has as part of its membership a category of education support personnel who are secretaries, paraprofessionals, custodians, food service workers and others. These members want to have the right to talk to the Board of Education about salaries and other terms of employment. Since they are covered by the PEER Act the local unit of government may opt in or opt out of the negotiating process. SB 276 will end an arbitrary denial. Kansas NEA requests passage of SB 276, see Attachment 2.

Steve Burton, Shawnee Mission School District, testified educational support employees are seeking the opportunity to sit down with their employers in an attempt to reach a mutual agreement as to the terms and conditions of their employment. Passage of SB 276 will establish an effective framework by which cooperation and mutual respect may be attained, see Attachment 3.

Larry Landwehr, Teamsters, Wichita, testified in support of SB 276. He said this bill will allow employees of municipalities and cities to organize to improve their jobs and their working conditions. He stated when the PEER Act was passed it created a class of second class citizens.

Capt. Jim Kilpatrick, Wichita Airport Safety Officer, feels some public employees are discriminated against in that they can be denied recognition as union employees. He favors repeal of Section 5(c).

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,
 room 254-E, Statehouse, at 1:30 ~~xxx~~ p.m. on January 30, 19 92

In answer to a Committee question, Brad Avery replied he had just received a federal district court ruling upholding Section 5(c). Senator Feleciano requested a copy of the district court ruling.

Bob Kent, Association of Fire Fighters, Local 1596, Lawrence, testified in support of repealing the local option clause of the PEER Act. The local option clause prevents many public employees from the protections and opportunities the PEER Act provides. The city of Lawrence has in place a set of flawed procedures for negotiations with employee groups as a substitute for the procedures provided under the PEER Act. For the last seven years the negotiation procedures in Lawrence have caused a great deal of turmoil between the city, on the one hand, and firefighters and police officers on the other. Repealing the local option clause would correct the flaws in Lawrence's negotiation procedures while protecting the legislative discretion of the City Commission.

Bob Schulte, Vice Mayor of Lawrence, testified the Lawrence City Commission has unanimously adopted a legislative program that strongly opposes the repeal of the local option provisions of the PEER Act. Since the PEER law was enacted it has contained a local option provision. There is no need to now force Lawrence and other cities to abandon their current practices and follow state procedures which do not allow for local flexibility and cost taxpayer's money through state administration of fact-finding and other required procedures under the PEER Act, see Attachment 4.

David Stephens, Councilman, City of Lenexa, testified in opposition to SB 276. Lenexa makes every effort to listen to and work with employees on all issues, regardless of what they may be. He said local units of government are being held accountable by the public for how their tax dollars are spent and SB 276 would take away the flexibility to deal with fiscal constraints, see Attachment 5.

Don Seifert, Assistant Director, Administrative Services, City of Olathe, appeared in opposition to SB 276. He said this bill is a fundamental threat to the principle of home rule. He stated the City of Olathe's opposition is solely based on the fact that SB 276 would obligate the city to come under the PEER Act, see Attachment 6.

Brad Avery informed the Committee the Kansas Supreme Court has held the PEER Act is the only provision that prevents public employees from striking.

E. A. Mosher, Research Counsel, League of Kansas Municipalities, stated the position of the League is state and federal governments should not intervene in local government employee relations and should not mandate collective bargaining or the recognition of employee organizations. The local option provisions of the Kansas public employer-employee relations law (PEER Act) should be retained. He said there are 15 cities, 8 counties and 2 USD's which have elected to come under the PEER Act. see attachment 7

The Committee meeting was adjourned at 2:30 p.m.

TESTIMONY OF BRAD E. AVERY BEFORE THE SENATE
LABOR, INDUSTRY AND SMALL BUSINESS COMMITTEE

JANUARY 30, 1992

My name is Brad Avery and I am the General Counsel for the Kansas Association of Public Employees, and I am speaking in behalf of SB 276.

The objective of this legislation is to provide full coverage to public employees and their employers under the Public Employer Employee Relations Act.

The principal reason for seeking that objective is equity. State law currently does not treat public employees alike in regard to their rights of representation before their employers. Teachers, under the Public Negotiations Act, have a nonqualified right to elect their bargaining representative.

Other public employees do not. They have no right to seek state sanction of their bargaining unit and compel their employer to negotiate unless the governing body for whom they work elects to vote to adopt the provisions of the Act.

It simply is unfair and unjust for teachers to have the nonqualified right to negotiate but deny that right to the secretaries, clerks and maintenance people that provide the services that keep the system going. KAPE represents teachers, and we in no way wish to impugn their rights. Our

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position is that those rights should be distributed in the same measure to other public employees as well.

Doing so is not only the fair way to proceed, but it would correct the logical inconsistency of the law in declaring the aim of developing and maintaining harmonious relationships through the Public Employer Employee Relations Act to be a fundamental interest of the people of this state but also allowing nonstate units of governments to decide whether that interest is sufficiently fundamental for them to be governed by the law. This aspect clearly undermines the overall intent of the law.

Most legislation passed by this legislature is not optional. If citizens were given the choice of whether to obey a law, its effectiveness would be destroyed, thus harming the greater public good. Since the fundamental interest of the people of this state is so specifically declared in the preamble of this act, you as legislators must ask yourselves what justification remains for continuing to allow that interest to be harmed by making its observance discretionary?

You are not protecting local government from binding arbitration. It's not in the act. Nor from oppressive labor contracts. All negotiated agreements must be approved by the governing body of the local unit. KAPE's answer is that there is no justification. The law should apply to everyone.

The problem the current law presents to most public employees is far more serious than the technical flaws I

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have cited. KAPE has repeatedly gotten calls from public employees across the state seeking representation because they have been unfairly treated. Most of the time we have to tell them that there is little we can do unless the employer has done something illegal or a bargaining unit has been established and recognized under the Public Employer Employee Relations Act. We can offer little hope to an employee faced with an uncompromising supervisor of management that won't listen when the act has not been recognized.

The employer's basic obligations under this act are to recognize the representative of the employees and meet and confer in good faith over the conditions of employment and grievances. KAPE has represented some local units of government for 15 years, and has found it necessary to ask for a fact finder's intervention precisely once. A fact finder's conclusions is the final remedy the act provides during the negotiation process.

The rights of management to hire, fire and determine duties of its employees are well protected. Compared with collective bargaining rights given to employees in the private sector, Kansas public sector employees are given very few prerogatives under this act. But they are better than dealing with a public employer without the assistance of representation or a collective voice. KAPE, therefore, urges that the Public Employer Employee Relations Act receive full implementation.

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KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Craig Grant Testimony Before
Senate Labor, Industry, and
Small Business Committee
Thursday, January 30, 1992

Thank you, Madame Chairperson. I am Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to visit with the committee in favor of SB 276.

Kansas-NEA has as part of its membership a category of education support personnel, or ESP. Our ESP members are the secretaries, paraprofessionals, custodians, food service workers and others whose lives touch students each and every school day. They are an important part of the operation of our schools and have made significant contributions toward the education of Kansas children.

Our ESP members have a problem. They often want to have the right to talk to the Board of Education about salaries and other terms of employment. They are under the PEER act. The PEER act states that a local unit of government may opt in or opt out of the negotiating process. School districts, unlike many cities and counties, opt out. Some cities also have other policies and regulations which cover the negotiation process with employee. Some cities and school districts have policies which cover the salaries and terms of employment. However, those policies can be overturned just as easily as they were implemented. As best we can determine, only two districts--Wichita and Hays--recognize school support workers for negotiations under the PEER act.

It is not that we have not tried. Unit determinations and selection of an agent--the first steps in being recognized--have happened in a number of

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areas only to have the Board refuse to recognize the unit for discussions.
SB 276 will end that arbitrary denial.

Nothing in this bill will require a board or a city or a county to agree to anything. Nothing in this bill will take away any local control. All it will do is to require a Board to talk with its employees if so requested.

That is the basic change. It asks for a basic right--the right to talk with the boss on a collective basis. It is not too much to ask. It is not too much for this committee and the Legislature to grant.

Steve Burton, one of our ESP members from Shawnee Mission, will speak as one who has gone through the process. Kansas-NEA asks that you pass SB 276 because it is the fair and proper thing to do. Thank you for listening to our concerns.

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KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Thank you Madame Chairman. I am Steve Burton and I work as a support person as a Head Custodian in the Shawnee Mission school district at Trailwood Elementary. I thank the committee for holding a hearing on SB 276, which contains a concept important to my colleagues and to me. Educational support employees in school districts throughout Kansas have found themselves in the same position as those in Shawnee Mission, which is to seek recognition by their employers only to be denied. While current law allows these employees to organize in order to seek improved working conditions, the School Boards which control these conditions may choose not to recognize them. We are seeking the opportunity to sit down with our employers in an attempt to reach a mutual agreement as to the terms and conditions of our employment.

I would like to share with you a few of my personal experiences in dealing with our school district. Several of my colleagues and I have spoken to the Board of Education during an open forum period to express to them our concern that our issues were not being addressed. While the Board would periodically interact with people speaking in open forum, their response to us was no response or to briefly touch on our issues towards the end of their meetings. I can tell you that we left these meetings with a sense of anger and hopelessness.

Being a member of Kansas National Education Association of Shawnee Mission I have felt a greater sense of belonging and purpose to the Shawnee Mission school district. Cheryl Hewitt, the President of KNEA-SM, has spoken to the Board of Education on our behalf only to be told that they did not recognize her as our spokesperson. Last year we pointed out to the Board that their rules of open forum stated that, "if a group wished to speak they should have one spokesperson." The Board finally acknowledged our President as a spokesperson for those educational support employees that were KNEA-SM members. This breakdown in communications serves only to interfere with employee-employer relations. Even with this important step we are still far from Board recognition for the purposes of negotiations.

A constant answer given by the Shawnee Mission Board to complaints and concerns by support employees is that the District has "mechanisms in place that can be used." While I never heard those "mechanisms" spelled out I assumed they were referring to the Classified Employees

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Steering Committees and Grievance procedure. First of all the steering committees have historically been ineffective. I have served on the Operations and Maintenance steering committee for three years. The committee continues to search for ways to have an effect. Secondly the district grievance procedure has been weakened to the point that an appeal goes no further than an Associate Superintendent. Support employees continue to fear retribution by their supervisors if they use this grievance process. The employees also feel that their efforts would be futile. I can tell you from first hand experience in a grievance procedure, as well as assisting other employees with them, that the outcome is often either not fair or is not enforced.

I would like to close by quoting from the cover page of our Classified Employees Policy book. " The classified employees covered by this policy book, together with teachers, administrators, and other employees of the Shawnee Mission School District, are all part of a team working together to promote the goals of the district." " The Board of Education and administrators will continue to work with the support personnel of this district to provide a working environment for all staff that promotes quality job performance in an atmosphere of mutual respect and trust." I now ask the committee to establish an effective framework by which these goals of cooperation and mutual respect may be attained by passage of SB 276.

I thank the committee for listening to my testimony. I hope that you will pass SB 276 favorably.

S.L.D. + A.B.
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Attachment 3-2



City of Lawrence

KANSAS

CITY COMMISSION
MAYOR
ROBERT L. WALTERS
COMMISSIONERS
BOB SCHULTE
SHIRLEY MARTIN-SMITH
JOHN NALBANDIAN
BOB SCHUMM

MIKE WILDGEN, CITY MANAGER

CITY OFFICES
BOX 708
6 EAST 6th
66044-0708
913-832-3000

To: Honorable Senator Alicia L. Salisbury,
Chair, Committee on Labor, Industry and
Small Business and Members of the Committee
From: Bob Schulte, Vice-Mayor, City of Lawrence
Date: January 30, 1992
Re: Senate Bill 276 - Repeal of Local Option for
PEER Act

The Lawrence City Commission has unanimously adopted a legislative program that strongly opposes the repeal of the local option provisions of the Public Employer - Employee Relations Act, the so-called PEER Act, such as that found in Senate Bill 276.

The City of Lawrence is one of the many Kansas cities which has decided not to come under the provisions of the PEER Act because the City procedures -
-set out in a City Resolution and tailored to meet our needs --
offer advantages of local flexibility and practice which are not present in the state law.

Our local procedures for meeting with employee groups has worked well. Our City Resolution establishes appropriate procedures through which city employee groups and the City can discuss and decide employment issues of mutual importance.

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Senate Bill 276
Testimony of City of Lawrence

Since the PEER law was enacted it has contained a local option provision. There is no demonstrated need to now force Lawrence and other cities to abandon their current practices and follow state procedures which do not allow for local flexibility and cost taxpayer's money through state administration of fact-finding and other required procedures under the PEER Act.

Because local government personnel management must remain a local responsibility, the Lawrence City Commission urges the Legislature to retain the local option provisions of the PEER Act, and we further urge this Committee to kill Senate Bill 276 at its earliest convenience.

cc: Douglas County Delegation Members

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TESTIMONY REGARDING SENATE BILL 276

SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

THURSDAY, JANUARY 30, 1992

PRESENTED BY CITY COUNCILMAN DAVID STEPHENS
LENEXA, KANSAS

Chairman Salisbury and Members of the Committee:

I am David Stephens, Councilmember for the City of Lenexa, located in Johnson County in the eastern part of the state. The City of Lenexa is a community of approximately 35,000 residents with a city labor force of 280 full time employees.

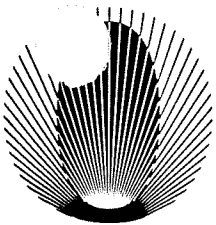
On behalf of the Lenexa Governing Body, I am here to testify in opposition to Senate Bill 276 which proposes to take away the local option of determining whether a local government should fall under the Public Employer-Employee Relations act. This bill directly contradicts the principle of "Home Rule" for cities that was constitutionally adopted by the citizens of this state in November of 1960. This piece of legislation represents another example of legislators interfering with the way local governments run their own affairs.

Currently, it is the choice of each and every locally elected governing body to decide if, in fact, their respective organization should choose to recognize employee associations and unions. In fact, it is my understanding that the cities of Wichita, Topeka, and Kansas City, Kansas, have opted to adhere to the PEER act and have consciously chosen this direction for their individual organization. In Lenexa, we make every effort to listen to and work with employees on all issues, regardless of what they may be. More and more, local units of government are being held accountable by the public for how we spend their tax dollars, and this represents a direction that would take away our abilities and any flexibility to deal with fiscal constraint. This action, in effect, will probably cost cities more by being forced to deal with employee associations no matter how large or how small.

Finally, Kansas local governments have prided themselves on excellent relationships with their employees, thereby avoiding the problems other states throughout the country have experienced with labor unrest. There have been few visible problems of issues that could not be worked out by the local units of government and their employees. I urge this committee to defeat any effort to force local units of government into recognizing employee associations and unions. I would be happy to answer any questions you might have. Thank you.

S. H. G. + S. B.
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Attachment 5-1



City of Olathe

MEMORANDUM

TO: Members of the Senate Committee on Labor, Industry, and Small Business

FROM: Donald R. Seifert, Assistant Director, Administrative Services *DRS*

SUBJECT: Senate Bill No. 276; PEER Act, Local Option Provision

DATE: January 30, 1992

On behalf of the city of Olathe, thank you for the opportunity to appear today to express opposition to Senate Bill No. 276. This bill would eliminate the local option provision in the Kansas Public Employer-Employee Relations Act.

Local option has been a basic provision of the PEER Act since its enactment in 1971. We view this bill as a fundamental threat to the principle of home rule. Home rule may rarely be a topic for discussion in this Committee, but I can assure you it is the very foundation of city government in Kansas. Home rule has long made Kansas a most progressive state in matters of local government self determination.

Opposition to this bill does not suggest that Olathe is uncommitted to a positive relationship with its employees. It does not suggest that the PEER Act is a poor statement of public policy or has no merit. Instead, our opposition is solely based on the fact that this bill would obligate the city to come under this particular employee relations system. Just as state government is hesitant to accept federal mandates, you must appreciate our natural opposition at the local level to mandates from Topeka.

For the last several weeks, the Olathe City Council has been discussing the PEER Act. As with any issue, the Council has gathered information about the Act, talked to other cities, and received presentations from knowledgeable persons on both sides. This is how we believe local government should operate. In summary, our governing body prefers to retain the flexibility to decide whether PEER or an alternative locally determined process best enables it to maintain a high level of commitment to its employees.

rc

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League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Labor, Industry and Small Business

FROM: E.A. Mosher, Research Counsel, League of Kansas Municipalities

RE: SB 276—Mandated Coverage of All Local Units Under the Kansas Peer Act

DATE: January 29, 1992

My name is E.A. Mosher, Research Counsel for the League of Kansas Municipalities, appearing in opposition to SB 276 on behalf of our member cities. This bill would repeal subsection (c) of K.S.A. 75-4321, thus eliminating the local option provision which has been in the Kansas Public Employer-Employee Relations (PEER) Act since its enactment in 1972. The effect of SB 276 is to authorize the formation of employee organizations under PEER in all governmental units, and to require the governing bodies of these units to meet and confer with such "recognized employee organizations". We also interpret the thrust of the act as effectively nullifying any locally-established employee relations procedures other than under the Kansas PEER Act.

There are two sections of the League's convention-adopted "Statement of Municipal Policy" dealing with this basic issue. These sections provide as follows:

"The governing bodies of cities should have full authority to establish comprehensive personnel programs, including authority to determine hours of work, compensation, overtime, leave policies, residency requirements, training requirements, fringe benefits, promotion, firing and all other terms, conditions and qualifications of city employment. We urge local governing bodies to adopt comprehensive personnel programs and policies, including grievance procedures, which are fair to employees, respect their legal rights, protect the public interest and are consistent with adopted policies of affirmative action."

"The state and federal government should not intervene in local government employee relations. Neither should city officials, employees or employee organizations seek state or federal legislative determination of such local affairs. Because personnel management must remain a local responsibility, we oppose any federal or state legislation which would mandate collective bargaining or the recognition of employee organizations. The local option provisions of the Kansas public employer-employee relations law (PEER act) should be retained."

Put bluntly, we think the matter before you is essentially a matter of home rule and local self-determination, and that state government should not intervene in local employee relations by mandating the procedures and requirements for dealing with employees and their organizations. The League was active in the development of the PEER Act and actively supported its passage, with the inclusion of the local option provision. The League's policy position at that time was taken after thoughtful consideration. We believed that some cities and

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counties would elect to come under the law, in order to take advantage of the procedures and processes established by the PEER Act. We also believed, at that time, that some local units would not elect to come under the act, for a variety reasons, including the disinterest of their employees, the absence of need, the attitude of the general public, or the desire to establish a local process separate and distinct from the state act.

We do not believe this general environment has changed since 1972. We suggest that locally elected governing bodies are responsive to community needs and interests, and recognize the need to have good employee relations. We suggest to you that if local employees find it difficult or impossible to convince their locally elected governing body to come under the PEER Act, one can question whether the state legislature should take it upon itself to mandate the inclusion of that local unit within the PEER Act. We remind you that the bill applies to public employers, not private businesses. In our judgment, the state has filled its responsibilities to the public, and to local public employers and public employees, by making the PEER Act available. We believe the public policy decision as to whether a local government is within or without the PEER Act should continue to be a local government decision, based on local conditions.

S.L.D. + S.B.
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**Cities and Counties Under the PEER Act
January, 1992**

Cities

(15)

- Burlington (may have no organization)
- Chanute
- Coffeyville
- Derby
- Ellis
- Hays
- Hutchinson
- Junction City
- Kansas City
- Manhattan
- McPherson (may have no organization)
- Osawatomie
- Russell (may have no organization)
- Topeka
- Wichita

*Wichita
& Hays USD's*

Counties

(8)

- Ellis
- Norton
- Phillips
- Reno
- Saline
- Sedgwick
- Shawnee
- Wyandotte

*S.L.J. + A.B.
1/30/92*

Attachment 7-3